

## PART II

### Buchanan's "The Powers of the Crown in Scotland: A Dialogue"

A LETTER TO JAMES VI, IN WHICH BUCHANAN  
PRESENTS THE DIALOGUE TO HIM

Some years ago,<sup>1</sup> at a time of great public disturbance, wrote this dialogue respecting *The Powers of the Crown in Scotland*. In this treatise I attempted to trace, from their beginnings, the rights and the respective powers of the king and of citizens.

At the time it was written, the book seemed to have some value for silencing those who — more by dangerous outcry than, as would have been right, by recourse to reason — sought to correct the state of public affairs. Later, as the country became somewhat tranquil, I freely laid down the weapons of conflict and devoted myself to promoting harmony between factions. Recently, I came upon this treatise, among my papers, and noting in it a number of items with which it is necessary that one of your age — and especially one who occupies a preeminent place in human affairs — should be familiar, I decided that it should be published, both that it may serve as a testimonial of my attachment to you and that it may remind you of your duties toward your people.

A number of things give me confidence that this effort on my part will not be futile. I am most encouraged by the fact that you are at an age when you have not been corrupted by false notions; and that your disposition to undertake, freely and eagerly, matters of the utmost importance, is much superior to what is usual in one of your age; that you not only comply readily with the suggestions of your teachers, but with those of anyone who gives you wise counsel; and that the quality of your judgment and sagacity are such that you are swayed by a person's advice only to the extent that it is confirmed by tested evidence.

I know, moreover, that your nature ever impels you to avoid that nourisher of tyrants and disease of legitimate governments, flattery; and that you dislike the

absurdities and artificial [38] customs of courts no less than you do those persons who appear to despise everything which is in good taste, and who love and practice such absurdities and customs: who season their speech with such terms as Your Majesty, My Lord, Your Excellency, and other expressions even more disgusting.

Although your natural goodness and the correctness of your principles protect you for the present from these ills, I am, nonetheless, apprehensive lest that suave wet-nurse of vice, bad company, turn your tender mind in a worse direction; and I am especially so, because I am not unaware of the ease which our senses present us with temptations. I, therefore, present this book to you riot merely as a guide, but also as an exacting critic — one even lacking, at times, in respect — which, in the age while your disposition is plastic, may go with you through the dangers of flattery, not only to show you the way, but also, once you have entered upon it, to keep you in it — to check you or draw you back if you would stray. If you persevere in the way which this book shows you, you will procure for yourself and your people peace in this life, and in the life to come eternal glory.

Stirling  
January 10, 1579

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1. "Some years ago...." Buchanan's *De Jure Regni apud Scotos* was first published in 1579. References, early in the dialogue, to the murder of Darnley, which took place February 10, 1567, and Mary's abdication, which followed closely after this crime, indicate that the dialogue was written about 1567 or 1568

THE POWERS OF THE CROWN IN SCOTLAND:  
A DIALOGUE

[The persons of the Dialogue are George Buchanan, who relates the story, and his young friend, Thomas Maitland<sup>2</sup>]

*[Chapter One. Buchanan Greets Maitland, and Sounds Him as to What the French Were Saying of the Murder of Darnley and of the Measures Taken Against Mary, Queen of Scots.]*

Thomas Maitland, a diligent student of contemporary life and opinion in France, had but recently returned from that country, when I, because I am greatly attached to him, began to urge him to continue upon the course in which he had [39] already laid the foundations of his fame, and so to fulfil the promise of his studies. For, I indicated, if I, a man of moderate ability and almost no fortune, have so exerted myself in the midst of the unfavorable conditions of an untutored age that I seem almost to have distinguished myself, certainly those born in a happier time, who have the endowment of age, means and talent should not be deterred from any honorable enterprise by the labor involved. They should, indeed, endeavor, with all their might, to advance literature, and to cause posterity to have both them and all of their nation in grateful remembrance. For, if such persons would put forth but a little effort, they might remove from men's minds the notion that people in the colder regions of the earth are as far removed from letters, the humanities, and liberal culture as they are from the sun. For, although nature has granted to the Egyptians, Africans, and many other peoples special quickness of mind and sharpness of wit, she has, surely, never doomed any people to exclusion from nobility of character or from horror.

Maitland, in replying, was very diffident in what he said of himself — for he is a modest person — and his remarks respecting myself reflected rather his affection for me than what was warranted by my merits. The course of our talk led, eventually' to his inquiring of me

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2. Thomas Maitland of Lethington was a younger brother of William called "Secretary" Maitland, who was the object of Buchanan's bitter satire in *The Chamaeleon*.

about the troubled situation in our own country. I answered him as best I could, and, in turn, I began to question him as to what the French and other peoples of the continent of Europe thought about the situation in Scotland. For I was confident that the unusual condition of affairs here had furnished everyone both the occasion and topic of talk.

"Why," he inquired, "do you ask me this? You understand the fundamental issues, and are not uninformed respecting what is being said on every side and how almost everyone feels; so that you can easily arrive at an idea, on the basis of what you yourself know, as to what the general consensus of opinion may be — or, at any rate, what it ought to be."

*Buchanan:* I cannot altogether agree with you. The further people are from a situation the less they are affected by anger, hate, affection, and other disturbing emotions which cloud the judgment. The less they are involved, moreover, the better can they think through an entire situation without bias, and the [40] more freely can they say what they think. For free speech can clear up obscure matters, remove obstructions, resolve doubts, silence the insincere, and strengthen the weak.

*Maitland:* May I speak frankly?

*Buchanan:* To be sure.

*Maitland:* Although I was extremely anxious to see my country, my parents, my other relatives and my friends, after a long separation from them, nothing did so much to influence this desire as the popular clamor against Scotland. For, though my character has been established by habit and by the teaching of men of the highest learning, yet in the present state of affairs I did not see how I could conceal my weakness [if I failed to take a stand respecting the struggle in my own country]. That infamous crime,<sup>3</sup> committed a short time ago, was denounced by everyone, without exception, and, since the perpetrators of it were not known to the public — which is rather swayed by passion than ruled by reason — the guilt of the few was attributed to the whole people, and the detestation attaching to the crime committed by a private individual engulfed the whole nation; so that persons who were free from any taint of suspicion were consumed by the infamy of another's crime. On this account, until the storm of calumny is quieted, I seek this harbor — in which, indeed, I may strike a rock.

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3. Darnley's murder

*Buchanan:* Why, may I ask?

*Maitland:* Because the hideousness of the recent crime has so inflamed minds already aroused, that there seems to be no possibility remaining for quenching the conflagration. How shall I withstand the attacks, not only of the inexperienced but also of those whom you must acknowledge to be most astute? These persons will raise an outcry, saying that we were complacent in the face of the murder of a harmless youth — this, an unheard-of brutality if we except the fresh instance of monstrous outrage against women, a sex spared by very enemies in the taking of cities.<sup>4</sup>

[41] What crime against worth or greatness can be too vile for persons who vent their rage against royalty in such a fashion? What place do those leave for pity who are restrained neither by the weakness of sex nor the innocence of youth? Right, customs, laws, respect for government, reverence for duly constituted authority — which will hereafter be either repressed in ignominy or surrounded with fear, where the power of the sovereign is at the mercy of the violence of the basest elements of the population — will degenerate into complete barbarity in a society in which the distinction between equity and injustice, baseness and honor is almost by common consent, removed. I am sure that I shall hear these things, and even worse, on my return to France; and that all ears will be closed to any reply or explanation.

*Buchanan:* I, on the other hand, shall easily free them from their fear, and our people from this false charge. For if they [the foreign critics of Scotland] abhor the wickedness of the first crime so greatly, how can they consistently censure the severity of the punishment? Or, if they are vexed that the Queen has been humiliated, they must approve the first [Darnley's murder]. Choose, then, which of the two appears the more horrible: for neither they nor you, if you wish to be consistent, can praise or blame both.

*[Chapter Two. Maitland Deplores the Fashion in Which the Queen Had Been Dealt With, and Buchanan Takes*

*Occasion to Introduce His Thesis — Rulers May Properly be Held Accountable for Their Acts.]*

*Maitland:* I do, indeed, think of the murder of the King with loathing and horror; and I am gratified that the guilt of the deed does not lie on the public conscience, but is chargeable to the wickedness of a few persons. I can not, however, either praise or denounce what came later without reservations. The prudent and tireless investigation of the crime — the most wicked in human history — and the armed pursuit of the criminals seems to me a praiseworthy and remarkable achievement.

But I am uneasy as to how the peoples of Europe, and particularly those of the absolute monarchies, will take the hum [42] bring of a chief magistrate and the slight put upon the name of kings — a name held in awe and reverence, always and everywhere. Moreover, although I know what is alleged on the other side of the question, I am much disturbed by the great significance and shocking character of the deed, and the more so, because some of its authors are my intimates.

*Buchanan:* I think perhaps that what concerns you is not the deed, but these hostile critics of other people's morals, in foreign countries, who you think must be reassured.

Those who denounce this deed so violently fall into three classes. The first class is the worst, for it is composed of those who have yielded themselves to the will of tyrants and who believe that anything they do is right and honorable provided that by doing so they please those in authority — such people do not value things in terms of their intrinsic worth, but in terms of the degree to which they will gratify their masters. These people have so subordinated themselves to the caprices of others that they have completely destroyed their own freedom of speech and of action. Of this class of men were those who — not because of any injury they had received but because they hoped to gain money, or preferment, or power at court — most cruelly sacrificed a harmless youth to the lust for blood of his enemies. While these people pretend to be grieved over the Queen's misfortunes, they are not really distressed by her troubles at all; but are trying to insure their own safety and to see to it that the rewards of their wicked deeds, which they thought they had already swallowed, are not pulled out of their gullets. In my opinion it is futile to reason with men of this sort. They should be forcibly dealt with to the full extent of the law.

Another class of men is composed of those solely concerned for their own selfish interests. These persons

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4. The forced abdication of Mary, Queen of Scots.

— who are not, in other respects, bad men — are not distressed at the public calamity, although they try to appear so; but at their own personal losses. Such people are rather in the need of cheering up than of the remedies of law and reason.

The remaining group is the unthinking multitude, the members of which are swept off of their feet by every novelty, and can credit nothing except what they do, or see done in front of [43] their own eyes. In their view, the extent to which anything departs from what they have long been accustomed to, is the exact measure of the extent to which it has departed from right and justice. These people — who are not swayed by malice, spite, or self-interest — will submit to instruction and to having their errors corrected, for they yield if they are conquered by force of argument. In the field of religion, we have learned — as had an earlier age — that there is well-nigh no man "so wild as not to be tamed, if he will but patiently yield to instruction."<sup>5</sup>

*Maitland:* Experience certainly supports your view.

*Buchanan:* When you deal with any member of the clamorous, restless mob, ask him what he thinks of Caligula, Nero, or Domitian. I believe that no one of them will be so besotted by the name of royalty that he will not acknowledge that these men were justly punished.

*Maitland:* Perhaps you are right, but there are some who will insist that they do not question the justice of the humbling of tyrants, who are distressed at the undeserved calamities of legitimate rulers.

*Buchanan:* Do you not see how the mob can easily be won over?

*Maitland:* Not unless you can explain further.  
[Chapter Three. The Distinction Between Tyrants and Legitimate Rulers Is Seen to Have a Bearing on the Matter at Issue.]

*Buchanan:* I can clear this matter up in a very few words. The people — you claim — approve of the execution of tyrants, but pity the misfortunes of kings. Do you not think that their feelings, in many instances, would be different if they were taught the distinction between a tyrant and a king?

*Maitland:* It is true that if everyone would acknowledge the propriety of putting tyrants to death,

the way would be opened to the solution of other matters. But I know some persons — men whose standing is not to be despised — who, while they [44] would hold kings liable to the penalties of the law, regard tyrants as sacred — untouchable. This, unless I am mistaken, is absurd. But persons who hold this principle are as ready to fight for their government, tyrannical and oppressive as it is, as for their religion and their families.

*Buchanan:* I, too, have met a number of persons who defend this opinion very tenaciously. Let us, however if it suits you, postpone the examination of this idea until later; and take up the question of the distinction between a king and a tyrant, with the understanding that you are perfectly free to return to it.

*Maitland:* I cannot decline such an offer.

*Buchanan:* Let us, then, set up these two, tyranny and legitimate government, as contraries.

*Maitland:* Agreed.

*Buchanan:* It follows, therefore, that he who explains the origin and the cause of creation of legitimate government, and shows what are the duties of rulers with respect to their people and of people with respect to their rulers, will, in the same explanation, make clear, by contraries, the nature of tyranny.

*Maitland:* I suppose so.

*Buchanan:* And do you not believe that, once the true conception is presented, the people will understand their duties with respect to each, and the duties of each to them?

*Maitland:* It is highly probable.

*Buchanan:* On the other hand, there are, in matters which are quite unlike, some points of a similarity which may readily deceive inexperienced persons.

*Maitland:* There can be little doubt of that and particularly where the worse on each side easily assumes the character of the better, and is more concerned with imposing on the inexperienced than with anything else.

*Buchanan:* Do you have clearly formed ideas of tyranny and of legitimate government, respectively? If you have, you will spare me a good deal of effort.

[45] *Maitland:* I could, very easily, say what my ideas of both are; but I fear my notions are crude and unformed; so that I prefer to hear what you — my superior in both age and experience — think, lest time be lost while you are examining my notions; for you are not only well informed respecting the opinions of other per-

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5. Horace, *Ep. I. i. 40.*

sons but have observed the customs and governments of many lands.

*Buchanan:* I shall be very glad to comply; but I am going to recount the ideas of the ancients, rather than advance any original ones of my own. This will give my discourse the more weight, since it is not composed to fit the immediate situation, but is drawn from the ideas of men who had no connection with this controversy. Their opinions were expressed without hatred, favor or rancor, for the issues did not affect them. I shall draw especially upon the ideas of men who were not content to remain in obscurity all their lives, but who — citizens of well governed nations — attained reputations for integrity and foresight, both at home and abroad. But, before I present these witnesses, I wish to ask a few questions, in order that we may be agreed on some matters; and so may not find it necessary to digress from the main course of the discussion, nor to delay for explanations or proof of matters which are quite clear and are of common knowledge.

*Maitland:* I think that this should be done; so, ask me what you will.

[Chapter Four. Governments Owe Their Origins to Man's Original Nature, Not to Their Utility in Serving His Selfish interests.]

*Buchanan:* Do you not think that there was a time when men lived in hovels or even caves, and wandered about as lawless vagabonds, without any rooted culture? And that they congregated as some caprice or as some convenience or something else of advantage brought them together?

*Maitland:* Yes, I think that this is agreeable with nature, and that it is also substantiated by all historians, everywhere. Homer pictures society, at the time of the Trojan War, as being thus rude and barbarous.

[46] They have neither council house nor judges, They find shelter in dark caves — High in the mountains, each man rules his own home, His wife and his children: Nor is there leisure to develop a commonwealth.<sup>6</sup>

Italy is said to have been at no higher stage of culture than is here described in that age; so that much of it on this side— since then one of the most fer-

tile regions on earth — was a lonely waste.

*Buchanan:* Which do you think more consistent with the law of nature, the life of solitary wandering, or the association and union of men by their own free choice?

*Maitland:* Union, unquestionably, which “. . . expediency, itself well-nigh the mother of justice and equity,”<sup>7</sup> first effected; and expediency decreed that:

The signal of the trumpet should be given to all; in order that they might defend themselves within the walls; and might lock all gates with a single key.<sup>8</sup>

*Buchanan:* What! Is it your opinion that expediency is the first and basic civilizing agency?

*Maitland:* Why not? I have heard it said by most learned doctors that by men are men begotten.

*Buchanan:* To be sure, expediency does seem to have a great deal of force in the establishing and maintaining human governments; but there is, unless I am mistaken, a much older force operating in the formation of human associations, and a much earlier and much more sacred bond of a commonwealth. If this were not so, if everyone consulted only his selfish wishes, expediency, clearly, instead of being a bond of social unity, would be a disruptive force.

*Maitland:* Perhaps you are right, in which case I should like to know what other account can be given, of the origin of human society.

*Buchanan:* There is an impulse which nature implants not only in men, but also in the more tractable lower animals; so [47] that, although the blandishments of expediency may be lacking, they, nevertheless, associate voluntarily with others of their kind. For the rest, there is now no question about the matter. This impulse is so deeply rooted in mankind by nature, that though a person had every possible thing to make him personally secure, and which would contribute to his sensory enjoyment or to delight his mind, he would, nevertheless, find life insupportable without human society.

Those who, on account of love for knowledge, seclude themselves and live in hidden corners are never able to endure their mental labors for a long period; nor can they live alone when they leave these labors off. Moreover, they voluntarily publish their private studies; and, having labored for the public welfare, they offer to

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6. Homer, *Od. ix.* 112- 115.

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7. Horace, *Sat. I. iii.* 97.

8. Juvenal, *xv.* 158.

society the fruits of their efforts. Persons who are so attracted to solitude that they flee from human society and avoid it, do so, I am convinced, rather because of diseased minds than because of some natural impulse. Such, we understand, was the case of Timon of Athens and Bellerophon, the Corinthian:

Who wandered, miserable and  
solitary, on the Aleian coasts eating his  
own heart, and shunning the footprints  
of men.<sup>9</sup>

*Maitland:* I am in substantial agreement with you. However, you use the word *Nature*, which I employ more as a habit of speech than because of any clear concept which I have. This term is used in such a variety of contexts and of so many things that I am puzzled as to what meanings I may attach to it.

*Buchanan:* For the purposes of the present discussion, I wish it understood only as it means the light divinely shed upon our minds. For when God formed

The animal made in His own  
image, endowed with reason, and gave  
him dominion over the beasts,<sup>10</sup>

He not only gave him the physical senses, by the use of which he can avoid all that endangers him and can maintain situations favorable to his well-being, but he also created in his spirit a light by which he distinguishes between good and evil [48] Some call this ability *Nature*, and others the *Law of Nature*; I regard it as truly divine, and am convinced that

Nature never says the one thing,  
and reason the contrary.<sup>11</sup>

Furthermore, God has given us a summary, which comprises the whole law in a few words: We should love Him with all our sours' end our neighbors as ourselves. Herein are contained all the rules of the Holy Scriptures, which deal with moral conduct — other than this is merely elaboration<sup>12</sup>

*Maitland:* That is to say, you think that God — not some orator or lawyer who brought man together — is the author of human association.

*Buchanan:* Precisely, and following Cicero's opinion, "There is nothing in the world more pleasing to God, who rules the world, than the union of men under a government of law— that is to say, a body- politic."<sup>13</sup> And the parts of the body- politic must be articulated, each with the others, just as the members of one's body are joined, so that the balancing of duties, the repulse of the public danger, and the provisions of things needed, may become a common possession, to bind all in a unity of benefits received.

*Maitland:* You maintain, then, that a divine law, ingrafted in us from the beginning — certainly a majestic and admirable conception — rather than expediency, accounts for the formation of governments.

*Buchanan:* I do not, it is true, loon on expediency as the mother of right and justice, but as the servant, and as a guardian of a well organized state.

*Maitland:* I agree, readily, to that.

[Chapter Five. *The Necessity of Political Authority Is Pointed Out, By the Analogy of the Service of the Physician in Maintaining and Restoring Health.*;

*Buchanan:* Now, just as in human bodies, composed as they are of conflicting elements, there are diseases — that is to say, [49] disturbances and internal uneasiness; so, of necessity, the men associated in these bodies which we call states are of diverse and often of opposing sorts, classes, conditions and natures. Of these none "Can remain for an hour in agreement about anything."<sup>14</sup> It is certain, in short, that they would separate and go to ruin, unless there were a physician employed to cure diseases, to strengthen the weaker parts with applications, in which soothing and health- giving properties are combined in right proportions, to check the excess of the fluids, and to look after several members, in order that no weak part might pine away for lack of nourishment nor other part grow overstrong.

*Maitland:* Clearly, this is essential.

*Buchanan:* But who shall do this for the body- politic; and by what name shall we call him?

*Maitland:* I am not greatly concerned about the name. I am of the opinion that, no matter by what name

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9. *Iliad*, vi. 200- 202.

10. Ovid, *Met.* i. 76.

11. Juvenal, xiv 321.

12. Lev. xix. 18; Matt. v. 43, xix. 19, xxii.

37- 39; Mark xii. 31- 33, Gal. 14; James 2.

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13. Cicero, *De Re Publica.* vi. 13.

14. Horace, *Ep.* 1. i. 82.

you call him, he who does this will be most eminent and godlike; and it is evidence of the foresight of our ancestors that they honored a most illustrious office with a most distinguished name. For I believe that you are thinking of the name king; and such is the force of that word that it presents, almost to the physical senses, a thing great and illustrious.

*Buchanan:* You are right. For we address God by this name, and have no more illustrious title by which we may declare the exalted character of his glorious nature; nor have we any title more suitable for showing his father's care over us and concern for us. What other names may I list which may carry the idea of the duties of a king? Are they not such terms as Father Aeneas, Agamemnon, Shepherd of the People, also Leader, Prince, and Governor? In all of these terms there is an implication that the king has been set up, not to serve his own interests, but for the good of the people. As respects the name, we are, it appears, agreed. Let us discuss the duties of the office: following the same course as heretofore.

[50] *Maitland:* To what course do you refer?

*Buchanan:* Do you recall what was just said, that the body- politic is like a human body, civil disturbances like to diseases, and a king like to a physician? If, therefore, one understands the duties of a physician, he shall not be far from understanding those of a king.

*Maitland:* It is possible, for in the points you have enumerated they are quite like — almost identical.

*Buchanan:* Do you expect that I shall examine every possible point of comparison? Time does not permit, nor is it necessary. But, if they coincide in the principal respects, you can supply the rest.

*Maitland:* Continue, I beg you.

*Buchanan:* They both, king and physician, seem to be working for the same object.

*Maitland:* And what is that?

*Buchanan:* The health of the body, to the care of which they are devoted.

*Maitland:* I see, the one is responsible, so far as is possible, for the soundness and restoration to health of the human body and the other of the body- politic.

*Buchanan:* That is just what I mean; for each has a twofold duty, to preserve health and to restore it when it is impaired by disease.

*Maitland:* I agree.

*Buchanan:* And the diseases treated by the two are similar.

*Maitland:* So it appears.

*Buchanan:* Both the human body and the body- politic are injured by the presence in them of harmful things and by the lack of things they need. Each body is cured in much the same way as is the other — namely, by nourishing and gently assisting the weakened members and by diminishing the fullness and excess of that which does no good, and by moderate exercise.

[51] *Maitland:* Yes, indeed, and there seems to be this further point: that the fluids of the one and the customs of the other should be brought to a due moderation. [*Chapter Six. The All Inclusive Function Of Government Is the Maintenance Of Justice.*]

*Buchanan:* That is correct. For, in my opinion, there is, for the body- politic, just as for the human body, a balance or harmony of functions which we, with perfect fitness, call justice. Justice protects the interests of the particular members, and governs them as they discharge their respective functions. In the human body this governing is accomplished by bleeding and by the use of vomits and purgatives — thus expelling hurtful substances, by cheering persons in low spirits and consoling the despairing.<sup>15</sup> In such fashion the human body is brought to the balance and harmony of functions of which I spoke, and once good health is established, this condition is maintained, so far as this can be done, by rest and exercise in due proportion.

*Maitland:* I agree to everything you say, save that you subordinate the harmonious functioning of the body- politic to justice; whereas, by its very name and declared character, this harmonious functioning seems to claim its place in its own right.

*Buchanan:* It doesn't, in my opinion, matter a great deal to which of those you give precedence. For all good traits the strength of which is proved in action are maintained in a certain measure and balance with respect to each other; so that they are interdependent and mutually allied. As a result, there seems to be a single function of all, and this function is the control of inordinate passions. The name by which this harmonious rela-

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15. The figure of the magistrate as the physician of the body- politic is to be found in Chrysostom, *The Acts of the Apostles, Homily Lll*. Both Chrysostom and Buchanan must have known the figure from Aristotle. *Politics*, III. xi. 5, 6.



tion of parts, as it shows itself in various ways, is called is quite unimportant. When, however, this harmony is maintained in a commonwealth and with respect to the [52] relations of human beings with each other, it seems to me that the full idea of it is best conveyed by the name *Justice*.

*Maitland:* I readily agree.

*[Chapter Seven. Kings Derive Their Authority from the Consent of the Governed. ;]*

*Buchanan:* In establishing a government, the ancients, I believe, followed this usage; that if there was, among them, some one of special eminence, who seemed to excel everyone else in fairness and foresight, they would confer the political authority upon him. This is said to be done in colonies of bees.

*Maitland:* That is a credible account of what may have been done.

*Buchanan:* But what if no one of this character is to be found in a state?

*Maitland:* By the law of nature which we mentioned earlier, it is neither possible nor right for one to assume authority among his equals; for I believe that it is naturally just for the position of equals to be alike with respect to the exercise of and subjection to political authority.

*Buchanan:* But what if the people, wearied by regularly recurring strife for office, should, as we have indicated before, choose as their ruler some person who was not gifted with the whole round of royal virtues, but was distinguished either by superiority of character, by wealth, or by military achievements? Should we not as we measure royalty by the highest law, regard him as truly a king?

*Maitland:* Yes, most emphatically. For it is right that the people confer the political authority upon whomsoever they will.

*[Chapter Eight. But Members of the Learned Professions Acquire Their Professional Status by Virtue of Their Acquirements, Not by Election.]*

*Buchanan:* What if we should employ, in the treatment of disease, some bright fellow who has never acquired the special [53] skills of this art? Should we accept a man as regularly a physician so soon as he has been elected by popular vote?

*Maitland:* Not in the least, for a man becomes a physician by instruction and by experience in many sorts of arts, not by being elected.

*Buchanan:* How are the practitioners of the other arts created?

*Maitland:* I think that there is the same way for all.

*Buchanan:* Do you think that there is any art or profession of government?

*Maitland:* Why should there not be?

*Buchanan:* Can you give any reason for your opinion?

*Maitland:* I believe that I can—to wit, the reason generally assigned in connection with the other professions.

*Buchanan:* Please explain.

*Maitland:* The entrance to all the professions is by way of experience. For, although any number of persons attempt all sorts of things without any knowledge of what they are doing, and other — empirics — are guided by experience and custom, wise men, noting phenomena on every hand and pondering the causes of events, have developed systems of knowledge, and this organization of art and knowledge they call a profession.

*Buchanan:* Is it possible that, by a process similar to that which has given us the science of medicine, a science of government could be developed?

*Maitland:* I believe so.

*Buchanan:* What is its content?

*Maitland:* I cannot say with certainty.

*Buchanan:* May we examine it by comparing it with the other professions?

*Maitland:* Just how?

[54] *Buchanan:* In this way: There are certain principles of grammar, of medicine, and of agriculture.

*Maitland:* I follow you.

*Buchanan:* Shall we not call these principles of the grammarians their arts and laws, and so of other professions?

*Maitland:* That seems to be correct.

*Buchanan:* And of the Civil Law? Does it not, by virtue of its principles, seem to you to be the queen of the sciences?

*Maitland:* It does indeed.

*[Chapter Nine. How Can We Secure Both of These Essentials of a Government: Election of the Ruler and Government in Accordance with Principles or Laws?]*

*Buchanan:* He who would be regarded as a true king should, therefore, be a master of the law.

*Maitland:* So it would seem.

*Buchanan:* What do you think of this: If some person who does not know the law is chosen, shall we call him a king?

*Maitland:* Your point puzzles me. If I agree, I am virtually saying that popular election can no more make a ruler than it can create competent practitioners of any other profession.

*Buchanan:* What do you think should be the practice in this matter? For I suspect that we cannot have a legitimate ruler unless we have him elected with the full consent of the people.

*Maitland:* I, too, suspect that this would be the case.

*Buchanan:* What next, shall we examine more carefully what we settled just now with respect to comparing the professions?

*Maitland:* Yes, if you like.

*Buchanan:* Have we not called the principles of the several arts the laws of each art?

[55] *Maitland:* We have.

*Buchanan:* And I suspect that we did not look into the matter with sufficient care before we did so.

*Maitland:* Why do you say that?

*Buchanan:* Because it is clearly absurd that a person should, if you please, be a master of a profession, and, notwithstanding, should be no professional man.

*Maitland:* Absurd indeed!

*Buchanan:* But we regard a man who performs the duties of a profession adequately as a master of it, whether he is quite untaught or has acquired his facility by unremitting and sustained exercise and practice.

*Maitland:* I imagine so.

*Buchanan:* We shall, then, call that man the master of his profession who has the art and science necessary for its successful practice, no matter how he has acquired this facility.

*Maitland:* And much more appropriately so than a person who has the bare theory, without experience and practice.

*Buchanan:* May we not regard a theoretical system as an art?

*Maitland:* No, but as a sort of likeness or, more accurately, a shadow of an art.

*Buchanan:* What, then, is this ability to govern, which we call the art and science of politics?

*Maitland:* You seem to be saying that it is reason, from which, as from a fountain, all laws which are of value for the preservation of human society must flow or be derived.

*Buchanan:* Precisely. And if a person possesses wisdom in the highest degree and without flaw, we may say of him that he is a king by nature, and not by virtue of the people's choice. To him we may entrust independent and unlimited power. If, however, no man who completely fills these specifications can be found, we shall call that man king who, having the [56] likeness of a genuine king, approaches most nearly to that highest eminence of character.

*Maitland:* We should so style him, if matters are as you indicate.

[Chapter Ten. *The Solution of the Dilemma Is to Be Found in the Requirement that Kings Rule in Accordance with the Laws.*]

*Buchanan:* And inasmuch as we are apprehensive lest he cannot wholly avoid being influenced by his feelings — which can and often do lead him astray from the truth — we set the law beside him as an associate in office, or rather, as a curb upon his arbitrary will.

*Maitland:* Do you not believe that the royal authority should be absolute and unlimited?

*Buchanan:* Emphatically, no! For I bear in mind that the ruler is not a king only, but is, as well, a man; mistaken in many cases through ignorance; doing wrong in many cases through wilfulness; acting in many cases under constraint. He is, in fact, an animal, easily moved by every breath of good or ill will; so that I have learned the truth of that exceedingly strong statement from one of the comedies, "Where there is license, everything goes from bad to worse."<sup>16</sup> It is for this reason that men of the keenest insight have made the law the King's associate; that it may show him the way when he is ignorant, and bring him back to it when he goes astray. From this, I think, you can see, "as in a picture," what I regard as the duty of a legitimate king.

[Chapter Eleven. *It Is No Limitation of the King's Freedom, Power, or Dignity to Rule in Accordance with the Laws.*]

*Maitland:* You have convinced me as respects the reason for creating kingship, the name king, and the duties of the office. I am not disinclined to have you

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16. Terence, *Heauton Tim.* 483.

continue; but though I am eager to know what appears to remain of this matter, [57] there is, nevertheless, one point in our discourse with which I seriously disagree, and which I do not believe that I should pass over in silence. You have clearly been unfair to kings. I had frequently suspected this of you in the past, when I frequently heard you so profuse in your praise of the ancient commonwealths and of the government of Venice.

*Buchanan:* You have not been interpreting me correctly. I am not so much concerned about the form of governmental administration among the Romans, Massilians, Venetians and others among whom the authority of the laws was superior to that of men as I am about the equal administration of the law. I do not believe that it is any great matter whether the chief magistrate is called King, Duke, Emperor, or Consul, so long as it is understood that he is placed in office to maintain justice. So long as government be just, we ought not contend over names.

For him whom we call the Duke of Venice is nothing more nor less than a king under a constitutional government; and the first consuls retained not only the insignia but also the powers of royalty. The consuls differed from the usual pattern of kings only with respect to the fact that two of them reigned simultaneously — and this, as you know, was the custom in Laconia throughout her history — and that they were not chosen to office for life, but for a year at a time.

It is, therefore, reasonable to stand by the position we have announced from the first, that kings, initially, were set up to preserve justice. If they had been able to have kept their exercise of authority as they had received it — that is, released and made free under the laws — they might have kept it in perpetuity. But, as is always the case in human affairs, matters degenerated, and the authority, which was established to serve the public interest, became an arrogant overlordship. For — since the arbitrary will of kings supplanted the laws, and men invested with unlimited and undefined powers did not regulate their conduct by reason but allowed many things because of partiality, many because of prejudice, and many because of self-interest — the arrogance of kings made laws necessary. For this reason, therefore, laws were devised by the people, and [58] kings were forced to employ the legal authority, conferred upon them by the people, and not their arbitrary wills, in deciding cases. The people had been taught by long

experience that it is better to trust their liberty to the laws than to kings; for the latter can be drawn away from justice by a great variety of forces, but the former, being deaf to both entreaties and to threats, pursues the one, unbroken course.

Kings, free in other matters, have their course prescribed with respect to the exercise of political authority — they must shape their actions and speech in conformity with the principles of the laws, and they must apportion rewards and punishments, those great means of social unity, in accordance with the laws' sanctions. Finally, as that great authority on republican government puts it, "The king should be the law speaking; the law should be the king mute."<sup>17</sup>

*Maitland:* At the outset, you praised kings to such an extent that you gave them a character almost sacred or holy. Now, as if you repent of what you did then, you confine them within I know not what narrow bounds. You cast them into what I may call the prison of the laws, and do not even permit them freedom of speech. You have disappointed me very greatly; for I had hoped that, in the course of our conversation, you would — either spontaneously or on my prompting — restore the royal office, which, as is attested by the most famous historians, is most illustrious in the sight of both God and men, to that splendor to which it is entitled. You have, instead, stripped it of all distinction and reduced it in degree. You have so hedged about the office which was the highest on earth that no sane person would want it. For what man in his right mind would not prefer to live as a private citizen of moderate means, rather than shape his whole career with reference to the concerns of other people — living in a state of constant turmoil and looking after other people's business while neglecting his own? If this situation with respect to government were imposed everywhere, I suspect that there would be in the future as great a scarcity of kings as there was of bishops in the early infancy of our religion. Nor should I be surprised [59] if kings were thought of as of the type found in the past — men taken from their herds or the plough, who received this awesome dignity.

[Chapter Twelve. Governments Exist for the Maintenance of Right.]

*Buchanan:* Consider how greatly you have strayed into error in thinking peoples and nations

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17.\*16 Cicero, *De Leg.* iii. 2.

desired to have governments, not for the maintenance of right, but that kings might enjoy themselves; and in measuring opportunity for distinction in terms of great show of wealth and pleasure. Think how you diminish the stature of princes by such a position!

Now, in order that you may understand the matter the more readily, compare some king whom you have seen decked out like a child's doll and paraded in great ceremony and with a prodigious hubbub in order to make an empty show: compare such a one, I say, with kings celebrated in ancient times, whose memory lives and grows, and is honored by posterity. These last were such men as I have been describing. Have you never heard this story of Philip of Macedon? He was petitioned by an old woman to hear her case, and replied that he did not have time. To this she answered, then you should reign *no* longer. Have you not heard, I say, that that king — victor in many wars and master of many nations as he was — being reminded of his duty by a poor old woman, performed it, and acknowledged that this [*i.e.*, the maintenance of the right], was the concern of kings?<sup>18</sup>

Compare Philip not only with the greatest kings of contemporary Europe but also with those of the past; and, surely, you will find no one of them his equal in judgment, courage, or industry, and but few who were as wealthy as he.

If I were to call over the names of the Spartan kings, Agesilaus, Leonidas and the rest — what men those were! — I should be thought guilty of using outmoded examples. I cannot, however, pass without mention of the saying of a Spartan girl, Gorgo, daughter of Cleomenes. This girl saw the servant of a guest, an Asiatic, pulling off his master's stocking, and running [60] to her father, excitedly said, "Father, the guest has no hands."<sup>19</sup> From this childish speech one may infer the character of Spartan education and the manner of life of her kings. Now, the men who came from this rustic but manly regime achieved great things, but those from the Asiatic type of education, because of their fondness for luxury and their laziness, allowed the vast empires which they had from their ancestors to slip from them.

But, to dismiss the ancients, a man of the recent past, Pelagius of Galicia, who was the first to shake off the Saracen power in Spain, was such a man. Though "the grave swallowed his goods, his house, and his herds, along with him, their master,"<sup>20</sup> the kings of Spain are not ashamed of him, but count their descent from him their greatest honor.

Since this subject merits more extensive examination, let us return to the point at which we digressed; for I am concerned to demonstrate to you at once that which I promised, that this plan of government is not a mere invention of mine, but is identical with the concept held by the most illustrious men of all history, and I shall indicate, briefly, the sources from which I have derived it. The treatise of M. Tullius Cicero entitled "Of Public Service" is, as all agree, of the highest excellence. In the second book of this work are these words:

It appears to me that, as Herodotus says, kings of the better sort were set up — not among the Medes only but also among our own ancestors — that justice might be maintained. For, when the helpless were tyrannized over by the powerful, they turned to some man of eminent character, who, while he defended the weak, governed high and low, once evenhanded justice was established, under a uniform system of law. And laws were made for the same reason that kings were set up — justice must needs be impartial, else were it not justice. If this was obtained under a good and just man, the people were satisfied; when this failed, laws were made, which could speak to all, and invariably with one and the same voice. This is clear, therefore, that those chosen to govern are usually those of whom the populace thinks highly. This may be added, that to the extent to which such leaders were accounted wise, men thought that there was nothing which could not be achieved under them.<sup>21</sup>

[61] I think that you can see from these words what Cicero regarded as the reason for wishing to have both kings and the law.

I could, at this point, commend Xenophon, a man no less eminent in military matters than in the study of philosophy, as a witness and guarantor of this same position; but I am aware that he is well known to you, for you have notes on all his writings. I omit Plato and

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18. Plutarch, *Regum et imperatorum apophthegmata*. 179 C 31.

19. Plutarch, *Moralia*. 240E.

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20. Juvenal, vi. 34.

21. Cicero, *De Off.* ii. 41.

Aristotle for the present, though I am not ignorant of the high esteem in which you hold them. For I prefer to cite in support of my position men distinguished rather in the world of action than men from the retirement of the schools. I am even less inclined to suggest the name of a Stoic king, such as is described by Seneca in his *Thyestes*; not that his conception of kingship falls short of perfection, but because his model of the good prince is of value rather as an intellectual exercise than as a practical possibility. Moreover, lest there be ground of criticism against any of my illustrations, I have not spoken of kings from the Scythian desert, who either tended grazing horses or performed other labor, a practice inconsistent with our usage. But I have chosen as my examples Greeks, who ruled great nations and prosperous cities at the time when the fine and the liberal arts were flowering in Greece — men who governed in such fashion that their people honored them very greatly while they lived and posterity accorded them the highest reputation after their deaths.

*[Chapter Thirteen. Maitland Is Convinced that there Is Much Evidence in Support of Buchanan's Position, and Leaving the Matter Open, Suggests that They Turn to a Discussion of the Nature of Government. The Friends Summarize the Points on which They Have Found Themselves in Agreement.]*

*Maitland:* Indeed, if you ask me now what I am thinking of, I scarcely venture to acknowledge my instability of mind, or timidity, or whatever my vice may be called. For, to be sure, I have often read in books well known to historians. of the matters of which you are speaking and I have heard them commended by scholars of the very highest standing — men whose opinions [62] I cannot afford to neglect. These ideas, moreover, appear to be approved by all good men as not merely true, right, and sound, but as potent and noble. Again, as I, from time to time, regard the refinement and good taste of our times, antiquity appears august and dignified, to be sure, but rough and uncouth. But, more of this, perhaps, when there is time. Will you, please, follow up the topic which you had begun to discuss?

*Buchanan:* If you agree, let us briefly review what has been said; so that we understand more clearly what has been passed over lightly, and if anything has been hastily conceded, we may readily take it up again.

*Maitland:* Splendid.

*Buchanan:* First, it was agreed between us that men were, by nature, created for society, and for the sharing of life.

*Maitland:* Agreed.

*Buchanan:* And that, as guardian of this society, a king, a man, eminent for his high character, is chosen.

*Maitland:* True.

*Buchanan:* And, just as strife between men has led to the necessity of creating kings; so the injuries inflicted by kings on their subjects were the occasion of our wishing to have laws.

*Maitland:* Granted.

*Buchanan:* And we regard the laws as a pattern for the art of government, just as the principles of medicine are for the physician's art.

*Maitland:* So it is.

*Buchanan:* Inasmuch as we have never set down the particular and precise details of the practice of either of these professions, it appears that it were safer that members of each profession practice in accordance with its principles than empirically.

*Maitland:* It were safer, certainly.

*Buchanan:* Now, the principles of the medical profession cannot be comprehended under a single class.

[63] *Maitland:* How is that?

*Buchanan:* The value of some of them is for the preservation of health, and of others for its restoration.

*Maitland:* True.

*Buchanan:* What of the art of governing?

*Maitland:* I think that there are many sorts of principles here, also.

*Buchanan:* It seems then that we should take this up next. Do you believe that physicians can be such masters of all knowledge of diseases and their remedies that nothing further can be asked for their cure?

*Maitland:* Not in the least. Many new diseases arise in every generation; and almost every year, man's industry either discovers new remedies for each of them or imports them from a distance.

*Buchanan:* What of the laws of sovereign states?

*Maitland:* The same rule clearly applies to them.

*Buchanan:* Then, neither the rulers of states nor physicians can either prevent or cure every ill by the application of the principles of their arts as they are written down and delivered to them.

*Maitland:* I think that, certainly, they cannot.

*[Chapter Fourteen. The Next Question: What Is*

*the Role and Nature of the Law?]*

*Buchanan:* Let us now inquire what things can properly be enacted as laws of states, and what cannot be taken account of by the law.

*Maitland:* This is a topic well worth our time.

*Buchanan:* It appears that many and weighty matters cannot be covered by the laws. First among such matters are those respecting decisions which must be made at some future time.

*Maitland:* Yes, all of these.

[64] *Buchanan:* Next in the list of matters which should not be covered by the statutes are many past events. The truth with respect to these matters is sought by inference, is established by witnesses, or is elicited by torture.

*Maitland:* Undoubtedly.

*Buchanan:* What part has the king in ordering such matters?

*Maitland:* I see that there is no need to speak at length on this point. Evidently, kings do not arrogate to themselves the supreme power in matters the disposition of which is in the future, for they voluntarily call into council with them men of superior judgment.

*Buchanan:* But what of matters which are known by inference from the facts or are proved by witnesses — such as the crimes of murder, adultery, or witchcraft?

*Maitland:* These are investigated by the clever methods of the lawyers and exposed by their dexterity — and appear to me to be commonly entrusted to the decisions of judges.

*Buchanan:* And, it is likely, properly so; for if a king were to undertake to hear all the lawsuits of every individual citizen, when would he have time to reflect on war and peace and these measures which unify and preserve a commonwealth? And, finally, when would it be permissible for him to leave off working?

*[Chapter Fifteen. Since the King Cannot Hear All Cases, Courts Must Be [Established. The Final Decision of Cases Must Be Referred to Lawyers.]*

*Maitland:* Neither would I wish to have the king institute every inquiry, nor is it possible that, if all lawsuits were referred to the one man, he could handle them. And for this reason I very strongly approve of the device which the father-in-law of Moses advised him to establish in order that the burden of hearing a great number of cases might be divided — this was a provi-

sion no less wise than necessary. I shall not speak further of this, for the story is familiar to everyone.<sup>22</sup>

[65] *Buchanan:* But judges, I understand, render their decisions in accordance with the principles of law.

*Maitland:* They do, indeed, so render them; but I conceive that there is little which can be safeguarded by the laws, compared to that which cannot be so safeguarded.

*Buchanan:* There is an additional problem of no less difficulty — not everything for which laws are required can be comprised under fixed rules.

*Maitland:* How so?

*Buchanan:* Lawyers, who assign a very high place to their profession, and wish to be regarded as priests of justice,<sup>23</sup> concede that the variety of problems is so great as to appear well-nigh infinite, and new crimes — as it were, several sorts of sores — daily arise in states.

*Maitland:* One would have to be divine to accomplish more than a little.

*Buchanan:* There is this other difficulty, and it is no small one: change is so marked a condition of human life that no art can secure in advance an unvarying and lasting system.

*Maitland:* Nothing could be truer.

*Buchanan:* Then it seems the safer thing to trust the health of a patient to the skilled physician and the character of the state to the ruler. For, frequently, beyond the rules of his science, the physician may cure a sick person, with or without the patient's consent; and so, also, may a king establish a new and, nonetheless, useful law — the citizens being either persuaded of its value or opposed to it.

*Maitland:* I can see nothing to prevent it.

*Buchanan:* Now in view of the fact that they both act in this fashion, does it not appear that each of them makes his own laws?

[66] *[Chapter Sixteen. Lawyers Must Act Within the Limits Set by the Laws.]*

*Maitland:* My opinion is that each acts in accordance with the principles of his profession. For, as we earlier agreed, a profession does not consist in its rules, but in a certain character of the mind, which an artist enjoys in manipulating the materials which are neces-

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22. *Exodus*, xviii. 21, 22.

23. Compare Fortescue, Sir John, *De laudibus legum Angliae*. iii.

sary to his art<sup>24</sup> But I am delighted—if indeed you are speaking in earnest—that, forced it may be said by the interposition of the facts, you are restoring the ruler to the place from which he had been dragged by force.

*Buchanan:* Stop: you have not yet heard everything. For there is in the laws a power of limiting. For the law is, as it were, a rigorous and stern taskmaster, which will accept nothing as right save what it wills. With a ruler, the excuse of weakness or haste may avail, or there may be pardon for one detected in a fault. The law is deaf, impersonal, and inexorable. A youth pleads the temptations of his age, a woman the frailty of her sex, another poverty, drunkenness, or friendship. What says the law to all this? “Ho, officer! Arrest him, blindfold him, scourge him, and hang him on a tree.”<sup>25</sup> Are you not ignorant of how dangerous it is—human nature being so weak—to trust innocence as the only guardian of safety?

*Maitland:* There is little doubt that the matter of which you speak is fraught with danger.

*[Chapter Seventeen. Obedience to Law Is Not Slavish Dependence upon Rules, but Guidance by Principles Which Set Patterns of Action in Accordance with Reality.]*

*Buchanan:* I notice that, invariably, when this matter comes under consideration, some persons are greatly disturbed.

*Maitland:* That is very true.

*Buchanan:* For this reason, when I reflect upon what we earlier agreed to, I am afraid lest the comparison between a king and a physician was clumsily introduced.

[67] *Maitland:* In what respect?

*Buchanan:* In this, that we have liberated both of them from slavish dependence upon rules, having conferred upon each of them the authority to practice according to his own judgment.

*Maitland:* What is there in this course which disturbs you so greatly?

*Buchanan:* Hear me out and form your own conclusion. We have agreed that there are two reasons why it is not good for a people to release their rulers from the

restraints of the laws; namely, love and hatred, which influence men's minds to the defeat of justice. But there is no danger that a physician will do wrong because of his affection for the patient he is attending, for he looks for his recompense in the restoration of his patient to health. If, moreover, a patient learns that his physician is being tempted by entreaties, promises or bribes to take his life, he is free to choose another physician, or, if there should be none available, I think it were safer to seek a remedy in books, deaf though they be, than in a bribed physician. But, since we earlier took exception to the indifference of laws to human values, let us see if we are being consistent in the positions we are taking.

*Maitland:* How so?

*Buchanan:* The ideal king, whom we can see rather with the eyes of the mind than with those of the body, is not, we are agreed, hampered by laws.

*Maitland:* Not at all.

*Buchanan:* And what is the significance of this?

*Maitland:* Following Paul, I believe that he should be a law unto himself and unto others in order that he may exhibit in his own life what is commanded by the laws.

*Buchanan:* Your reasoning is correct; and that you may, possibly, hold the law in the deeper reverence, I add that long before Paul wrote, Aristotle, guided solely by the light of nature, understood this. But, in order that you may see the more clearly what was proved earlier, I repeat, “the voice of [68] God and of Nature are one and the same;<sup>26</sup> and, that we may get forward with our undertaking, let us state what those who first made the laws had in mind.

*Maitland:* I think that, as was said earlier, they were thinking of justice.

*Buchanan:* I am not at the moment asking to what ultimate goal they aspire; but rather what design they had conceived.

*Maitland:* I believe that I follow you, but please explain; so that, if I am pursuing the right course of rea-

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24. Compare Chrysostom, *The Acts of the Apostles, Homily LII*.

25. Cicero, *Rabir.* iv. 13; Livy, i. xxvi. 7. This was the ancient formula for arrest.

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26. John of Salisbury, *Policraticus*. II. xii. See *Fivolities of Courtiers and Footprints of Philosophers*, Joseph B. Pike, translator (Minneapolis, The University of Minnesota Press, 1938), p. 73n. Pike cites St. Augustine, *De Civ. Dei*, viii. 3.

soning, You may assure me of it, and if I am mistaken, that you may correct the error.

*Buchanan:* You understand, I believe, the fashion in which the mind directs the body.

*Maitland:* I seem to understand it.

*Buchanan:* Nor are you ignorant of the fact that where we act otherwise than at random, there is in our minds, prior to action, a plan of the matter in hand; and that the pattern — the idea — to which the greatest artists conform their work, and which their finished work may be said to represent, is far more perfect than are the works they produce.

*Maitland:* I have experienced this in both speaking and writing; for I have sensed the inability of words to express an idea, no less than of ideas to represent things. For, neither can the mind, imprisoned in that dark and disordered dungeon, the body, perceive the exact details of all matters; nor can we, in any wise, convey to others, by means of discourse, the ideas previously formed in our minds without those which are conveyed being greatly inferior to those which served as patterns in the mind.

*[Chapter Eighteen. The Law Is the Ideal of the Perfectly Just Ruler.]*

*Buchanan:* What shall we say, then, that those who established the laws had before their minds?

[69] *Maitland:* I can almost grasp your meaning; namely, that they had in mind the image of the perfect king, and, so far as they were able, they modeled what they produced upon this, producing a likeness not of a material body but of an idea — a king who will wish to have as laws what he thinks good and just.

*Buchanan:* You follow me perfectly, for that is precisely what I wished to say. And, next, I wish you would think what sort of ruler we set up, from the first. Was he not firm in resisting the influence of hate, affection, anger, envy, and the other forces which unsettle the mind?

*Maitland:* We did indeed form him so; or, so we believed him to have been among men of earlier times.

*Buchanan:* But do laws seem to you to be made like this?

*Maitland:* Not at all like this.

*Buchanan:* And a good king is no less unbending and inexorable than a good law.

*Maitland:* He is equally firm. But since I can change neither — nor ought I wish to do so — I do desire to render both somewhat more flexible, if I may.

*Buchanan:* God, however, wills that in judging we should not show compassion on account of poverty; but bids us regard right and justice, and to pronounce judgment with respect to that alone.

*[Chapter Nineteen. If the Government Is Indeed to Be of Laws and Not of Men, Have We Not Set up a New Absolutism?]*

*Maitland:* I recognize the good sense of your statement, and am overcome by the truth. But, inasmuch as it is not possible to loose the king from the bonds of the law, who will be the lawgiver? Whom shall we set up as a teacher?

*Buchanan:* Who, do you think, is most capable of preserving authority?

[70] *Maitland:* If you ask me, the king himself. For we perceive that in almost all other arts, the rules are laid down by the artists, who employ them for their own guidance, or in teaching others their duties.

*Buchanan:* I, on the contrary, regard this as not of the slightest importance. Suppose we leave the king free and loose from obedience to the laws. Do we, then, give him authority of prescribing the laws? No one will voluntarily put fetters on himself; and I do not know which is better, to leave him free or to bind him with fetters which are of no account, which, assuredly, he can slip off whenever he wishes.

*Maitland:* And you, when you trust the power of government to laws and not to kings, beware, I beg of you, lest you impose a despotism upon him whom you by name make a king, which will oppress him with authority and confine him in chains and a dungeon,<sup>27</sup> until at length it either drives him forth into the wild or returns him to his former state [as a private citizen].

*[Chapter Twenty. The People Prescribe the Limits of Government; and this, Far from Being a Limitation of the Freedom and Dignity of the King, Adds Greatly to His Stature.]*

*Buchanan:* Well said! I place no master over him; but I am resolved that the people who gave him authority over themselves shall prescribe the limits of that authority; and I demand that the king shall use the power which the people have given him over themselves within these limits.

Nor would I, as you put it, impose these laws by force; but I believe that that which makes for the welfare

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27. Virgil, *Aen. i. 54.*



of all the people, ought to be jointly enacted in a public proceeding with the king in council.

*Maitland:* You wish to concede this office to the people?

*Buchanan:* To the people, most assuredly — unless, perhaps, you think differently.

[71] *Maitland:* It appears that nothing could be less appropriate.

*Buchanan:* Why so?

*Maitland:* You know the expression, “A monster with many heads.”<sup>28</sup> You are aware, I believe, how impulsive the masses are — how fickle.

*Buchanan:* I never thought that the management of affairs should be left to decision of the whole people; but that, according to our custom, selected persons from all ranks should join with the king in council; and when, at length, a decision is arrived at between them, it should be submitted to the people's judgment.

*Maitland:* I understand your plan very well; but you seem to me to help the situation not at all by these excessive precautions. You do not want a king who is above the law. Why? Because, as I recall, two most cruel monsters, lust and rage, carry on, within every man, an eternal war with reason. Laws are desired which may restrain their license, and, as they run to excess, to call them back to respect for rightful authority. But what of those counselors furnished from the people? Are they not troubled by the same inner conflict? Are they not affected by the same evils as is the king? To the extent that you increase the number of assistants which you associate with the king, by so much do you increase the number of blockheads. You understand what may be expected of that.

*Buchanan:* On the contrary, I anticipate something very different from what you are thinking; and I will tell you why I do anticipate it. First, your idea, that the assembling of a great many people — among whom there are perhaps none of exceptional ability is a futile

business, is not universally true. For not only does the assembly see and understand more than any one of its members when taken singly, but it sees and understands more than a person, even, who excels any individual of the crowd in cleverness and practical judgment. In [72] deed, an assembly is a better judge of all matters than is an individual. For individuals, taken separately, have particular good qualities which combined make a trait of outstanding excellence. This may be illustrated by reference to the physician's poisons, and especially to that antidote which is called Mithridates. There are in this remedy a variety of drugs which, taken separately, are harmful, while the compound is a wholesome remedy against poison. Likewise, in some men slowness or hesitation is the drawback, in others headlong haste. These mingled in an assembly produce a moderation of disposition which we seek in traits of every sort.

*Maitland:* Suppose it should be done as you propose — that the people should make and execute the laws, and let the kings be, as it were, keepers of archives. And when laws are seen to be in conflict with each other, or do not order matters with sufficient definiteness or clarity, will you then have the office of the king to be of no importance; especially since, should you require him to decide everything by a written rule, a multitude of absurd results will, inevitably, follow? For example, to quote a very well-known bit of the law recited in the schools: “If a stranger climb a wall, let him die.”<sup>29</sup> What could be more absurd than this possibility — that a protector of the commonwealth, who, standing on a wall had defeated the enemies, might himself be snatched away in ignominy, as though he had climbed up as an enemy?

*Buchanan:* Nothing could be more absurd than that.

*Maitland:* You approve then of the old saying, “The highest justice is the highest injury.”<sup>30</sup>

*Buchanan:* I do indeed.

*Maitland:* If anything of this sort comes up for decision, there should be a humane executive who would not allow the laws which are made for the profit

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28. Horace, *Ep.* I. i. 76. Cf. Pomponius Porphyrius, *ad h.l. fabella ergo Aesopia inter se repugnantiam hominum dicens beluam multorum capitum esse*. Cf. also L. Sternback, “De gnomologio Vaticano inedito 121,” in *Wiener Studien*, X (1888), 23. Sternback refers also to Proclus on Plato's *Alcibiades*, I, Vol. I, 1 sq. (Creuzer).

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29. Cf. Quintilian, *Inst. Orat.* IV. iv. 4: “*Lex aperta scripta est, ut peregrinus, qui murum ascenderit, morte multetur.*”

30. Cicero, *De Off.* i. 38.

of all to be the ruin of good men, rather than of those apprehended in crime.

[73][Chapter Twenty- one. Buchanan Proposes that the Law Be Interpreted in All Cases by Lawyers, a Position to Which Maitland Objects.]

*Buchanan:* You are quite right. Moreover, as you may have observed, throughout this entire discussion, I have been striving exclusively for this one thing — that the Ciceronian principle, “The public welfare is the supreme law,”<sup>31</sup> might be held in reverence and perfectly observed.

Therefore, if a case of a complex sort comes up for decision, in order that what is just and right may not be hidden, it would be the duty of the king to see to it that the law be applied according to that rule which I have just quoted. But you appear to demand more in the king's name than the most domineering of them arrogates to himself. For you know that a question of this sort — where the law appears to say one thing and the legislator to have intended another - is commonly referred to legal experts; just so, certain laws arise from the fact that some right is ill- defined, or from some conflict of the laws. It is on this account that in connection with interpretation the most serious issues arise between lawyers, and the maxims of the masters of the law are carefully expounded.

*Maitland:* I know that these things are done just as you describe; but it seems to me that the laws are harmed no less than are kings in this procedure. For I hold that it is better to bring litigation promptly to a conclusion through relying upon the judgment of one good man than to entrust the power rather of concealing the laws than of explaining them to clever fellows, and sometimes to rascals. For in cases when a contest is sustained not only for the sake of the interests in litigation, but also in the interest of the reputations for brilliance of the opposing attorneys, the issue of right or wrong, justice or injustice, is lost sight of, or is brought into jeopardy.

*Buchanan:* You appear to have forgotten the proposition upon which we agreed earlier.

*Maitland:* What is that?

[74] *Buchanan:* Complete freedom of action ought indeed to be allowed to such a supremely excellent king as we described at the outset; and in such a sit-

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31.Cicero, *De Leg. iii.* 8.

uation there would be no need of laws. But where the royal office is committed to some person who is not greatly superior in ability to others of his fellow citizens, and where he is even inferior to some of them, this boundless power — undefined and unchecked by laws — is dangerous.

*Maitland:* Has this, indeed, anything to do with the significance of the laws?

*Buchanan:* It has a great deal. You do not, perhaps, perceive that, by merely changing the terminology, you now grant to kings that unlimited and arbitrary power which is earlier denied them — namely, the power to turn every matter in any direction whatsoever that their whims dictate.

*Maitland:* If I am doing this, I certainly am acting without considering the matter.

*Buchanan:* In order that you may understand, I am going to speak more plainly. You confer this unlimited power upon the king when you grant him authority to say what the laws mean — for the law itself says neither what the intent of the maker of the law might be nor what is justice and right in every instance; that is for the advocates in every suit to examine —so that, having this authority, he could, following the Lesbian rule, bend all his official actions to the service of his private interests.<sup>32</sup> Appius Claudius, during his term as Decemvir, made a most just law, “That in suits where the liberty of a person is involved, bond shall be given as a defense of liberty.”<sup>33</sup> How could a statement be more clearly put? But in his exposition the author of the law renders it worthless. You see, I am confident, how much license you give the prince at one stroke: that, commonly, what he wishes, the law intends; what he does not desire, it does not intend. If we ever admit this principle, it will be of no avail to make good laws, which [75] are designed to admonish a good prince respecting his duties, and to restrain a bad one. On the contrary, I tell you frankly, it were preferable to have no laws at all than that, under the pretext of law, liberty to rob should be tolerated and even honored.

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32.Aristotle, *Nic. Ethics*, v.x. 7.

33.Appius Claudius, called the Decemvir, led in the formulation of the Laws of the Twelve Tables. Buchanan's reference, clearly, is to *Tabula* II. 1: See Gaius, *Inst.* IV, 13- 14.

*Maitland:* Do you believe that any king would be so insolent as to have no regard for the reputation and respect in which people generally hold him; or, that he will so far forget himself and his people that he will fall into the vices of the very persons whom he has controlled by humiliation, imprisonment, confiscation of goods — in a word, by the heaviest punishment?

*[Chapter Twenty- two. Buchanan Cites Examples to Show the Dangers to Be Expected from Absolute and Arbitrary Rulers.]*

*Buchanan:* We could not believe that such things could be, save that they have been done these many years past, to the very great hurt of the whole world.

*Maitland:* Where do you claim that such things have been done?

*Buchanan:* Where, do you ask? As if all nations of Europe had not only seen, but also felt with how much evil the unbridled liberty — I do not say the arbitrary power — of the Roman Pontiff has plagued human affairs. No one is ignorant that nothing less is to be feared by the unwary from that liberty, which came from such modest and apparently honorable beginnings. At first, laws were proposed to us, not only as drawn from the deepest secrets of nature, but as given by God himself, revealed by the Holy Spirit through the prophets, and at length, by God, the Son, and to the same effect testified to of God, commanded in the writings of most excellent men, portrayed in their lives and sealed with their blood. Now there is no topic in the law which is more carefully, more agreeably, or more plainly explained than that which deals with the official duties of bishops. So long as it was permitted to no one to add anything to these laws, or to subtract from them, or to change them, the interpretation remained constant. But when the Bishop of Rome appropriated the [76] interpretation to himself, he not only oppressed the rest of the churches, but claimed of right a despotic authority, the most severe that ever existed: daring to command not men only but even angels. He brought Christ completely under his authority: unless it be not subjection to authority, that whatsoever the Bishop of Rome wills shall be done in heaven, on earth, and among the lost. What Christ has commanded shall be done, if the Bishop of Rome so wills. For if the law appears to serve the purpose of the Roman bishop inadequately in any matter, he can bend its meaning; so that Christ is constrained to speak, not merely from his mouth, but also

from the purposes of his mind. And as Christ speaks from the mouth of the Pope, Pippin<sup>34</sup> is set in place of Childeric and Ferdinand of Aragon<sup>35</sup> in that of John of Navarre. The son took up unholy weapons against the father, citizens against government. Christ is dripping poison, and next he is constrained to practice poisoning, so that he made away with Henry of Luxemburg by poison.<sup>36</sup>

*Maitland:* I have heard this before, but I wish to hear more plainly of this interpretation of the law respecting bishops.

*Buchanan:* I shall place before you one example, from which you may readily understand how powerful is this principle. The law is: “A bishop ought to be the husband of one wife.”<sup>37</sup>

[77] What could be plainer than this law and what could be said more clearly? The one wife is explained to mean one church. As if the law were established to repress the avarice of bishops, not their lust. But this explanation, although it is not at all to the point, contains an idea which is thoroughly honorable and good, if the Pontiff had not turned about and made the law of no effect by another interpretation. What then does the Pontiff devise? It varies, he says, from person to person, from case to case, from place to place, and from time to time. Some are of such distinction that no quantity of churches can satisfy them. Again, certain churches are so poor that they hardly suffice for the support of a monk — lately a mendicant, now mitred — if he wishes to maintain the title of Bishop. By means of this ingenious interpretation of the law, a scheme is devised under which but one of a bishop's churches is said to be his, the others are committed to his care — all are plun-

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34. Pippin III. (d. 768), the Short, and his brother Carloman became masters of the Frankish empire on the death of their father Charles Martel, with the title *majores palatii*. The mayors made Childeric III king, but retained all the powers of the government in their own hands — Childeric was a figurehead, merely. In 747, Carloman abdicated and became a monk, and, four years later, Pippin deposed Childeric, secured the assent of the assembly of the Franks to his assumption of the title of king, and had himself crowned by St. Boniface.

dered. If I wished to display all the tricks devised against this one law, there would not be time enough for me to do so; but though these things are unworthy of the name of Priest and of a Christian man, the tyranny does not consist in them. For it is universally true that once things begin to rush headlong on the downward road, they stop for nothing until they fall into utter destruction. By what notable example would you have me prove this? Do you recall among the emperors of Roman blood anyone who was more cruel or wicked than C. Caligula?

*Maitland:* I have known of none.

*Buchanan:* What do you consider the worst crime he ever committed? I do not refer to those which the Roman chief priests reckon among those reserved, but in the remainder of his life.

*Maitland:* What this may have been doesn't occur to me.

*Buchanan:* What do you think of his having invited his horse, Fastmover,<sup>38</sup> to eat supper with him? Of his having set before him a golden service? Of his having him declared Consul?

*Maitland:* All of it was most wickedly done.

[78] *Buchanan:* And how do you regard his having made his horse his colleague in the sacred office?

*Maitland:* Do you tell, me that in all seriousness?

*Buchanan:* Certainly I am serious; though I am not surprised that these stories appear to you to be mere inventions. But our Roman Jupiter has done things that make these acts of Caligula seem to appear to posterity as quite creditable. I refer to Pope Julius the Third,<sup>39</sup> who seems to have been resolved on a contest for prominence in wickedness with that most depraved of men, C. Caligula himself.

*Maitland:* What deed of this sort did he do?

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35. Ferdinand I (1423- 1494), Don Ferrante, natural son of Alphonso V, king of Aragon, became king of Naples upon the death of his father. Calixtus III, however, declared the house of Aragon extinct. Pius II, on the other hand, recognized the claim of Ferdinand. Aided by Alesandro Sforza, Ferdinand dispossessed John of Anjou, who had taken possession of the kingdom, and reestablished himself in authority.

*Buchanan:* He associated the keeper of his apes, a man worse almost than the very worst beasts, with him as his colleague in the holy priesthood.

*Maitland:* Perhaps there was some other reason for choosing him.

*Buchanan:* Some are reported, but I have chosen the most respectable. Therefore, since there is not only so much contempt for the holy office, but even disregard for humanity flows from this license in interpreting the laws, do you think that this is an unimportant power? [*Chapter Twenty- three. Maitland Points Out that Roman Emperors Who Delegated Authority to Judges still Retained the Power to Interpret the Law Themselves. Buchanan Replies by Showing that These Rulers Were Not Legitimate Kings, and by Pointing Out the Fashion in Which Lawyers Are Checks on Each Other.*]

*Maitland:* But the fathers do not seem to have regarded this matter of saying what the laws mean as so momentous a business as you would have it appear. That this is true may be perceived from this one piece of evidence — that the Roman emperors delegated it to the jurists. This one instance overthrows that entire wordy argument of yours. Not only does it [79] refute your contention respecting the importance of this power, but it clearly specifies that they did not deny to themselves the power of handing down legal opinions — a power which they delegated to others — if they wished to assume the duty, and the pressure of other business permitted them to do so.

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36. Henry of Luxemburg, who reigned from 1308 to 1313 as Roman emperor with the title of Henry VII, was, at the time of his sudden death in Tuscany, embroiled in a quarrel with the Pope, Clement V, and with Robert of Naples. The story was circulated that his death was due to poison, administered in the bread of the Holy Eucharist. The *Histoire des papes* (Scheurleer, 1833, III, 381) tells the story and attributes to Heydegger, *Hist. papat.*, stat. 5, the accusation that the Pope and Robert of Naples were accessories in the crime.

37. *Titus*. 1. 6.

38. Suetonius, *Gaius Caligula*. lv.

39. Reigned as Pope from 1550 to 1555.

*Buchanan:* What can be proved by these Roman emperors? These men were elevated to power, without the slightest regard to due process of law or to the public interest, by their own soldiers. They do not conform to the pattern of that king whom we have described; for those who were chosen by these utter scoundrels were well-nigh the most vicious of men; or they ruled because they had seized the office by force.

Now I do not find fault with them because they delegated the power of giving legal opinions to jurists. For although that power is very great, as I said earlier, it is, nevertheless, committed with the greatest degree of safety to those in whose hands it cannot become an instrument of oppression. It was moreover committed to very many, so that each held the other to the path of duty; for, if any one deviated from the right, the others refuted his positions. And if they conspired to defeat justice, the ruling of the judge was superior, for it was not necessary for him to regard the opinions of the legal experts as law. And the Emperor was superior to all; it was in his power to impose punishments for violations of the law. The lawyers, being bound by so many chains, were controlled; for they feared a penalty which outweighed the reward which they anticipated. You see, I suspect, that the danger to be feared from men of this sort is not very great.

*[Chapter Twenty-four our. The King Who Rules Wholly in Accordance with the Law and Through Legally Constituted Officials Is Both More Powerful and Freer Than Is the Tyrant.]*

*Maitland:* Are you not going to say anything further about royal government?

*Buchanan:* First, if it meets with your approval, let us assemble the little which has already been said; so that we may understand the more easily if anything has been omitted.

[80] *Maitland:* I think that we should do so.

*Buchanan:* We appeared to agree rather well with respect to the origin and purpose of setting up [rings and laws; but not with respect to the makers of laws. But, at length, you seemed to me to agree — as if compelled by the force of evidence.

*Maitland:* Indeed, you took from the king the power of making the laws; while I, as an attorney for the defense, objected strongly. For this reason, I am apprehensive, lest I be charged with double dealing, if the matter comes to a test, for having permitted what

seemed at first so good a case to be wrung so easily out of my hands.

*Buchanan:* Never fear. If anyone accuses you of double dealing, I promise free legal services.

*Maitland:* Perhaps we shall test that shortly.

*Buchanan:* There seem to be many sorts of business which cannot be included under any laws. We placed the burden of some of these on ordinary judges, and a part, the king consenting, on the council.

*Maitland:* I do indeed recall that it was done. And do you know what came into my mind?

*Buchanan:* How can I, unless you tell me?

*Maitland:* You appeared to me to portray kings as something very like the stone figures which are seen almost at the tops of columns, straining as though they were holding up the entire building, whereas they sustain no more weight than any other stone.

*Buchanan:* What, loyal defender of kings! Do you complain of me for laying a little responsibility on them? Whereas I actually rush about, day and night, for no purpose other than that of looking for associates on whom rulers may place responsibilities, and so relieve themselves of them? At the same time, you seem to be indignant because I have afforded some aid to these overworked persons.

*Maitland:* I, too, willingly accept this abundance of helpers, but such helpers as may serve, not such as may command; such [81] as may show the way, not such as will lead in it — I do not want persons as helpers who actually drag the king along as though they were propelling some machine; nor do they leave the king any power save that of agreeing with them. And so, I expect that, presently being done with this discourse on royalty, you will turn to tyrants or something of the sort. For you have shut the king up within such narrow limits that I am afraid lest, if we should continue, you would consign him, stripped of his great wealth and supreme dignity, to some uninhabited island, where denuded of all honors he will grow old in poverty and misery.

*Buchanan:* You feared, as you earlier professed, the crime of double dealing. Now I fear, lest you wrong with calumnies the king whom you are trying to protect. First, I do not wish him to be idle, unless you wish your master builders to be idle statues. Second, you deprive him of good helpers and friends — whom I had not imposed upon him as guards, but wished them to be invited by the king to share his work; and, these having been driven away, you surrounded him with a band of

rogues, who make him betray his own people. Moreover, you do not think that he will be formidable, unless we entrust to him great power of doing evil. I wish that he may be beloved by his people: protected, not by the fear of his citizens of him, but by their love. These arms alone make kings invincible. Unless you object to my going on, I hope, shortly, to prove this. For I shall lead him from what you call imprisonment into the light. And I shall give him, by one law, so much authority and liberty that he will appear impudent if he wishes more.

*Maitland:* I shall be exceedingly glad to hear you out.

[Chapter Twenty- five. *The Purpose of the Laws May Be Defeated by Trickery.*]

*Buchanan:* I shall, therefore, begin, in order that I may gratify your wishes as quickly as I may. A little while ago we agreed that no law can take every contingency so clearly into account that evil minds can make no opening for trickery. This may, perhaps, be the more readily understood by means [82] of the example already proposed. According to the law, no father gives a benefice which he holds to his illegitimate children. In this matter, the law seems to be clear, yet a trick is devised to this effect: The father puts another in his place; and this man hands over the benefices to the illegitimate children of him who first held them. Furthermore, though it is distinctly specified in the law that the son should by no means possess the office which his father had held, this precaution achieves nothing, for there is a plot devised against it among the priests that each of them should put the son of some other priest in his place. When this was prohibited, the law was evaded by a new sort of trick. A litigant was fraudulently set up, who declared that this benefice legally belonged to him. While the father was fighting against this cheat which he had himself set up, the son petitioned the Roman Pontiff that, in case the benefice belongs of right to neither litigant, it be given him. Each party to the suit willingly and yieldingly arranged the case, and, by the father's trickery, the son was able to succeed to the paternal benefice. You see how many tricks are devised in connection with the one law.

*Maitland:* I see.

*Buchanan:* Do not the proposers of laws seem to act in this just as do physicians, who when they attempt, by the application of a plaster, to check the eruptions of pus or some other poisonous fluid, find that the fluid, checked at one place, seeks an outlet in many places at

once? It is like the case of the hydra — in the place of the one head that is cut off, many, newly born, grow.

*Maitland:* No illustration could be more apt. [Chapter Twenty- six. *The King's Great Function to See That the Laws Are Enforced and the King Who Can Keep His People Free and Secure under the Laws Is the Greatest of Benefactors.*]

*Buchanan:* What ought the physician do first for the freeing of the body promptly and completely from poisonous fluids? In this situation, ought not the physician of the body- politic, [83] in order that he may relieve the state of evil practices, to do the same?

*Maitland:* I believe that this cure, though severe, is the proper one.

*Buchanan:* And if one can employ it, there would, I believe, be need for but few laws.

*Maitland:* That is true indeed.

*Buchanan:* Do you not regard the person who can administer this remedy as conferring, single handed, more benefit upon the public than all the multitude of all ranks, assembled for the purpose of passing laws?

*Maitland:* Far more, I have no doubt. But, to employ the words of the comic poet "Who is so strong as to undertake so much?"<sup>40</sup>

*Buchanan:* What if we turn over the greater part of it to the king?

*Maitland:* What indeed! You have committed to the people what was agreeable and easy; but anything that is difficult and unpleasant, you turn over to the king. As though it were not enough to shut him up, bound as he is with chains, in a prison, you place upon him a most weighty burden, under which he cannot survive.

*Buchanan:* We are not contending for that, but for a thing which he could accomplish easily; we urge that he bind himself to hear petitions.

*Maitland:* What is meant by that?

*Buchanan:* That the king should at all times conduct himself toward his people — whom he should regard as his children — just as he thinks that fathers should conduct themselves toward their children.

*Maitland:* What has this to do with the matter?

*Buchanan:* This, surely, is the one sovereign remedy against evil practices. And lest you think this my own invention, hear Claudia;

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40. Terence, *Eun.* 353.

[84] Cherish your country and your fatherland: and consider your people, not yourself. Let not your private interests influence you; but regard your public obligations. If you think that your decrees should be binding on all your people. Be, yourself, the first to obey then will justice be maintained by the people; nor will they, when they see that he who commands also obeys, refuse to do their part. The world is united by the example of a king; nor do laws exert as great influence upon human minds as is exerted by the lives of rulers; for the excitable multitude Ever moves with a leader.<sup>41</sup>

Are you unwilling to believe that the poet, possessed as he was of such exceptional ability and learning, deceived himself with respect to the force of this statement. For the masses are altogether ready to copy leaders in whom any semblance of worth shows itself, and are so eager to imitate their conduct that they even try to reproduce some of the faults of speech, dress, and posture of those whose good traits they admire. The truth is, that by their efforts to make their manners and speech like those of the kings they not only take great pains to imitate him, but they insinuate themselves, by flattery, into the affections of the powerful; and by these arts they intrigue for riches, honors, and power. Indeed they know what nature has appointed — that not only do we love ourselves and everything that is ours, but we take to our hearts everything, even that which is vicious, in others which is like us ourselves.

Now what we ask for — not wickedly or arrogantly, but strive to procure by petition — has much more force than the threats of the law, the display of penalties, or great numbers of soldiers. This, without use of force, can make a people law-abiding; can win the affection of citizens for the king; and can increase and safeguard both public tranquility and private property. On this account the king should ponder the fact that he is set before the eyes of the world, and is constantly the

object of the attention of everyone; so that no word or deed of his can be concealed.

It is not possible to hide the faults of kings. For the dazzling light of their destiny permits nothing about them to be concealed, but reveals the darkest corners.<sup>42</sup>

[85] Is it not of the utmost importance, then, that princes guard their conduct carefully, in all respects, since neither their faults nor their good qualities can be hidden, and since there is no limit to the influence they may exert on human affairs?

If anyone has any doubts respecting the importance of the conduct of a prince, let him consider the beginnings of ancient Rome, what hatred and fear did they arouse — those rough folk banded together, drawn from among shepherds and refugees, I will not say from worse, having gotten an exceedingly warlike king, and like an armed camp, demanded tranquility of their neighbors or provoked them to fight? That same people, when they had appointed a good and just king, were suddenly transformed, and devoted themselves to religion and justice to such an extent that their neighbors deemed it almost a crime to harm them — those very neighbors, I add, whose fields the Romans had laid waste, whose cities they had burned, and whose children and kinsmen they had enslaved. Now if in a society so barbarous and in an age so uncultured, Numa Pompilius<sup>43</sup> — come only a short time earlier from a hostile people — could accomplish so much, what should we expect of those princes who come to their imperial dignity with the support of kinsmen, vassals and inherited wealth, who are born and educated in the expectation of power? How greatly this should inspire the minds of princes to excellence, that they may aspire, not to glory for a day, as do the actors who have given a good performance of a play, but the affection and admiration of their people during their lives, and perpetual renown in succeeding ages. They know, too, that a heavenly reward is prepared for them in the life to come.

I wish that I were able to express in words as adequately as I conceive it the nature of that honor. But that I may partially present the idea in rough outline, consider the brazen serpent which Moses set up in the desert of Arabia — that, by one look at it, the wounds made by other serpents were cured<sup>44</sup> Think that out of

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41. Claudian, *Panegyricus de quarto consulatu Honorii Augusti*. 294- 302.

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42. Claudian, viii. 272- 275.

43. Livy, I. xxviii- xxxii.

the great crowd, some bitten by the serpents were running to the healer set up before them; others were amazed at the wonder of a new thing. All were celebrating the great [86] and unbelievable goodness of God with every kind of praise, when they saw that the pain of the deadly wound was not relieved either by medicines — most painful to the patient — by the physician's efforts, or by the care of friends, completely cured, not over a long period of time, but in a moment.

Compare the brazen serpent with a king; but so compare him that you may count a good king as among God's greatest blessings; who, singly, and without cost to you, and without your efforts, relieves all the troubles of the kingdom, settles all disturbances, and even in a short time transforms old sores of the mind into healthy scars. For he is the healer, not only of those who look at him from nearby, but also of those who are so far off that they cannot hope to see him. The very idea of him has so much force over the minds of men that it readily accomplishes more than the practical judgment of lawyers, the knowledge of philosophers, and the accumulated experience in the arts of the centuries could achieve. What greater honor, dignity, greatness, or majesty can be thought or said of any man than that by speech, by being a member of a company, by a look, by his reputation, by his silence, and lastly, by the impression made on the mind by his bearing, he restores to moderation those abandoned to luxury, the violent to poise, and the mad to sanity. Could you, if you wished, ask a finer gift from God for any man who wished to help humanity?

This, if I am not mistaken, is the true conception of a king; and not that of the ruler surrounded by armed men, in constant terror himself, or inspiring terror in others and measuring the hatred his people bear towards him by his hatred for them. Seneca, in his *Thyestes*, has expressed this ideal much more beautifully than I can. You know the passage, no doubt, since it is most charming.<sup>45</sup>

Do I seem now to speak disparagingly and contemptuously of royalty? Or, do I, as you said earlier, appear to load the king with shackles and lock him in the prison of the laws? Do I not rather bring him out into the light and into the society of men and into the theater

of human affairs? He is safe because of his own innocence, not because he is surrounded by spies and cut-throats, ruffians in silk. He is protected by the [87] love his people have for him and not by their fear of his soldiers. He is not merely set free and raised to great dignity — he is also honored, venerated, sacred, and glorified. The moment he appears in public, he is greeted with the utmost good feeling by the most favorable expressions; and wherever he goes, all faces, eyes, and thoughts are upon him. What ovation or what triumphal procession can compare with this paying homage every day. Or, if God, in human form, should descend to earth, what greater honor could he receive from men than that which is shown to a true king, who is the living representative of God? Nor can love bestow, nor fear extort, nor flattery invent an honor greater than this.

What think you of this conception of a king?

*Maitland*: Truly splendid! So magnificent indeed that it appears to me that nothing more magnificent could be described or conceived. But, in the corruption of our times it is difficult for such greatness of mind to emerge, unless care in education is added to solid natural ability and good native disposition. For the mind being shaped from childhood by sound instruction and exercise, and being strengthened by age and by experience in practical affairs, strives, by worth, to win true glory — the pleasures of the flesh tempt it in vain, and in vain is it shaken by reverses of fortune. For, thus

Instruction cloth perfect the inborn  
traits, and education strengthens principles.<sup>46</sup>

As a consequence, the properly developed character finds opportunity to exercise its strength even among the allurements of pleasure; and strength finds, in the difficulties which commonly terrify the weak, opportunity for glorious action.

And so, since liberal culture is of so much importance, the matter of impressing right principles on the tender mind of a king from the earliest days of his life should be looked after with the utmost care and attention. For, since there are many benefits which citizens enjoy from good kings, and, on the other hand, so many calamities proceed from bad leaders, that nothing appears to me to have more value for every group of a

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44. Numbers. xxi. 9.

45. Seneca, *Thyestes*. 336- 400.

46. Horace, *Carmina*. IV. iv. 33- 34.



nation than the scholarly and moral character of the kings [88] and others, who together wield the supreme power. For what is done well or ill by a private person is generally hid from the multitude; or, because of the unimportance of the persons involved, their acts affect but few people. But every word or act of those who govern a commonwealth, being, as Horace says, a votive tablet, cannot be concealed, but is set up before all men for imitation. For rulers attract men to them, not by seeking ways of pleasing, but they influence the minds of everyone by the pleasing allurements of advantage; and in whatever direction the inclinations of the king may move, they affect national custom.

But I fear that our kings will not allow themselves to be persuaded to do the things you have suggested. For they are so weakened by the allurements of pleasures, and deceived by the false notions of dignity, that I believe that they come into almost exactly the same case into which certain of the poets declare the Trojans who sailed with Paris to have come. For the true Helen, they say, having been left in Egypt with Proteus,<sup>47</sup> a holy and most saintly man, they fought stubbornly for ten years for her shadow; and there resulted a most fearful war and the destruction of one of the most prosperous kingdoms of the time. For impotent tyrants, cherishing the false appearance of a kingdom, when by fair means or foul they have once obtained it, cannot hold it without crime, nor can they give it up without destroying it. And if anyone were to tell them that, all the time, Helen, for whom they think that they are contending, is hid elsewhere, they will think him insane.

*Buchanan:* I am delighted that, although you do not see the true daughter of Zeus, you nevertheless perceive something of her beauty in this likeness. But if those who, to their own great hurt, saw the perfect likeness of that Helen, painted in all her beauty by some Portogenes or Appelles, I have no doubt that they would strive after her and perish from love. And, unless they immediately forced themselves to attend to some other matter, they would rush into the exceedingly severe punishments which Persius in his *Satires* calls down upon tyrants:

[89]Great Father of the Gods, we beseech you,  
Punish cruel tyrants, thus:  
When lust, abominable,  
Filled with burning poison, shakes their being,  
May they see goodness, and may they die  
Of longing for what they have deserted.<sup>48</sup>

And now that we have come to speak of tyrants, if you will, should we not continue this line of thought.

*Maitland:* Yes, unless you know of something that should come first.

*[Chapter Twenty- seven. It is of the Nature of Tyrants That They Seize Office Without Being Legally Chosen, and Rule Autocratically. Such Rulers Are to be Counted as Tyrants. Even Though They Do Many Things Which Benefit Their Subjects.]*

*Buchanan:* We shall not, I think, go astray, if we pursue the same paths in seeking to learn about tyrants which we took in our investigation of kings

*Maitland:* I quite agree. For by this course we shall readily perceive the difference between them as we compare them with each other.

*Buchanan:* And first, beginning with the word *tyrant* - I do not certainly know to what language it belongs. I think it is useless for us to seek its Greek or Latin root. Now I think that all of us who are familiar with humane letters understand quite well what the ancients called tyranny. For those were called tyrants by both the Greeks and Latins who had autocratic power in their hands — power neither circumscribed by any bonds of the laws nor subject to judicial investigation. Consequently, in both languages, as you know, not only heroes and most eminent men, but also the greatest of the Gods, even Zeus himself, are called tyrants; and this was done by persons who both think and speak of the Gods with reverence.

*Maitland:* I am not ignorant of that; but I am the more puzzled that this name should now be regarded throughout the whole world as hateful and a term of the most severe reproach.

[90] *Buchanan:* It seems, as a matter of fact, that this word has been affected as have many others. For, if you consider the nature of words as such, there is no

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47.This is the story according to Stesichorus (Herodotus, ii. 112- 120, Euripides, *Helen*).

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48.Persius, *Sat.* iii. 35- 38.

harm in them. And though some fall more pleasantly and some more harshly on the hearer's ears, yet not one of all of them has any property in itself of exciting anger, hatred, or joy, or of otherwise causing pleasure or grief. If words arouse any of these feelings in us, it is commonly due to social usage and the meaning conceived by the hearers, and not to the nature of the word. As a consequence, a word which is quite respectable among some peoples, among others cannot be listened to if a preliminary statement is lacking.

*Maitland:* I recall that something of the sort happened in the case of Nero and of Judas. One of these names was regarded as most distinguished and honorable among the Romans and the other was similarly regarded by the Jews. Later, by no fault of the names but because of the crimes committed by those two men, no man, however wicked, would give either of these names to his children, for they are covered with infamy.

*Buchanan:* The same fate is seen to have befallen the name tyrant. For it is within the bounds of belief that the first rulers who were called by this name were excellent men; and it may be inferred that this name was one of great dignity, for it was even used in speaking of the Gods. But later generations conferred such infamy upon it by their crimes that everyone avoided it as something unclean and unwholesome, and thought it preferable rather to be called an executioner than a tyrant.

*Maitland:* The same thing, perhaps, took place in the name of a dictatorship with respect to the kings of Rome, after the expulsion of Tarquinius, and following the consulate of M. Antonius and P. Dolabella.

*[Chapter Twenty- eight. The Final Test of the Rightfulness of a Government is Not That of the Legality of the Election of Its Rulers, but the Subordination of All — Even the Supreme Rulers — to the Laws.]*

*Buchanan:* Right. And on the other hand, humble and common names, by the worth of the men who bear them, are made [91] illustrious: As, among the Romans, Camillus, Metellus, and Scrofa; and among the Germans, Henry, Genseric, and Charles. You may understand this the better if, leaving the name out of account, you consider that this type of government has continued in its early distinction among many glorious nations. For example, the Aesymnetae among the Greeks,<sup>49</sup> and the dictators among the Romans. For rulers of both of these

types were legitimate tyrants. Now they were truly tyrants, for they were more powerful than the laws; but they were legitimate tyrants, because they were chosen by popular election.

*Maitland:* What is this I hear? They are tyrants and actually legitimate? I certainly expected something far different from you. Now you seem to completely obscure the distinction between kings and tyrants.

*Buchanan:* Among the ancients, kings and tyrants seem to have been much the same; but their functions changed, I imagine, from time to time. For I think the name tyrant the older; later, when this name became distasteful, the name of king took its place — a name more suave and denoting a milder government. When the government had degenerated, the laws, which set limits to the boundless avarice of kings, were relaxed. The established form of government became distasteful to men who longed for new remedies, and a revolution was effected; the character of which was determined by the spirit of the times and by the culture of the people. It is proposed to define both of these types of government in this discussion. First, the type of government in which the laws are superior to the rulers; and then the worst sort of tyranny, the opposite in every respect of a royal government. We will undertake to compare them.

*Maitland:* I agree, and am eager to have you go on.

*Buchanan:* At the outset it was understood that political authority was established for the purpose of safeguarding civilized society. We determined the king's true function in [92] the government, namely that he should administer justice to every individual in strict accordance with the laws.

*Maitland:* I recall this.

*Buchanan:* To begin: What shall we call the ruler who does not receive his office by virtue of his people's choice, but seizes it by force?

*Maitland:* A tyrant, I imagine.

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49. *Aesymnetes* (a - greek) according to Anton's *English Lexicon of the Greek Tongue*, this title was applied in antiquity, to an umpire chosen to regulate the games; to an elective ruler; and, by Dion. Hal., V, to an officer similar to a Roman dictator, who was, for a time, invested with supreme power. Aristotle, *Politics*, III. x. 10.

[Chepter Twenty- nine. The Points of Difference Between Tyrannical and Political Governments.]

*Buchanan:* There are many other points of difference between political and tyrannical governments, which, since anyone may easily collect them out of Aristotle's writings, I pass over briefly. A royal government is in accordance with nature; tyranny is contrary to nature; the king governs subjects who willingly accept his authority; the tyrant rules unwilling subjects; a royal and political government is the leadership of free men by a free man, a tyranny is a lordship over slaves; citizens keep watch over the health and safety of the king, but foreigners oppress citizens in the interest of the tyrant. The king exercises authority in the public interest; the tyrant in his own interest.

*Maitland:* But what of the rulers who obtained supreme power by force and without the consent of the people and who governed their subjects for many years in such fashion that the people never regretted their administration. For how little is lacking to make Hiero of Syracuse or Cosimo dei Medici of Florence a legitimate king, except the vote, according to law, of his people?

*Buchanan:* Nevertheless, we cannot leave them out of the list of tyrants. For as was well said by an eminent historian, "Though one may be able to govern his fatherland and kin by force, and to correct abuses, this sort of government is, nonetheless, dangerous."<sup>50</sup> Moreover, rulers of this sort appear to me to be no better than robbers, who try, by cunningly giving [93] away a part of their ill-gotten gains, to win reputations for justice by means of unlawful conduct and of generosity by robbery with arms. Now, by one hideous crime they throw away all the regard purchased by their show of goodness, and so they actually diminish the confidence of their subjects in them; because they act not out of regard for the public good but in order to enhance their own power; and in order that they may enjoy their own pleasures safely, and secure their authority for the future by decreasing a little the hatred of the people for them. When they have accomplished this, they return to their old ways. For the harvest of the future may readily be foreseen from what is sown. The ruler who has power to evoke all laws or to transfer their authority to himself at his pleasure has also power to destroy all laws. But it

may be best to endure a tyranny of this sort [*i.e.*, benevolent despotism] if it is not possible to get rid of it without a public calamity; just as we prefer to endure some diseases of the body in preference to putting our lives in jeopardy on the chance of a doubtful cure.

But those who openly rule for their own selfish advantage and not for that of their country, and who do not consider the public interest, but only their own pleasures, who depend upon the weakness of the people for the security of their authority and who regard the kingly office not as a trust committed by God, but rather as booty turned over to them, are not united with the rest of us by any bond of common citizenship or of humanity; but ought rather to be counted the most dangerous enemies of God and of all mankind. For every action of a king should be directed toward the public welfare, and not at his own aggrandizement. Just to the degree that kings are raised to the greatest distinction among men, to that degree they ought to imitate the heavenly bodies, which, without being appeased by any services of ours to them, flood humanity with the life and blessing of heat and light. The titles with which we have honored kings should suggest this obligation to them.

*Maitland:* I seem to recall — they should employ a fatherly tenderness toward their subjects, who are committed to them as their children; and should be diligent, as shepherds, in [94] providing for them; as leaders they should protect their subjects; as governors they should promote virtuous character; and as commanders they should be preeminent in ordering courses of action which are advantageous.

*Buchanan:* Can he then be called a father who holds the citizens in servitude? Or a shepherd who does not feed his flock, but devours it? Or a pilot who plans only barratry, and who, as the proverb has it, bores a hole in the hull of every ship in which he sails?

*Maitland:* No indeed!

*Buchanan:* What shall we call him, then, who does not govern in order that he may attend to the interests of the people, but is concerned only for himself? Who does not vie with the good in excellence, but competes with criminals as to which can surpass the other in disgraceful conduct? A ruler who leads his people into open ambushes?

*Maitland:* Truly he should be regarded as neither leader, nor commander, nor governor.

*Buchanan:* If then you should see anyone usurping the name of a king, who was superior in no respect

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50. Sallust, *Bellum lugurthinum*. iii. 2.

to anyone of the populace but was inferior in many; who bestows nothing of fatherly care upon his people, but oppresses them with arrogant mastery; who thinks his people are not given to him to be guarded but to be exploited; would you think such a man a genuine king, merely because a great crowd of satellites attends him, and that he presents a magnificent personal appearance, makes a display of public piety, and conciliates the masses and gains their applause by awards, entertainments, and ceremonies? Would you regard him, I ask, as a king?

*Maitland:* No, and since I wish to be consistent, I add that I regard him as having no place in civilized society.

*[Chapter Thirty. Life under Law Is the Essential Condition of the Maintenance of Humane Society, and Those Whose Acts Place Them Outside the Laws Forfeit Their Rights to be Treated as Human Beings.]*

*Buchanan:* Within what limits do you define civilized society?

[95] *Maitland:* Those indeed within which you seemed in your earlier remarks to have confined it, namely within the walls of the laws. I observe that those who go outside the laws — as robbers, thieves, and adulterers — are punished; and I regard this as a just ground of their punishment, that they have placed themselves beyond the bounds of civilized society.

*Buchanan:* What of those who desire never to go within these walls?

*Maitland:* They should be regarded as enemies of God and of men; I think they should be regarded as wolves or other predatory animals rather than as men. Monsters of such a sort that to nourish them is to nourish one's own destruction; so that the man who kills them benefits not only himself but also the whole community. If it were within my power to make a law, I would order (as the Romans commonly did with respect to monsters) that men of this sort should be taken to uninhabited regions of the earth, or sunk into the depths of the sea far out of sight of land, lest the infection of their dead bodies be hurtful to men; and that rewards should be decreed to their slayers not only by the state but also by private individuals; as was usually done in former times for those who killed wolves or bears or caught their young. Nor would I, should a monster of this sort be born and should it emit a human voice and

have the face of a man and resemble it in respect to the other members, trust myself in its society. Or, if any person divested of his human character should degenerate into such a monster that he could not meet other men except to their hurt, I think that he should no more be called a man than should satyrs, apes, or bears, though he should counterfeit humanity in features, carriage and speech.

*[Chapter Thirty- one. The Tyrant, Because He is the Enemy of the Human Race, Has Made Every Man His Enemy, and, as a Consequence Suffers in His Own Person Torments as Fearful as Those He Inflicts on Others.]*

*Buchanan:* Now, unless I am mistaken, you understand what the wisest of the ancients considered the nature of a king, [96] and likewise the nature of a tyrant. Will you consent, then, that we place before you some such model of a tyrant as we set up in describing a king?

*Maitland:* By all means; unless it will burden you too greatly, I wish you would do so.

*Buchanan:* You have not forgotten, I imagine, what the poets have said about the furies, and what is said among us about unclean spirits — clearly, these spirits are enemies of the human race, who, while they are themselves in perpetual torment, nevertheless take delight in tormenting human beings. This is indeed the perfect portrait of tyranny. But because this picture can be perceived only in thought and not by the aid of the senses, I will place before you a picture which will not only be known to the intellect, but the senses may perceive it as though it were actually before our eyes.

Picture in your mind a ship driven before a tempest, and all neighboring lands not only without harbors, but full of dangerous enemies; the master of that ship, contending in reciprocal hatred with the members of his ship's company, actually has no hope of safety save in the fidelity of his crew, nor can this be relied on, as any must know who trusts his life to men who are utterly barbarous and without normal humanity. Those whose loyalty he keeps by money alone can be induced by a larger payment to oppose him. Such, in fact, is that life which tyrants embrace as the fortunate one. They fear foes from without and their own citizens at home. Nor are they afraid of the citizens merely, but of their own servants, their neighbors, brothers, wives, children, and near relatives. As a consequence, they are incessantly

either engaged in war with external enemies or in civil war with their subjects or the members of their own households; or they are afraid, and can hope for no aid save that bought by wages. But they are afraid to hire good men and cannot trust bad ones. What happiness can life hold for them? Dionysius was afraid, once his daughters were grown, to allow them to trim his beard lest they cut his throat.<sup>51</sup> Timoleon put his own brother [Timophanes] out of the way;<sup>52</sup> Alexander Pheraeus was killed by his own [97] wife;<sup>53</sup> and Sp. Cassius was put to death by his own father.<sup>54</sup> What torments do you suppose the man who has these pictures always before his eyes must carry about in his breast? He must think of himself as the target set up to be shot at by the entire human race. Not only does he suffer from the torments of conscience while he is awake, but he is aroused out of his sleep by terrifying visions of both the living and the dead, and is harassed by the faces of the furies. That time which nature has provided as a season of rest for all living things and for men as a period of relaxation from his Cares has been turned for tyrants into a time of horror and of punishment.

*[Chapter Thirty- two. Maitland Contends that Buchanan's Arguments are Beside the Point, for What is Said Applies to Elected Rulers, Not to Those Who Rule by Virtue of Royal Descent. They Should Have Been Presented to Our Ancestors*

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51. *Tusculanae*, v.xx. 59.

52. *Timoleon*. Timophanes, in command of the mercenaries at Corinth, proclaimed himself tyrant, and, in an attempt to make himself master of the state, put a number of citizens to death without trials. He was assassinated by his own kinsmen and friends — according to Diodorus, xvi. 65, 4, by the hand of his own brother Timoleon. Plutarch, *Timoleon*, iv. 4, says that Timoleon, taking with him Aeschylus, brother of the wife of Timophanes, and Satyrus remonstrated with the tyrant upon the course he was following. When Timophanes became angry and violent, Timoleon went aside a little and muffled his head with his cloak, while Satyrus and Aeschylus drew their swords and killed the tyrant. Nepos, *Timoleon*. i. 4, supports the account given by Plutarch.

*Who Have Committed Perpetual Sovereignty over the Scots to the Royal House of Scotland.;*

*Maitland:* I Cannot pass on the accuracy of your arguments, though they are certainly quite skillfully put. But they appear [98] to me to be beside the point; for those who have the power to choose whatever persons they wish as kings have also the authority to hold them in check by laws. In Scotland, as you know, our kings are not elected, but hereditary. I have always thought that their inherited right to determine what should be law, by their own decisions, was no less definite than their right to the throne. Nor have I been influenced in forming this opinion by accident, but by great authorities, in company with whom I need not be ashamed to be in error — if perchance I am in error. For, to omit mention of others, legal authorities declare that by the law affecting kings, which is set up to govern their conduct, all the sovereignty inherent in a people is transferred to them; so that it is obligatory that the king's pleasure be regarded as law.

It was on this principle, as a matter of fact, that a certain emperor based his threats to abolish all the legal science, in which legal experts take such enormous pride, by a single order.

*Buchanan:* In citing the worst of men as a doer of great things, you do well to suppress his name. For the author of this remark was C. Caligula, who expressed the wish that the Roman people had but one neck. The story is that Caligula wished that the Roman people should have but one neck in order that he might behead them all at a stroke.<sup>55</sup> In that emperor there was, except

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53. Alexander, about 369 B.C., made himself master of Pherae, in Thessaly. According to Plutarch, his cruelties and debaucheries aroused such hatred of him in his wife, Thebe, that she conspired with her brothers to murder her husband. Thebe carpeted the stairs leading to her husband's bedroom with wool, in order to deaden the sound of the steps of her brothers, had the dog who guarded her husband at night sent away, and admitted her brothers to the room, where they killed her husband. The story, as told in Plutarch, *Pelop.* xxviii, 4, 5, and xxxv. 3- 7, is thought to have furnished something of the inspiration for the plot of *Hamlet*

for his appearance, nothing human —to say nothing of any royal character. You know perfectly well how much deference is due to such a person.

As regards the law touching the royal authority — of what nature it was, when, by whom and in what words it was delivered — these legal experts offer nothing. The Roman emperors never enjoyed any such authority, for appeal was made from them to the people. No one has ever regarded the decree —a means of destroying Roman liberty — by which L. Flaccus, by abrogating all other laws, established L. Sulla's dictatorship, as a law.<sup>54</sup> The meaning of that decree was this: that what M. Sulla did was to be approved. No free people was ever so [99] utterly stupid as to willingly permit such a law as this to be imposed upon them; or if ever there were a people so unintelligent, they certainly deserved to be eternally ruled by tyrants as a punishment for their stupidity. If there ever was such a law, let us regard it as a warning to us to beware, not as a model for imitation.

*Maitland:* You assuredly teach excellently; and your instruction is applicable to those who had it in their power to make persons of this sort their kings. It certainly does not apply to us, who do not elect the best men by our votes, but accept those given us by chance. Furthermore, the opinion of the legal expert seems to be aimed at us, who have committed to the ancestors of our kings this power with respect to us and to our posterity,

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54. Spurius Cassius, three times (502, 493, and 486 B.C.) Roman consul is said to have proposed a number of agrarian reforms, the purpose of which was the distribution of public lands to the plebeians. Failing to secure the assent of the Roman senate to his proposals, he attempted to effect the measures by force. He was tried before the senate on the charge of attempting to make himself king, found guilty and put to death. The story was circulated that his own father condemned him. Mommsen regards the whole story as a fabrication, based on efforts in a later age to secure agrarian reforms. See Livy, ii. 41; *Dion Hal.* viii. 49, 69- 79.

55. Suetonius, *Gaius Caligula.* xxx.

56. Appian. *The Civil Wars,* C. I. 98.

that they should have perpetual sovereignty over us and our posterity.

I wish that you had instructed them — I mean our ancestors, with whom the matter was still undetermined, who accepted as their kings whomsoever they wished. This belated advice of yours avails now only for this: With no power at our disposal to correct these matters, we may bewail the stupidity of our ancestors and think about our own miserable condition. For what can remain to us, who have been delivered into slavery, but that we pay the price of other men's folly? But, in order that the payment may be the lighter, let us alleviate it by patient endurance. Ought we to provoke the anger of rulers by constant outbreaks — rulers whose authority we cannot throw off, whose power we cannot diminish, and whose strength or weakness we cannot escape?

But that law of kings, to which you are so hostile, was not made for the benefit of tyrants, as you would have it. It was, in fact, sanctioned by Justinian, a most upright prince, by whom such open flattery would not be countenanced. On the other hand this sentiment applies to a foolish prince:

Who, except the libertine and liar, is happy over empty honors or terrified by lying scandal?<sup>57</sup>

*Buchanan:* Justinian was indeed, as history has long told us, a great man; though some historians do charge him with [100] cruel meanness toward Belisarius. But even were he the sort of man you think him, you must still bear in mind that Tribonian,<sup>58</sup> who was almost his exact contemporary and who had a leading role in compiling the Justinian code, was utterly corrupt, and could easily have been induced to pander to the worst vices of a prince. Even good princes, moreover, are susceptible to flattery. For

They who wish to kill no man,  
desire that power — and he who hears  
himself praised as equal to God is ready  
to think that nothing is above his  
authority.<sup>59</sup>

But let us return to our own princes, on whom, you say, the kingly office is conferred by birth and not by the suffrage. I shall speak only of ours, for if I digress

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57. Horace, *Ep.* I. xvi. 38- 39.

58. Tribonian, d.545.

59. Juvenal, x. 96- 97; iv. 70- 71.

and discuss others, I fear that our conversation will be longer than we had planned.

*Maitland:* I approve of that: For foreign practices have no great bearing on the matters we are examining. [Chapter Thirty- three. Buchanan Challenges Maitland's Statement on the Grounds of its Historical, Accuracy, and Shows that the Scots have Consistently Held Their Kings to Account for the Legality of Their Acts.]

*Buchanan:* Then, to begin with our fundamental principles, it is settled that those who govern others, princes, are chosen on account of their good qualities.

*Maitland:* So we are told by our historians.

*Buchanan:* Nor is it less well known that many Scottish kings were cruel and corrupt in the discharge of their official duties and were called to account by their subjects. Some were condemned to life imprisonment; of the rest some were exiled and some put to death; and no investigation of the slayers was ever ordered, nor were their children and kindred held accountable in their stead.

Those, however, who injured good kings were punished more severely than any other offenders; but because it would [101] be too tedious to enumerate each individual case, I shall present a few of the latest instances only, the memory of which is fresh. The nobles punished the murder of James the First<sup>60</sup> — who left as his heir a son six years of age — with the utmost severity, putting to death, by new and ingenious tortures, men of the most illustrious families, rich and of the highest standing in society. On the other hand, who grieved over — I do not ask who avenged — the death of that particularly cruel and infamous man, James the Third?<sup>61</sup> When, however, his son, James the Fourth,<sup>62</sup> was murdered, to fall under suspicion of the crime was to incur the death penalty.

Nor were our ancestors loyal to good kings only, for they were also patient and forgiving toward the bad. For when Cullen<sup>63</sup> — who was on his way to defend

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60. James I of Scotland (1394- 1437) was, at the instigation of Walter Stewart, Earl of Atholl, murdered by Sir Robert Graham. Both Atholl and Graham were executed, after having been put to torture. Buchanan tells the story in Book X of his *History of Scotland*.

himself at his trial when one of his enemies killed him on the journey — was slain, most severe penalties were imposed by a sentence of the Estates of the Realm. Similarly when an enemy killed Evenus [III], who had been condemned to life imprisonment, in his dungeon, he was punished in the same way. The slayer was prosecuted for having violently done to death that parricide, whose wicked life had been hateful to everyone.

[102] *Maitland:* I am not asking at the moment what has happened in the past; but, by what right do kings exercise authority.

*Buchanan:* Very well, let us return to that topic. Up to the time of Kenneth the Third,<sup>64</sup> who, first of Scottish kings, established the succession to the throne in his own family, the sovereignty of the people in the matter of creating their kings and in controlling the succession was perfectly clear. It must be understood, then, that Kenneth either coerced the people by force or got his way by persuasion.

*Maitland:* That is undeniable.

*Buchanan:* Moreover, if he coerced the people by the use of force to submit to him, the people, just so soon as they began to feel confidence in their own strength, would have thrown off this government by

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61. James III of Scotland (1451- 1488) was assassinated, shortly after his forces had been defeated at Sauchieburn, near Bannockburn, by a rebel force led by Scottish nobles. Buchanan says in Book XII lx- lxii, of his *History of Scotland* that the estates “voted that he was justly slain, and an act passed to prevent all who had ever borne arms against him from being ever, personally or in their posterity, disturbed on that account.”

62. James IV of Scotland fell at the battle of Flodden. but the story was told that he had not been killed in battle, but had fled from the field, only to be murdered a little later, near Kelso, by vassals of Hume. Buchanan notes this report in Book XIII of his *History of Scotland*, but concludes his account of the matter by saying, “these reports were in general so doubtful, that upon Hume's trial before James, earl of Moray . . ., they were never brought against him.”

force. For all the laws accepted for the government of the relations of kings and people declare, and nature proclaims, that anything which is done by force may likewise be undone by force.<sup>65</sup>

*Maitland:* What if the people, having been defrauded by trickery or compelled by fear, gave themselves into slavery? What arguments can be presented why they should not continue for all time in the state into which they had come by this covenant?

[Chapter Thirty-four. Grounds Upon Which Rulers May Justly Be Deposed.]

*Buchanan:* If you argue from the covenant to prove the responsibilities it entails, I will advance, in opposition, reasons why compacts and covenants may be dissolved. First among these reasons is an established principle, derived from nature, that agreements made under compulsion are not binding. The laws allow full restitution to be made to those who have been defrauded by trickery, and this they allow most liberally to orphans and to those other persons who they think ought to be protected; these they endeavor to have dealt with most justly. Now what assembly of men can more justly demand [103] restitution than a whole people? For the injury done to the public does not affect some particular part of the citizenship, but reaches widely into every part of the body-politic.

*Maitland:* I am aware that in cases involving private persons there is this law respecting usurpation of rights, nor is there anything wrong in it. But this is not

the matter we are debating so earnestly, seeing that the account of the matter which historians give us of it is far more probable, namely, that the people have voluntarily surrendered their rights to the king.

*Buchanan:* It is also most probable that an arrangement of so great importance was not affected except for a very important consideration.

*Maitland:* I readily agree.

*Buchanan:* What do you think was the chief consideration?

*Maitland:* What else other than what is told us: disgust with ambition, disorder, murders, and civil war? And often these civil wars resulted in the utter ruin of both parties to the conflict and always with great harm to both; for those who had seized political authority, in order that they might bequeath it without further strife to their children, would attempt to wipe out their brothers and other near kin. This we hear is the practice among the Turks; and we see it among the clans in our own islands, and in Ireland.

*Buchanan:* To which do you think such a contest the more hurtful, to the people or to princes?

*Maitland:* To the kings, certainly; for the greater part of the people — themselves personally safe — are accustomed to watch the contests of princes, and always render homage to the victors.

*Buchanan:* It appears from this that princes wish to settle the succession in their own families rather for their own sake than from any advantage that this would have for their people.

*Maitland:* That is probable.

[104] *Buchanan:* Now it is very likely that, in order to get something which effects the distinction, wealth, and security of their families, kings would give up a part of their prerogative in return; and that they would make concessions for the purpose of holding the favor and affection of their people the more easily, and of winning their votes.

*Maitland:* I believe so.

*Buchanan:* And you must certainly confess that it is quite incredible that people would, as a return for bestowing such great favors on kings, allow their rights to be in a worse case than they were before the compact.

*Maitland:* It is utterly incredible.

*Buchanan:* Nor would kings seek the office with such eagerness if they knew that in the future it would prove hurtful to their children and worthless to their people.

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63. Cullen and Euenus III are listed by Buchanan as early Scottish kings. James Aikman, translator of Buchanan's *History of Scotland*, while expressing complete confidence in Buchanan's integrity as a historian admits that a "great deal of doubt as well as obscurity hangs over the whole history [of Scotland] till the junction of the Picts and Scots." He points out that Buchanan's list of Scottish kings before Kenneth Macalpin corresponds with the list of no other writer. "The Life of George Buchanan," prefaced to Aikman's translation of Buchanan's *The History of Scotland* (Glasgow and Edinburgh, 1827), pp. lxxiv, lxxv.

64. Kenneth III, King of Scotland, 997- 1005.

65. See Part I, Note 32.



*Maitland:* They would not wish it in the least.

*Buchanan:* I imagine, then, someone from among that assembly of free people asking the king this: What if, to any prince, there should be born a son who is feeble-minded or insane?<sup>66</sup> Would you place such a person as a master over us — one not able to rule himself?

*Maitland:* I believe that there would be no need for them to take such measures as this, inasmuch as cases of this sort are provided for in the laws.

*[Chapter Thirty-five. Buchanan Contends That Limited Monarchies are More Stable than Absolutisms; Maitland Agrees that this is True, but Argues that this is Still Beside the Point — the Scots had Made Their Compact to Obey Their Rulers, and Should Accept the Consequences.]*

*Buchanan:* Well said! Let us consider, therefore, if kings receive from their people power without any limitation of the laws, whether such power would be useless to them, and [105] especially to those who wish to look forward to a future for their own families.

*Maitland:* Why should we regard a future of this sort [i.e., of enjoyment of unlimited authority] as without advantage?

*Buchanan:* Because nothing contributes so much to the continuance of governments as limitation upon the exercise of authority, for this is both honorable to kings and a safeguard to the people and to the public safety. The human mind has something sublime and eminent implanted in it by nature; it will submit to no man unless there be something of worth to be gained by accepting his authority. Nor is there anything that is more potent for the maintenance of human society than the reciprocal exchange of favors. And by this fact, Theopompus is shown to have answered wisely his wife's complaint to the effect that, by the addition of the Ephors, the force of his authority had been reduced, and that the royal power which he would bequeath to his sons would be less than that he had received. He answered: "By so much, the more secure."<sup>67</sup>

*Maitland:* I see that what you have to say of securing tenure in office is most true. For I believe that the Scottish and the Danish kingdoms are by far the most ancient of Europe, nor do they seem to me to have sought to secure themselves by any means at all other

than the most complete regularity of government. In the meantime the kingdoms of the French, the English, and the Spaniards have passed frequently from one family to another. But I do not know if our kings have been so wise as was Theopompus.

*Buchanan:* Although they may not have exercised a great deal of foresight, do you think that the people would have been so stupid as to miss so good an opportunity if it were thrust upon them? That they were so overcome with fear or misled by flattery that they would voluntarily give themselves over into slavery?

*Maitland:* Perhaps not; but, as might very well have been the case, they may have been so blind as not to understand what was involved in the matter; or seeing, were so careless [106] of their own interests that they put no value, upon them. Are they not paying the penalties which their stupidity merits?

*[Chapter Thirty-six. Buchanan Appeals to Scottish History for Proof that Scotland has Always had a Government of Laws - a Limited and Constitutional Government.]*

*Buchanan:* It is not likely that anything of the sort took place, since from the beginning of time to the present we see that the practice has been the opposite. For in addition to the fact that whenever bad kings attempted to tyrannize over their subjects they were invariably controlled, some vestiges of this ancient practice, furthermore continue in our ancient families. The old-fashioned Scots, to the present time, as has always been their practice, elect the chiefs of their clans and with these elected chiefs they associate a council of old men. Any person, moreover, who fails to obey this council is deprived of his office. Would persons who are so careful with respect to details neglect the safety of all? And would those who have had, instead of some privilege, a government of law, voluntarily consign themselves to slavery? And would those who do not wish for anything hand over the liberties won by their courage and held by force of arms, without show of force and without war?

In addition to the punishments which have befallen so many kings on account of their bad conduct in office, the fate of John of Balliol<sup>68</sup> furnishes evidence that our kings have never had this sort of authority. About two hundred and fifty years ago he was deposed by the nobles because he placed himself and his kingdom under the authority of Edward, King of England;

66. Aristotle, *Politics*, III. x. 9.

67. Plutarch, *Lycurgus*, vii.

and Robert the First<sup>69</sup> was made king in his place. The custom, moreover, which has been observed without any interruption from the very earliest times, proves this.

*Maitland:* Of what practice are you speaking?

[107] *Buchanan:* Our kings, when they are publicly consecrated, promise the entire people, with an oath, that they will preserve the laws and usages of their ancestors and our ancient institutions, and will use the same system of justice which they have received from their ancestors. The entire ceremonial and the first entry of a king into every city reflect it. From all of these instances it is easy to understand what sort of authority they have received from their ancestors; namely, that it is just this: Those who are elected by the suffrages of the people swear obedience to the laws. God gave this principle as the correct one for a kingdom to David and to his posterity; and promised that they would continue to reign just so long as they obeyed the laws which He had given them.<sup>70</sup>

It is most probable then that this was actually what took place: Our kings received from our ancestors an authority which was not absolute, but which was limited within definite bounds. Confirmation, moreover, is supplied by immemorial usage and by the people's assumption, without objection being made, of certain rights — for no one has challenged this assumption by a public pronouncement.

*Maitland:* But I fear that it is not going to be easy to induce kings, however they may have sworn obedience to the laws or the people may have assumed power, to yield this obedience

*Buchanan:* I, for my part, believe that we should encounter no less difficulty in persuading the people to give up a right received from their ancestors, approved by the usage of centuries, and held in uninterrupted possession.

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68. John of Balliol, King of Scotland, 1292- 1296. See P. Hume Brown *History of Scotland*, I, 142- 143. Buchanan's abbreviated account, while not false to the general spirit of what took place, does not reflect the course of events precisely.

69. Robert Bruce, King of Scotland, 1306- 1329.

70. I Kings ii. 4.

Nor do I think it necessary to guess what may be done, since I see what has been done. Even though, through the unreasonable stubbornness of both sides, the matter should lead to civil war, the victor will impose on the vanquished such law as he pleases; but he will impose it only until he who was the weaker in the struggle — his forces having been collected again — takes up arms once more. In such contests the fighting is always extremely damaging to the people but almost utterly destructive of kings. From this one source comes the ruin of all kingdoms.

*Maitland:* This is inevitable.

[108] *Buchanan:* Perhaps, in attempting to make clear to you what sort of constitution we had in ancient times, I have gone into more detail than was necessary. For if I had argued from the principles of the law, I might have reached the point at which I was aiming by a much shorter summary.

[Chapter Thirty- seven. Buchanan Argues Further, from the Nature of Law, that the People Cannot Alienate Sovereignty.]

*Maitland:* Although you have almost convinced me, I still shall be glad to hear what you have to say about that.

*Buchanan:* First I wish you would tell me this: Do you approve the definition of the law laid down by jurists, who say that that is law which the people ordain, when proposed by him to whom the power of proposing belongs?

*Maitland:* Indeed I do approve it.

*Buchanan:* We are agreed then that once the defects of the laws have been detected, they can be corrected or wiped out by the lawgivers.

*Maitland:* We are agreed.

*Buchanan:* I believe that you now agree that those who are born to be our kings are made so by the laws and by the suffrages of the people, no less than those who we said were elected at the first; and that there are measures of relief provided to the people, who are the lawgivers, not only against force and trickery, but also against negligence in interpreting the laws.

*Maitland:* I see that plainly.

*Buchanan:* There is this point of difference: The law relating to our kings was made a number of centuries ago and when a new king comes to the throne there is commonly no new one made, but the old law is reenacted.

*Maitland:* So it is.

*Buchanan:* Now, if you please, let us briefly summarize what is agreed upon between us from the beginning, in order that, if [109] anything was approved heedlessly, there may be opportunity for correcting what is amiss.

*Maitland:* I agree.

*Buchanan:* First of all, it is understood that among the Scots the king is made for the sake of the people; and as there is no gift of God better than a good king, so is there no worse plague than a bad one.

*Maitland:* Right.

*Buchanan:* We have said, moreover, that a bad king is called a tyrant.

*Maitland:* So we have.

*Buchanan:* There is, moreover, no such abundance of good men that there are excellent ones always at hand we may elect; nor is there such happy chance of birth that luck will always furnish us the good ones. We may not, therefore, have as kings such men as we would wish; yet we may have such as the general will has approved, or as chance affords. But this hazard with respect to the election of new kings, or in accepting those given us by their descent, is the reason for our desiring laws to control the power of kings. But these laws should differ in no respect, in so far as we can attain it, from the pattern of a good prince.

*Maitland:* We are in agreement here, too.

*[Chapter Thirty- eight. The Friends Discuss the Matter of the Punishment of Tyrants. Maitland Recalls the Biblical Command that Christians Pray for Rulers. How Then, He Asks, Can it be Right to Hold Them to Account for Their, Acts?]*

*Buchanan:* It now remains, I think, for us to discuss the punishment of tyrants.

*Maitland:* That alone seems to be left.

*Buchanan:* If, therefore, the king breaks all the bonds of the laws, and clearly conducts himself as a public enemy, what do you think should be done with him?

[110] *Maitland:* I am at a standstill. For, although the arguments you have presented seem to be sufficient to convince me that we should outlaw such a king, nevertheless, the strength of long- continued habit is such that, in my opinion, it has the force of a law. This bias is fixed so firmly in the minds of men that should it at any time lead to some wrong course of action, it would be better to endure that than to strive to cure an ailment

which custom has rendered quite mild, and so to upset the entire public order. For such is the nature of some disorders that it is preferable to bear the pain which they occasion than to seek some hoped- for cure. For in experimenting with them, even though our efforts should, in some respects, prove successful, such intense suffering is occasioned in the course of the treatment that the cure does more harm than does the disease.

But what concerns me more is that I regard the government which you call a tyranny as the type established by the word of God; and that what you denounce as the destruction of the laws, God calls the law of the royal prerogative. The force of this point affects me more than all the arguments of the philosophers. Unless you can settle this problem, the inventions of men will not prevent me from confessing my defection to the opposition.

*Buchanan:* It appears to me that by appealing to tyranny to sanction tyranny, you have involved yourself in a false, but very generally accepted position, and one of serious importance. For there is no lack of experience in our own age to show— and that ancient writer of history, Herodotus, shows us by instances from antiquity— how great is the tyranny of custom. But there is no need of examples from antiquity; look into your own mind. Think how many matters of wide import there are with respect to which you have followed the dictates of reason and have departed from the ancient custom of past centuries; so that by now you should have learned from personal experience that no way could hold more danger in the conduct of public matters than that which custom orders us to follow. I bid you to consider very earnestly what disasters and what defects you see on that road. But since this is clearer, [111] as the phrase has it, than the light, I need not delay longer in order to prove or to elucidate anything so evident.

Now as to the point from the Book of Kings which you rather indicate than state, I beg of you to beware lest you think that God allows to kings those things which He abhors in the lives of tyrants. He did not do this in the instance to which you refer. I bid you first think what the people asked of God, next what reasons they had for this novel request, and finally what answer God made to the people.<sup>71</sup> First, they asked for a ruler. And of what sort? A legitimate one? But such a one they had,

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71.1 Samuel viii- x.

for God, whose prerogative it was to set a ruler over them, had given Samuel to them. Samuel had judged them lawfully, according to the principles of the divine laws. But when, in his old age, his sons judged in his stead, they did many things that were wrong and delivered judgments contrary to the laws. Now I can see no reason why the people should have asked for a change in the form of government, in preference to asking that the faults of the one they had should be corrected; or why they hoped so confidently that God would grant this, since, because of similar provocation, he had almost completely wiped out the family of Eli. What, then, did they ask for? They asked for a king, such as the neighboring nations had, who would be a judge at home and a military commander against outside foes. But these kings were, in effect tyrants. For since the peoples of Asia are of a more servile disposition than Europeans, they are more ready to obey tyrants; nor has there ever, so far as I know, been any mention by any historian of any constitutional monarchy in Asia. That a tyrant, not a king, is here described is very readily apparent from the fact that the covenant earlier prescribed to them in Deuteronomy is not merely different from, but is actually the opposite of that cited here. Under this covenant Samuel and other judges had ruled for many years. God declared that when Israel rejected this covenant, they rejected Him.<sup>72</sup>

*Maitland:* But God, on all occasions, called him a king, and not a tyrant.

[112] *Buchanan:* He did, indeed, call him king, for it is God's way, when he addresses a people, to employ their manner of speech. He therefore uses the common expression of popular speech, but lest a changing usage of the word should deceive, he explains clearly what this word meant among the neighboring nations.

*Maitland:* Granting these points, the writings of Paul urge us strongly to pray for the safety of princes.<sup>73</sup> It is most improper to speak disparagingly of authority, and much less is it proper to undermine a government, or to put a deposed ruler to death. And what princes did he commend to us for our prayers? They were the most cruel of all — Tiberius, Caligula, Claudius, Nero — for

these were practically the contemporaries of Paul's epistles.

*[Chapter Thirty- nine. Buchanan Argues that it is in the Legal and Proper Exercise of His Rightful Authority Only that the Ruler is to be Reverenced and Obeyed. The Church Has Always Held that Bishops, and even the Bishop of Rome, Must Obey the Law.]*

*Buchanan:* You do well, in my opinion, to give so much weight to the authority of Paul that one sentence from him outweighs all the writings of the philosophers and legal experts. But see to it that you weigh his words with sufficient care. For it is important not only to look closely at his works, but also at his times, and to whom and for what purpose he wrote. Let us first see what Paul wrote: For he wrote to Titus, Chapter III, "Put them in mind to be subject to principalities and powers, to obey magistrates, and to be ready in all good works."

You see, I think, the limits which Paul sets to the obligation to obey. He wrote, in the second chapter of the Epistle to Timothy, to the same effect: That we pray for all men, especially for kings and other rulers, in order, he says, "that we may lead a quiet . . . life in all godliness and honesty." And here you see the purpose of our prayers as he describes [113] it: It is not only the safety of kings, but the peace of the Church — from which it is not difficult to conceive the form of the prayer.

In the Epistle to the Romans, he defines a ruler with a precision almost equal to that of formal logic.<sup>74</sup> For, he says, the ruler is a minister to whom God has entrusted the sword, that he may punish evildoers, and assist and support the good. For as Chrysostom says: "Paul was not writing of tyrants, but of true and lawfully appointed rulers, who are God's true vice-gerents on earth: Anyone who resists them does indeed resist God's ordinances."<sup>75</sup>

But, on the other hand, although it is our duty to pray for bad princes, we ought not to conclude from this that their crimes ought not to be punished; they should no more be immune to punishment than are the robbers for whom we are commanded to pray. Nor does it follow

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72.1 Samuel viii. 7.

73.1 Tim. ii. 1- 2.

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74. Romans xiii. 1- 7.

75. Romans, *Homily xxiii*, is in the spirit of this passage, but I have not succeeded in locating this quotation.

from the fact that good rulers ought to be obeyed that the bad ones ought not to be resisted. When you study the condition which impelled Paul to write, take care that this passage is not misunderstood. For he was writing for the purpose of rebuking a particular erroneous attitude on the part of some persons who denied that governmental authority extended to Christians. They [the Antinomians] maintained that, inasmuch as government should be provided as an agent for holding evildoers in check in order that we may all live under impartial justice and that . an example of divine justice should continue among men, political authority is of no value for those persons who are unaffected by the vices, for they are a law unto themselves. Paul, in consequence, is not pleading for those persons who exercise political authority, but for political authority itself; that is, for the functions and duties of those who rule over others. Nor is he pleading for any particular type of government, but for every lawful type of government. He is not, moreover, disputing with those who believe that bad rulers ought to be controlled, but with those persons who refuse to accept the authority of all magistrates; and who, putting an absurd [114] interpretation on the doctrine of Christian liberty, maintain that it is beneath the dignity of those who have been made free by the Son of God and regenerated by the Spirit of God to be under the authority of other men.

With the purpose of rebuking the error of these persons, Paul demonstrates that government is not only good but even holy, since God clearly has willed it and He has set it up in order that men may, by this means, be held together as social beings and as citizens, that they might know for themselves the goodness of God, and might refrain from harming each other. God commands those who are placed in positions of distinction to be guardians of His laws.

When we grant that the laws are good — as they are — and that their guardians are worthy of honor, we shall be compelled to grant that the office of the guardian is good and useful. Now the civil ruler inspires fear — but in whom? In good or in evil doers? He is not to be feared by the good, for he protects them from injustice; but he is to be feared by evildoers — not by you, who are directed by the Spirit of God. What need then, you ask, is there that I should be subject to the civil ruler, since Christ has made me free? On the contrary, you prove your possession of Christian liberty by obedience to the laws. For the Spirit of Christ — by which

you boast that you are ruled — is at the same time law and lawgiver, the judge of civil rulers and the author of the duty of civil obedience.

We are, then, agreed on this point; that there is need of civil offices even in the best of states, and that government ought to be accorded respect in every way. We moreover count that man insane, detestable, and deserving of punishment who thinks differently, for he openly opposes the will of God, as it is revealed to us in the Scriptures. But you find nothing in Paul's writings to the effect that Caligula, Nero, Domitian and other tyrants of their sort ought not to be deposed as a punishment for their breaking of laws both divine and human; for Paul is speaking of the authority of public officials, not of those evil men who exercise that authority wickedly. Nor, if we apply Paul's rule, will all tyrants of this sort prove to be public officials.

[115] But should anyone argue that bad princes are likewise appointed by God, beware of the fallacy of this argument. For God, as the proverb has it, uses a hard wedge for a hard knot, and sets up a bad man for a while as a punishment to the wicked;<sup>76</sup> but no man of sound mind would dare to affirm that God is the author of human wickedness; and, likewise, no one is ignorant that he is the author of condemnation of sin. A good ruler, moreover, usually chooses a bad man [to act] as the executioner who punishes criminals; but though the ruler chooses the executioner for this service, he does not grant to him perpetual immunity from punishment for all crimes. Nor will the ruler wish to be above the laws; so that he cannot be held to account under them.

But I will not delay longer on this comparison, lest the court flatterers raise an outcry that I speak with too little respect for the highest officials. But however they may cry out against me, they surely cannot deny that the duty performed by the executioner is a part of the public service, and possibly of the royal office. Assuredly this is the testimony of the kings themselves, who when any one of their public officials is wronged, charge that their majesty and person are wronged.

The punishment of criminals, moreover, and other matters of this sort, lie within the duty of a king. What have you to say respecting the governors of cities? Of the commanding: Officers of camps? What of governors of provinces? What of the consuls themselves? Does

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76. Calvin, *Institutes*. xvi C.

Paul not command us to be subject to them? Does he regard them as private persons? It was customary not only to put minor officials, who were guilty of maladministration, out of office, but even those who were equal to kings. I wish, then, that those who idly imagine that by his words Paul has given such a great power to kings might show, from this same Paul, that kings alone are to be included under this name of authorities, and therefore that they alone are to be exempted from punishment; or whether, when we speak of authorities, we mean also those other officials, set up by the same authority of God for the same employment. I wish moreover that they would show me also whether all [116] governmental officials are freed from obligation to observe the laws, and pronounced free from any fear of punishment; or whether the king alone has been granted this immunity, and others who are vested with authority are denied it.

*Maitland:* But Paul wishes everyone to be subject to the supreme rulers.

*Buchanan.* He so directs, at least; but, of necessity, this name included other governmental officials — unless, perhaps, we believe that Paul thinks that there is no authority, but rather complete anarchy in those states which lack royal government.

*Maitland:* I do not think that, nor is it probable; and I am the more sensible of this because the weight of the opinions of all learned men on the point supports you. They think that Paul's argument was designed to meet the position of those who maintained outright that laws and rulers had no authority over them.

*Buchanan:* But how do you reply to what I was saying just now? Do you believe that Paul's rule covers those savage tyrants?

*Maitland:* By all means. What reasons can you suggest why I should not believe it? Especially in the light of the fact that Jeremiah, by divine command, earnestly advised the Jews to obey the King of Assyria, nor were they to resist his authority in any respect<sup>77</sup> And thence scholars, reasoning from analogy, infer that other

tyrants, no matter how inhuman they may be, are to be obeyed also.

*Buchanan:* To answer your last argument first: It is important to notice that the Prophet does not order the Jews to obey all tyrants, but the Assyrian king only. First, you are not ignorant — for logic has taught you how absurdly you would act were you to undertake to deduce a general law from what is ordered with respect to a single instance. Next you expose yourself to the danger of being attacked with the same weapons by the enemies of tyranny. You must show what peculiar [117] feature there is in this case which accounts for your proposal that it be universally imitated; and if you cannot do this, it must be confessed that whatever is commanded to any individual by any specific divine command is equally binding on all. If you once admit this — which you must do — it would be at once pointed out that the slaying of Ahab was done by God's command; and that a reward was promised and paid to the killer, also by divine command. And so, should you appeal to the argument that all tyrants must be obeyed because God, through his prophet, in one instance ordered his people to obey a tyrant, you will immediately be told in reply that all tyrants should be put to death, because Ahab, at God's command, was destroyed by one of the officers of his own army.<sup>78</sup>

I advise you, therefore, to prepare some stronger defense of tyrants out of the Scriptures; or else to lay this defense aside for the present, and once more go to school to the philosophers.

*Maitland:* I will consider it. But in the interval, let us return to the matter from which we have wandered. What proof do you present from the Scriptures in sup-

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77. Jeremiah xxvii. 12; xxii. 7. Maitland's allusion is not accurate. Jeremiah directed the Jews to bring their "necks under the yoke of the king of Babylon, and serve him and his people and live," but there is no such direction with respect to Assyria.

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78.1 Kings xviii- xxii, and II Kings ix. 1- 37.

See especially xxii. 6- 38. Jehu was anointed king of Israel by one of the younger prophets, at the direction of Elisha, an unrelenting foe of Ahab and of his wife Jezebel. Jehu and his brother officers conspired against Ahab, who did not, however fall at their hand but at the hand of an enemy who, in battle, "drew his bow at a venture." Jehoram, son of Ahab, succeeded his father as King of Israel. Jehu killed Jehoram with his own hand, and had all the other sons of Ahab, his kinfolk and friends put to death.

port of the contention that tyrants may be killed without guilt to the slayer?

*Buchanan:* First, I suggest this, that it is expressly ordered that wickedness and wicked men are to be put out of the way, without any exception of rank or estate; at no place in the sacred pages, moreover, is there any indication that tyrants are to be treated with more circumspection than private persons. Next, the description of public officers which Paul gives does not apply to tyrants in every respect, since, indeed, they employ the power of government, not for the profit of the people, but for the gratification of their own desires. Furthermore, the extent of the powers which Paul attributes to bishops should be earnestly considered. He dignifies their office with exceedingly high and genuine encomiums; to the effect that they [118] correspond, in a fashion, to the kings — being set in contrast to them — as much as the nature of the essential characters of the two admit. For these bishops are the physicians of the inner diseases, the others kings of the external ones; but, nonetheless, he planned that neither of them should be independent of or exempted from the jurisdiction of the other. But, just as bishops are subject to kings with respect to the duties of the citizen, so ought kings submit to the spiritual correction of bishops.

Now although the grandeur and distinction of these bishops is so great, no law, divine or human, exempts them from punishment for crimes. Omitting mention of others, the Pope himself, who is regarded as the bishop of bishops, who has raised himself to a supreme eminence above all kings, and desires to be regarded almost as a God among men, is not regarded, by his own experts in the canon law—though they are very strongly committed to him—as exempt from the penalties of the laws. Since, therefore, they regard it as unthinkable that God (for they do not hesitate to apply this designation to him)<sup>79</sup> should be subject to punishment by men, and they believe that it is unjust that the greatest crimes and most abominable infamies should go unpunished, they have invented a scheme by which crimes may be punished and the papacy be kept sacred and inviolable. For the canonists regard the prerogative of the Pope as one thing, and of the man who is Pope as another. And while they exempt the Pope, whom they

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79. i.e. to him as the holder of the sacred office, not as a man.

regard as incapable of error, from being held accountable under the laws, yet they confess that the man who is Pope is liable to faults and to being punished for his faults.<sup>80</sup> The subtlety of the distinction of the opinion which they have published is no greater than the severity of the censure.

It would be a long undertaking to recount the story of the Popes who — or rather to speak in their own terms, the men who bore the office of Pope — not only were forced during their lives to renounce their office, but who after they had died were dragged from their graves and thrown into the Tiber.

[119] But, to leave ancient history, the memory of Paul the Fourth<sup>81</sup> remains fresh. His own Rome demonstrated the general detestation in which he was held, by an act of the sort just spoken of. For the Roman people vented their rage upon his relatives, his statues, and his portraits.

You should not regard this line of reasoning, by which we separate an office from him who holds it, as more devious than philosophy can allow or ancient commentators approve; for the masses, untaught in other nice distinctions of logic, are not ignorant of it. The craftsmen of a particular trade do not regard the punishment of a smith or a miller for robbery as a disgrace to their craft; but, instead, rejoice that their company is purged of criminals. If anyone feels differently in this matter, I am convinced that he must be regarded as sorrowing more because men are punished with whom he is associated in villainy than because of the disgrace brought upon the guild.

Were kings to rely on their own good sense and not on scoundrels and sycophants, and were they to measure their importance rather by the good of their services to the state than by the impunity with which they commit crimes, they would not be distressed by the punishment of tyrants, nor would they think that their

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80. See J. N. Figgis, "Political Thought in the Sixteenth Century" *Cambridge Modern History*, III, 744.

81. Paul IV was elected in 1555 and died in 1559. A relentless foe of Protestantism, he led in its eradication in Italy, but the severity of the Inquisition under his reign caused him to be greatly hated; so that his death was followed by a rebellion in Rome.

order is in the least diminished in dignity by the destruction of such men. Instead, they would be glad that that order had been cleansed from the most shameful stigma of corruption; and especially so since, as is right, they are commonly most enraged against any robbers who pretend to act in the King's name.

*[Chapter Forty. There is Abundant Proof that the King who is Being Tried for a Crime is on Trial with Respect to the Crime, and not as Respects His Kingship.]*

*Maitland:* Tyranny is indeed detrimental to royal prestige; but I wish that, leaving the topic at this point, you would pursue the other subject of which you spoke.

[120] *Buchanan:* To what subject do you refer?

*Maitland:* To be specific — the subject of the times and the persons to whom Paul wrote the passages quoted. For I wish to know what relevance this information may have for the matter in hand.

*Buchanan:* It shall be as you wish. First to describe the age: Paul wrote these passages during the infancy of the newly-born Church, in times when it was of the utmost importance to Christians to be not merely guiltless of wrongdoing, but also to give no occasion which would serve as even a pretense upon which to base any accusation of criminal acts. In the next place, Paul wrote to men of different races and from every part of the Roman Empire, who were united into one society. Among them were few distinguished for their wealth, and almost none who held political office or had done so. There were certainly not many who were regarded as citizens of consequence, and these were almost invariably foreigners, and were for the most part freedmen — others were mostly laborers and slaves.

Among these there were persons who stretched Christian liberty further than the plain Gospel allows.<sup>82</sup> These folk, therefore, drawn from the mixed masses of the plain people, who were striving by hard work to get an uncertain living, were unlikely to care as greatly for the state of the commonwealth, the majesty of sovereignty, or the careers and duties of kings as for public tranquility and private ease. Nor could they properly ask for anything more for themselves than to be safe in the shadow of some government.

If these people had attempted to assume any part of the management of the commonwealth they would, properly, have been regarded as not merely stupid, but quite thoroughly insane; still less was it proper for them, from their dens, to raise disturbances against the state and cause trouble for those who were guiding the affairs of government. Another most embarrassing expounder of Christian liberty, the folly of immaturity, had also to be curbed.

What, then, was Paul writing to them? No new doctrine, certainly, but a commonplace — that citizens should obey the [121] civil authorities, servants their masters, and wives their husbands. Furthermore, they were not to think that the yoke of Christ, however light it may be, frees us from the bonds of our duties; but that we ought, more faithfully than before becoming Christians, to perform every duty of our respective stations, in order that we might, by honorable actions, win the favor of men. And once this state of affairs was established, because of the character of the Christians, the name of God was heard gladly by the people, and the glory of the Gospel was spread the more widely.

Princes and subordinate officials, though evil, were the keepers of the public peace, which was essential to the achieving of this condition of things. Let me give you a simple illustration. Imagine that some one of our scholars should write to Christians who are subjects of the Turkish government; and to men, I add, of limited means, of humble spirit, defenseless, few in number and exposed, from every quarter, to all sorts of ill usage. How, I ask, could this hypothetical scholar advise them differently from the advice which Paul gave to the church at Rome, or which Jeremiah gave to the Hebrew exiles living in Assyria?

Now the most convincing proof that Paul had in mind the situation of the persons to whom he was writing and of citizens generally is this: He is extremely careful to explain the reciprocal character of the duties of husbands toward their wives and of wives toward their husbands, of parents to children and of children to parents, of servants to their masters and of masters to their servants; but when, at length, he wrote of the duties pertaining to public office, he does not call them by name — as he had in the relations mentioned before. On this account, we believe that these are the only directions which he gave to kings and subordinate authorities; especially since the inclinations of rulers are to be restrained by more fetters of the laws than are those of

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82. Compare, Chrysostom, *The Epistle to the Romans, Homily LIII*.



private persons. What other reason can we assign for his actions than that there were in the Church at that time no kings nor subordinate authorities to whom he could write?

But let us suppose that Paul were alive in these times, when not only the people but even the princes profess Christianity. [122] Let us suppose, too, that there is at this same time some prince who is convinced that divine laws, and not human laws only, must conform to his desires; who is determined that not his decrees only, but his mere nod shall be accounted as law; who, as he of the Gospel put it, "neither fears God, nor respects men."<sup>83</sup> Who, I may add, parcels out the revenues of the Church among men of fashion and mountebanks — men who ridicule those who sincerely practice their religion and regard them as stupid and crazy. What would Paul write to the Church about such a prince as this? If he were consistent he would deny that such a man should be regarded as a ruler. He would forbid all Christians to eat or talk or be closely associated with him, and would turn him over to the civil authorities to be punished under the laws of then state. He would think that the people but did their duty if they looked upon that man who is by his own act no longer in touch with divine law as no longer their king.

But there will never be any lack of servile courtiers, who do not keep to any honorable position, but reach such a stage of insolence that they say that God, angered at the people, sends tyrants, whom he sets up as executioners, who punish those who deserve to be punished. I own that this is true, but it is equally true that God has called poor and almost unknown men from the ranks of the common people to execute vengeance on an arrogant and worthless tyrant. God, as has been said before, orders evil persons put out of the way; nor does he except any rank, or sex, or condition, or person whatsoever; and kings have from him no consideration that is denied to beggars.

We are able, therefore, to assert confidently that God, who is equally the father of all, from whose foreknowledge nothing is hidden and whose power nothing can withstand, leaves no wickedness unpunished.

But someone else may rise to demand to be shown an instance in the Holy Scriptures of a king punished by his subjects. This I cannot produce, but it does not nec-

essarily follow that because we do not read of this act, that such an act is at once to be [123] regarded as infamous and criminal. I am able to cite, from the codes of many a nation, a great number of most beneficial laws to which there is no parallel in the Holy Bible. For the general agreement of all people approves the principle that what the law commands is right and what it forbids is to be regarded as wrong; likewise there is never, in the memory of man, any prohibition to the effect that what the law does not contain is never to be done under any circumstances. For such slavery has never been agreed to, nor will the natural order, so fruitful of new expedients, allow it to be agreed that whatsoever is not ordered by some law or reported in some famous example must be regarded as infamous and criminal.

And so if anyone demands that I cite a precedent from the Holy Bible where the punishment of evil rulers is approved, I shall ask of him in turn, where such a course is censured. For, if no course of action is permissible save that for which there is a precedent, what part of our governmental institutions would remain to us? What part of the laws? For the greater part of them is not taken from some ancient precedent, but is established without a precedent as a sanction against some new form of rascality. But we have made a more extensive reply than was necessary to the demand for precedents. The fact that the kings of the Jews were not punished by their citizens does not bear greatly on the question of our institutions. For the Hebrew rulers were not made kings by the act of their people, but God himself set them over the nation.<sup>84</sup> And so by the highest law, He who was the author of their rank also inflicted punishment.!

Now we maintain that the people, from whom our kings hold the powers to which they lay legal claim, have an authority above that of kings; and that the people of the nation have the same authority with respect to the rulers that rulers have with respect to one person from among the citizens.

All the institutions of other peoples who live under a government of laws<sup>85</sup> support our system of the powers of government. All peoples which give allegiance to rulers whom they have chosen hold this common conviction, that the people may, for [124] just

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83.Luke xiii. 2.

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84.1 Sam. ix. 16- 27, x. 1- 27.

85.Plato, *Laws*. iv. 715 D.

cause, demand that any power they have committed to anyone shall be given back to them. Commonwealths, without exception, have retained this authority. Thus Lentulus, who conspired with Catiline to overthrow the republic, was forced to abdicate his praetorship, and the Decemvirs, makers of Roman laws, while they occupied the place of supreme authority, were degraded from their rank.<sup>86</sup> Certain dukes of Venice, and Chilperic, King of the Franks,<sup>87</sup> having laid aside the insignia of authority and withdrawn from public life, joined the common life of monasteries. Not long since Christian [Christian II, 1481- 1559], King of Denmark, died in prison almost twenty years after he was divested of his authority.

There certainly has never been a dictatorship, which is a sort of tyranny, not subject to the control of the people. And this law is universally adhered to, that where public favors have been awarded wrongly they may be recalled, and that the liberties of those who enjoy the greatest degree of privilege may be taken from such as are unmindful of the obligations pertaining to their liberties. Up to this point we have spoken of foreign nations, lest we should appear to enjoy some new and unique power to the disadvantage of our kings. But matters peculiar to Scotland can be dispatched in a few words.

*Maitland: Splendid, for I am most eager to hear! [Chapter Forty- one. Scotland has Always had a Limited Government. Her Kings have Never been above the Law.]*

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86.P. Cornelius Lentulus Sura Consul in 71 B.C. and praetor for the second time, in 61 B.C., took a leading part in the conspiracy of Catiline. He was tried, stripped of his office, and strangled in prison. Sallust, *The War Against Catiline. Iv. 2.*

87.Chilperic II, a Merovignian, was living quietly in a monastery when the Neustrian nobles, led by one of their number, Ragenfrid, placed him on the throne of Neustria. Chilperic was a tool, merely, in the hands of the nobles. Charles Martel overthrew Ragenfrid, recognized Chilperic as king of Neustria, and on the death of Clotaire, made him king of the Franks. Chilperic died in 720.

*Buchanan:* I could name twelve, or even more, kings of Scotland who, on account of their crimes and disgraceful deeds, have either been condemned to life imprisonment or who have escaped the just punishment of their crimes by voluntary exile or suicide. But lest someone complain that I am reviving old, [125] outmoded matters, if I should mention Cullen, Evenus and Ferchard, I shall recall a few matters within the memory of our fathers. All the Estates [*Ordines*] of Scotland, in public assembly, gave judgment that James the Third<sup>88</sup> was lawfully put to death, for his extreme cruelty toward his people and his shameful wickedness. And they made sure that none of the persons who banded together, plotted, and contributed money or effort in connection with the slaying should suffer because of it. They judged this act, then, to have been right, and done with due regard to legal form; nor is there any doubt but that they wished to set a precedent for posterity.

This is no less a precedent than is the decision in which L. Quintius officially commended Servilius Ahala — who turned his back on the court and refused to answer at his trial for having killed Sp. Maelius in the Forum — and declared that he was not guilty of the murder of a citizen, but that he was ennobled by reason of his slaying the tyrant; and succeeding generations have, each in its turn, agreed with this decision.<sup>89</sup> Seeing that the citizen affected approved of the slaying of a tyrant, what do you think he would have done to the tyrant who robbed his subjects of their goods and shed their blood? What have our fellow Scots done? Do not those who have bestowed upon the perpetrator of an act of violence a public decree of immunity appear by this course to have established a law for every case of this sort which shall occur in the future? For, in short, there is no difference between a legal decision touching some matter that has been done and a statute looking to future contingencies; for a judgment is passed respecting the

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88.Buchanan tells the story in his *History of Scotland*, Book XII. P. Hume Brown (*History of Scotland, I, 287*) tells the story of the rebellion against James and of his murder, but says nothing of these other matters.

89.C. Servilius Ahala, killed Sp. Maelius, who, it was claimed, aspired to absolute power, and was commended by the dictator. Livy. iv. 13, 14, 15.

character of an act and respecting the punishment or reward, of its author.

*Maitland:* Perhaps these considerations may carry some weight among us Scots; but I do not know how foreign nations are going to receive them. You understand that I must put their minds at rest. Not by way of defense against an [126] accusation of crime, but with respect to public reputation, not, moreover, as affecting my reputation, for I am not touched by any taint of suspicion, but as affecting that of my fellow countrymen. For I fear that foreign nations will condemn the very laws by which you think you are sufficiently protected, even more strongly than they do this cruel and vicious crime. You are aware, I suppose, of what is commonly said regarding the quality and the degree of justice of the precedents you have proposed.

I wish therefore, that since you seem to me to have explained these other matters less by appealing to human laws than to the sources of nature, if you have anything to say with respect to the justice of this law, that you would briefly explain it.

*[Chapter Forty- two. Buchanan Shows how a Limited Monarchy is Established. The People have Created the King to do Justice, and the Law Commands this. To Act Justly is, Therefore, No Limitation of the King's Properly Vested Authority. If the King puts Himself Outside the Law, He Forfeits His Character as a King.]*

*Buchanan:* Though it may appear unfair to plead with a foreigner on behalf of a law, which from the very earliest times of the Kingdom of Scotland has been approved as essential to the public welfare, not unfair to kings nor disparaging to their dignity, but which is now denounced by them as unconstitutional, I shall undertake to do so on your account. Therefore, just as though I were dealing with those persons who have wished to bring on their controversy with you, I ask this first: What is there in the Scottish constitution that you regard as deserving of condemnation? Is it not, actually, the purpose of the law that you do not like? For the law is desired as a means of restraining the unlawful desires of kings. He who condemns this law, by the same judgment must condemn the laws of every people, for all are desired for this same reason. Or, do you find fault with the law itself, and think that kings should be above the law? Let us see whether anyone would want that. If, earlier in our conversation, we were right in likening a

king to a physician, then certainly no great number of words [127] will be needed to prove that absolute government would not be to the advantage of the public. For just as the people would not be willing for a physician to be permitted to put to death with impunity anyone he wished, so it is not to the public good to grant license to kings to attack everyone promiscuously. We must not therefore be angry with the people, whose greatest power is with respect to the making of the laws, if, just as they wish their king to be a good one, they should also wish the law to be superior to a king who falls short of perfection.

But if this law is not to the advantage of the king, let us see what should be done with the people, to induce them to give up some part of their rights, and that they may suspend the law not for three days, but for forty days; so that, according to our custom, we may call an assembly. But now, that we may discuss the matter, tell me, does he who frees an insane person from his chains seem to you to do anything to relieve his madness?

*Maitland:* Far from it.

*Buchanan:* What of someone who gives a cup of cold water to a man almost delirious with fever, who begs him earnestly? Do you think he deserves well of the sick man?

*Maitland:* But I speak of a king of sound mind; and I deny that there is real need of medicine for those in good health or that there is need of laws for a king of sound mind. You wish, indeed, that all kings may be thought bad; so you impose the laws upon all of them.

*Buchanan:* Not all, by any means; nor do I regard the whole people as bad, but nevertheless, the law speaks to all equally. The bad fear that voice — the good know that it does not affect them. In like manner, good kings do not suffer any indignity from this law; and the bad kings, if they were wise, would be grateful to the legislators who had established the law which made clear what would not be to their advantage and what would not be permitted. And they certainly would be grateful for the law, if ever they came to their senses; just as patients, once their illness is relieved, are grateful to the physician whom they hated while they were sick because he would not yield to their wishes.

[128] So long as kings continue in their madness, he who yields to them most completely is to be counted their greatest enemy. Among these the worst are the sycophants, who encourage royal vices by flattery, increase the malady of rulers, and for the most part are

involved with the kings in one headlong plunge to destruction.

*Maitland:* I certainly cannot deny that princes such as this have been, and should be, restrained by the bonds of the laws. For there is no monster more violent or more deadly than man when, as in the poets' fables, he has degenerated into a brute.

*Buchanan:* You would say this much more emphatically if you would consider how many-sided an animal a man may be, and of how many sorts of monsters he is made up. The poets of antiquity shrewdly observed this, and pointed it out particularly, when they said that Prometheus, in making man, brought together in him some part of every living thing.<sup>90</sup>

It would be an endless task to mention, one by one, the natures of all the monsters; but it is sure that two most loathsome monsters, anger and lust, are clearly apparent in mankind. And what else do laws strive for or accomplish than that these monsters be made obedient to reason? And where they do not conform to reason, may not the laws most justly impose limits upon them? He, therefore, who releases a king, or anyone else, from these bonds does not merely release a man, but sets up two exceedingly cruel monsters in opposition to reason, and arms them that they may break down the barriers of the laws.

Aristotle, then, appears to have spoken well and truly when he said, "He who obeys the law, obeys God and the law; he who obeys the king, obeys a man and a brute."<sup>91</sup>

*Maitland:* For all that these things are so beautifully said, I think that we are involved in a twofold fallacy. First, these later statements do not seem to be in all respects in agreement with what went before. Second, because, although they may be correct, they do not appear to me to advance our argument [129] toward any conclusion. For we agreed earlier that the voice of the king and the law should be the same; now we make him subject to the laws. If we should concede that this is true, how would this conclusion advance our thinking? For who shall bring a king who has become a tyrant to trial? I distrust the adequacy of the power of a law, not backed by force, to coerce a king forgetful of his duties, or to bring him to trial against his will.

*Buchanan:* I fear that you have not sufficiently considered what has been maintained above with respect to the king's authority. For, if you will consider you will readily understand that there is no conflict between the ideas which you have just spoken of. But, in order that you may understand it readily, first tell me this: When a magistrate or a clerk publishes a proclamation through a public crier, is not the voice of both the same? I mean of the crier and the scribe?

*Maitland:* The same, certainly.

*Buchanan:* Which do you think the more important?

*Maitland:* He who publishes the proclamation.

*Buchanan:* What of the king, the author of the edict?

*Maitland:* More important than either.

*Buchanan:* Then, following up this idea, let us compare the king, the law, and the people. The voice of the king and of the law are the same. Has either authority from the other — the king from the law or the law from the king?

*Maitland:* The king from the law.

*Buchanan:* On what grounds have you come to this conclusion?

*Maitland:* On the grounds that the law was desired to keep the king within bounds, not the king the law. And it is by virtue of the law that he is a king; for without it he is a tyrant.

*Buchanan:* The law, then, is superior in authority to the king, and is a corrector and governor of his desires and actions.

*Maitland:* That is already agreed upon.

[130] [Chapter Forty- three. *The Whole People is the Source of the Law. A People Creates Fundamental Law, May Abrogate Laws, and May Hold Officials to Account Before Judges.*]

*Buchanan:* What of this? Is not the voice of the people and of the laws the same?

*Maitland:* The same.

*Buchanan:* Which is superior in authority, the people or the law?

*Maitland:* In my opinion, the whole people.

*Buchanan:* Why do you think that?

*Maitland:* Since the nation is the parent, indeed the author of the laws, it is able to preserve them or to wipe them out as seems best to it.

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90. Horace, *Odes*. I. m. 13 ff.

91. *Politics*. iii. 1287a. 28- 30.

*Buchanan:* Since, then, the law is superior to the king, and the nation superior to the law, it is clear how we shall bring the king to justice. Let us investigate this line of thought: Are not things which are created for the sake of something else inferior to those things for the sake of which they were made?

*Maitland:* Please be a bit clearer.

*Buchanan:* Consider this then: Is not the bridle provided on account of the horse?

*Maitland:* Obviously.

*Buchanan:* And what of harness, trappings and spurs?

*Maitland:* For the same reason.

*Buchanan:* But if there were no horse, there would be no use for these things?

*Maitland:* None.

*Buchanan:* The horse, then, is of more importance than all of them?

*Maitland:* What are you getting at?

[131] *Buchanan:* What of the horse? Why is he valued?

*Maitland:* For many reasons; and especially as a means of obtaining victory in war.

*Buchanan:* We regard victory, then, as of more importance than horses, arms, and other materials which are provided for use in war.

*Maitland:* Of much more, certainly.

*Buchanan:* What was the principal thing that a people had in view in creating a king?

*Maitland:* As I see it, the advantage of the whole people.

*Buchanan:* Now, if there were no uniting of men, would there be need of kings?

*Maitland:* Absolutely none.

*Buchanan:* A people, therefore, is superior to its king.

*Maitland:* Necessarily so.

*Buchanan:* If superior, then greater, also. The king, therefore, is judged by the people, for the lesser is judged by the greater.

*Maitland:* But when may we hope for that happy situation when a whole people agrees on what is right?

*Buchanan:* This, indeed, is scarcely to be expected, and is certainly not to be expected with any confidence; otherwise there would be no point in making laws or creating magistrates. For there is well-nigh no law which bears equally on everyone; and almost no man who is held in such popular favor that there is no

one who is his enemy, no one who is envious of him, or no one who slanders him. What is sought is that the law shall be of advantage to the majority of the people, and that the majority have confidence in the person chosen. Then, since a majority of the people may decree a law or create a ruler, why should a lesser matter — viz., that the public should hold the ruler accountable and should set judges over him — be forbidden? And, if the tribunes of the Roman people and the [132] Lacedaemonian ephors were needed to limit the exercise of public authority, ought it to appear wrong for a free people, either for a like reason or for a different one, to cast about for a way to restrain the unreasoning violence of tyranny?

*Maitland:* Now I think I almost see what it is permissible for a people to do, but it is extremely hard to guess what they actually will either wish to do or do. For most people want old things and old customs; which — in view of the speed with which food, clothing, building and all sorts of household utensils change — is quite an admirable trait.

*Buchanan:* Do not infer from what I have said that I wish something new done in this respect, for I am going to show you that it was the ancient practice for a king to plead his case before judges — a thing which you regard as almost unthinkable, and, what is more, as a novelty. For — to omit mention of any number of instances in which our ancestors have done this, some few of which have been already spoken of, and which you can easily glean from history's pages — have you never heard of those who were disputing over a kingdom, and who appealed to an umpire?

*Maitland:* I have indeed heard that this is sometimes done among the Persians.

*Buchanan:* And Scottish authors tell us that this was done in the cases of Grim and of Malcolm the Second<sup>92</sup> But lest you think that umpires of this sort were usually chosen with the consent of the contending parties, let us turn to a consideration of regular judges.

*Maitland:* In this inquiry I fear you will succeed about as well as one would who stretched his net in the ocean to catch whales.

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92. Buchanan's account of the rivalry of Grim and Malcolm II is to be found in Book II, Chapter LXXXII of his *History*. Malcolm reigned from 1005 to 1034.

*Buchanan:* How so?

*Maitland:* Because all arresting, imprisoning, and censuring is by the more powerful against the weaker. Before what [133] judges would you order the king to present himself? Before those over whom he has the supreme authority — men whom he can fetter by the single word, "I forbid!"

*Buchanan:* What if some greater authority is devised, which, in matters of judging, would stand in the same relation to kings as kings stand to others?

*Maitland:* I should like to learn what this authority is.

*Buchanan:* As you may recall, we have said that this authority resides in the people.

*Maitland:* In the whole people, or in the majority? For I grant you this, further, that this authority resides with those persons in whom the people, or the majority of the people, have vested it.

*Buchanan:* Well said! You save me a good deal of work by putting the matter so clearly.

*[Chapter Forty- four. Maitland Expresses Lack of Confidence in the Character and Good Sense of the Common People. Buchanan Asserts Full Confidence in the Character and Intelligence of the People.]*

*Maitland:* But you are not unaware of the fact that the masses for the most part are corrupted, either by fear or rewards or by the hope of a bribe or by privileges; so that they prefer their own comfort and pleasures to the public interest and even to integrity. Those who are not influenced by selfish considerations are not numerous. "Good people are rare. There are scarcely so many, as there are gates to Thebes, or separate mouths of the Nile."<sup>93</sup> For the rabble, nourished on blood and robbery, has its liberty for sale and envies the liberty of others. Now I pass over those to whom the name of an evil king is sacred. I do not depend, either, upon those who, though they are not ignorant of what is law and of what is right, choose a quiet inaction to honorable risks, and, with hesitant mind, order their plans with a view to any eventuality, [134] or who follow the fortunes of a party but not its principles. You know how great a multitude this is.

*Buchanan:* A great many of the common people are such as you describe, to be sure, but not the majority.

For while the injuries inflicted by tyrants affect a great many people, their favors are extended to a few only. For the cupidity of the mob is insatiable; and, like a fire, it burns the more fiercely as it is fed; and the upshot of the matter is that what is forcibly taken from the many does more to increase the rapacity of the few than to satisfy their greed. Men who support tyrants, moreover, are usually inconstant: "And loyalty stands or falls with fortune."<sup>94</sup> But, if such men should remain unshaken in their loyalty, they still would not be regarded as true citizens. For they are foes to human society, or rather, are traitors to it; a crime which cannot be endured in a king, and is much less to be borne in the case of a private person.

But who are to be accounted citizens? Those who uphold the laws; who support organized society; who, forgetful of their own safety, prefer effort and danger of every sort to being at ease but without honor; who keep ever in mind not their own enjoyment of the moment but the thought of all time to come.

Moreover there are some who, though they may be tempted to turn aside from danger by fear or regard for their own interest, may still have their ignoble souls aroused by the glory of some notable deed and the beauty of courage; so that they, although they have not the courage to serve as creators or leaders, do not draw back from doing their part as citizens. Therefore, if citizenship is to be reckoned not by mere head count but by worth, not only the better people but even a majority will stand up for liberty, honor, and security.

However, even though the whole of the common people should disagree, it would not affect the present discussion; for we are inquiring not what will be done, but what it is right to do. But now we turn to a consideration of the regular judiciary.

*Maitland:* That is just what I want to hear about. [135] *[Chapter Forty- five. Buchanan Explores and Defends the Principle of the Independence of the Judiciary and of the Vital Importance of Judicial Review.]*

*Buchanan:* If a private citizen maintains that his farm or some part of his land is illegally held by the king, what do you think that this private citizen should do? Should he give up the land, since no one can give judgment against the king?

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93. Juvenal, xiii. 26- 27.

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94. Ovid, *Ex Ponto*. ii. 3. 10.

*Maitland:* By no means; but he will summons the king's agent, rather than the king himself to appear in court.

*Buchanan:* Now see how valuable is the device of which you make use. For it makes no difference to me whether the king appears or his agent; for in either case, the risk is the king's. The outcome of the lawsuit will result in his loss or gain, not in the loss or gain of the agent. He whose affairs are under examinations is, in last analysis, the party to the suit. Now I wish you to consider how absurd and even wicked it would be to render a verdict against a king because of a little farm, or on account of lights in a house or of water falling from the eaves, if there should be no judicial notice taken of parricide, poisoning, or treason — how unreasonable to employ the utmost penalties of the law in lesser matters and to grant complete freedom and immunity in cases of the commission of the most atrocious crimes. Were this allowed the old saying would appear to be true: "The laws are very much like spiders' webs, which hold flies fast but let the bigger beasts pass through."<sup>95</sup> For is there justification for the complaints and indignation of those who say that it is neither honorable nor fair for a person of lower rank to hold a king to account. For they know that this is the accepted practice in lawsuits over land and money; and the men of the highest rank, second only to the king, commonly plead their case before judges who are not their peers in either riches, rank, or achievements — judges who are raised but a little above the masses, and are more the inferiors of the accused who stand before them than the nobles of the higher rank are to kings.

[136] If, however, we were once to admit that no one can be brought to trial before a judge who is his inferior in rank, then any man of lower rank would be under the necessity of awaiting the king's pleasure or his leisure before a person who belongs to the nobility could have his examination. But suppose the complaint against him is not only unjust but even false?

No one who appears before a judge appears before an inferior; particularly since God has so greatly distin-

guished judges, and has called them not merely kings but even God, and as far as may be done, he has invested them with his own grandeur. Thus the Roman Pontiffs who graciously permitted kings to kiss their feet, who, as a mark of respect sent mules out to meet those who were coming to see them, and who trampled with their feet upon the necks of emperors, these same Pontiffs when they were summoned to appear for trial obeyed; and, upon the orders of their judges, have abdicated their office.

John the Twenty-second,<sup>96</sup> having been brought back after he had fled and thrown into prison, was scarcely able to secure his liberty on payment of a fine. He did complete submission to the Pope who was set up in his place; and by this submission accepted the verdict of his judges. What did the Synod of Basel do?<sup>97</sup> Did it not decree and ratify, by the common consent of all the estates, that the Pope should be subject to the Council of Priests? You may learn from the minutes of the Councils what were the reasons by which the Fathers of the Church were induced to act as they did. I cannot understand, [137] therefore, how kings who acknowledge that the majesty of Popes is so far above their own as to cast the shadow of its heavenly dignity upon all of them can think that it takes anything away from their dignity to be held responsible before the law, when the Pope does not think it unworthy of his office to descend from a more lofty throne in order that he might plead his case in the College of Cardinals.

Do you not see how false is the contention of those who think it is unworthy of them to be arraigned before judges of lower rank than themselves? For when a case is decided in court, it is not Titus, or Sempronius, or Stichus, but the law itself which condemns or declares innocent. Valentinian and Theodosius, most illustrious of emperors, regarded the subjection of kings to the law as especially honorable. I quote their very

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95. Plutarch, *Solon*, V; Diogenes Laertius, *Solon* 58; Valerius Maximus vii, 2, 14. William Shenstone uses the proverb in his *Essay on Men and Manners: on Politics*, and Francis Bacon uses it in his *Apothegms*.

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96. The controversy of John XXII, who was Pope from 1316- 1334 A.D., with Lewis the Bavarian called forth the *Defensor pacts* of Marsilius of Padua. The reference to John by Buchanan is one among many indications that his political theory is in the tradition of William of Occam, Marsilius, and the Conciliarists.

words at this point, because they are worthy of being remembered in all ages. They say:

The declaration by which a prince declares himself bound by the laws adds luster to a king's majesty. It is the essence of government to subordinate the chief magistrate to the laws, and we will not permit any deviation from the principle which we now declare by the word of this edict.<sup>98</sup>

The greatest rulers both believed these things and acted upon them, as did also the worst princes. For Nero, performing in the character of a harper, is reported not only to have copied the postures and motions of the musicians, but when the time was come for judging their performances, to have stood anxiously, poised between fear and hope of victory. For though he knew that he would be adjudged the victor, yet he was aware that the victory would be more honorable if it were awarded not on account of the partiality of the judges, but on the outcome of a fair contest. Close observance of the rules did not, he thought, take anything from his authority, but rather made his victory the more glorious.<sup>99</sup>

*Maitland:* I now see that your statement to the effect that you desired that kings obey the laws is not so arrogant as I, at first, thought, for it rests not so much

upon the authority of philosophers as of kings, emperors, and church councils. But [138] I do not follow you in your statement that it is not a man but the law which pronounces judgment.

*Buchanan:* Call to mind what was said a little while ago. Did we not say that the voice of the king and of the law is one?

*Maitland:* So we did.

*Buchanan:* And of the scribe and the herald when a law is proclaimed?

*Maitland:* It is the same.

*Buchanan:* What of the judge when he interprets the law in an opinion?

*Maitland:* The voice of the law and of the judge are one.

*Buchanan:* And which has authority from the other: the judge from the law or the law from the judge?

*Maitland:* The judge from the law.

*Buchanan:* Then the force of the opinion is due to the law, and the judge has but the pronouncing of the words.

*Maitland:* That appears to be the case.

*Buchanan:* Nothing is more certain; for through opinions of judges which are rendered in accordance with the law are confirmed, and those which are otherwise are overruled.

*Maitland:* Nothing could be more true.

*Buchanan:* It is clear then that the authority of the judge is derived from the law; not that of the law from the judge.

*Maitland:* I see.

*Buchanan:* Nor does the humble condition of the man who renders an opinion diminish the worth of the law, but the worth of the law is eternally the same, whether it is proclaimed by king, or judge, or herald.

*Maitland:* Most assuredly.

*Buchanan:* Then once the law is enacted, it is first the voice of the king, and then of others.

[139] *Maitland:* Very true.

*Buchanan:* When a king, therefore, is condemned by a judge, it is clear that he is condemned by the law.

*Maitland:* Clearly.

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97. The Council of Basel, 1431- 1449, was the third and last of the great reforming councils of the fifteenth century. The conciliar theory had, perhaps, its finest expression in a statement by Nicolas of Cusa, presented to the Council in 1433, and in the decree by which the superiority of a general council, representing the body of the Church in which sovereignty is inherent, to the Pope. When, at the Renaissance, the absolute sovereignty of princes was asserted, Calvinists employed the line of argument developed from John' of Paris through the conciliarists to vindicate the rights of the people to resist their rulers. Professor Sabine says: "That the conceptions of natural law and the rights of subjects expressed by Nicholas [of Cusa] were the direct ancestors of the later revolutionary theories is not open to question." George H. Sabine, *A History of Political Theory* (New York, Henry Holt and Company, 1937), p. 319.

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98. *Cod. Justiniani*. I. xiv. 4.

99. Suetonius, *Nero*. xxiii, xxiv.



*Buchanan:* Since the voice of the law and of the king are the same, the king who is condemned by the law is self- condemned.

*Maitland:* It appears that he is no less self- condemned than if his sentence had been written by his own hand.

*[Chapter Forty- six. Buchanan Develops the Principle of the Equality of Accused Persons Before a Court of Law.]*

*Buchanan.* Why then do we put ourselves to so much trouble over the matter of the judge, since the sentence is that of the law — that is to say, of the king himself? Let us also consider a matter which has just occurred to me. Should not the king, when he is sitting in judgment in any case, lay aside all other characters — as brother, father, neighbor, friend, or enemy— and retain but the one character, that of judge?

*Maitland:* He should do just that.

*Buchanan:* And should he not think exclusively of what is a fitting course of action for that character?

*Maitland:* I wish that you would make this matter clearer:

*Buchanan:* Take this for example. If a man secretly takes away the property of another, what do we say that he has done?

*Maitland:* I should think that he had stolen them.

*Buchanan:* What name do we give a person who commits this act?

*Maitland:* Obviously, that of thief.

*Buchanan:* What of the man who lives with the wife of another as though she were his own?

*Maitland:* He commits adultery.

[140] *Buchanan:* What do we call him?

*Maitland:* An adulterer.

*Buchanan:* And what do we call one who judges?

*Maitland:* We call him a judge.

*Buchanan:* In this same fashion, then, names may be given to others in accordance with the functions which they perform

*Maitland:* They may.

*Buchanan:* A king then, when he utters a judicial sentence, should lay aside all other characters?

*Maitland:* He certainly should, and especially those which may be detrimental to either of the litigants.

*Buchanan:* What of the person against whom legal action is directed. What name do we give him on account of the action?

*Maitland:* We must call him the defendant.

*Buchanan:* And is it not fair that the person who is judged should divest himself of any character which might prejudice the case?

*Maitland:* He certainly should if he bears any character other than that of the business in which he appears, and this have no relation to the case in litigation: For God wills that there be no relation between the judgment passed and one's estate.

*Buchanan:* Then, if a man who is both painter and a grammarian should contend with a painter, and should discuss the art of painting before a judge, he is not speaking as a grammarian, since his knowledge of grammar ought not to benefit him in this matter.

*Maitland:* It should not enter into the matter at all.

*Buchanan:* Nor should experience in painting be noted if the controversy is one of some point of grammar.

*Maitland:* Not any more than in the other case.

[141] *Buchanan:* In a lawsuit then, the judge knows the defendant by but one name, that of the crime of which the plaintiff accuses him.

*Maitland:* By one only.

*Buchanan:* What if the king stands accused of parricide) what name is appropriate to that king at his trial?

The name of parricide only, for he is not in court on any question respecting his government, but only as respects parricide.

*Buchanan:* What if two parricides be brought to trial, the one a king and the other a pauper. Will not the trial be the same for both?

*Maitland:* It will indeed be the same; Lucan, I think, speaks with no less truth than beauty in the lines:

In the passing of the Rhine Caesar was both my leader and my comrade. Whom a crime makes guilty — it makes equal.<sup>100</sup>

*Buchanan:* True indeed. So it is not the king and the pauper who are on trial, but the parricides. But, if there should be any question as to which of two complainants should be king, or if there should arise a question as to whether Hiero be king or tyrant, or if, there is any question which belongs particularly to the duties of a king, then the king is judged in terms of his kingship.

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100.Lucan, v. 289- 290

Just as a painter would be judged in that character, were the question at issue his mastery of the art of painting. [Chapter Forty- seven. *Buchanan Argues the Right of a People to Overthrow Their Government and Stand upon their Freedom under the Law of Nature.*]

*Maitland:* What of a case in which a king would not willingly submit to trial, and could not be compelled to do so?

*Buchanan:* Here he is in a common case with all criminals; for no robber or poisoner submits to trial of his own accord. But you know, I think, what the law provides — that anyone may slay a thief by night, and may slay him by day in self [142] defense. You will recall what is done when a criminal cannot be brought to justice either by his own surrender or by force. Robbers who are so powerful that they cannot be dealt with by the ordinary process of law are pursued as in a war with force of arms. Nor is there any other cause of wars alleged between nations and between peoples and kings than those injuries which are decided by the sword when the law cannot settle the issue.

*Maitland:* This justification of war is generally regarded as valid when the war is waged against enemies, but the case is far otherwise with respect to making war against a people's own kings; for we are under obligation, by the taking of a most sacred oath, to obey them.

*Buchanan:* We are indeed obligated; but before we take the oath the kings first promise that they will maintain the law in justice and goodness.

*Maitland:* Precisely so.

*Buchanan:* There is, then, a mutual compact between king and citizens.

*Maitland:* So it appears.

*Buchanan:* Does not he who first withdraws from the covenant or does something contrary to the agreement break the covenant and the agreement?

*Maitland:* He does indeed break it.

*Buchanan:* I think moreover that in case the king has broken the bond which holds him and his people together, he who first breaks the agreement forfeits whatever rights belong to him under it.

*Maitland:* He forfeits them.

*Buchanan:* But the other party to the covenant would be in the same state as he was before the agreement, free.

*Maitland:* He clearly has the same rights and the same liberty.

[143] *Buchanan:* If a king were to do something the effect of which would be to destroy orderly government, for the preservation of which he was made a king, what would we call him?

*Maitland:* A tyrant of course.

*Buchanan:* But a tyrant has no rightful public authority; but is a public enemy.

*Maitland:* He is an enemy indeed.

*Buchanan:* And is it right to wage war against an enemy in case one suffers great and unendurable injury?

*Maitland:* It is absolutely right.

*Buchanan:* What of that war which is waged against a tyrant, the enemy of all humanity?

*Maitland:* It is the most just of all.

*Buchanan:* But once a just war is undertaken with an enemy, it is not only right for the whole people to destroy an enemy, but for the individual to do so.

*Maitland:* I grant that.

*Buchanan:* What of that public enemy the tyrant, with whom every good man is eternally at war? May not every member of the human race justly demand that all force of arms be employed against him?

[Chapter Forty- eight. *“Rebellion to Tyrants Is Obedience to God.”*]

*Maitland:* I know that almost all nations share that opinion. For Thebe is generally praised for having killed her husband;<sup>101</sup> Timoleon for having killed his brother;<sup>102</sup> and Cassius for having killed his own son.<sup>103</sup> Fulvius killed his own son who had gone with Catiline;<sup>104</sup> and Brutus slew his own sons and kinsmen [144] when he learned that they were setting on foot a plan to established a tyranny.<sup>105</sup> Public rewards and

101. Plutarch, *Pelop.* xxviii. 4, 5, xxxv. 3- 7.

102. Diodorus, xvi. 65. 4.

103. Dion. Hal. viii. 49, 69- 79

104. A. Fulvius, son of a senator, joined the ranks of Catiline's army after hostilities had begun. He was put to death by order of his own father. Sallust, *The War Against Catiline*, xxxiv. 5.

105. Junius Brutus, believing his sons to have been involved in a conspiracy to restore the Tarquinii to the throne of Rome, condemned them to death. Dion. Hal. v. 8.

honors were provided in many Greek states for those who killed tyrants. For these Greeks, as was said earlier, were convinced that there is no obligation to treat a tyrant as a human being.

But why should I collect single supporting instances, when I may present the testimony of virtually the entire world? For who does not condemn Domitius Corbulo<sup>106</sup> severely for his failure to promote human welfare in not having deposed Nero when he could easily have done so? He was not blamed by Romans only, but also by Tiridates, King of the Persians, who was not at all afraid that this might serve as an example of a course which might be copied in his own case. But the minds of even the worst of men, though of savage cruelty, are not immune to this public detestation of tyrants, but that from time to time the thought of it thrusts itself upon them, and makes them stand paralyzed and stupefied at this glimpse of truth and honor.

When the ministers of C. Caligula, the most cruel of tyrants, were thrown into confusion by the slaying of their master and were demanding the punishment of those who had killed him, and there was an incessant cry, "Who has killed the Emperor?" Valerius Asiaticus, a man of consular rank, putting himself in a prominent place, whence he could be heard, roared, "I wish it had been I who killed him!"<sup>107</sup> At his words, these men, experienced as they were in public life, were thunderstruck and ceased their clamor. For there is so much force in honesty that the slightest examples of it presented to the mind quiets the fury of passion; raging madness subsides, and, willingly or unwillingly, folly acknowledges the rule or reason. Nor do those who move heaven and earth with their howlings think differently. This we can detect easily from the fact that they condemn what is done in our age, but praise and approve [145] the same deeds, and even more dreadful ones, when they are described in the history of ancient times. By this course they reveal that they are influenced

more by regard to their own ignoble passions than by the public danger. But what surer evidence of what tyrants merit need we look for than that which is furnished by their own consciences. From thence comes their eternal fear of everyone, and especially of good men; for they see, forever suspended above their necks, the sword which they have drawn against their fellowmen; and by the hatred which they bear in their minds against others, they measure the hatred which others have for them. Good men, on the contrary, being suspicious of no one, frequently expose themselves to danger, since they estimate the goodness of others not in terms of the meanness of human nature but in terms of what they themselves deserve of others.

*Buchanan:* You think, then, that tyrants are to be regarded as the most savage of all monsters; and you think further that the harm done by tyranny is more contrary to nature than poverty, sickness, death and the other ills which can befall men in the course of nature. [*Chapter Forty- nine. Maitland Expresses Fear that this Principle may Open the Way to Civil Disorder. Buchanan Attempts to Show that it does not.*]

*Maitland:* Indeed, when I weigh in my own mind the significance of your arguments, I cannot deny that they are true: but when I consider the dangers and troubles which are implicit in this theory, my mind, held in, as is a horse by a halter, somehow wavers, and turns from the too stoical and hard way toward expediency, and almost revolts. For if it is lawful for anyone to kill a tyrant, see what an opportunity for evil you provide to wicked men, and how great a hazard you create for good ones. You grant unbounded license to the wicked. You loose universal disorder upon us all! For could not he who kills a good king, or one who certainly is not of the worst sort, profess that his crime was committed with some regard to right? Or, if some good citizen should attempt in vain to kill a prince thoroughly deserving of punishment, or if he should [146] carry through the deed which he had planned, would not a great disturbance of the entire society inevitably follow? And while bad men, enraged at the taking away of their leader, would riot, not all the good ones would approve of the deed. Nor would all of those who approve of the slaying defend the author of their liberty against the criminal faction. Will not most of these last, moreover, clothe their pusillanimity with a fair pretext of peaceableness,

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106. *Corbula*. Dio assures us that Corbulo disappointed his friends in but one particular, that he kept faith with Nero (Dig. 1xii. 19, 26), and declares that Tiridates found but one fault in Corbulo, "that he put up with such a monster [as Nero was]."

107. Dio Cassius, *Roman Hist.* lix. 30. 1c- 2. Cf. Tacitus. *Annales.* xi. 1.

and rather misrepresent the valor of others than confess their own cowardice? This regard for personal advantage, this excusing oneself for deserting the cause of the public, and this fear of danger, if they do not break the spirit of most men, certainly weaken it; and induce it to prefer tranquility, though not perfectly secure, to the uncertain hope of liberty.

*Buchanan:* If you will but keep in mind what was said - earlier, this fear of yours may be easily dispelled. For we said that there are tyrants who are sanctioned by the free suffrage of the people, and because they observe due limits in their conduct of governmental affairs we deem them worthy of being called kings. No man will have my support in attacking any one of these, or even in attacking any of those rulers who, though they acquired their power by force or by fraud, govern in the spirit of the constitution. Examples of rulers of this sort are Vespasian, Titus, and Pertinax among the Romans; Alexander from the Greeks; and Hiero of Syracuse. These men took over governments unjustly by the use of force and of arms, but on the score of the excellence and rightness of their governments they deserve to be placed in the number of true kings.

Moreover, I am discussing what may legally be done or ought to be done in a case of this sort; I do not advise what ought to be undertaken in a particular case. For while an examination of the facts and a clear explanation is all that is needed in a discussion of what is permissible and right in government; where overt action is contemplated, a plan for the undertaking, good judgment in beginning it, and resolution in carrying it to a successful conclusion, are needed. For success or failure in overt undertakings of this sort depend upon the times, persons, places, and other matters involved in their execution; so, if [147] anyone were to rashly undertake the overthrow of a government, no more blame would attach to me for having defended the right of citizens to resist tyrants than there would attach to a physician who has diagnosed a disease adequately. The man who administers the remedy improperly is the person who should be held accountable.

[Chapter Fifty. *The Church Censures Tyranny.*]

*Maitland:* One thing more seems to be necessary to resolve our problem. If you can supply this, you will do me, I am sure, a great kindness. Tell me if the Church imposes any censure on tyrants.

*Buchanan:* You may, if you like, begin with the First Epistle of Paul to the Corinthians, where the Apos-

tle forbids the having any fellowship, either by living or talking, with evil and dishonest men.<sup>108</sup> If this rule were observed among Christians, scoundrels, unless they mended their ways, would perish of hunger, cold, or exposure.

*Maitland:* That is certainly a severe censure, and I doubt if the people, accustomed as they are to yielding to their rulers in everything, will agree that kings ought to be included under this rule.

*Buchanan:* The Church Fathers certainly understood this passage from Paul's writings to teach that they should be so included. For Ambrose refused to admit the Emperor Theodosius to Christian fellowship, and Theodosius obeyed the bishop.<sup>109</sup> No action of which I have ever heard on the part of any other bishop of the early Church has received more praise; [148] nor has the dignity of any other emperor been commended more highly than that of Theodosius. But what difference is there in a case of this sort between being expelled from the Christian commonwealth and being forbidden the use of fire and water. For this last is the extremely severe sentence imposed by secular rulers on those who refuse to do their commands; and the first is the sentence of the churchmen. Now death is the penalty for refusing to

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108. I Cor. v. 10- 11.

109. *The Defiance of Theodosius by St.*

*Ambrose.* During a riot at the circus at Thessalonica, Botheric, general of the imperial troops garrisoned at the city, and several of the magistrates were killed. Theodosius, who was, at the time, at Milan, sent orders that the city should be punished. On a day, therefore when the people of Thessalonica were assembled in the circus by thousands, troops surrounded the place, closed the gates, and for three hours butchered the helpless spectators. Thousands were massacred. St. Ambrose, bishop of Milan, forbade Theodosius to set foot in a church building, and required of him full confession and penitence. The story is readily accessible in *The Dynasty of Theodosius* (Oxford University Press, 1889), pp. 131, 122. Ponet, in his *A Shorte Treatise of Politicke Power*, uses the incident in precisely the same way as does Buchanan.

accept either sovereignty, but the one pronounces sentence upon the body, the other commands the destruction of the whole man. Does the Church, therefore — which regards death as a punishment much lighter than that which the criminal merits — not believe that that man deserves to die whom she expels from the society of good men while he is alive and consigns to the society of unclean spirits when he is dead?

*[Chapter Fifty- one. Scotland's Order and Stability are due More to Her Devotion to the Principle of Constitutional Government than to any other Factor.]*

I think that I have said quite enough to show the justice of our [the Scottish people's] case; and if I do not satisfy certain foreigners, I ask them to consider how unfairly they are persecuting us. For, in view of the fact that there are a great many rich and powerful nations in Europe, each of them with its own laws, these hostile critics of Scotland act most arrogantly when they prescribe for everyone their own peculiar form of government.

The Helvetian people form a commonwealth; Germany calls its constitutional monarchy an empire; I hear that some German states are ruled by nobles; the Venetians have a government in which all of these features are combined; Russia rejoices in a tyranny. Ours, to be sure, is a poor nation, but for two thousand years now we have held it, free from the domination of foreigners. From the first, we have made our kings constitutional rulers. We have imposed the same laws on them and on ourselves, and the passing centuries have taught the value of the constitutional principle. For this kingdom owes its preservation more to the faithful observance of this principle than to strength of arms.

[149] Would it not be a wicked thing were we to wipe out or to neglect the laws which have proved so valuable through so many centuries? And is it not the height of insolence in those who are scarcely able to maintain their own government to attempt to weaken the stability and order of a foreign country? Are not our institutions advantageous not only to ourselves but to our neighbors also? For what can contribute so much to the maintenance of peace between neighboring nations as well ordered governments? For it is by reason of ungoverned and lawless passion that most wars of aggression are rashly undertaken, wickedly waged, and disgracefully concluded. Furthermore, what can be of

more disservice to nations than the bad laws of the nations which touch their borders, the contagion of which, as a general thing, spreads widely?

And why do foreigners attack us only, when each of the nations about them has its own laws and institutions; and there is almost no agreement among them? And why precisely, are they troubled, for we have enacted no new laws, but continue steadfast in our ancient right? Why do they complain, for we are not the only people who enjoy these institutions, nor are we the first to have them nor do we now enjoy them for the first time?

So, our laws do not please certain persons! Perhaps their own laws do not please them either. We do not officiously meddle with the institutions of other nations. Let them leave ours, which have been tested by trial through so many years; to us. Do we disturb their assemblies? In what respect do we cause them trouble?

They say, "You are divided."

I can readily answer, "What is that to you? We are divided at our own risk and at our own loss."

I can name not a few civil insurrections which were not at all harmful to commonwealths or kingdoms; but I shall not employ that defense. I deny that any people has less internal dissension than we. I deny that any nation has managed its internal disputes with more moderation than we. There have been many contests over questions of the laws, over the powers of government, and over the administration of the kingdom, but the sovereignty has been ever preserved. Nor [in Scotland] [150] has strife been due to an effort to ruin the commons or because of hatred of the princes, but out of love of country and desire to preserve the laws. Have not great armies frequently, within our recollection, stood face to face, and have they not as often dispersed not only without wounds but without harm and without wrangling? Has not the public interest quieted many a private quarrel? Has not the rumor of a foreign invasion composed quarrels between parties within the nation?

Nor have we been less fortunate than moderate in our civil strife; for, always, the party which had the better cause was the more successful. And as we have practiced moderation in our domestic quarrels, so also we have agreed to our mutual advantage.

These matters appear to be enough to suppress the rumors spread by the malicious; to silence the obstinate, and to satisfy the fair-minded. I have thought that we should not be greatly concerned with the laws under

which any other nation is governed. I have reviewed briefly our own customs, but more at length than I had planned, or than the matter demanded; for I undertook this task wholly on your account, and, if the way the matter has been dealt with meets with your approval, I am satisfied.

*Maitland:* So far as I am concerned, I am fully satisfied; and if I am able to convince others in the same fashion as you have convinced me, I shall have profited greatly by this discussion, and I shall think my troubles have been greatly lightened.

*The End*