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## Intellectual Influences of Scotland on the Continent<sup>1</sup>

**I**N the case of every nation we can trace certain large effects that were directly due to influences which came to them from without. In the development of our own country we are reminded at every stage of her history of what she owed to the community of nations of which she has been a member. In the earliest period of her history that is known to us we find the missionaries of the Celtic Church of Ireland spreading light in certain portions of her territory. By the time she became a distinct kingdom she was open to all the influences that went to mould the different nations of Christendom, and to her contact with these nations she owed feudalism and the Catholic Church—the foundations of the mediaeval societies. Her Reformation of the sixteenth century was not self-originated, but was due to a European movement. So in the eighteenth century the prevailing type of religion, known as Moderatism, was born of the speculations of thinkers who were not her own sons.

It is a natural question to ask—has Scotland, on her part, exercised any perceptible influence on the sister nations of the Christian group? Compared with these sister nations, she has certainly been at a disadvantage. By her geographical position and her limited natural resources, she was debarred from playing such a permanently important part in the world as was assured to

<sup>1</sup> Introductory Lecture delivered to the class of Ancient (Scottish) History, University of Edinburgh, October 15, 1913.

nations with greater material advantages. Only at certain periods of her history has she, owing to a conjunction of circumstances, been one of the determining factors in the rivalries of the powers of Europe. An interesting chapter might be written on these periods when, owing to a special set of conditions, she possessed a political importance that made her action an anxious concern in the councils of every European Court. Our interest at present, however, is in less palpable forms of influence than those of politics and diplomacy; it is with influences in the spheres of thought and feeling only that I propose to deal in what follows. What new currents of speculation, what new springs of emotion, has she communicated to other peoples which the world has agreed to recognise as directly proceeding from her? As we shall see, there is one century in her history—the eighteenth—during which she was in remarkable degree a source of stimulus in almost all the intellectual interests of the time in Western Europe. To what extent she contributed to the common intellectual capital in the preceding centuries we have insufficient knowledge. It is on dubious grounds that we can claim certain writers of the Middle Ages whom we know to have been potent inspirers of their contemporaries, and, on the other hand, in the case of others whom we can claim with certainty we have not the information requisite to estimate their influence. With such information as we possess, however, and with such detail as time permits, let us note the most remarkable Scots who, previous to the eighteenth century, may be regarded as seminal minds in their respective ages.

If we were to give credit to our early historians, as all Scotsmen once did, Scotland was betimes in the field. According to that remarkable annalist, Hector Boece, who did not invent the story, it was two Scots who assisted Charlemagne in founding the University of Paris. Unfortunately, as Charlemagne flourished in the ninth century, and the University of Paris was not founded till the twelfth, this early proof of Scotland's intellectual superiority we must perforce reject. How the story arose we can conjecture. The truth is that all through the Middle Ages, and even after them, Scotland figured under borrowed plumes. The illusion arose from a confusion of the designation *Scotia*. The original *Scotia*—*vetus et major Scotia*—was not Scotland, but Ireland, and it was not till the eleventh century that the territory north of the Tweed came to be designated by that name. But long before that date Ireland had a great repute in the world for

her learning. Whoever on the Continent knew Greek in the days of Charlemagne was either an Irishman or had been taught by an Irishman. It was the result of this confusion of terms that Scotland so long got credit for excellencies which were not her own.

One scholastic theologian of distinction, who flourished as early as the twelfth century, we can claim with certainty as a Scot. It is our historian John Major who tells us what we know of him. This was Richard of St. Victor, a monk of the Augustinian Order, who apparently spent most of his life in the schools of Paris. Here is Major's quaint account of him: <sup>1</sup>'He was second to no one of the theologians of his generation; for both in that theology of the schools where distinction is gained as brother meets brother on the battlefield of letters, and in that other where each man lets down his solitary pitcher, he was illustrious,' and Major adds that he 'published a vast number of most meritorious lucubrations.' Also, according to Major, the name of Richard of St. Victor is associated with a dogma which has filled a large place in the history of the Catholic Church; in one of his sermons he was the first clearly to enunciate the dogma of the Immaculate Conception. Richard died about the year 1173, and on his tomb in the cloister of St. Victor was inscribed a Latin epitaph, from which we may infer that he died at a comparatively early age. The lines may be rendered as follows:

For virtue, genius, every art renowned,  
 Here, Richard, thou thy resting-place hast found.  
 Scotia the land that claims thy happy birth,  
 Thou sleepest in the lap of Gallic earth.  
 Though haughty Fate hath snapt thy short-spun thread,  
 No scathe is thine; thou livest still though dead.  
 Memorials of thy ever-during fame,  
 Thy works securely keep thy honoured name.  
 With step too slow death seeks the halls of pride,  
 With step too swift where pious hearts abide.

Of far more resounding fame than Richard of St. Victor was a Scot of the following generation—Michael Scot, called of Balwearie. It is only in comparatively recent years that Michael's real significance in his time has been recognised. In the traditions of his countrymen, as we know, he was the mightiest wizard

<sup>1</sup>The translation is that of Mr. Archibald Constable (Scot. Hist. Soc. vol. x.)

Scotland had produced, and it is this conception of him that Sir Walter Scott has used with such effect in his *Lay of the Last Minstrel*. On the Continent, also, it was as an adept in the black arts that he attained notoriety—a notoriety blazoned for ever in Dante's great poem. As one who impiously professed to reveal the secrets of the future, Dante assigned him a place in the eighth Circle of the *Inferno*, where the appropriate punishment of the sinners was to have their heads turned round so that they were compelled to walk backwards, 'for to look before them was denied.' In one of his grim pictures Dante brings the would-be diviner before us. 'That other,' his conductor Virgil tells the poet, 'that other so thin in the flanks was Michael Scot; and of a truth he knew the play of magic arts.' His sinister renown as a master in *diablerie* Michael shared with every thinker in the Middle Ages who attempted to extend the bounds of human knowledge. His contemporary, Roger Bacon, was in equally ill-repute as being in league with the infernal powers, but, less fortunate than Michael, he paid a severe penalty in this world, and not in an imaginary hell. Both were interested in what we now call physical science, and it is a sentence in Bacon's works that clearly marks the service that Michael did for his generation. Michael Scot, Bacon tells us, was the first to translate Aristotle's treatises concerning nature and mathematics, with the result that Aristotle's fame was greatly magnified among the Latins. The significance of this sentence of Bacon is that it marks the dividing line between the earlier and the later scholasticism. Previous to these translations by Scot, the schoolmen knew only Aristotle's writings on logic, but with his new works in their hands their speculations made a new departure, and found scope in wider interests, and in more various problems. It will be seen, therefore, that Scot was an initiator, a pioneer who has his own place in the history of philosophic thought. So far as we know, he was the first of the legion of wandering Scots who in successive ages sought the fountains of learning wherever they were to be found, and who not infrequently gained the patronage of the great. We can trace dimly his steps in France, in Italy, and in Sicily, where he found favour with that brilliant imperial heretic, Frederick II. It was at Frederick's instance, it would appear, that he travelled as far as Toledo in Spain, and there it was that he made the acquaintance with the Arabic translations of Aristotle by Averrhöes which he rendered into Latin, for he knew no Greek. And besides his distinction as a revealer of Aristotle, he

has another claim which has been fully recognised. Along with his translations he gave Averrhöes' Commentaries on Aristotle, and thus became one of the founders of Averrhöism, the rankest and most deadly heresy of the Middle Ages, inasmuch as it was the negation equally of benignant and malign spiritual forces in nature.

In the thirteenth century flourished a still more distinguished thinker than Michael Scot—Duns Scotus, the 'Subtle Doctor,' who has also been claimed as a native of Scotland. As both England and Ireland contest the claim, however, and the evidence in favour of each of the three claims cannot be considered satisfactory, we must perforce leave him out of account. We are in the same difficulty with regard to another famous writer of the thirteenth century—Johannes de Sacrobosco, the Latinised form of Holywood, Holybush, or Halifax. Sacrobosco was the author of a work—a text-book on the Ptolemaic astronomy—which had as wide a circulation and as lasting a repute as any production of the Middle Ages. Long after Copernicus had exploded the Ptolemaic system it continued to be a text-book in the schools. George Buchanan versified it with poetic adornments in his poem on the 'Sphere,' and as late as 1656 the Government of Holland ordered that it should have a place in the teaching of the youth of that country. But as England, Scotland and Ireland with equal probability claim him as their son, he also must be left out of our roll.

It is not till the close of the fifteenth century that we meet with the name of another Scot who can be said to have had a European reputation. In an interesting passage in his 'Praise of Folly,' in which he specifies the characteristics of the different nations, Erasmus says of the Scots that they plume themselves on their skill in dialectic subtleties—a remark, it may be said in passing, which Galileo also made a century later. Erasmus's testimony to the metaphysical aptitudes of Scotsmen may have been suggested by one whom he must have personally known, as they were members of the same college—the Collège Montaigu, in the University of Paris. He was John Mair or Major, a native of Haddingtonshire, where he was born in 1470. He received the elements of his education in his own country, probably at the burgh school of Haddington, which John Knox also attended. His higher studies he pursued at the Universities of Cambridge and Paris, in the latter of which he became one of its most distinguished teachers. The subject in which he won his fame was

that scholastic philosophy which had exercised the wits of the successive generations of thinkers throughout the Middle Ages. The ponderous folios he produced bear witness to an industry truly prodigious, and are at the same time a monument of the futility of so much of human effort. For it was the misfortune of Major that he came at a time when the scholastic philosophy of which he was the exponent was moribund, and a new world of ideas was being opened up to which apparently his eyes were shut. He became, in fact, the jest and the butt of the men who looked to ancient Greece and Rome for inspiration and spiritual nutriment. Yet the distinction of those who selected him as an object for their wit is a tribute to his great reputation as a champion of the old order. The arch-mocker Rabelais had evidently heard of him, as in the wonderful library of St. Victor in Paris his Pantagruel found a book by Major entitled *The Art of making Puddings*. He was known to Melanchthon, also, so far off as Wittenberg. In a reply to the censure of the Sorbonne on the opinions of Luther, Melanchthon has these biting words on Major: 'I have seen John Major's *Commentaries on Peter Lombard*. He is now, I am told, the prince of the Paris divines. Good heavens! What waggon-loads of trifling! What pages he fills with disputes whether there can be any horsemanship without a horse, whether the sea was salt when God made it. If he is a specimen of the Parisian, no wonder they have so little stomach for Luther.' Be it said that Melanchthon does not exaggerate the absurdity of the questions which Major raises in his *Commentaries*. He seriously discusses, for example, whether God could become an ox or an ass if He chose, and whether John the Baptist's head, when it was cut off, could be in more places than one. It would be a mistake, however, to conceive Major as a hidebound obscurantist. Apart from his logic and philosophy, he gave proof of an open and original mind. Both in his *Commentaries* and in his *History of Greater Britain* he expounds political theories which were eventually adopted at the Revolution of 1689. And he has a more remarkable claim to be regarded as an independent thinker; he threw out an idea which gives him a place in the history of Poor Law Reform. In his *Commentaries on Peter Lombard* he expresses this opinion, which in his day was regarded as of startling originality: 'If the prince or community should decree that there should be no beggar in the country, and should provide for the impotent, the action would be praiseworthy and lawful.' And what is interesting is that the hint was taken by

one state and city after another, and put into action as a remedy for mendicancy—the intolerable evil of the age. From this account of Major it will be seen that in his day he was a figure of European importance, and deserves to be regarded as one of the brightest ornaments of his country.

Major's contemporary, Hector Boethius or Boece, may be more briefly passed over. A native of Dundee, he also studied in Paris, became a professor of philosophy there, and was subsequently Principal of the newly-founded University of Paris—an office which he filled with notable distinction. In philosophy he was a schoolman like Major, but, unlike Major, he was open to the new lights of the Revival of Learning. He was the friend and correspondent of Erasmus, the most brilliant adversary of the scholastic theology, and he wrote a Latin style which was evidently formed on classical models. Moreover, he did not, like Major, compose Commentaries on the Schoolmen, but confined himself to biography and history, and bequeathed two books to the world—his *Lives of the Bishops of Mortlach and Aberdeen*, and his *History of the Scottish Nation*. It is only with his *History* that we are now concerned, as it had an influence of its own kind beyond the limits of Scotland. From a Scots translation of it by Archdeacon Bellenden, the English annalist Holinshed appropriated certain passages for his *Chronicles of England*, and it was in Holinshed that Shakespeare found the nucleus for *Macbeth* and the local colour in which the play abounds. But further, it had the distinction of being translated by the royal cosmographer of France, and was thus the means of giving currency on the Continent to notions regarding Scotland which are hardly extinct at the present day. In his wonderful *History* Boece circumstantially relates the lives and fortunes of the successive kings of Scots whose portraits adorn the walls of Holyrood, and his narrative materially helped to convey the impression, long prevalent on the Continent, that the Scottish monarchy was the oldest in Europe. Moreover, in his description of the physical characteristics of his native country, he enumerates so many marvels that Scotland came to be regarded as having been a distinct creation.

At the opening of the sixteenth century were born three Scots who in different spheres did honour to their country abroad. They were Alexander Alane, better known as Alesius, Florence Wilson, and George Buchanan. Alesius, as his record proves, must have been one of the most strenuous Scots who ever left his

native land. He was born in Edinburgh in 1500, and it is from his hand that we have the first prose description of his native city. When a boy he fell down the Castle rock, and his preservation was considered so marvellous that it was variously attributed to the portions of Scripture he wore round his neck, to his guardian angel, and to the piety of his parents. In early manhood he adopted Protestant opinions, and was forced to flee to Germany, where at Wittenberg he gained the friendship of Melancthon. Subsequently he came to England, where he was well received by Cranmer and Thomas Cromwell, and lectured on theology at Cambridge. Driven from England by the statute of the 'Six Articles,' he returned to Germany and played a notable part in forwarding the Reformation in that country. Florence Wilson was a man of another type. Mystic and humanist, he at Lyons became the centre of a circle of scholars who looked up to him as a rare exemplar of the graces and virtues that should adorn learning. Of Buchanan's fame on the Continent it is unnecessary to speak. For two centuries he was for Continental scholars what Grotius called him, 'Scotiæ illud numen.' By the beauty of his Latin verse, and by the purity of his style in his *History of Scotland*, he won for his country a place in the intellectual commonwealth of the nations.

As has already been said, the ideas that underlay the Scottish Reformation were not of home growth, but were mainly taken over from Continental Reformers. Directly, therefore, it had no intellectual influence on other countries. Indirectly, on the other hand, it affected the whole subsequent development of Christendom. Had Queen Mary, on her return to Scotland in 1561, found the country still in the communion of the Church of Rome, momentous results must have ensued. We know how passionately she coveted the English Crown, but, as things went, she did not even succeed in persuading Elizabeth to recognise her as her successor. Had Scotland been Catholic, however, Mary would in all probability have been in a position to make herself Queen of England by force of arms. At the period of her return the majority of the English people were still Roman Catholics. Backed by her own subjects, and supported by the Catholic party in England, she would have had a superiority of force against which Elizabeth could not have successfully contended. The result would have been that England would have been gained to Rome, and with the loss of England, its great bulwark, Protestantism

would have been at the mercy of the great Catholic powers of the Continent. Thus indirectly, it will be seen, the Scottish Reformation may have determined the spiritual and intellectual development of Western Europe during the last three centuries.

The object of the present lecture is to note what original ideas, what fresh springs of emotion, Scotland may fairly claim to have contributed to the general movement of mind in Continental countries. Of the many distinguished scholars who issued from the Scottish Reformation we cannot say that any of them made such contributions. In the books that they wrote, in their teaching from the many professorial chairs which they filled on the Continent, so far as we know, they enunciated no thought, nor struck any new note that drew the world's attention. The most distinguished of them, Andrew Melville, signalized his teaching by his free handling of Aristotle as he had been interpreted by the schoolmen, but in this he was no pioneer. From the Reformation till the eighteenth century there is but one Scot, Napier of Merchiston, whose name is written in the European firmament. By his discovery of logarithms Napier has a permanent place in the roll of original discoverers in mathematical science.

We come to the eighteenth century—the century in the national history when she made her largest contribution to the forwarding of human culture. These mocking words of Voltaire themselves attest the variety and importance of the ideas that then went forth from her. 'It is an admirable result of the progress of the human spirit,' Voltaire wrote, 'that to-day rules of taste in all the arts, from the epic poem to gardening, come to us from Scotland. The human spirit daily expands, and we should not despair of soon receiving manuals of poetics and rhetoric from the Orkney Islands.'

We recognise as inadequate all attempts to explain the appearance of galaxies of genius at particular epochs in different countries. All that we can say in general of Scotland during the eighteenth century is that her people were then more alive both to material and intellectual interests than at any previous period of her history. During the two previous centuries the nation had been preoccupied with ecclesiastical and political questions which at once narrowed her outlook and absorbed her energies. In the eighteenth century she, like other countries, ceased to be dominated by theological questions, and turned her energies to making the most of this world. Thus was created an atmosphere in which her best minds could expatiate freely, and raise questions that, in a previous age,

would have sent their propounders to the stake. Be it said, also, that throughout the eighteenth century Scotland was in closer touch with the Continent than at any previous period. The most important European books were widely read, and it was the custom, we are told, for every Scottish gentleman with £300 a year to travel abroad for two or three years before settling down to the duties of his position. Even in the Hebrides, Dr. Johnson says in his account of his journey to these islands, 'he never entered a house in which he did not find books in more languages than one.'

It was under these conditions that from Scotland there issued a series of works, in widely different spheres, which potently influenced European culture. In three distinct domains this influence may be traced—in the domain of abstract thought, in the domain of physical science, and in the domain of literature. In the brief space at my disposal I can do little more than indicate the most representative names, but even the bare mention of these names will recall what were the main intellectual interests of the eighteenth century.

The first name that meets us in the domain of abstract thought is that of Francis Hutcheson, 'the never-to-be-forgotten Hutcheson,' as his pupil Adam Smith calls him. A Scoto-Irishman by birth, Hutcheson received his University education at Glasgow, where he subsequently held the post of Professor of Moral Philosophy for seventeen years. His tenure of that post marks an epoch in the intellectual development of Scotland. The testimony of succeeding Scottish thinkers to the awakening influence of Hutcheson's teaching is unanimous. He built up no philosophic system as they did, but by his gift of exposition and of touching the higher instincts in man he created a new spiritual atmosphere for the world around him. The ideal that inspired all his teaching was that *reine Menschlichkeit*, which in the latter half of the century was the evangel proclaimed with fuller content by Herder and Goethe. On the Continent his influence was greater in Germany than in France, where the Newtonian philosophy, as expounded by Voltaire, held the field. To his influence in Germany, however, all German historians bear testimony. Probably without exception, every German thinker of the latter half of the eighteenth century owed more or less to the inspiration and to the ideas set forth by Hutcheson. In the development of the German *Aufklärung* he was a potent force, and his doctrines in psychology and aesthetics were a permeating influence in German literature. But

the conclusive tribute to the importance of Hutcheson is that he was a favourite author of Kant, who freely acknowledged his debt to him, both by way of stimulus and suggestion.

The name of the next eminent Scottish thinker—that of David Hume—is writ large in the history of European thought. The issue of his teaching has been described as ‘intellectual suicide’—a strange conclusion to have been reached in Scotland, which for nearly two centuries had been the peculiar home of dogmatic assertion on all ultimate questions. His influence in his own country was both deep and lasting. Largely owing to his teaching the prevailing philosophic creed of Scottish thinkers during the latter half of the eighteenth century was a pagan naturalism, for which Christianity was an aberration of the human mind. In the House of Commons an honourable member ventured to assert that ‘the Scots were not *all* free-thinkers.’ As late as 1817, John Gibson Lockhart could say that Hume’s was regarded as the *beau idéal* of the Scottish mind; and still later (in 1832), Carlyle spoke of Hume as ‘the pontiff of the world,’ who ruled most hearts and guided most tongues, and whom Goethe had finally displaced from his sovereignty. On the Continent his influence was even greater than at home; for there, in the words of the most competent of witnesses, he became ‘the chief factor in shaping European thought.’ Like Hutcheson, he was a greater power in Germany than in France, where the *Encyclopédistes* had already evolved a philosophic system of their own. In France, it would appear that Hume was more generally appreciated as an historian than as a metaphysician. Writing from Paris in 1765, Horace Walpole says that Hume ‘is here treated with perfect veneration. His History . . . is thought the standard of writing.’ Be it added that in the following century Auguste Comte spoke of Hume as ‘his principal precursor in philosophy.’ On Hume’s influence in Germany it is unnecessary to enlarge. In the time-honoured phrase he ‘woke Kant from his dogmatic slumber,’ and with what consequences in the world of speculative thought the philosophical literature of every country is the speaking testimony.

To the third name in the succession—that of Adam Smith—it is sufficient merely to advert, as it is one of the landmarks in the history of human development. In three distinct spheres he exercised a potent influence on Continental thought. His *Theory of Moral Sentiments*, published in 1759, affected the speculations of every German writer on ethics and aesthetics (Kant included) in

the latter part of the eighteenth century. Of economic science, his *Wealth of Nations* constitutes him, if not the founder, at least its presiding divinity.

We come to the specific product of the Scottish genius in the region of abstract thought—the ‘Scottish School of Philosophy,’ of which Thomas Reid was the father. Alike in France and Germany the teaching of that school was welcomed by conservative spirits as supplying the most effective weapons against the common enemy—scepticism. During the first three quarters of the nineteenth century it was the officially recognised philosophy in the colleges of France. In his *Souvenirs d’Enfance* Renan tells us how he was reared on ‘*le bon Thomas Reid*,’ whose teaching, he was assured, soothed and consoled and led to Christianity. But the most striking testimonies to the interest of the Scottish School come from two unexpected sources—one from a Frenchman and the other from a German. Auguste Comte writes thus of his obligations to the whole succession of Scottish philosophic thinkers. ‘It is to the Scottish School, and not like many others, to the German School, that I owe the first rectification of the grave aberrations, at once moral and intellectual, peculiar to what is called the French School. I shall never forget how my evolution was in the first instance especially due to some luminous inspirations of Hume and Adam Smith.’

The other testimony comes from a still more unexpected source—from Goethe, to whom all abstract thinking was distasteful, but whose all-embracing eye no manifestation of the human spirit escaped. ‘The reason,’ he says, ‘why foreigners—Britons, Americans, Frenchmen, and Italians—can gain no profit from our new (German) philosophy is simply that it does not directly lay hold on life. They can see no practical advantages to be derived from it, and so it is that men turn more or less to the teaching of the Scottish School as it is expounded by Reid and Stewart. This teaching is intelligible to the ordinary understanding, and this it is that wins it favour. It seeks to reconcile sensationalism and spiritualism, to effect the union of the real and the ideal, and thus to create a more satisfactory foundation for human thought and action. The fact that it undertakes this work, and promises to accomplish it, obtains for it disciples and votaries.’

The second domain in which Scotland made its own contribution to the world’s progress—the domain of physical science—is beyond our present scope, and it may suffice merely to advert to the work of William Cullen in medicine, of Hunter in anatomy,

of Sir John Leslie in physics, of Hutton in geology, and of James Watt, 'the chief of inventors,' in practical discovery.

We come to the third domain—that of literature—in which Scotland exercised an influence on the Continent. In recent years French and German scholars have given their attention to the subject, and with some unexpected results. In the sphere of imaginative literature, it appears, Scotland has made a double contribution: it supplied new themes, new motives, and new inspiration, and it gave to the world certain novel theories regarding the nature of genius and the conditions under which it works.

Only two Scots can be named who, as poets, attracted the attention of Europe in the eighteenth century. The one was James Thomson, the author of the *Seasons*; the other, James Macpherson, the 'translator' of *Ossian*. To Thomson's *Seasons* German and French historians of their respective literatures ascribe the awakening of a new interest in nature which permanently affected the development of poetry in both countries. According to a French author, who has written a large book on the subject, Thomson not only inspired Rousseau in his attitude to nature, but in his poem on *Liberty* supplied him with his 'moral ideas' and his 'sociological doctrine.' In Italy Thomson appears to have been widely known. At least, some thirty years after the publication of *The Seasons*, an Italian historian of literature could write that it was 'universally read with infinite pleasure by all lovers of good poetry.' . . . On Macpherson's *Ossian*, now a disenchanted thing, it is unnecessary to dwell. It struck the most resounding note in European literature of the eighteenth century, and it laid its spell on the greatest man of action and the greatest man of thought among their contemporaries—Napoleon and Goethe.

Recent German research has opened up a new chapter relative to the intellectual influence of Scotland on the Continent in the eighteenth century. From the seventies of that century a ground-problem which occupied German thinkers was the nature of genius, especially as it manifests itself in creative literature. In the consideration of this problem, we are now told, German writers owe a large debt to two Scotsmen who are all but forgotten even in their own country. The one was Henry Home, Lord Kames, whose work entitled *Elements of Criticism* attracted the attention both of French and German critics. It was, indeed, a passing remark in that work to the effect that the *Henriade* was not a satisfactory epic poem that provoked Voltaire's sarcasm

already quoted. In Germany, however, his influence was greater than in France. Every important German writer on aesthetics, Kant included, derived inspiration and suggestion from his speculations on that subject.

The other Scottish writer, even less known than Home to his countrymen of to-day, exercised a still greater influence on German thought. He was Alexander Gerard, a Professor in the University of Aberdeen, and the two books that brought him his fame were his *Essay on Taste* and his *Essay on Genius*. The *Essay on Genius* a recent German writer has described as 'an epoch-making performance' on its subject, and he supports his statement by tracing the obligations of Kant to Gerard in his conceptions of the nature of genius and taste. And Kant himself freely acknowledged the obligation. 'Gerard,' he said, 'is the best writer on the subject.'

In another field of literature which has a closer interest for us on the present occasion—the field of history—there were three Scots whose works made the tour of the Continent and exercised an influence of their own. The names of two of them—Hume and Robertson—are familiar to every student of history; the name of the third—Adam Ferguson—is less known, yet of the three he was the most fruitful in suggestion to Continental writers. As we know, Robertson and Hume owed their inspiration to the example of Voltaire, but what gave them their distinction was a unity of treatment and a logical arrangement of their materials of which there was no previous example. Their Histories were regarded as models of lucid narration and philosophical reflection, and, translated into various Continental languages, were read with equal admiration by the general reader and the professional historian. Writing after the middle of the eighteenth century, the Italian literary historian already quoted exclaims: 'Who does not read and admire Hume's History!' and of Robertson he says that he has won 'immortal praise.'

The influence of Ferguson was of another kind, and was mainly confined to Germany. His *History of the Roman Republic* long held its place as a standard book, but it was in his speculative works, his *Essay on Civil Society* and his *Principles of Moral and Political Science* that he threw out the suggestions which influenced German conceptions of the scope and meaning of universal history. To Ferguson pre-eminently among other English and Scottish writers has been traced the beginning of a new method of historical research which appeared in Germany

in the latter half of the eighteenth century. 'Generally speaking,' says the German writer whom I am following, the 'German conception of *Weltgeschichte* was prompted by English authors,' and among these authors he assigns a special place to Ferguson.

With the eighteenth century closes the continuous succession of Scotsmen who in such different spheres made their respective contributions to European culture. In the nineteenth there was but one, Sir Walter Scott, who by his original genius appealed to the civilized world and influenced the imaginative literature of every country. For the Scottish nation, therefore, their eighteenth century has an unique interest. May it be added that for Europe at large it has an interest of its own, if merely as a curious chapter in the history of the human spirit ?

P. HUME BROWN.

## 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. Dempster<sup>1</sup> writes of his death in 1611, 'ultima senectute et penuria,' and Mackenzie<sup>2</sup> gives the date as 1541, but M. Dubois,<sup>3</sup> 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.'<sup>4</sup>

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.'<sup>5</sup> It is apparent that his father was an example of the enlightened and ecclesiastically minded

<sup>1</sup> *Historia ecclesiastica*, i. 118.

<sup>2</sup> *Lives and Characters*, iii. 468.

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

<sup>4</sup> *De Regno*, iii. 8.

<sup>5</sup> *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.'<sup>1</sup> 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,<sup>2</sup> and of his having at an early age heard discussions between eminent theologians and confessors on the respective rights of rulers and subjects,<sup>3</sup> and again of youthful study of Major's *summula*.<sup>4</sup> 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.'<sup>5</sup> 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.<sup>6</sup> The other reminiscence is of a different character. 'Id ipsum,' he writes, 'Ministros vestros Calvinistas crebro intonuisse ipsemet adolescens audivi.'<sup>7</sup>

About 1571 Barclay left Scotland and crossed to France. Mackenzie<sup>8</sup> writes that he had spent his patrimony at the Court, but the reasons of the step were probably deeper.<sup>9</sup> 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.'<sup>10</sup> The writer

<sup>1</sup> *De Regno*, vi. 10.

<sup>2</sup> *De Potestate Papae*, cap. 40.

<sup>3</sup> *De Regno*, iv. 7.

<sup>4</sup> *Ibid.* vi. 10.

<sup>5</sup> *Ibid.* i. 1.

<sup>6</sup> *Ibid.* ii.

<sup>7</sup> *Ibid.* iv. 4.

<sup>8</sup> *Op. cit.*

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

<sup>10</sup> *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,<sup>1</sup> 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,<sup>2</sup> 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,<sup>3</sup> and in his *De Regno* he writes of an opinion of Cujas, 'Vere Cujacius mihi non videtur hic esse Cujacius.'<sup>4</sup> 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

<sup>1</sup> '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).

<sup>2</sup> 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*.

<sup>3</sup> Otto, *Thesaurus*, iii. 805.

<sup>4</sup> *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.<sup>1</sup> 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*).<sup>2</sup> 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,'<sup>3</sup> 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,'<sup>4</sup> and in 1581 he married Anne de Malvallier, a young lady of the 'noblesse lorraine.'<sup>5</sup> 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.<sup>6</sup> 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,<sup>7</sup> and had accompanied the Faculty of Law in its two years' exile from Pont-à-Mousson.<sup>8</sup> 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

<sup>1</sup> *De Regno*, vi. 16.

<sup>2</sup> *Ibid.* i. 1.

<sup>3</sup> *Ibid.* v. 18.

<sup>4</sup> Ghilini, *Teatro d'huomini litterati*, ii. 162.

<sup>5</sup> *Mémoires de l'Académie de Stanislas, ut supra.*

<sup>6</sup> *Ibid.*

<sup>7</sup> *De Potestate Papae*, cap. 38.

<sup>8</sup> *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.<sup>1</sup>

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 personnages de ce temps,'<sup>2</sup> and 'célèbre docteur qui puisse remettre cette Université en sa splendeur';<sup>3</sup> 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*.<sup>4</sup> Even in his old age he continued to be the ornate Highland gentleman, and saved his

<sup>1</sup> 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.).

<sup>2</sup> *Mémoires de l'Académie de Stanislas*, App XI.

<sup>3</sup> *Ibid.*

<sup>4</sup> *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.'<sup>1</sup> He died at Angers on 3rd July, 1608, and was buried in the church of the Cordeliers, which has long since disappeared.<sup>2</sup>

Of his works, his *De regno et regali potestate* was first published in Paris in 1600.<sup>3</sup> His *De rebus creditis et de jurejurando commentarii* was also published during his lifetime, and has found a place in Otto's *Thesaurus*.<sup>4</sup> 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.<sup>5</sup>

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

<sup>1</sup> Menage, *Remarques, ut supra*.

<sup>2</sup> 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.

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

<sup>4</sup> *Ibid.* iii. 805.

<sup>5</sup> *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.<sup>1</sup> 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,

<sup>1</sup> Cf. Vigié, *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 interpretes*. 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.<sup>1</sup>

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

<sup>1</sup> 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.<sup>1</sup>

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

<sup>1</sup> 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.<sup>1</sup> The publication of his posthumous

<sup>1</sup> 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. Angliae 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.'<sup>1</sup> 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.'<sup>2</sup> 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

<sup>1</sup> Acton, *History of Liberty*, p. 188.

<sup>2</sup> 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.'<sup>1</sup>

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

<sup>1</sup> 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.

## Scotstarvet's 'Trew Relation'

### INTRODUCTORY NOTE

The text following is the first instalment of a transcript from a MS., No. C 187631-3, in the Mitchell Library, Glasgow, written *circa* 1660-3 by 'Master Johne Thomsonsone,' and included in a collection of 'Practicks,' reports of law cases, etc. Dr. Barrett, City Librarian, was kind enough to invite my attention to the miscellaneous contents, of which the 'Trew Relation' is probably the most notable item. Its two first chapters are of extreme interest and historical value upon the development of an autocratic policy in Scotland after the accession of Charles I. to the throne. The third and fourth chapters contain matter of great importance on questions of the early years of the reign of Charles, and especially as regards the Revocation, the Lordships of Erection, teinds, tenure of Kirk-lands, and the attitude of the Scottish supreme court judges towards the Covenant and King Charles after the Glasgow Assembly of 1638. It is believed that only the second chapter (relative to the Earldom of Strathern) has been printed—from another manuscript—and it is proposed to present the entire text of the 'Trew Relation' in successive numbers of the *Review*.

The historical and literary eminence of the author, Sir John Scot of Scotstarvet (1585-1670), offers the best guarantee of the claim his narrative makes upon the attention of students of the period between the death of James VI. and I. and the Restoration. Scot's own political vicissitudes were numerous, and his account of certain passages, in which his own fortunes rose and fell with the turn of sharply dramatic controversies and events, is as sure to command a hearing as his well-known 'Staggering State of Scottish Statesmen,' which unified in a seldom flattering picture the figures and careers of many of his contemporaries in public life. Less sauce is served with the present dish than flavoured the 'Staggering State,' but the same intimate knowledge and observation are qualities of both treatises. In the present work

the author had a closely personal cause impelling him to write. Whether his *apologia*, for it has that character, was in any form published at the time of its being written does not appear to be known; certainly it was never printed; and the only reason to infer its circulation in manuscript is the fact that the copy of it in the Mitchell Library MS. cannot have been unique in view of the second chapter—perhaps the whole treatise—having been available to Sir Harris Nicolas in a MS. ‘in the possession of Capt. John Graham of Duchray,’ from which he printed the thrilling story of the downfall of the Earl of Strathern (Nicolas, *History of the Earldoms of Strathern, Monteith, and Airth*, 1842; appx. No. IX.).

The text is given as in the Mitchell MS., but contractions have generally been expanded, and capitals and punctuation supplied. The MS. is a foolscap, closely written in a neat but very small hand, and averages between 66 and 70 lines to the page. That it came from the pen of ‘Johne Thomsone’ is certain. It corresponds in handwriting with that of a similar collection of ‘Practicks,’ etc., in my possession, which was ‘finita 10 kalendarum junij 1657,’ bears the signature of ‘Mr. Jo. Thomsone,’ and contains *in gremio* documents naming him. In one of these he appears ‘at Drumfreis ye penult day of julij ye zeir of god jai vi<sup>c</sup> fyftie three zeiris’ in the capacity of ‘procurator speciallie constitute be Robert erle of Nithisdail’ for recovery of rents of Dalswinton. Similarly, in the Mitchell Library MS., his name occurs in relation to Maxwell business. Both of his MS. collections show him to have had access to authoritative materials of current history and law. He was a most industrious scribe, who gives a thoroughly intelligent version of his documents, and whose renderings of Latin passages and extracts indicate his general legal competence and education. There seems to be no reason to doubt the fidelity of his copy of the ‘Trew Relation,’ which, besides its major intrinsic historical importance, offers subjectively a remarkable and subtle self-portraiture of its adroit, politic, and far-sighted author. His knowledge of skeletons in cupboards gave him dangerous powers of retort, some examples of which, notably his handling of Tam of the Cowgate (Earl of Melrose) and the Earl of Mar, are brilliantly exemplified in the present instalment of text. Besides, the light his memoir brings to bear on the status of the Lords of Council and Session must be new and valuable matter for the constitutional history of Scotland.

The particular passage which nettled Scotstarvet (as his address

'To the reader' sufficiently reveals), and which occasioned the writing of the 'Trew Relation,' occurs in the account which William Sanderson, biographer of Charles I., gives of the events of the year 1638. Sanderson, who has never been considered an accurate writer, is considerably out of the chronological reckoning in putting these episodes under the year 1638, but it was not his dates, it was his epithet for Scotstarvet which gave offence. The passage is as follows :

'Some upright and honest *Scots* were in policy taken off, either by subtilty or force. And because the Earl of Strathern a bold man, and had the *King's* ear, and deservedly too, being faithfull and true, these men set on Sir *John Scot* (*Directour* of the *Chancery*) a busie Person, to inform against his *Descent*, (which they call *Service*), as Heir to *David* Earl of *Strathern*, pretending to the Crown.'

The 'busie Person' stuck in Scotstarvet's throat : hence the 'Trew Relation.'

GEO. NEILSON.

A trew relation of the principall affaires  
concerning the state

acted be Sr John Scot of Scotstarvet in the raigne of King Charles the first vindicating him from the aspersions laid upon him by Mr Saunderson in the history of the life of the sd King Charles 1658—written at Edr the 9 August 1660.

TO THE READER

**I**T is written of Atys the King of Lydia his sone that althoght he was dumbe till he came to mans age yet seing ane villane intending to kill the king his father, that he cryed out in ane passion slay not the king. I am necessitate for vindication of my selfe from the aspersions laid on me in the large history of Mr Saunderson<sup>1</sup> in the life of King Charles the first, page 230: to publish to the worlde the truth of such matters of state qherin I was ane speciall actor during the tyme of my being a member thereof as ane lord of the counsell session and exchecker that therby it may appeare how eyill the author hath bein informed of our scots affairs and how he hath taken upon trust our bussines qherof he could have no better information but from ignorant & malitious persons beside his natural antipathy against the nation qherof in his whole history he hath not one good word. His clause concerning me is that the covenanters perswaded me to accuse an eminent worthie persone the erle of Menteth to his majesty who had done him notable services and subjoynes that epithet that I was ane bussie persone and sayis that Airth was extremly and speciallie aymed at by the former contrivers of his ruine, viz the

<sup>1</sup>A Compleat History of the Life and Raigne of King Charles from His Cradle to his Grave. Collected and Written by William Sanderson, Esq. London. Printed for Humphrey Moseley, Richard Tomlins, and George Sawbridge. 1658. p. 230.

covenanters, lest he might hinder there wicked intended designs against the king and the estate of the church and bishops quhilk how true it was it will be cleared out of the subsequent narration to quhich I leave ye imparciall reader and intends to acquaint the wordle with 3 particulars qherin I was actor during my being ane member of state: first concerning that bussinesse of changing of the lords of the session at king charles entrie to the crowne, 2<sup>dly</sup> concerning the accusation of the E. of Monteathe, 3<sup>dly</sup> concerning erections or impropriations qherin I was ane commissioner for the gentry to the parl<sup>t</sup> an. 1648 and 1649 and petitioned then ye parl<sup>t</sup> in there behalff to be freed from the nobilities vassalage to whom the king had given there superiorities contrair to the Lawes of the nation and did procure an act of parl<sup>t</sup> an. 1649 in there favour ordaining these Kirklands all therafter to hold of the crowne, qherunto I thocht not unfitt to subjoyne ane publick oration of ane learned lawyer now a judge declamed before the Lords of session an. 1648. upon that same subject justifying the gentries cause together with the summons intended by me at there instance against the sds Lords by all quhich it will appaere that it was no occasion or subject of greife or discontentment to the nation but rather that the whole gentry gott great contentment thereby being freed by the kings obtening surrenders frae the nobles and making them againe both to gett there awin teyndis and to hold of himselfe. Referring the rest to the narration contened in the 4<sup>t</sup> chapter I Rest.

*The relation of his majesties proceedings concerning the alteration of the Session in the beginning of his raigne—*  
[Chap 1

Amongst<sup>1</sup> the other directions of his majesty to the Erle of Nithisdale qhen he came from England to the convention of the 3 estates at Ed<sup>r</sup> this was one that he sould acquaint the gentry of that kingdome that his royall intention was to make choyce of some of there number to be judges conform to the first institution of the college of justice and remove these of the nobility therefrae that were lately broght in at the end of the raigne of his father of happy memory, quhilk his ma<sup>ty</sup> thought would give them great contentment, but be the contrair the com-

<sup>1</sup>On the whole matter of this chapter compare the no less interesting account in the Mar and Kellie MSS. (Historical Manuscripts Commission), 1904, pp. 139-144.

missioners for small barrons made little account of that bountifull offer shewing in the face of that convention the small regard that they had of it publickly professing that they desyred no innovation at all qherby both his majesties designe at that tyme was slighted and his purpose for a tyme of reformation of counsell and session delayed. The ground of his royall intention was founded upon an information given to his maj. that the judicatories both of counsell and session at these tymes were all confounded, for the cheife of the counsell were also cheife of the session and so ingrossed in there persons the managing of qhatsumever affairs of the kingdome and were in few yeirs therby so farre exalted both in credit and meanes as was admirable to the hail kingdome, qherby his majestie thoght best to remove that confusion by distinguishing the judicatories and removing the nobilitie and officers of estate from the places of the session advancing therto only the gentry but finding that notwithstanding his letters written to the convention for that effect the small progresse of so noble intention he left off the purpose for a tyme and from a publick direction turned himselfe to private missives wryting by his secretary depute particular missives to the Erle of melrose president of the session, the Erle of Lauderdale ane of the lords of counsell and session, the lord Carnagy lykwise counsellor and sessioner Sr W<sup>m</sup>. Oliphant his majesties advocat sir Rich. Cockburne of clerkingtoun lord privie seale & sir J<sup>on</sup> Hamiltoun clerke register officers of estate and at that tyme counsellors and sessioners willing them to take notice of his royall intention and to give over there places of session as under degree of erles and not sitting counsellors and officers of state, in regard his majesty was absolutely resolved to distinguish & separate these judicatories. The Erle of melrose only consented and demitted his place of session by a letter to his majestie.

Lauderdale and Carnagy answered that they had als good ryt to there places as to there Lands and expected that his majesty would doe nothing in prejudice of there right till they were heard to pleade for the same By this tyme the Erle of Nithisdale being croced in many of his majesties instructions by this discontent of the great ones and there power with ye rest *minorum gentium* returned back to court to give an account to his majestie of qhat he had done qhilk are here pretermittit intending only to shew how his majestie separated the counsell and session qhilk was thus. At that tyme of the convention Sr J<sup>on</sup> Scot director of the chancellerie being at court his majesty made the Erle of Nithis-

dale privatlie inquire of him if he could give him any light in that matter anent the session quhilk he assured himselfe he could doe being so long trayned up amongst them promising all favour and kyndnesse if he could cleare in that bussines. Sir Jo<sup>n</sup> having kysed his mat<sup>ies</sup> hand Nithisdale being present at Hampton Court vndertook to prove by law and auntient practick of that kingdome that his majestie might at his pleasure [P. 2] Input or output any he pleased either from counsell or session and promised within few days to instruct by wryte and evidences what he had said.

The nixt morning these about his majestie qho opposed all maner of innovation contended violentlie to keepe still the power in the hands of these qho had it, thinking that these clouds might be dissolved at the sight of these whose credit meanes & power they thought sufficient. [They] dealt earnestlie with his majestie to send for themselffs to court before he determined any thing in the contrare wherevpon there were immediatlie letters dispatcht commanding the persons aftermentioned to come to his majestie with all convenient diligence to wit the erles of Marre Mortoun Roxburgh Melrose & Sr Geo Hay chancellour. His majesty willed also the archbishop of St Andrews to come at that same tyme being in the beginning of februar 1626.

Before there coming his majestie had gotten from sir Jo<sup>n</sup> Scot the reasons qherby he proved the sessioners had not there places *ad vitam* which at Roystoun some dayis before there coming his majestie had communicate with s<sup>r</sup> Ja. Skeene, after president of the session & then one of there number, desyring to know if they would hold, quhilk he answered that in his opinion they would and in testification therof resigned his place. The lords being all come to London, his majesty appoynted an audience to them in the withdrawing chalmber at Whitehall at quhilk 5 of the Scots counsell were present, against qhom his majesty objected first against the chancellor, that according to his direction he had not caused expedie his revocation by act of the committee of estates as was commanded by the Erle of Nithisdale in his name but by the contrair had divulged the samyn and had made participant therof other six or seven there present quilk might have disturbed his majesties other purposes then in hand.

To the Erle of Melrose he objected that he had refused to be president of his counsell quhilk he had offered to him by letter.

To the erles of Marre Mortoun & Roxburgh the convening of such a multitude of the leidges contrare to the lawes of the kingdome and the places & charges they had under his majestie

and there opponing of his royall will in making of barronnets and in resisting of the most part of his royall directions given to the erle of Nithisdale for there awin particulars, qhilk he said he could not but resent, and the more because the said erle had no publick commission but was only carrier of the letters and swa not apparant to have incurred so great emulation and envy for his affection to his majesties service.

The chancellor answered that the matter being of so great importance and tuiching the whole kingdome so neerly he could doe no less than communicate the samyn to the principall of the counsell and that notwithstanding therof he had so carried it that in dew tyme it was published and yet no notice taken therof be the convention till the rest of his majesties bussines was perfyted specially that of the taxation. The Erle of Melrose replyed that it came of no neglect or misregard of his majesties service that he refused that honour of being president of the counsell but only becaus it would seeme a strange and new thing to the rest of the nobility that he being preferred bot latlie to there degree from a gentleman sould by that place presume to take place above them yet offered to obey his majestie therin qhen it sould please his majestie to command to the qhilk Mortoun subjoynd that if that had place his majestie might put in men after that fashion before them he might make such ane number of officers of estate that might sway doune all there votes in parl<sup>t</sup> and so might carrie what he pleased, his majesty first told Melrose that he sould not be troubled with that burden thereafter and then turning toward Mortoun in ane angry maner told him that his speach was seditious, inquiring of him who had nobilitate him and his predecessors, and if it was not in his power to create such officers as pleased him, qherupon Mortoun craved pardon on his knees and that matter there ended.

To the convention it was answered by the chancellor that it was only a frequent meeting at the end of the session by these qho had suites in law and for the matter of the barronnets he agknowledged his majestie had power to create what honour he pleased and that they were only moved by the gentry to delay the matter till they might petition the contrare. Thereafter his majestie pulled out of his pocket the reasons proving the sessioners had not there places *ad vitam*, giving them also his revocation to make answer to, both against the nixt meeting. The Erle of Marre desyred to know by qhom these reasons were authentick, qherby his majestie behoved to cause Sr Jo<sup>n</sup> Scot there present to

avow them, and then in presence of the duke of buckingham ane new meeting was appoynted within 3 dayis after and direction given to the Erle Melrose to answeire in wryte and to communicate the reasons to Sir Jo<sup>n</sup> Scot.

The nixt meeting was appoynted to be at the counsell table at Whitehall qherat ther were 18 counsellors of the English and Scots counsell present with the duke of buckingham qho was appoynted by his majestie to heare the reasoning. The first reason was qhither s<sup>r</sup> Jo<sup>n</sup> Scot and s<sup>r</sup> Al. Strauchan of Thorntoun sould sitt for if the late kings counsellors sould sitt then sir Jo<sup>n</sup> Scot had place and if the new then was sir Alex<sup>r</sup> a counsellor. It was answered that sir Jo<sup>n</sup> Scot being a counsellor to king James and no new counsell sworne he could not be removed and for sir Alex<sup>r</sup> seing he was both in the list of the new counsell and had warrant from his majesty to be present at that meeting he could not be removed. It was replied by Mortoun that he behoved to shew his warrand but the matters was settled by the duke qho told them they were too nigh<sup>t</sup> the king to sitt there without a warrand. The bussines then agitat were first anent the revocation lafulnesse & unlafulnesse therof: the bishop of Rosse maintained the first, Melrose and the chancellor ye contrare, but that purpose was not then ended till a new meeting, only the chancellor averred that if that revocation gott way any rights given be any of the kings predecessors to any subjects in Scotland would be reenversed and that no man in that kingdome could have assurance of Lands swa that the king would make them lyke timariots of ye turks that enjoyed the Lands for lyfetimes only. The next purpose was anent the places of session qhither or no his majesty might remove them at his entry to be king and there the chancellor produced the answers made to sir Jo<sup>n</sup> Scot his propositions of qhilk the tenor followeth.

*Sir John Scot his reasons.*

1. In the institution of the college of justice an. 1535 in the act of parl<sup>t</sup> concerning the samyn there is no mention that they sould possesse there place *ad vitam*.

2. If the sessioners had there places for there lyfe then they sould not have lost the samyn be reason of inability or being removed from there places be decreits or vtherwise put out be the king or, regents being displaced, bein reestablished be a simple letter from the governor, bot it is of verity that dyverse of them being displaced for there inability the governor placed others in

there rounes, and some being removed from the session were againe repossessed be the governor, to wit Patrick Vaus of Barbarroch was made ordinar lord in place of m<sup>r</sup> Rob<sup>b</sup> Maitland qho was displaced for his inability the 11. feb. 1575. m<sup>r</sup> Jo<sup>n</sup> Maitland in place of m<sup>r</sup> Archb. Dowglas for his inability the 26. April. 1581. Jo<sup>n</sup> commendator of Coldingham in place of m<sup>r</sup> Archb. Crafurd [P. 3] Removed for his inability the 2. june 1568 and m<sup>r</sup> Archb. Dunbar being debarred from his ordinar place of session was againe restored thereto by the regents letter an. 1572.

If the saids lords had there places for there lyfe then could not the king have given there places to vthers so long as they lived but it is of truth that M<sup>r</sup> Tho. Hammiltoun was admitted to be the kings advocat for good considerations moving his majestie and not as vacant in his majesties hands qhilk was done the last januar 1595 the king being major and ane certane space before the death of m<sup>r</sup> Da. McGill qha was advocat for the tyme.

If the saids lords had there places for there lyfetymes then one of them during his lyfetyme could not have bein removed for withdrawing himselfe and an vther placed in his roome bot true it is that the L. of Seggie was placed in the L. of Lundies place be Lundies withdrawing of himselfe 9. july 1575 the king being minor.

M. Craig in the 10. chap. of his 2d book<sup>1</sup> of the fewes wryting of all offices and places granted be the king he calls them a sort of fewes and concludes concerning the same as follows quhither or no<sup>t</sup> [?] these fewes ends with the death of the giver I am yet uncertane seing they are granted for the lyfetyme of the receiver, yet did I see all those qho had publick charges in the commonwealth at the inauguration of our dread soveragne King Ja. 6. to take new gifts of there procurations or places qherof having requyred the cause from ane most learned man m<sup>r</sup> Jon Ballentyne he gave me this answeare that all these dignities procurations & offices that are called offices of the croune did end as well with the death of the giver as of the resserver. Lykas conforme to the said forsaid declaration it is of truth that all the lords tooke of new of K. James there places. Amongst all there gifts qho were sessioners from the yeir 1535 to the yeir 1581 I find none of there gifts contenis that they had the samyn for there lyfetymes except two m<sup>r</sup> Jo<sup>n</sup> Bartoun and m<sup>r</sup> Jo<sup>n</sup> Colvill qho did not enjoy the samyn for there lyfetymes.

It is to be remembered that the senatours have no gift under

<sup>1</sup>The first book, not the second. *Jus Feudale*, Lib. I. Diegesis 10, § 11.

any seale to warrand there place but only a letter from the king qherby his majestie desyres the lords to ressave such a man in such a mans place vacant be deposition death or inability and wills them to give the new intrant all honours and priviledges belonging to an ordinar lord that justice be not hindered for want of ane compleit number to let him vote amongst them and make him participant of there contribution and take his oath.

*The Erle of Melrose answers.*

If his majestie command had not tyed vs to wryte of this subject we would rather have remitted the answers to them qhom it concerneth nor vndertaken to oppose these indigested lynes to the articles so advydedly prepared after diligent search of the register many yeirs patent to the said sir John at his pleasure.

1. The first article is founded upon the first institution of the session an. 1535 qherin he sayes ther is no mention made that the lords sould possesse there places *ad vitam* and inferred thervpon that they have not there places *ad vitam*, qherin it is to be considered that there institution maketh no mention that they have there places *durante beneplacito*, or that being once Lauffullie provyded they may be removed in there lyfetye; Lykeas it is declared in the first act of parl<sup>t</sup> 1537 that beginning is only given to the order of session vnto the tyme the said college be institute at mair leysure so that the institution nether declaring that the lords sould possesse there places *ad vitam* or *durante beneplacito*, the obscuritie of the institution is cleared by the continuall course of there admission and possession, qherby it is evident that many have been provyded to possesse during lyfe and never any removed at pleasure but either for inability or *ob culpam* and if the original of the institution with the popes ratification were seene it is very probable it would remove this question.

2. The 2d argument is, if sessioners had there places during lyfe they could not be removed for inability or decreets voyd and be thereafter reestablished be ane simple letter of the regents qhilk he confirmeth by instances. It is answered that albeit a man be provyded to a place *ad vitam* that impedes him not to be depyvded for inability, for his provision gives him not immunitie against deprivation for crymes or inability it being manifest that such as were deprived for inability were incapable to possesse any longer the place, if it be dulia considered qhat the sense of the word inability is in such cases, to wit if a sessioner be a profest papist,

an excommunicate persone contemptuously Lyand at the horne refusing to acknowledge his majesties authority, or convict of any heynous cryme or being long absent without Licence, these are cases exprest by act of parl<sup>t</sup> and session to be just causes of deprivation as in the instances adduced m<sup>r</sup> Rob Maitland was unable for religion and not residence and adhering to the queens authority; m<sup>r</sup> Archb. Dowglas fugitive for airt & part of the kings fathers murder and his servaunt Jo<sup>n</sup> Binning execute to the death at the samyn tyme for the said cryme; m<sup>r</sup> archb. Craford depryved for inability and dyverse crymes; and m<sup>r</sup> Alex<sup>r</sup> Dunbar for absense without licence and his place not being disponed to any other he was reponed by the regents letter.

3. The 3d is a meere mistaking for m<sup>r</sup> Tho. Hammiltoun was nether provyded to m<sup>r</sup> Da. Mcgills place in session nor to his place of advocat during his lyfetyme because m<sup>r</sup> Thomas was an ordinar lord of session an. 1592 and thereafter an. 1595 after m<sup>r</sup> Da. McGill by great age and irrecoverable infirmity had bein forced to keepe his house a long space qherby his majesties service in that office was prejudged m<sup>r</sup> Thomas was joyned in office with him and after made sole advocat upon his dimission who within 2 or 3 days after died. Lykeas it was a thing vsuall to the king and his predecessors to have two advocats Ja. the 5 appoynted m<sup>r</sup> Adam Otterburne and m<sup>r</sup> Ja. Fowlis to be his advocats and thereafter m<sup>r</sup> James being clerke register m<sup>r</sup> Adam remaned advocat many yeirs till at last becoming very aged m<sup>r</sup> Henr. Lauder was joyned with him Lykeas m<sup>r</sup> Jo<sup>n</sup> Spense of Condie & m<sup>r</sup> Da. Borthwick were advocats to Q. Mary and m<sup>r</sup> David and m<sup>r</sup> Ro<sup>t</sup> Crichtoun were at one tyme advocats to King James after whose deceis m<sup>r</sup> Da. McGill & m<sup>r</sup> Jo<sup>n</sup> Skeene were advocats and m<sup>r</sup> Jo<sup>n</sup> Skeene being made clerke register m<sup>r</sup> Thomas Hammiltoun was joyned in office to m<sup>r</sup> David. Nether was his place of session given to m<sup>r</sup> Jo<sup>n</sup> Prestoun till a month after his deceis.

4. It is answered to the 4<sup>t</sup> argument that the L. of Lundies absence without licence was not a sufficient cause to Lose his place but the L. of Seggie obtened it not upon his deprivation but upon his dimission.

5. To the 5<sup>t</sup> it is answered that although m<sup>r</sup> Tho. Craig & m<sup>r</sup> Jo<sup>n</sup> Ballentyne were Learned men of good fame yet there privat and singular opinions were of no greater force nor authority nor sir John Scots is and it is strange that these Learned men sould call places in session fewes and nevertheles m<sup>r</sup> Tho. Craig confesseth that they are granted during lyfe and qhere he alledgit

that at king Ja. the sixth his inauguration the Lords tooke renovation of there places his affirmation will be found erroneus and not able to be verified for manifesting therof.

[P. 4] 6. And mistaking the 6 argument it is to be verified be the register that in dec<sup>r</sup> 1567. after queene Mary was made prisoner and compelled to make resignation of the crowne in favours of king James being then an infant of a yeir old, her ennimies being conscious of the weaknesse of ther title to the soveragne authority, qhilk they exerced in king James name, the regent received the oathes of all the lords clerks advocats but nether annulled there former provisions, nor made them to take any new gifts, but depryved some members of session qho refused to agknowledge the kings authority but adhered to the partie qhich maintained civill warre at that tyme for defence of the Queens authority. Nether did the lords take any new provisions to there places till 5 dec<sup>r</sup> 1582 but only gave there oathes to doe justice, qhilk the king may lafullie requyre them every yeir and oftner to doe as the Lords cause the advocats renew there oathes yeirlie given at there admission.

7. The seventh argument and warrand therof most depend vpon the sight of the register qherin it will never be found that any man once lafullie provyded to a place in session was removed during his lyfe without a cause expresst, for qhich he might have bein depryved by warrand of law, and except the few instances in the 2<sup>d</sup> article founded vpon inability and crymes, to qhich answer is alreadie made. All the rest of the ordinary places given to any sessioner are either exprest vacand be dimission or by deceis of the last possessor. The cause of m<sup>r</sup> Jo<sup>n</sup> Colvils short possession of his place was that he finding his vncle Culrose daungerously sicke affirmed to the king that he had Culrosse dimission and so obtened his majesties presentation and being admitted thervpon 2 june 1587 Culrose convalescing and vnwilling to bring vpon m<sup>r</sup> Jo<sup>n</sup> Colvill qho was his nephew the infamy of a false dimission for covering his shame was content to be of new reponed to his place vpon m<sup>r</sup> Jo<sup>n</sup> his dimission 26 june 1587; and farder it may be affirmed and authenticklie verified that 40 places of session are expressly given during lyfe; nether thinke we that any possessing place at this tyme is not provyded therto *ad vitam*.

8. To the last argument it is answered that all places during lyfe requyre not the warrand of the kings great seale but are lafullie possessed acording to the conswetude of the realme quich is in place and force of law qher no Law is made to the contrair

Nether is the kings letters the only warrant of there places but the lords admission and act made therevpon after tryal of there qualification, because king Ja. 6. p. 6. 93 alloweth the lords to refuse any man presented be him to a place in session if after tryall they find him not qualified.

At the meeting at Whythall these considerations being red it was desyred by the duke that sir Jo<sup>n</sup> Scot might answer therto qho having first shewin that he was surprised, and being contrare to there promise to his majesty to produce these answers in publick till first they had been communicate to him that he might have knowne the contents therof and what to have answered, yet after protestation made that he might be heard be wryte to answer thereafter and that they would not thinke the worse of the kings cause if the present replies to be made be him to the answers qhilk he had never seene did not fully answer there expectations, and seing by the kings order a Scots counsell was appoynted to sitt at Whytehall qhere never any had sittand before, nor was lyklye to sit after, that it sould not be said that nothing was done in the Scots counsell, he condescended to answer every one of these articles severally as they were set doune *ex improviso*. In the qhilk answer two things displeasid Melrose, first that he was taxed to have incroached vpon the king's advocat his place in his lifytyme, the nixt was that Melrose had said in his penult answer that he beleved that no sessioner was qho was not provyded to his place *ad vitam*, to qhich sir John his reply was that he could not be ignorant in his awin cause, and that vpon the perrell of the haill it sould be instantlie proven and verified, that he himselffe had not his place *ad vitam* but *ad beneplacitum*: qhilk knowing to be of truth and that it would be instantly verified he answered that it was no marvell that he had forgotten seing it was 35 yeirs since he had gotten that gift; qhich gave the duke such contentment that instantly he dissolved the meeting and went into the king.

*The replies maintaining that sessioners have not there places for lifytyme.*

It is answered to the first argument that it is certane that if in a gift of presentation to any place of judicatory granted by the king it be not expresly set doune that the samyn is granted for the receivers lifytyme, then the gift most be interpret at the pleasure of the kings majesty granter thereof and the said Sir John his first argument grounded upon an act of parl<sup>t</sup> is not

taken away be this pretended answer, albeit the institution contain nether deprivation for faults or for inability, seing these albeit not exprest are to be understood and therefore was not requisit to be set doune in the act (these sessioners being only judges appoynted by the king & approven be the estates for decyding of causes during his pleasure as others were before the institution) differing then in no other thing but that the judges were more certane and the judicatory drawne to ane certane place qhilk before went abroad throw the country, and any of these judges after the institution being found unmeat by his majestie for the place was at his direction depryved and others upon his majesties letters placed in there roumes. And qheras it is alledgit that there was then but a beginning made to the order of session till such tyme as the said college sould be instituted at more leysure, the contrair is cleare seing there was never a new addition made therto but it remaned the same as it was established the 17 May 1577. Nether if any other had been valable seing it was only the institution that was still by new acts of parl<sup>t</sup> ratified, since nether does the sessioners there possession for lyfe take away the first argument seing the samyn was only by the kings permission qho might have displaced them if he had pleased they not having the samyn for lyfe as said is, and it sall be cleared that some were removed at the kings pleasure, in reply to the 4 answer

To the 2<sup>d</sup> argument stands good notwithstanding of the answer made therto, seing that inability was wont to be proponed be his majesty or regent qherupon any sessioner was depryved and the lords upon the Kings advocat persute did displace such as his majesty thocht unmeete for the roome, and it will be found ane sufficient inability of a number of the present sessioners that they are not such persons as were appoynted to be judges at the first institution, viz some of them erles Lords and others officers of estate qho either be there birth or be there place are members of parl<sup>t</sup> and so the saids temporall Lords & officers of estate not being contened in the first institution of the session, qhere before they had place be the same act of institution, are not capable to possesse these places, and others now may be substitute in there roumes for there inability his majestie being [P. 5] the fountaine from qhence that jurisdiction doth flow is now in the same roome that his great grandfather was at the first institution, seing as yet he hath nominate na sessioners, nether approved these qho were judges in his fathers tyme, qhich most

of necessitie be done before they can sitt in judgment, and swa there being now no sessioners his majesty may alone depryve any of the former qhom he either finds unmeete for that roome or uncapable thereof be there places, and in there roomes may substitute others. And as tuiching the particular of m<sup>r</sup> Arch<sup>b</sup>. Dumbar, whose absence was called unability and he alledgit to be depryved only for that cause, It is answered that at that tyme, viz anno 1572, there was no such act that judges sould be depryved for a short tymes absence without sentence, as will appear in reply to the 4<sup>t</sup> answe

The 3<sup>d</sup> argument stands good notwithstanding the answer that if his majesties dearest father might have given to m<sup>r</sup> Tho. Hammiltoun a gift under the privie seale of m<sup>r</sup> David McGills place before his deceis without ane dimission or fault committed but only from good consideration moving his majestie, farre more may the king now give ane ordinar place of session to ane in place of an other qho was never received nor agknowledged be him, bot the first is trew or the 2<sup>d</sup> most follow. Nether was the said m<sup>r</sup> Thomas only joyned in office with the said m<sup>r</sup> David as is alledgit bot he was absolutely created the kings advocat the last of Jan: 1595, 15 dayis before the said m<sup>r</sup> David McGills decease, not having mention in his gift of any other of the kings other advocats, and the king having of 2 advocats in tymes preceding so often repeated prejudices no ways the 3<sup>d</sup> argument for ane of these advocats was pleader for the kings cause bot they had not severall gifts under the privie seale of that office [?]<sup>1</sup> cace at this tyme controverted.

To the 4<sup>t</sup> answe it is replied that a litle tymes absence was then no cause of deprivation and there is no appearance that Seggie gott Lundies place be dimission seing the very presentation granted to Seggie sheweth the contrare that he had it by the said Lord of Lundies withdrawing of himselffe, and if so it had bein for his absence he sould have been depryved, qhich cannot be, seing it is plaine that the lords always excuse others for absence at the desyre of any other of there number and sets doune that excuse in there booke of sederunt. Yet that would have requyred ane declarator and sentence of the lords if it had bein in the kings power alone to place another in his roome for his evill attendance as the 4<sup>t</sup> argument bearis.

The 5<sup>t</sup> and 6<sup>t</sup> argument conjoynd stands good notwithstanding the answe made therto, seing the testimonie of M. Craig and m<sup>r</sup>

<sup>1</sup> Here a short word illegible.

Jo<sup>n</sup> Ballentyne the one a most learned Lawyer and the other a long practised statesman, and both being eye witnesses of the acceptation be the sessioners of there places from King James, may serve for ane sufficient probation to the king in his awin cause so neerly touching his prerogative royall, and Craigs passage is mistaken in the answere for he calls not the places of session fewes but offices of estate, and these he sayis are granted for the life of the resserver but does not alledge that the sessioners there receiving of there places for life and part of the sessioners receiving there places of the king is [conj]oynded in these words and conjoynded in that with the offices of estate, and the erle of Melrose awin renovation of his gift argues that his lo[r]dship] was not ignorant that all these places fell in his majesties hands at his coming to the croune, and the haill rest of the answere does naways prejudice the 5 & 6<sup>t</sup> arguments but rather confirms the samyn and shewis that only in the 81 yeir the sessioners in the kings presence sworne to administrat justice bot also at Q Maries deprivation the regent did the same, who he confesseth did depryve some of there number for disobedience of the kings authority, and so he might have done the rest of them if he had pleased for it was in his power aswell to have displaced all as some of them, but he in that turbulent tyme fearing to make farder alteration disisted and retening them in there places they needed no new provisions but were secure to enjoy the same by giving there oath to the regent in the kings name. And last these very giving of there oathes at both the former tymes does clearlie shew that they of new accepted there places of his majestie, nether will it be found that ever the haill Lords gave there oathes all at one tyme but at a kings new entry albeit it be the lords custome to take the advocats oathes yeirlie.

The 7 argument standeth good and it sall be offered to be proven as it is conceived albeit in that tyme above 60 sessioners were presented yet never one but two had gifts for there lyfetyme; yea nether the said Melrose the late Lord Chancellor nor the lord privie seale had there gifts for there lyfetymes, but these sort of gifts begouth at the kings going into England.

To the last it is answered that ane simple presentation without any seale can be no sufficient warrand to the sessioners to enjoy there places, except the kings majestie of new confirme the samyn, and there possession is interrupted by the kings authority, and the institution of the college of justice (qhich doth not beare expresly that they have them for there lyfe) is a sufficient Law to dis-

possesse them, unlesse it please his majestie to renew there gifts; and seing signatours of Lands passed the signet and not expedie the great seale in the kings fathers tyme could not passe the great seale unlesse they were approved be his majestie now, Much lesse can the sessioners clame title to there places granted by the Late king except his majestie give them of new, and wher as it is affirmed that there presentation is not only the warrand of there place but the act of admission after tryall of there qualification It is answered that the cace is not now alyke as qhen ane simple place did vaick, at quich tyme the king by the act here alledgit gave the lords power to examine the new intrant, for now the haill places being in his majesties hands and at his disposition his majesties sole presentation at this tyme will serve for there admission without any other warrand for that effect but only an act to be made in the sederunt booke.

*The reformed reasons against the lyferent places of sessioners.*

1. At the first institution the sessioners were ordained to be nominate be the king not making mention *ad vitam* but only indefinite, quhilk most be interpret *ad bene placitum regis* and altho none of these judges were removed in tymes past except for faults or inability that hinders not but that the king might have displaced them if his majesty had pleased being placed by him, for by the law prescription runnes not against the king.

2. The said sessioners in the yeir 1581 being all present gave there oathes to King James of famous memory both of fidelitie and administration of justice quich is all that is requisit at there admission, qhen the haill bodye of the session or any great part thereof is to be admitted, as it was at the first institution and is now; and qhere it is answered that they tooke no new gifts and that the king may exact that oath yeirlie of them, it is [P. 6] Replied that there new act and oath then set doune in the sederunt booke *rege presente* was sufficient to them for there new gifts; and that [it] will never be found that at any other tyme the said sessioners gave all there oaths but at the entrie of a new king.

3. Fourtie fyve yeirs together after the institution, no presentation contened place *ad vitum*; Lykeas the gifts granted to Melrose and the lord privie seale two of the present number will testifie, and the cause why none of the said sessioners were altered at the entry of queene Mary and king James was because the governors then thought it not expedient in respect of there sufficiencie, and because they did agknowledge that they held there places of them at there

severall coronations qherof then 23 gave there oathes as was given at the first institution qhilk was ever the forme of admission of the haill bodye of the session.

4. The testimony of so famous a jurisconsult as was m<sup>r</sup> Craig qhose booke of the fewes is now in credit throw all Europe, and of so worthie a statesman as Sir Jo<sup>n</sup> Ballenden qho was both a sessioner himselfe and director of the chancellarie and justice clerke, may well serve for a probation to maintain his majesties royall prerogative, it being expresly mentioned in the first book of the fewes that all publick procurations places and offices fell as well by the death of the giver as receiver, and that the haill sessioners at king Ja: inauguration took renovation of the samyn places from his majestie.

5. A simple presentation not warranted be any seale can be no ground to the sessioners to possesse there places after the death of the giver, except they procure the samyn of new of his majesty; and qhere it is answered that the presentation is not the only ground of there places but also the act of there admission given be the rest of their number grounded upon the act of parl<sup>t</sup> qherby they have power to refuse any person qho sall be<sup>1</sup> not be found be them to be able, It is replied that notwithstanding that act the most part of the present sessioners have been admitted without any publick tryall, but were sworne and admitted upon sight of the kings letter, yea shortly after the former act there was dispensation of that act expresly granted in favours of the Lord of Edzell, qho was knowne not to have been learned, and that at the desyre of the kings majesty; and now the whole body of the session being vacant the kings presentation serves for all and albeit every one presented suld be examined be the lords and admitted yet the presentation is the only ground of there right and therefra there title to the place doth flow.

6. And Bodin<sup>2</sup> in his first book c. 8. says that it is certaine that the Lawes ordinances letters patents priviledges and gifts of princes have not any force but during the tyme of there lyfe if they be not ratified be the expresse consent, at leist tolerance & suffering, of the intrant prince, so doe we also see in this kingdome at the coming of new kings that all colledges and communalities demand confirmation of there priviledges, even parl<sup>ts</sup> & soveragne courts, and lib. 3 c. 1 fol. 258 he sayis that also the senatours & counsellors

<sup>1</sup> *Sic.* Delete this 'be.'

<sup>2</sup> The first passage cited from Bodin, *De La Republique*, will be found *e.g.* in the French edition of 1577, on p. 96; and the second on p. 272.

of state to speake properly are nether officers nor counsellors and hes no other warrand but a simple letter subscryved be the king without seale or casket<sup>1</sup> bearing in 3 words that the king gives them seats and deliberative voyces in his counsell so long as it pleaseth him; and the king being dead they have need of a new letter.

7. The kings majestie either be himselfe his counsell or such a number of them as he sall be pleased to appoynt or any other persons qhom he lykes to delegate judges are the only competent judges to such of the sessioners as will mantaine there places by law, conforme to the act of parl<sup>t</sup> anno 1584 c. 129 p. 8 and qhere it is answered that the act was granted upon the misdemeanor of sindry ministers that is not to be respected seing all generall acts are grounded upon particular complaints and yet the acts themselfs are generall and obliges all the subjects in all causes qherunto they are extended: nether is the parl<sup>t</sup> judge as is alledgit except the king swa appoyntit. King Ja: the 5 institute the session and put it in use dyverse years before the doune sitting of the parl<sup>t</sup> qherin it was confirmed.

8. The civil Law maks the cace cleare, Institut. lib. 3 tit. 27 *de mandato recte item si adhuc integro mandato mors alterutrius interveniat j. vel ejus qui mandaverit vel ejus qui mandatum susceperit mandatum solvitur.*<sup>2</sup>

9. The king hath just cause to reduce any thing done be his predecessors in prejudice of the royall priviledges of the crowne; but such are the gifts given to the Judges, for the samyn does absolutely stay his majestie from giving judges, and herby he is urged to retaine these judges in there places qho were chosen be his predecessors and his majesty hes revoked all such gifts.

10. Seing the first act of the college of justice mentions that there is but ane beginning given to the order of session until such tyme that the said college sould be institute at more leysure as is cleare in the words of the institution, qhilk was never yet done. Therfor his majestie may now helpe therin any thing that is deficient, as well as King Ja: 5 did at the first institution, and may either double or diminish the number or reduce it to quarter sessions as it was of old, or may reforme the judicatory after what forme and maner he thinks fittest according to the power reserved in the first institution.

At the meeting qhilk was befor his majestie the lord Ochiltree

<sup>1</sup> French *cachet*, privy seal.

<sup>2</sup> The passage is section 10 of the title cited.

was commanded to reason the lafullnesse of the revocation (qherin sir John had no hand) with the Erle of Melrose qho gave his majestie such contentment that he concluded the Lafullnesse of the said revocation with himselffe, and qhen the chancellor saw that it would give great discontent to the subjects of that kingdome his majesty replyed that he hoped qhere ane was discontent an hundreth sould be well pleased therwith, meaning the gentry who he heard were daylie oppressed by the teyndmasters & lords of the erections.

At that tyme there falling out some alteration<sup>1</sup> betwixt the erles of Marr & Nithisdale qho accused Marre of misgovernment and evill carriage in the office of treasurer and speciallie for taking bands vpon estates to himselfe and his airis, qhilk gave immunity to rebells from paying there debts and ruined many of his majesties good subjects, and the other offering to defend himselffe or what else could be objected against him, hindered any farder proceeding that day, and an other dyet was appoynted for concluding the matter of the session, but before there parting the chancellor insisted with his majestie that he would not remove Lauderdale nor Carnagy from the session, affirming that they were such men as he had not the lyke in his kingdome to the qhich his majestie replyed that he was sorry that the country [was] ill provyded of able men, and that he had never sein such perfection in one but that it might be had in another, and said he pityed that kingdome qher there was such scarcity of good spirits.

The bishop of St. Andrews intreated that if they were not ordinar lords they might be extraordinar, qhilk was competent to counsellors and noblemen, qhilk the King said he would thinke upon, and therafter to give them some kynd of contentment condensed therto

[P. 7] The last meeting his majesty only reasoned anent the matter of the sessioners where the Erle of Marre regrated that his majestie sould give more trust to sir Jo<sup>n</sup> Scot then to these of his counsell. Sir John answered that he had the honour to serve his majesties father of worthy memory as one of his counsell, that he sould say nothing in his majesties presence without good warrand, and albeit he might not compare with noblemen as not being of there degree, yet he might affirme that himselffe and 5 of his predecessors of qhom he is Lineallie descended had served his majestie and his noble progenitors continuallie without intermission since the dayis of King Ja. 3d 145

<sup>1</sup> *Sic.* Query altercation ?

yeirs in places of estate as counsellors, clerks of register, clerks of the session, or directors of the chancellerie, and that amongst all there wryts there was not a remission for any fault committed against there King or country.<sup>1</sup>

His majesties reply was that he could not but give sir Jo<sup>n</sup> Scot trust, seing his fayre and sound grounds.

The nixt question his majestie proponed to them was, he desyred to know qho sould be Judge to this question. The Lords alledget the sessioners themselffs were invested with that power; the king replied that was Lyke the answeere of the papists qho would not admitt any judge of the errors of there church but the pope qho sayis he cannot erre. S<sup>r</sup> Jo<sup>n</sup> sustained the contrair, that the counsellors were only judges therto or any other delegate persons of that number qhom his majestie would be pleased to appoynt, for verification qherof he alledgit and produced an act of parl<sup>t</sup> in King [James] 6<sup>t</sup> tyme the king & his counsell judges of all persons & causes within the kingdome. Marre answered to the act that it was only against some turbulent ministers of that tyme who disclaymed his Late fathers authority. Sir Jo<sup>n</sup> replied that all acts of parl<sup>t</sup> had particulars qheron they were grounded but there conclusions as positive Lawes obliged the hail subjects.

His majesties nixt question was qhither the judicatory of the secret counsell or that of the session was most supreme. They answered they were both equall, sir Jo<sup>n</sup> replied that the counsell was farre above the other as treating and judging of the highest matter of estate and hail bussines concerning the crowne, government, coyne, peace & warre, qheras that of the session treated only of debates of Law betwixt parties; and to clear the matter the better produced to his majestie qhat<sup>2</sup> he himselffe in King Ja. his tyme being a counsellor sate in the session house and fearing the increase of the plague quhilk then brake furth in Ed<sup>r</sup> might by the frequencie of the people resorting thither<sup>3</sup> raised the said session, by there act and decree discharging them to conveene<sup>4</sup> till

<sup>1</sup> A most effectual cut this! Mar had been condemned as a traitor for his share in the Raid of Ruthven. *Acts Parl. Scot.* 1584, iii. 295-296. *Reg. Privy Council*, iii. 685.

<sup>2</sup> *Sic.* Query for ‘that’?

<sup>3</sup> Some omission or confusion here. Query, supply after ‘thither’ words to the effect—[be occasioned, the council]?

<sup>4</sup> Such prorogations were ordained on more than one occasion. *Reg. Privy Council* (1606), vii. 263.

they had the counsellis warrant, quherby his majestie may clearly understand that the judicatory of the counsell is farre above the session.

His majestie therupon said that he would helpe sir Jo<sup>n</sup> with an argument quhilk he said he would bring *a majori ad minus*; if I have power to alter these of the counsell *multo magis* have I to alter these of the session.

Upon this his majesty finding himselfe satisfied in that particular dismissed them, and that same night sent for the signet from the secretary deput m<sup>r</sup> Dowglas and delyvered it to Sir William Alexander master of requests. He gave order to sir Jo<sup>n</sup> to draw up presentations blank for the persons names to be filled up by himselfe, willing them to be made in the old style *ad bene placitum* not *ad vitam* and in them he filled up the names following after he had taken two Lists of able men to discharge that place of session, one from the erle of Nithisdale and these quho were of his judgment and the other from the chancellor and remnant lords. The extraordinar lords quhom he choysed were Lauderdale, Carnagy, Sir Archibald Naper treasurer depute and Lindsay bishop of Rosse for ordinars m<sup>r</sup> Ja. Ballentyne, Sir Robert Spotswood, Sir Geo. Auchinleck, Sir Alexander Naper, m<sup>r</sup> Alexander Morisone, m<sup>r</sup> Alexander Seatoun, and Sir Archibald Achesone in the places of Sir William Oliphant advocat, Sir Richard Cockburne lord privie seale, & Sir Jo<sup>n</sup> Hammiltoun clerke register, the Erles of Lauderdale, Melrose, and Carnagy.

His majestie gave direction to dispatch ane packet by Sir William Alexander quhom he immediately made conjunct secretar with the Erle of Melrose and therein constitute the Erle of Wintown viz. chancellor commanding him to dispatch the forsaid gifts, with the quhilk packet m<sup>r</sup> Shaw one of his majesties privie chalmber was dispatched to him quho admitted them the 14 Feb. 1626. By his commision also Sir Ja. Skene was made president of the session, as the king had promised at Roystoun: immediatly thereafter his majestie dispatched the hail number home ward telling them he would acquaint them farder of his royall intentions at his nixt Leysure, and at that tyme caused ane packet follow them contening ane commission for the counsell & session, of quhilk number he made Sir John Scot one. Therafter his majesty considering that the revocation had given great discontent to the nobility, surceased a year or two for urging a prosecution of his cause in session as he

intended to have done therupon; at quhat tyme was sent from the nobility the petition following—

‘Most sacred soveragne the wisdome and goodnesse quherwith god hath replenished your royall hearts<sup>1</sup> makes us hope and begge that your majesty may be graciously pleased to permitt us to exhibite to your judicious & equitable consideration this our faithfull demonstrance and submissive petition. Many of your majesties royall progenitors and specially Q. Mary your grandmother and your father of glorious and ever blisshed memory calling to remembrance the faithfull and memorable service done by some of us and many of our predecessors and authors, quhen your crounes and lifes were endaungered by the joynt counsells, fraud & forces of papish potentats and rebellious subjects tending to the subversion of religion & state, and withstanding your blisshed father attaining to his righteous inheritance of the croune of England, did royally reward the blood, means & travels of us and our predecessors by infestments, erections, grants of Lands, teyndes, patronages, offices, jurisdictions, priviledges, and free tenors quhilk were advysed and drawne up by your majesties advocates, judges, and lawyers of best famed Learning and experience in the bypast and present tymes, quho gave assurance to their clients & friends that there titles and securities were perfytyly valid in law, for farder corroboration quherof some of our rights were originallie granted in parl<sup>t</sup>, and many others amplie ratified by your majesties commissioners & estates of the kingdome, quhilk is the most accomplished perfection quhilk could be interposed to any inviolable title of inheritance within this realme, be vertew qherof we and our ancestors have peaceably possessed our forsaid inheritance by the favour, justice and protection of your worthy father, your grandmother, & other your royall progenitors, without any contraversie or question, and have obtained many wayis authorised by innumerable sentences of the lords of session as most eminent judges of this state, resting therby confident that we and our posterity sould enjoy the lyke securitie and quyettesse under your majesties uncomparable justice and bounty to the best and most famous of all preceeding kings, till now that being not without cause afrighted at the large extent of your majesties revocation, your advocats with concurrence of some counsellors at Law have caused summond us and many others your faithfull subjects to compeir and see our rights and heretabill titills of the before mentioned nature reduced and improven.<sup>2</sup> And altho your

<sup>1</sup> *Sic.* Read ‘heart.’

<sup>2</sup> A term of law meaning disproved.

majesty be informed that the event of this doth only concerne us & others qho are expresly [P. 8] Summond, whose number qualite and interest in some sort is considerable, yet it is more than manifest that thousands more of your majesties subjects who have purchased at deare rates from us and our predecessors large possessions of Lands & tynds, either mediately or immediatly, may be the event of this action be in equall daunger with us of irreparable ruine, swa that we may truly affirme that your majesties revocation taking effect even within the limitation contened in your majesties proclamation and sentence being pronounced and put to execution against the multitude interest be the summons, according to the conclusion & desyre therof, may bring more irreparable ruine to an infinit number of families of all qualities in every region in this land nor was in any former age inflicted upon our forbears by the shrewdest & feircest frownes of adverse & maligne forrainers, because the vicissitude of humane accidents & conversion of tymes & affairs left means to the afflicted people of these deplorable dayis be there vertue & industry to repaire, suppose slowly, the overthrowes of there ruined estates, bot if your majesties revocation and action of reduction presently depending sould take from us and so many others interested the titles of ther Lawfull inheritance, no course of tyme nor affairs can assure or promise to us any probable hope of recovery of our wracked and perished estats, nothing remaining in that cace to the most part of us but dignitie without meanes, without families, without maintainance, & <sup>1</sup>burden of anuel rents and debts to our creditors and such as we are obliged to warrand, qho be our vnability to keepe promise band and faith to them will become partakers of our miseries.<sup>2</sup> We are no wayis diffident of the sufficiencie of our titles, and much lesse of your majesties justice & bounty, but the instance Lately made to have your revocation registrat in the buicks of session to have the strenght of ane decreet of these eminent judges, against us & exceding many mae of your majesties subjects, uncited & unheard, contrare to your gracious intention expressed by 2 proclamations published and printed, and our principall advocats acquainted with the securities of our ryts whose assistance we expected in defense therof being now our persewers in the reduction & improbation intended processe

<sup>1</sup> Query, read 'and under burden' ?

<sup>2</sup> On the word 'miseries' in the MS. a + is marked, which is repeated in the margin as if there had been an omission. But the marginal note or addition if intended has never been written.

against us to have our recourse to your sacred majestie, humbly beseeching yow graciously to beleve that as we are most unwilling to oppose any of your royall intentions, but rather freely and faithfully disposed to spend our lifes & fortunes in your service, so we expect and most humbly begge that after dew consideration of the manifest prejudice of so great a number of your faithfull people your majestie may be pleased to command the forsaid registration & reduction to surcease for a tyme, and either to call a parl<sup>t</sup>, qhilk is the earnest desyre of all your people extremely longing for the happiness of your sacred presence, or if the multitude and weight of your royall affairs may not grant us that felicitie so zealously and universally desyred, your majestie may be bountifully inclined to appoynt a competent number of best experienced counsellors, prelats, noblemen, judges, Lawyers & parties interested in the bussines, to convene & treat of all that may concerne your majesties profet and patrimonie and your subjects lawfull securities, by qhom the joynt and equitable securing of both being impartially represented to your most excellent judgment such Lawful meanes may be advysed as may give all respective satisfaction to your just desyres, and supplie to your royal patrimony and affairs, without our irrecoverable overthrowes, and that the recompense qhilk your majesty graciously offers to these qho for obedience of your will sall renunce there titles as testimonies of there most humble desyres to give all furtherances that they can conceive to be affected by your majestie, may, be consent of the estates and there authority, be secured to them acording to your gracious declarations, qhilk they are confident your majesty doth no lesse intend then your awin power and profit, qherin nether our lyfes, lands, goods nor faithfull endeavors sall be wanting, but sall als heartily contribute for your service and contentment as our fervent and sincere prayers are and ever sall be powred out to god almighty to grant your majesty long lyfe, constant health, flowrishing and increasing empyre, permanant posterity to be crowned with immortall renowne in earth and in blissed<sup>1</sup> in heaven Dec<sup>r</sup> 1626.’

Sir Jon Scot, having gotten intelligence thereof, meeting accidentally at Ed<sup>r</sup> with other 7 of the gentry, of quhich number were Sir Jo<sup>n</sup> Prestoun of Ardrie, Sr Ja. Lockhart of Ley, Sir Ja. Lermonth of Balcomby, Sir William Bailzie of Lammingtoun, four quho behoved to meete privatlie in the Cowgate for feare to be apprehended by the counsellors and noblemen, and there presently

<sup>1</sup> *Sic* in MS. Query for ‘blisse’ ?

he penned the petition of the gentry anent ther teyndis possesit be noblemen and titulars of kirk Lands, but having lately returned from London, albeit requyred by the rest to goe back therwith to his majestie, desyred Balcombe to supplie his place, and the paper being only subscriyved by these 8<sup>t</sup> was sent up and gott a favourable answe, and Balcomby for his paynes in the voyage was made a lord of the session and gott the place of one of the lords quha died in his absence. Upon this the king resolved to contract the bounds of his revocation by urging the nobility only to surrender ther ry<sup>ts</sup> of kirklands quhilk did dewly belong to the crowne be the act of annexation, and was contrare to law separate be his late father therfrae, quherunto they voluntarily condescended and surrendered the samyn in his majesties hands *ad perpetuam remanentiam* quhilk was the ground of a commission sent home be his majesty anno 1628 as after followes.

He<sup>1</sup> was an instrument in causing Craig's book *de feudis* to be printed, quhilk, anno 1644, at the desyre of the Erle of Craford he translated into English, quhilk is readie for the presse, contening 7 quaires of paper; quhilk being considered with his ordinary employments in his offices of counsellor, sessioner, exchequer, & director of the chancellarie, his 22 journeys to London,<sup>2</sup> two to Holland for perfyting the maps,<sup>3</sup> will make the author a bussie person in an other sense than he is styled by Saundersone, with qhom he never spake. The reasons why he so willingly contribute his help to change the great ones off the session were—

1. Because they had wronged him in refusing him K. James warrand commanding them to permitt him to sitt in the inner house to heare causes reasoned, pretending to be against the order of the house, qhen in effect it was done by the credit of the Erle of Haddingtoun, then president, brother in law to his uncle Sir William Scot, fearing that therby he might acqyre friendship of the judges and obtaine sentence against his said uncle for his tutors, compt quhilk wrongouslie he had detained dyverse yeirs after his majoritie.

2. Because they had given a decreit in favours of Lauderdale,

<sup>1</sup> 'He' that is Sir John Scot. Various MS. abstracts in translation of Craig's *Jus Feudale* are known. One of them is in the Mitchell Library, Glasgow, No. C 115544. But is Scotstarvet's translation extant?

<sup>2</sup> 'Holland' originally written by Thomsone: word deleted and 'London' substituted.

<sup>3</sup> The maps referred to were those of Timothy Pont and others, for the stately and most meritorious *Theatrum Scotiae* in Blaeu's Atlas.

one of their number, making him as lord of the erection of the abbacie of Haddingtoun, Sir Jo<sup>n</sup> superior of his Lands of Eister Pitcorthie he having gotten infestment to be halden of his majestie long before, qhich particular will be better cleared in the 3d chapter treating of the superiority of kirklands contrare to the old law of the country.

3. Because of there exorbitant power and his majesties earnest desyre to have it curbed, thinking it the dewtie of his place to assist his majesty in so just a demaund, being so earnestly desyred therunto.

*(To be continued.)*

## Some Sources of the Tales of the Thrie Priests of Peebles

FROM several points of view *The Thrie Tales of the Thrie Priests of Peebles* requires more discussion than it has yet received, and the quality of the poem is such as to deserve a fuller criticism. If we had an accurate text—the defects of the one we have obviously suggest corruption—there would probably be little need to excuse the occasional flaws of the versification on the plea that it was *auribus istius temporis accommodata*, good enough for the ears of less fastidious times. Many of the verses are sufficiently harmonious if properly read, and almost all are vigorous and graphic. The contents, too, are interesting. If the stories are didactic, they are never dull; and some of the topical allusions make the date of the poem a question of some historical importance. The reign of James III. has been suggested, but the reasons given so far prove inconclusive. The only certainty is that the poem must have been composed before the Reformation. As to the author, the name of Sir John Reid—‘guid gentle Stobo’ of Dunbar’s lament—has been advanced; but the support lent to the theory by Mr. Renwick in his *History of Peeblesshire Localities*, though interesting, does not establish more than a possibility.

The following notes upon some sources of the tales are offered as an aid to appreciation, both artistic and historical. Consulting the originals and comparing them with the poems, the student may form a just opinion of the poet’s technical skill and at the same time judge more safely of the element of Scottish historical allusion. It is possible also that some clue may be furnished to the authorship or to the date. Information that means little to oneself may put a key into the hand of another.

The first tale may, for our present purpose, be dismissed briefly, though it is of lively interest for the light it throws on the different orders of society. It reproaches the King for the prevalence of simony in the Church; satirises spendthrift upstarts of the burgh class; and protests against the oppression and degradation of the

old nobility and their 'leil men.' But if it is of historical value, the poem can hardly be called a tale, as we use the word. The fictitious framework is of the slightest, and it is hardly worth while searching for an original. We are told how the King convoked the three estates of the realm, and, assigning a hall to each, asked them to answer certain questions. The commons he asked to explain how it was that

Burges bairns thryves not to the thrid air,

a fact that we still note in the common saying that there are 'but three generations from shirt sleeves to shirt sleeves.' The fate of the *tertius heres* is an old saw, and the explanation is still the same as that given to the King: that the father makes a fortune, the son spends it, and the grandson has to work or beg. No need to search for origins here, but one may note in passing the raciness of the sketches of burges life in the poem. The query put to the nobles and their reply is perhaps more likely to have a literary source. The King would fain learn why they were so inferior, in all respects, to that old nobility—

Sa full of fredome, worship and honour,  
Hardie in hart to stand in everie stour,—

who adorned the reigns of his ancestors. In their reply the nobles admit the charge, but blame the King. There may be a connection between this and the story of the King of the Franks who asked why his knights were less worthy than the Rolands and Olivers of former days.<sup>1</sup> The reply of the jongleur is crushing: 'Give me such a King as Charlemagne and I will give you such knights as you have named.' The Scottish nobles are a little more polite, but if their answer is indirect and circumstantial, it comes to the same thing.

In the Second Priest's Tale we are much more clearly in touch with older fiction, and the debt is heavier. The prelude introduces us to a King who 'lufit over weil yong counsel,' and to his jester, Fictus, who was in reality 'a clerk of great science,' but 'feinyeit him a fule' in order to gain the royal favour. So well did he act his part that he made himself 'as sib' to the King 'as seif is to ane riddil.' But he does not play merely for his own hand: he guides the King into seeing his follies in their true light, and succeeds in reforming him. How he did this is shown

<sup>1</sup> *Quare non essent ita prohi milites nunc sicut fuerunt in tempore, scilicet Rolandus et Oliverus.* See Wright's *Latin Stories*, cxxxvii.

in three stories. The first of these evidently comes straight from the *Gesta Romanorum*. Tale LI. of that collection reads as follows:

‘Josephus mentions that Tiberius Caesar, when asked why the governors of provinces remained so long in office, answered by a fable. ‘I have seen,’ said he, ‘an infirm man covered with ulcers, grievously tormented with a swarm of flies. When I was going to drive them away with a flap, he said to me: ‘The means by which you think to relieve me would, in effect, promote tenfold suffering. For by driving away the flies now saturated with my blood, I should afford an opportunity to those that were empty and hungry to supply their place. And who doubts that the biting of a hungry insect is not ten thousand times more painful than that of one completely gorged—unless the person attacked be stone and not flesh?’

*Application.*

‘My beloved, governors who are already enriched by plunder are less likely to continue their oppression than they who are poor already.’

This is the kernel of the story in the poem. The skill shown by the Scottish author in expanding it into a dramatic narrative of a man who fell among thieves, is admirable; and, as in all the tales, there is store of topical allusions. Of course one does not seek for the ultimate source of a story in the *Gesta Romanorum*, since that is but a collection of oriental, legendary, and classical fables adapted to the romantic taste of the middle ages. In Aristotle's *Rhetoric* (Bk. II. ch. xx. p. 1393) we most probably have the origin of the *Gest* in the fable of the Fox attacked by Leeches, and the Hedgehog.

The second story of the Second Tale tells of a ruffian who slew three men, at intervals of time, one after the other. For the first crime he was pardoned by the King, on the intercession of a courtier whom the murderer had bribed. On the second occasion he again found grace, and in the same way. But the King would not pardon him a third time. Fictus, however, while approving of the sentence of death, sharply observes that the man had committed only one murder, and that the King had committed two.

‘Had thou him puneist quhan he slew the first,  
The uther twa had been levand, I wist;  
Therefore, allace, this tale, sir, is over trew,  
For, in gude faith, the last twa men ye slew.’

The source of this story I have not found, either in the *Gesta* or in Wright's *Latin Stories*. Neither is it in the *Contes Moralisés* of Bozon, nor in the *Exempla ex sermonibus vulgaribus* of Jacques de Vitry, unless it has evaded a careful search.

The source of the third story is easily found. Fictus had succeeded in guiding the King into wiser ways of government, but a grave domestic evil remained. There was

Ane still strangeness betwixt him and his Queene.  
He beddit nocht right oft, nor lay hir by,  
But throw lichtness did lig in lamenry.

How this was made to end and how the King fell in love with his wife, is very plainly and yet not coarsely told; for the spirit of the whole series of Tales is dignified, even where it is humorous. But the story need not be rehearsed, since the Queen, acting under the guidance of Fictus, succeeds by the same method as Helena resorts to in *All's Well that ends Well*. The source of that idea has, of course, been long familiar to the student of Shakespeare in the story of Giletta di Nerbona, which forms the ninth novel of the Third Day of the *Decameron*; and it may well have been to Boccaccio that the Scottish poet was indebted. Yet as Dunlop<sup>1</sup> has pointed out, the main elements of the Italian tale are found in Indian literature; and in that case there may possibly have been other versions besides Boccaccio's which our author may have read. But if, like Shakespeare, he drew from Boccaccio, he is certainly happier in his method of adaptation. Giletta, in the Italian story, is both indelicate and ungenerous to the man whom she forces, with the King's authority, and without any excuse but her own passion, to marry her. Shakespeare takes the story with all its imperfections, and if one sympathises with his heroine, it is simply because the art of Shakespeare overcomes one's judgment. The Scottish poet, with less wizardry at his command, omits the distasteful circumstances of Giletta's situation, and makes his heroine the properly married but neglected wife; and, in this version at least, all's well that ends well.

The Third Priest's Tale is the most notable of all. It is a striking moral parable, well constructed, and told in a simple and homely style that sometimes attains to eloquence by virtue of earnestness and sincerity. Though of universal appeal, it is not without historical interest, since it affords proof of the serious and lofty tone of the teaching of some, at least, of the much-abused

<sup>1</sup>*History of Prose Fiction*, vol. ii. ch. vii. p. 87; Bohn's edition.

pre-Reformation clergy. It is an excellent corrective to take with Lindsay's ribald satire and the perfervid philippics of Knox. That the idea of the parable is borrowed matters nothing: the nature of the thing borrowed and the treatment of it is everything.

The source of the tale, like most of the serious medieval fictions, is oriental. At first one is reminded of what has been called the most perfect of all moralities, *Everyman*; but certain points of difference between the two, to be noted later, lead one to seek elsewhere for the original. Resorting to Wright's *Latin Stories* and to the *Exempla* of Jacques de Vitry, we find versions there. Both are practically the same, but they differ from the Scottish story in an important detail which will also be referred to hereafter. The *Gesta Romanorum* has its version, too, but it is mangled almost beyond recognition. Returning to the study of *Everyman*, one receives from Ten Brink a hint which guides one to the source of that morality. That source is one of the most interesting productions of old monastic—or perhaps it would be more correct to say anchorite—literature, the *History of Barlaam and Josaphat*. This is generally attributed to John of Damascus (eighth century). Whoever the author was, he acknowledges that the tale is of Indian origin; and, indeed, it is little more than a Christianised version of the legendary life of Buddha. Written in Greek, it attained a wide popularity in Western Europe when translated into Latin. The translation is of uncertain date, but it exists in a manuscript of the twelfth century. A still greater popularity was gained when it was abridged by Vincent de Beauvais and inserted (about 1250) in his *Speculum Historiale* (lib. xv. capp. 1-64). But although the romance as a whole had a good circulation in the middle ages, the apologues, or moral tales, which it contained, were even more popular. Of these there are eleven that are non-biblical, and it is from the sixth of these that the Third Tale of the Three Priests is descended.

When we compare the two and then think of the other versions, it would almost seem that the Scottish poem was first in the line of descent. It is by far the closest to the original; and, if it were not for the language one would be tempted to think it of earlier date than any of the others. But whether it is earlier than *Everyman* or not, there is no probability that it dates as far back as any of the other renderings. If only to establish its independence of all save the earliest version or some unknown intermediary, it may be advisable to give the tale as it appears in *Barlaam and Josaphat*. I translate from the 1603 edition of the Latin rendering of Billius.

‘A certain man had three friends. Two of them he loved and cherished with all his heart, and would for their sakes brave any danger, even death itself. The third he slighted, showing him neither respect nor kindness, but only a pretended friendship.

‘One day came fierce and terrible soldiers, purposing to hale him before the King that he might render account of ten thousand talents which he owed. The man was sore perplexed, and sought for some one who might help him to meet this dreadful reckoning before the King. Running therefore to his first and dearest friend, he said to him : ‘Thou art not forgetful, oh friend, how I have ever put my life to the hazard in thy cause. It is now my hour of need. This very day I am grievously beset, and I long for thy aid and thy assistance. Wilt thou, I pray thee, promise to be my help? What hope, dearest friend, may I place in thee?’

‘But the other answered and said : ‘I am not thy friend, oh man, and who thou art I know not. Others there are whom I love. To-day I must make merry with them, and they shall be my friends alway. Wherefore I offer thee only two goats’-hair cloths that thou mayst have them with thee on thy journey. Truly they will profit thee nothing, even as there is not any reason thou shouldst expect aught of me.’

‘Hearing these words the man forsook all hope of the help that he had expected, and betook himself to his second friend. To him he said : ‘Remember, friend, how greatly I have honoured thee and how many acts of kindness thou has received from my hands. This day I have fallen into direst calamity and affliction, and I have need of some one to be my help. Tell me, then, what assistance thou canst give me.’ But the other, answering, said : ‘To-day I have much to do, and can by no means stand by thee in thy peril. Cares and anxieties beset me on all sides, and I am sorely cumbered. Yet I will go a little way with thee on thy journey, though thou wilt nowise profit by my fellowship ; and thereafter I shall straightway return home and give heed to my own affairs.’

‘So the man turned away with empty hands, and, finding nowhere any help, he bitterly bemoaned himself for the lying hope he had built on the false and faithless, and sorrowed to think of the idle labours he had undertaken in his love for them. Howbeit, he went now to his third friend, whom he had ever lightlied, and had never made the companion of his mirth. Shamefaced and with downcast eyes, he thus addressed him : ‘Scarcely can I open my lips to speak to thee. I acknowledge

that I have never acted towards thee kindly or been a true friend to thee. But, now that I am oppressed by sore calamity and find no hope of salvation in my other friends, I come to thee, begging and beseeching that thou wilt not be mindful of my unkindness, neither refuse to do me any benefit that is in thy power.'

'But the other answered with a cheerful and pleasant countenance: 'Verily, I profess thou art mine honest friend, and what little kindness thou hast done me I shall not forget, but repay it to thee this day with usury. Fear not, therefore, and be not sore dismayed. For I will set out before thee and implore the King on thy behalf, that he may not deliver thee into the hands of thy enemies. Wherefore be of good cheer, dear friend, and cease to lament thyself so grievously.'

'Then did the man feel sharp remorse, and he wept abundantly, saying: 'Wretch that I am, which shall I lament the more? Shall I blame my own misplaced goodwill towards those false, forgetful, thankless friends? Or shall I rather tax the folly of that ingratitude which I have shown to this true and sterling friend?'

'Not without wonder did Josaphat hearken to this parable, and he asked what its meaning might be. Barlaam answered and said: 'The first friend is Great Possessions and the love of riches, for the sake of which a man falls into scores of perils and bears many hardships. But when the last day of his life has closed, he retains nothing whatsoever of all those goods save some useless rags to serve his burial. The second friend is Wife and Children and those other kinsmen and friends, love of whom holds us in bondage, so that we can scarcely be torn from their side, and will neglect ourselves body and soul for their sake. From them, however, one receives in return no service in the hour of death, unless it be that they bear his body to the grave. This they do but nothing more. Forthwith, returning home, they give heed to their daily cares, leaving behind all memory of him who was aforesaid dear to them, even as they abandon his body to decay. But the third friend, who was despised and rejected, and from whose approach we turn with dismay, is the Chorus of Good Deeds—Faith, Hope, Charity, Pity, Kindness, and all the other Virtues. These, indeed, when we take leave of the body, can set out before us, and move God on our behalf with their prayers, and can set us free from our enemies, the dread extortioners who urge against us a bitter suit for the rendering of our debts, and cruelly strive to seize us. Such, verily, is that noble, worthy and

loving friend, who remembers our good deeds, however slight they be, and repays them to us an hundredfold.’

‘Man may embellish but he cannot create,’ says Mr. Gladstone, speaking of Hellenic myth. However true this may be, or however fallacious, reproduction has not always resulted in embellishment. Certainly the monks have not adorned this theme in the variations that appear in de Vitry and Wright, and in the *Gesta Romanorum*. All three are illiterate abridgements. The first two also agree in making the hero the constable of a castle belonging to a king, and in telling how he was condemned to death for betraying it to the enemy. This, of course, is the kind of modification that is meant to please the romantic taste of the age of chivalry. As to the version in the *Gesta* (Tale cxxix.), it is so changed as to lose all dignity. The son of a certain king, after being seven years abroad to see the world, returns to his father, and being asked what friends he has made, answers that he has found a friend whom he loves more than himself, a second whom he loves equally with himself, and a third whom he loves very little. The King proposes to prove their quality. ‘Therefore,’ he adds, ‘kill a pig, put it into a sack, and go at night to the house of him you love best, and say that you have accidentally killed a man, and if the body should be found you will be put to an ignominious death. Entreat him, if he ever loved you, to give you his assistance in this extremity.’ The sequel is the same, and so also is the moral.

But if none of these three have any literary merits, a point of interest is to be found in the introductory sentence in de Vitry : *Hec sunt verba Gregorii ex quibus ostenditur, &c.* If it is true that the apologue is to be found in Gregory—who is, of course, Gregory the Great—then it means either that the story had circulation in Europe earlier than the publication of *Barlaam and Josaphat*, or that that work is, as some aver, by an earlier writer than John the Damascene.

To return to the main question. Compared with those puny abridgements, the Priest’s Tale is a work of art. It expands the story with illustrative detail and is distinguished by frequently effective phrasing. Further—and I think that this at least is an embellishment—it does not in the parable of the second friend slander human nature. Every other version does. The Peebles tale warns us that in the hour of death not even our dearest kith and kin can take our place, or follow us beyond the grave; but it is not so cruel as to say that when they return from the burial

they 'leave behind all memory of him even as they leave his body to decay.' This libel upon humanity—as savage as anything in Swift—is characteristic of the anchorite principle, which led to the abandonment of social ties and the mortification of the domestic affections. 'To break by his ingratitude the heart of the mother who had borne him, to persuade the wife who adored him that it was her duty to separate from him for ever, to abandon his children uncared for and beggars to the mercies of the world, was regarded by the true hermit as the most acceptable offering he could make to his God.'<sup>1</sup> This inhuman doctrine is, as far as possible, mitigated by the Scottish author. He shows wife and children full of grief and helplessness at the side of the grave, but does not say anything of short memories.

And than with us unto that yet<sup>2</sup> will cum  
Baith wyfe and bairnes, and freindis al and sum :  
And thair *on me and thè lang will thay greit.*

This is something more human ; and, as I said, the Scottish author is the only one who has thus redeemed the tale from a degrading cynicism. *Everyman*, instead of mitigating the harshness of the original in this respect, makes it worse, and that in a hard, brutal, shallow way.

*Everyman.*

My cousin, will you not with me go ?

*Cousin.*

No, by our lady ; I have the cramp in my toe.  
Trust not to me, for, so God me speed,  
I will deceive you in your most need.

*Kindred.*

It availeth not us to 'tice :

Ye shall have my maid with all my heart, &c.

Besides this striking difference between the Scottish tale and the English morality, there is another which is even more valuable in regard to the question of the possibility of either being derived from the other. They have different motives. While the Third Priest's Tale aims only at inculcating the supreme importance of good deeds as a means of salvation, *Everyman* is written especially to exalt the clerical office. Good Deeds, in the morality, is a faithful and willing friend, but by himself he is too weak to walk. Only if *Everyman* goes to the priest and confesses his sins and does penance, can Good Deeds go with him.

<sup>1</sup> Lecky : *History of European Morals*, vol. ii. ch. iv.

<sup>2</sup> Gate (of death).

*Good Deeds.*

Here I lie, colde in the grounde,  
Thy sinnes hath me so sore bounde  
That I can nat stere.

‘Good priesthood,’ Everyman is told, ‘exceedeth all other thing.’

*Five-Wits.*

Ther is no emperour, king, duke, ne baron,  
That of God hath commissyon,  
As hath the leest priest in the world beying.

Nay, the priests are not only greater than all earthly potentates, they are greater even than the angels.

‘God hath to them more power given  
Than to any aungel that is in heven.’

So, after all, the sufficiency of good deeds, which the original parable preaches, is denied, and the power of the priesthood is the theme of the play.

This in itself is enough, I think, to prove that the Scottish tale is not derived from the English drama. The Third Tale is evidently written by a cleric or by one who was friendly to the Church, but there is not a line of it that advances any such claims for the priesthood, and if either priest or priest-lover had taken his theme from *Everyman*, it would have been strange had he not worked in a word for Holy Church. On the contrary, ‘Almos-deid and charitie’ is the whole burden of his song. In the last lines of the ‘application,’ the Scottish poet does indeed exhort us to do ‘penance, fast and pray,’ over and above good works; but there is no word of the priesthood.

There is, however, one point in which the two works agree, and in which they differ from the original tale. In *Barlaam and Josaphat*, the King sends ‘fierce and terrible soldiers’ to arrest the hero of the story: in *Everyman*, God sends a ‘messenger, Death’: in the Scottish tale, the King—who is afterwards explained to be God—sends his ‘officer,’ who is interpreted as Death. This is a slight coincidence in modification, but it is enough to suggest that if neither the English nor the Scottish author was indebted to the other, they may have drawn from a common source. It is, of course, just possible that the English poet, in spite of the influence of

‘The cold river of Tweid.’

may have borrowed from the Scot. We cannot determine by

dates. Both are generally assigned to the same half of the same century, but it is guess-work in both cases.

We must also take into consideration the existence of a Dutch *Everyman*—*Elckerlijck*—and the probability of its being the original of the English morality. The far-travelled Scot of those days might well have met Peter Dorland of Diest, the probable author, and may have read his work ; but the reasons urged against the English morality hold as strongly against the Dutch. Nor is there any reason to consider the Latin morality *Homulus*, since it is merely a translation of *Elckerlijck*. Another Dutch morality and a Low German play are of the same parentage.<sup>1</sup> We must conclude, therefore, that unless some other poem existed of which I have not heard,<sup>2</sup> the Third Priest's Tale was directly inspired by the apologue in the *History of Barlaam and Josaphat*.<sup>3</sup>

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<sup>1</sup> See the Introduction to *Everyman*, by F. Sidgwick (A. H. Bullen, 1902).

<sup>2</sup> Chardri, an Anglo-Norman poet (eleventh century), has a metrical version of *Barlaam and Josaphat*, but it omits all the apologues, except the first.

<sup>3</sup> After this article was put in type, my attention was drawn to a note in the *Athenaeum* (Nov. 29) which points out that the source of *Everyman* is possibly to be found in the Talmud, part v. On referring to that 'literary wilderness' one will find in the section on the Day of Atonement a version as bald as those of Wright and de Vitry. To say nothing of *Everyman*, there are at least two reasons for thinking that the Scottish poet may have known it. The king, in the Talmud, sends 'an officer'; and the second friend offers his company as far as the palace gates. So it is in the Peebles tale, and not so in *Barlaam*. But the man, in the Talmud, does not know the charge against him, and can only think that some one has slandered him to the king. *Barlaam* and the Peebles tale agree in making it a summons for debt. And there are other points in which they alike differ from the Talmud. On the whole, it seems probable that the Scottish poet, whether directly or indirectly, knew both versions.