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論文

Absolutism and Constitutionalism: James VI and the Duty of a King

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I. INTRODUCTION

King James VI and I (1566 - 1625), who wore the Scottish Crown from 1567 and succeeded the English throne to enact the union of crowns in 1603, has been renowned for his profound learning and active authorship. Among his literary production, *The Trew Law of Free Monarchies* (1598; hereafter TL) and *Basilikon Doron* (1599; hereafter BD)[1] have been studied as the royal manifestation of political thought.[2] Despite the dense scholarly interest on the two writings, an attempt to analyze them in the context of either English history or Scottish history has been unsatisfactory.

The approach from the English history contains two problems. First, the quotes from TL and BD have been fragmentarily used when they discuss English political scenes. Since both works had been written before James was coronated in England, such method is anachronistic. Moreover, upon excerpting one should be more aware of the entirety and context of the texts. Second, as a partial consequence of the first, TL and BD are read uncritically as if they epitomized James's "absolutist"[3] tendency to cause conflict against common lawyers and parliamentarians after 1603 in England. To some extent, the surge of revisionism in English history has occluded a portrait of James as an unreasonably oppressive king who led a high road to the English Civil War.[4] Still, there are sustained claims of "absolutist" elements in the studies on the understanding of common law of James I, the king of England.[5]

Unlike their English counterpart, Scottish historians are deeply aware of the Scottish context of TL and BD.[6] However, the shortage of theoretical contemplation has resulted in the alike recognition of James's "absolutism". In the field of Scottish history, James VI's actual rule has been positively reappraised. Particularly since the rise of British history and of alertness to consider Scotland and Ireland as entities independent from England, Scottish historians have successfully demonstrated that James VI had been a confident and shrewd king who could realize the "absolutist" centralization of his land before the Anglo-Scottish union in 1603.[7] The political thought of James VI has been discussed in tandem with the reassessment. Yet, whether he really had an "absolutist" perspective is another question. Thus, James VI's political idea should be reconsidered from a theoretical perspective.

Therefore, the task of this paper is to focus on James's two Scottish political works with a proper theoretical scheme. This approach yields a conclusion that the political thought of the monarch was rooted in the medievalistic moral *duty* of a king[8] rather than a modern "absolutist" *right* to govern and legislate.

In order to frame the discussion on TL and BD, three terms, "absolutism," "constitutionalism," and "divine right of kings," should first be analyzed. On the first term, the lively debates have been produced in the process of ejecting the Marxist historiography, which equated the "arbitrary" and "absolute" rule.[9] As a result, both in practice and theory, the actual intensity of "absolutism" has been mitigated. On the theoretical front, J. Sommerville presented a muted definition of "absolutism" in which a king was not permitted to conflict with "divine positive, or natural law".[10] This definition is so broad and muted that it is difficult to distinguish "absolutism" from "constitutionalism", since no one in the early modern age attempted to usurp divine positive law or natural law. G. Burgess defined the term in another way, that an absolute monarch must be "conceived of as *unlimited* by positive or human law, *and* fully superior to it".[11] Specifically in the English context, an "absolutist" would be someone who believed that royal proclamations alone had the force of common or statute law and thus, asserted the wide discretion of the king.[12] This definition is better suited for the theoretical discussion of early modern thought, since it appropriately highlights the possession of independent legislative right as the demarcating point. Thus the definition of "constitutionalism" is convincingly derived to be the belief that "the king could not alter the rules and

law in the sphere of absolute authority".[13] With consideration to the Scottish context in which James VI was located, Burgess's particular analysis on common law will not be referenced. Instead, it will be examined whether James perceived the Scottish crown as having supreme legislative power regardless of the subjects' assent or dissent. This paper proposes that James VI's idea adhered to the virtually ingrained institutional procedure and to the obligation means something more than personal accountability.

Finally, the conception of the "divine right of kings" needs clarification in order to avoid the frequent confusion with "absolutism".[14] As J. Daly and Burgess observed, the consequence of the "divine" character of a king is rather *duty* than *right* to command.[15] Moreover, Burgess further explained that the "divine right" theory was designed to rebut Presbyterian and Catholic resistance theories, and it was a completely different issue from the full credit of kings to exercise sovereignty.[16] Taking those issues into consideration, James's perception of the "divine" character of his throne in relation to royal duty and right is studied as demonstrated in what follows.[17]

II. LAW OF GOD AND LAW OF NATURE

James VI began both writings with the discussion of the obligation of a king as a Christian. James imposed a heavy duty on being a king chosen by God, and the guarantee by Scripture would have been taken seriously in the sixteenth century.[18] Since the general duty of a king under law of God was indisputable, we should consider the question how the duty of subjects was treated in relation to their king. The "divine" origin of a king, by itself, did not necessarily support the positive discretional right of a king upon his subjects, and closer study of James's argument is required.[19]

James made an intricate use of 1 Samuel 8:9-20 to extrapolate subjects' obedience.[20] Drawing a case of obedience from 1 Samuel 8 was not a commonplace tactic. More familiar theory of obedience could have been constructed upon Romans 13 and Mark 22, which allegedly profess passive obedience to secular authority.[21] James mentioned these two sections of the New Testament as well,[22] but put considerably less weight on them.

From 1 Samuel 8, James drew two reasons of debasing popular resistance. First, because it was "your selues haue chosen him vnto you, thereby renouncing for euer all priuiledges, by your willing consent out of your hands"; secondly, for the king was ordained by God and only God can unmake the king.[23] The king was irresistible not only because he was ordained by God, but also because people made the irreversible choice to have a king through God. Here James associated the people and the king directly with God respectively, as the king was not directly chosen by his people but by God. This precludes direct accountability of the king to his subjects even when the people's will is included in the election of kings, which is a strong refutation against the idea of elective kingship or popular origin of monarchy.

The denial of direct contract between a king and people at the point of his enthronement stood against resistance theory. As earlier studies suggested, James's argument was designed against the idea of "the second covenant" between a king and people, which was employed in anonymous *Vindiciae contra Tyrannos*.[24] Like James, the author of *Vindiciae* cited the story of Saul, but emphasized the king as the one "ordained by God and established by the people",[25] validating the assembly of Israelite elders at Mispah as the confirmation of the king by the people.[26] While James did not directly engage in the ritual at Mispah, he accepted that "a king at his coronation, or at the entry to his kingdome, willingly promiseth to this people, to discharge honorably and trewly the office giuen him by God ouer them".[27] The promise, or contract, however, was not authorized by the people and the confirmation of subjects was not an indispensable procedure to establish a dutiful king. The contract could not be 'so sicker [secure], according to their allegeance",[28] because the human inaptness would result in impartiality of becoming "both iudge and partie in his owne particular".[29] Therefore, the contract was better and sufficiently secured by God. James concluded that neither the king nor the whole body of the people could be freed from the contract solely based on human presumption, because the break of the contract was only able to be judged by God.[30]

Besides *Vindiciae*, there was another opponent of James in the closer vicinity: his rigid childhood tutor and a renowned humanist, George Buchanan (1506-1582). Given the apparent antagonism towards Buchanan,[31] the emphasis on the Old Testament as the law was to oppose Buchanan's secularized and particularized theory. In *De Jure Regni apud Scotos* (1579), Buchanan denied Pauline passive obedience because the Scripture was not applicable to the contemporary politics.[32] On this point, James stated that "since the erection of this Kingdome and Monarchie of Iewes, and the law thereof may, and ought to bee a paterne to all Christian and well founded Monarchies", and proposed the universality of the law of God among Christian monarchies.[33] In addition, James clearly presented a vision of the universal ground of Christianity laid under the tradition of each diverse kingdom.[34] Thus, regardless of particular domestic situation, the law of the Old Testament regarding kingship had universal applicability. By utilizing Samuel instead of Romans, James doubly consolidated his position against Buchanan.

James was also remarkably muted in the exegesis of Samuel

in another aspect. As J. Burns sparingly mentioned, James had not built on the "anointed" character of kingship with reference to 1 Samuel 10,[35] which illustrated the moment of Saul's anointing. That part had very often been cited to show "divine" authority of kings by royalists.[36] On the other hand, in addition to the fact that James did not build his case upon the familiar idea of Pauline passive obedience, neither he did count on the well-known concept of the anointed king. These two points are puzzling if he did intend to claim his supreme *right* as the one distinguished by the divine selection.

James's argument in the law of God was entirely devoted to the duty of the king in an ordinary circumstance, and the duty of subjects in an extraordinary moment. In the latter, the biblical reference was to renounce the idea of elective kingship and resistance against the king, not to affirm any positive right of the king. A tyrant did not have the right to command obedience: God alone did. Additionally, although not very explicit, an ordinary prince in theory did not have the right to command obedience since only the divine authority elected a king, as J. Allen asserted.[37]

Still, it seems unfair to command people to bear a tyrant when God's punishment was unpredictable and not prompt. This would be the reason why TL gives an impression of authoritarianism rather than of piety and duty. Theoretically, it is true that his idea did not guarantee subjects' welfare within an earthly institution. Despite the distinction between a tyrant and a good king in BD,[38] the threshold of a tyrant is not clear. Thus the remark, "God is doubtles the only Iudge",[39] does not seem a secure repellent of tyrant. Practically, however, James discounted the possibility of a king turning into a tyrant, confidently trusting the king's good nature in general. According to James, "a king can neuer be so monstrously vicious, but hee will generally fauour iustice, and maintaine some order".[40] Furthermore, although James did not mention the anointing of Saul, he did say that "Saul was chosen by God for his virtue, and meet qualities to gouerne his people".[41] Hence, with all his explanation on the extreme tyranny, James, as himself being a king, was very positive that such situation was almost unthinkably rare. For James, a king was generally so virtuous as to be an example for the people,[42] and his virtue stood out in contrast to the less virtuous populace. In the second part of BD, James clearly affirmed the "naturall sicknesse"[43] and "corruption"[44] of the Three Estates in Scotland. Thus, it was a part of a king's duty to usher his subjects into the virtuous life by taking various measures.[45]

James fortified the image of the gracious king who guided his people with the idea of "law of nature". For James, the "law of nature" meant a king being a father and a head of his subjects.[46] His perception of the law of nature was nothing of Thomists and Catholic resistance theorists.[47] Contrary to the law of God, which separated a king and subjects, the law of nature bridges them. As a father loved his children, and as a head cared for the body, it was the duty of a king to consider his people's welfare.[48] Also for subjects, it was as "vnnaturall" to rebel against a king as a child against a father or the limbs against a head, because such rebellion would cause serious disorder, which would initially jeopardize the people's lives as well as that of a king.[49]

The paternal authority may have provided the right to command obedience, but as well as the explanation of the law of God, it was entirely about the "duetie" a king owed to his people. Moreover, patriarchy was not explicitly supported by the authority of God. James stated that "the agreement of the law of nature in this our ground with the Lawes and constitutions of God",[50] but further explanation on the relationship of those two laws is not present. James solely focused on providing analogy of the reciprocal relationship between a king and his subjects, without any dependence on the authority of God. Again, James's perspective was different from that of some renowned royalists, who did link divine authority and paternal authority of a king to justify certain *right* to rule.[51]

The analogy of a head and the body might justify a king's discretion of punishing subjects. James said that "the head will be forced to garre cut off some rotten member," in order "to keepe the rest of the body in integritie"[52] because "if it be troubled, all the members are partakers of that paine".[53] Still, there is no additional elaboration on why and when the cutting of the body was acceptable, and more importantly, how could such exercise of power became an obligation of a king. James could have reinforced this position if he had explicitly referred to the duty to keep the subjects' welfare under the law of God. Yet this strategy entailed the danger of falling into the justification of divine *right* to command, and James did not subscribe to it. His short argument in the law of nature was more anecdotal than theoretical.

If James did not intend to strengthen any substantial right, or any logical theory of a king, then, the aim of those two analogies was twofold: one was, obviously, to reject popular resistance as already shown. The other objective, although less obvious, was to present the image of a king as a considerate father and a caring head.[54] It seems that James counted on a "natural and good inclination" of a king when he commented that "[t]he head cares for the body, so doeth the King for his people"[55] and "as the Fathers chiefe ioy ought to be in procuring his childrens welfare, … so ought a good Prince thinke of his people".[56] Under the law of nature, it was simply "natural" for a king to be generous towards his people and "unnatural" for his people to betray the generosity.

The transferal of possible defect to the side of the populace, and emphasis of the general benevolence of a king, altogether resonated with the aforementioned contrast of the virtuous king and the corruptive subjects. Despite its logical weakness, the analogy was effective rhetoric to enhance King James's confidence regarding the respectable quality of a king. Ergo, instead of building a strong case by linking the origin of being a father or a head to the authority of God, James merely expounded the good intentions of a king.

III. FUNDAMENTAL LAW OF SCOTS

James VI proceeded to the explanation of "the fundamental Lawes of our owne Kingdome" after the part of the law of God. His tone is more vehement than in the other sections. The expressions such as "ouer-lord"[57] or "the King is aboue the law"[58] may easily be understood as containing an "absolutist" connotation. With closer examination, however, it will be deduced that James did not assert "absolute" royal prerogative beyond the constitutional restraint of Scotland. With religious and historical legacy, there was little discretion allowed for a king. Contrary to the predominant perception, James did not agree on the royal prerogative based on conquest theory. In due course, it will be demonstrated how the aforementioned "non-absolutist" idea of kingship still stood in conflict with George Buchanan's proposal of a limited monarchy.

According to James, the coronation oath made by "our owne Kings"[59] was "the clearest, ciuill, and fundamental Law, whereby the Kings office is properly defined."[60] It seems that a king could freely declare a new coronation oath with wide discretion, but is not free from some constraints. The oath was to obligate three concepts detailed in "the Princes duetie"[61]; "first to maintaine the Religion presently professed within their countrie",[62] "next to maintaine all the lowable [desirable] and good Lawes made by their predecessours,"[63] and "lastly, to maintaine the whole countrey, and euery state therein, in all their ancient Priuiledges and Liberties".[64] Hence, in reality, he was circumscribed by the religious and historical duty existing from before he declared the oath.

Still, the actual content of the fundamental law was not made clear in either TL or BD. There is no further explanation concerning whether "all the lowable and good Lawes made by their predecessours" or "ancient Priuiledges and Liberties" include the right of the subjects. The ambiguity has made scholars draw the definition that James declared in 1607.[65] In the 1607 English Parliament, James identified that "the fundamental law is *ius Regis* and nothing more".[66] From the perspective of James VI and I in 1607, *ius Regis*, was only a catalogue of the laws governing the untroubled succession to the throne; it allegedly conflicted with the Estates' idea of *jus* being "fundamentally related to the whole frame of government for kingdom".[67] This remark, which was most likely produced in a different place and political background,[68] has been too easily fused to James's thought in 1598. Given the third duty at the oath, "to maintain the whole countrey", it could be assumed that what James had intended in TL was closer to the Estates' later claims.

In addition to the definition itself, the spared elaboration on the fundamental law of Scots has revealed a further disagreement on their relationship with the law of God. Kobayashi argued that James never linked the "divine right of kings" in the law of God and the secular absolutist right in the fundamental law of Scots.[69] Kobayashi was right to note that conventional accounts on TL uncritically linked the "divine origins" of kings and the secular "absolute power" of kings. In such accounts, the combined assertion of "divine power" of kings caused the Civil War.[70] Kobayashi's treatment of James as an advocator of secular "absolutism," which will be examined in the next section, is not the only aspect that is questionable. The complete separation of the law of God and the fundamental law of Scots is debatable. Unlike when James explained the law of nature, he clearly mentioned God more than one time. Within the duty defined by the coronation oath, the king was "countable to that great God," and promises "to discharge honorably and trewly the office giuen him by God ouer them".[71] The coronation oath was not a contract between a king and his people but a declaration to God, although it was the king's duty to preserve the welfare of his people, who were ordained by God.[72] Even if it had been a contract, God was the only one able to judge the break.[73]

Therefore, James used the idea of the king's duty under the inspection of God in the fundamental law of Scots. The law of God and the fundamental law of Scots were linked so long as the law of God was properly understood as something that defines the duty of the king under the authority of God. James would not have exempted the "Christian Monarche"[74] Scotland from the law of God, which was a strategy more likely to be taken by Buchanan in order to insist the particular and secular tradition of popular election in Scotland.[75] Contrary to Buchanan, James located Scotland, or kingdoms "rising among Gentiles",[76] in the historical stream beginning from the "Kingdome and Monarchie among the Iewes".[77] Although the details of the fundamental law of Scots were not clarified, the law and the Scottish king's duty were discernibly located in the religious and historical context.

Having explained a king's duty, James moved on to "describing the allegeance, that the lieges owe to their natiue King, out of the fundamentall and ciuill Lawe".[78] Instead of

clarifying the allegiance of subjects subsequently, James narrated his version of the foundation myth of the Scottish monarchy. According to James, the first Scottish king, Fergus entered Scotland from Ireland, and became the first of the "makers of the Lawes" and lords "of the whole lands".[79] The Fergusian myth had already been employed by Buchanan to demonstrate popular origins of the Scottish monarchy and a certain kind of "natural law" existing before the monarchy was established.[80] James denounced such "seditious writers"[81] and presented his version of "authentick"[82] history.

James's story of Fergus has often been misunderstood as justification of royal prerogative based on "conquest theory".[83] It is true that James described the king as a feudal lord, by whom "the land distributed (which at first was whole theirs) states erected and decerned, and formes of gouernement deuised and established".[84] It should though be noted that James did not go so far as to deny the Scottish tradition of "free people"[85] who had never been conquered for two thousand years. He argued that the people had never been conquered: the people "willingly fell to him"[86] instead. James clearly contrasted Scotland with England, which was conquered by "the Bastard of Normandie" in a manner that was "by force and with a mighty army".[87] James stated that there were examples of "the kingdome being reft by conquest from one to another, as in our neighbour countrey in England, (which was neuer in ours)".[88]

For James, the definition of "conquest" was different from something that might have been readily supposed thus far. For those who readily employ the term, "conquest" would mean something along the lines of the "establishment of a new governmental institution by a newcomer, presumably with force and without public consent." However, the idea of "conquest" in James's mind would have been slightly different. The concept of "conquest" can be conjectured from his explanation on the Norman Conquest. In addition to the military invasion, James elaborated the conquest as follows:

> Where he gaue the Law, and took one, changed the Lawes, inuerted the order of gouernment, set downe the strangers his followers in many of the old possessours rooms, as at this day well appeareth a great part of the Gentlemen in England, being come of the Norman blood, and their old Lawes, which to this day they are ruled by, are written in his language, and not in theirs.[89]

It can be drawn from this passage that "conquest" occured only when there was already a decent civil society run by the old laws. Scotland, on the other hand, was 'scantly inhabited, but by very few, and they as barbarous and scant of ciuilitie, as number".[90] Hence, it could be inferred that, for James, the Fergusian myth was a process of "civilization" rather than a "conquest", because there was no civil society when Fergus arrived. It might have been attractive to construct strong royal prerogative upon the idea of "conquest," but James perceived Scotland as a country that was "inhabited by civilised people," not one that was "conquered by foreign military".

It might be suggested that the logical consequences of conquest and civilization would be almost identical, because each justified "the King aboue the law".[91] The distinct nature of conquest and civilization, however, meant that there was a difference to the connotation of "the King aboue the law". Had it been a conquest, nothing more than coercive military power would have been necessary to subjugate people under the new law. Civilization, on the other hand, is more about the cultural and moral superiority of the king than power. There was no need for forceful change and so the intention was to demonstrate a good example to settlers in order to start over a civilised way of living. Therefore, a civilizing king "will frame all his actions to be according to the Law"[92] because it was necessary for "good example-giuing to his subjects".[93]

Consequently, what James meant by "the King is aboue the law" was not that a king can ignore the law of his realm through the use of violence, but instead the king was the best exemplar of the law in his country, so exemplary that no human could punish him. Portraying the king as a moral paragon meant that he was the most distinguished in terms of virtue in his country. In this sence, he was above the Scottish law. Nevertheless, he was still under the law of God, because no king could be morally superior to the legendary kings of Jews. James evidently recognized the authority of God in the fundamental law of Scots that "a king that gouernes not by his lawe, can neither be countable to God for his administration, nor haue a happy and established reigne".[94] Moreover, "the health of the common-wealth be his chiefe lawe"[95] was similar to the same point stressed in the law of God.[96]

Therefore, James's version of the Scottish national myth should not be labelled as conquest theory. If a label were to be given, civilization would be more appropriate. As described in James's explanation of Fergus, the character of the king was the superiority in virtue rather than physical power. The emphasis, therefore, was rather on moral duty, which was bound by the law of God, to be an example of subjects. With this in mind, two specific infamous "absolutist" ideas should be revised to consider whether they asserted any substantial *right* over subjects, or emancipated the king from historical constitution. One is the idea of a feudal lord, and the other is the insignificant constitutional

position of the Scottish Parliament.

As already mentioned, the first king Fergus and the kings thereafter become "ouer-lord" of the whole land.[97] The notoriously "absolutist" part is as follows:

> the King might haue a better colour for his pleasure, without further reason, to take the land from his lieges, as ouer-lord of the whole, and doe with as pleaseth him, since all that they hold is of him.[98]

Yet, the notoriety is entirely due to partial citations. The condition of taking the land from his lieges was "if wrong might bee admitted in play",[99] not when the king personally would like to do so. Moreover, the meaning of king's pleasure is also misunderstood. According to the prince's duty in the fundamental law defined earlier, the king should procure the welfare of his people "as a louing Father, and careful watchman, caring for them more then for himselfe".[100] Thus, the king should not, and would not be pleased by jeopardizing his people unreasonably or unlawfully. James's reference to "ouer-lord" was about the one who initiated the jurisdictional regime. Since the laws were the "rules of vertuous and sociall living",[101] it should be promulgated and exercised by the most virtuous person, in this case, the king. Therefore, James did not insist on any "right" of the king to exploit his subjects but a "dutiful" obligation to lay down lawful administration from the idea of feudal lord.

The next concern is whether the king alone was entitled to make the law without the consent of parliament. Along with the conventional English historians, the recent Scottish historians also perceived that James VI undermined the Scottish Parliament.[102] Nonetheless, this interpretation was due to the inappropriate reading of James's work, chiefly due to certain biases. James did not disenfranchise the parliament at all, although he sought his own firm place to sit on.

There is a phrase often employed to indicate James's disregard of the parliament: "yet it lies in the power of no Parliament, to make any kinde of Lawe or Statute, without his Scepter be to it, for giuing it the force of a Law".[103] This quote emphasizes that the parliament could not legislate without the king, not that the king could legislate without the parliament. James did write "the king make daily statutes and ordinances, […] without any aduice or Parliament or estates".[104] Yet, it was only regarding "daily" business in contrast to "rogation", which was made "with their aduice".[105] Finally, the most noteworthy remark made in this text is as follows: "the same lawes […] made by himselfe, or his predecessours, and so the power flows always from him selfe".[106] Again, even though James confided the king's power, he did not state that the king did not need the parliament to make laws.

Despite the constant conviction based on those phrases, James never precluded a constitutional channel of legislation, albeit he asserted his distinguished position. The argument that James compounded *dominium and imperium* to claim *Princeps legibus solutus* and *Rex in regno suo est imperator* of civil law dictums,[107] lacks textual ground. More substantially, there are evidences that show James's plausible recognition of the parliament. Even in TL, which has a more "absolutist" reputation than BD, James's opinion of the parliament was rather amicable: "the head Court of the king and his vassals".[108] The appraisal of parliament became more fervent in the BD: "Parliaments haue been ordained for making of Lawes",[109] "Parliament is the honourablest and hightest iudgement in the land (as being the Kings head Court)".[110] It is a skewed perspective not to take those remarks of James into consideration and to instead claim that James ignored the parliament.

Recognizing James's positive opinion toward the parliament, Wormald still contended that the following section was "absolutist" and would have been particularly offensive to the English Parliament:[111] "for few Lawes and well put in execution, are best in a well ruled common-weale",[112] in a way that minimizing the necessity of holding parliament. But firstly, it should be noted that the "few Lawes" in this phrase did not mean that the laws are few in the land. James was well-aware that the laws are necessarily inherited, and in this case, "few Lawes" only indicates the few "new" laws. Thus, this phrase should not be misunderstood as claiming the king's arbitrary reign with few laws in hand. Secondly, the reason why James advocated fewer new laws was because too many laws may unreasonably afflict subjects,[113] not because the king's precarious appetite. For James, who was confident about a king's fine nature, it was much better for imperfect subjects to follow the virtuous example of a king than to be ruled by strict laws. Therefore, it is true that James trusted the positive turnout of the king's personal reign. In other words, he neither undermined the fundamental law nor the parliament.

Meanwhile, the following passage could be interpreted to be implying the discretionary power of a king.

> And therefore generall lawes, made publickly in Parliament, may vpon knowen respects to the King by his authoritie bee mitigated, and suspended vpon causes onely knowen to him.[114]

Yet, this kind of discretion was to be exercised when "[the king]

sees the lawe doubtsome or rigorous"[115] in which the law worked in a negative manner to the subjects. There is no passage that justifies the king's right for himself. Moreover, it was a mitigation of laws that had been already enacted on specific cases, not a permanent nullification of a law or legislation of a new law without the parliament. Considering the "absolutism" is a position that asserts royal prerogative to legislate without the subjects' consent, James's idea does not fit into this category.

James spent only one paragraph explaining the duty of subjects in the section on the fundamental law of Scots. He professed that subjects should not rebel against the king in the same way that they could not displace lords, magistrates, pastors, provosts, or schoolmasters.[116] Notably, any conceivable Saul-like tyrannical circumstance is not discussed at all. Two reasons may explain this omission. Firstly, James perceived that most resistance theories were sufficiently refuted by the biblical references, and so did not deal with them in secular theory. Secondly, and more importantly, James did not find any precedent that a Scottish king had turned into a tyrant.

Buchanan, on the other hand, had no difficulty in identifying tyrants in the Scottish royal chronicle. Instead of surveying detailed history, examples from *De jure* would be presented, for the book sufficiently provides examples of tyrants. Buchanan enumerated around twelve kings including James III (1451-1488) as tyrants who met misfortune for their mal-administration.[117] Unlike the contemporary Scottish anti-monarchmachs who refuted Buchanan's historical reasoning meticulously,[118] James boldly maintained his case simply with the form of Scottish monarchy from Fergus, espoused by "the lineall succession of crowns".[119] The undisturbed hereditary line of succession was a proof that no Scottish king had been a tyrant who must had been punished by God. The kings were virtuous enough not to be dethroned by God, and there had been no need of popular election to choose a virtuous man as a king.

The undisturbed line of the Scottish monarchy was one of the "free Monarchies", which is the very title of TL. The meaning of "free" has been surprisingly undiscussed, even though it reveals a crucial fundamental disagreement between James VI and George Buchanan. "Free" does not mean free from history or control as previous scholars loosely implied.[120] The king was strictly demarcated by history as explained earlier. It was one of the two most "vnpardonable" crimes to be "against your Parents and Predecessors: ye know the command in Gods lawe, Honour your Father and Mother".[121] Contrary to the prevailing perception towards the "absolutist" James VI and I, the legacy of parents and predecessors as law-givers constrained not only subjects,[122] but also the king. This was because the reverence of the legacy was obliged by the supreme law of God, or the Ten Commandments.[123] There was unquestionable authority in the ancestors' laws in James's mind. He said that, after the reign of a tyrant, not only "the endlesse paine hee sustainth hereafter" but also "the fact [that unpunished criminals escapes] will remaine as allowed by the Law in diuers aages thereafter".[124] Consequently, the legacy of the law cannot be eliminated even in the case of a tyrant, much less in the case of ordinary ancestors. Therefore, James did not attempt to erect a monarchy "free" from history.

For James, "Free Monarchies" were a form of government that was "not of electiue kings, and much lesse of such sort of gouernors, as the dukes of Venice are, whose Aritocratick and limited gouernment, is nothing like to free Monarchies".[125] Here James modified the meaning of "free" employed by Buchanan. For Buchanan, "free kings" were legally unrestrained kings, who were "free" from law and therefore are tyrants.[126] For James, whilst the king may be "above" certain law of the secular realm, he was in no way "free" from all law. "Free" monarchy was an antonym of "limited" and "elective" monarchy in James's mind. The point of dissent becomes clear when the fact that Buchanan rendered "the voice of the people and the law same".[127] For Buchanan, lawful kings and an elective monarchy were inseparable, because the king should be fettered by law which ultimately originated from people. For James, on the other hand, lawful kings and elective monarchy were different things because what guaranteed the former was the law given by God. James would not agree that the origin of law was ill-natured people who tended to disrupt the order of the nation. The divine authority was a more stable and secure way to establish a lawful king.

With this reliance on the divine order in mind, James's definition of a tyrant and a good king become conceivable. A tyrant was the one who "thinkteth his people ordained for him", whereas a good king was "[the] one acknowledgeth himselfe ordained for his people, hauing receiued from God a burthen of gouernment".[128] A king would fail to govern well if he felt so much confidence at his earthly popularity that he ignored the law of God and eventually became "a prey to his passions and inordinate appetite".[129] This point also demonstrates James's strong sense of duty as a king. Nonetheless, James did not clarify why the election or limitation by the multitude could not prevent misgovernment at all. On this point, Buchanan constantly argued that kings are imperfect and were necessary to be limited by the law, i.e. the voice of the people. Although *De Jure* lacks a strong reason as to why citizens were that much trustworthy, it did explain at the very least that an individual king could not get experienced in everything to reign perfectly well.[130] Admitting that he himself was not perfect,[131] James believed in the moral

supremacy of the king in his realm without providing sufficient counterclaim against Buchanan. The private and parliamentary consultation was necessary not to compensate for the king's imperfections but to show the virtue of the king to the subjects, as argued in the previous section. The election and limitation of a king by people were rejected on the unexamined premise that a king is able to manage himself well. Despite the surprisingly broad consensus of James and Buchanan on features of a desirable king ordained for people, the student could not resolve the tutor's fundamental mistrust of kings.

James's discussion of duty explicitly countered the Scottish resistance theorists' idea on the relationship between the king and his duty. Buchanan and William Lauder (1520-1578) considered that a king could violate his duty and at that moment, he was no longer qualified as a king.[132] James's proposition of duty, on the other hand, cannot be subsumed by the contemporary Scottish anti-resistance thought. The Scottish anti-resistance theorists refrained from mentioning duty at all.[133] James envisaged medievalistic royal duty predicated by the virtuous nature of the monarch so that he could reject the encroachment upon the throne while sharing the same term with his opponents.

IV. CONCLUSION

This study demonstrated that James VI did not propose a modern idea which allows a king the independent legislative right. James neither supported "absolutism" nor the "divine right of kings" beyond the attempt to condemn resistance theory. James rather revitalized the medieval notion of the moral duty of a king in order to reject the resistance theorists. In addition, contrary to what previous literature suggested, a conquest theory or disregard of parliament was not an appropriate description of James's thought. James's problem rather lied, firstly, in his undauntingly positive belief in a king, and secondly, in his distrust of the subjects' nature without full-fledged reasoning.

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1 This paper quotes from J. Sommerville (ed.), *Political Writings: James VI and I*, (Cambridge: Cambridge University Press, 1994). *The Trew Lawe in Free Monarchies*, 62-84; *Basilikon Doron*, 1-62. Dr. M. Kobayashi rightly pointed out the danger of quoting later copies of these works and I consulted the footnotes of *Political Writings* which contained references to the earliest imprints.

2 The exact intention of these two writings is yet to be confirmed. Recent scholars emphasize the association with the succession of the English crown. M. Innes, "Robert Persons, Popular Sovereignty, and the Late Elizabethan Succession Debate," *Historical Journal* 62 (2019): 57-76; P. Kewes and S. Doran (eds.), *Doubtful and Dangerous* (Manchester, 2014). However, as discussed below, this paper considers that only a substantial correspondence with the resistance theorists could be found.

3 In this paper, double quotation marks are provided unto the terms "absolutism," "constitutionalism," and the "divine right of kings" (and their variants) as analytic terms. The definitions of these terms are discussed below.

4 R. Houlbrooke, "James's Reputation, 1625-2005", in Ralph Houlbrooke (ed.), *James VI and I* (Aldershot, 2006), 169-190. For revisionism in general, see A. Hughes, *The Causes of the English Civil War*, 2nd ed. (London, 1998) and *Huntington Library Quarterly* 78 (2015) winter special issue "Rethinking Revisionism."

5 J. Sommerville, "James I and the Divine Right of Kings: English Politics and Constitutional Theory", in L. Peck (ed.), *The Mental World of the Jacobean Court* (Cambridge, 1991), 55-70; P. Christianson, "Royal and Parliamentary Voices on the Ancient Constitution, c1604-1621", in *Mental World*, 71-95; B. Levack, "Law and Ideology: The Civil Law and Theories of Absolutism in Elizabethan and Jacobean England", in H. Dubrow and R. Strier (eds.) *The Historical Renaissance* (Chicago, 1988), 220-241; L. Peck, "Kingship, Counsel and Law in Early Stuart Britain", in J. Pocock, G. Schochet and L. Schwoeror (eds.), *The Varieties of British Political Thought, 1500-1800*, (Cambridge, 1996), 80-116. Y. Doi, *The Formation of English Constitutionalism and the Ancient Constitution* [in Japanese] (Bokugakusha, 2006), 273-281.

6 J. Wormald, "James VI and I, *Basilikon Doron and The Trew Law of Free Monarchies*: The Scottish Context and the English Translation", in *Mental World*, 36-54; R. Mason, "George Buchanan, James VI and the Presbyterians", in R. Mason (ed.), *Scots and Britons* (Cambridge, 1994), 112-137; J. Burns, *The True Law of Kingship* (Oxford, 1996); M. Kobayashi, *Kingship in the Early Modern Scotland* [in Japanese] (Minerva Shobo, 2014).

7 J. Goodare, "The Nobility and the Absolutist State in Scotland, 1584-1638", *History* 78, 253 (1993), 161-182; J. Wormald, "James VI, James I and the Identity of Britain", in B. Bradshaw and J. Morrill (eds.), *The British Problem, c.1534-1707*, (London, 1996), 148-171.

8 F. Kern, *Gottesgnadentum und Widerstandsrecht im früheren Mittelalter* (Leipzig, 1914), 6-7, 12, and 38; W.R. Jones, "The Two Laws in England: The Later Middle Ages" *Church and State* 11 (1969): 111-131.

9 J. Miller (ed.), *Absolutism in Seventeenth-century Europe* (London, 1990); C. Cuttica, and G. Burgess (eds.), *Monarchism and Absolutism in Early Modern Europe* (London, 2012). See further, J. Daly, "The Idea of Absolute Monarchy in Seventeenth-century England," *Historical Journal* 21 (1978): 227-250; H. Inuzuka, "Absolutism in the History of Political Thought: The Case of King James VI and I," *Journal of Social and Information Studies* 14 (2007): 205-220; T. Furuta, "The Thought World of Sir Robert Filmer, 1588-1945" [in Japanese] (Ph.D. dissertation, Keio University, 2016): 29-57. This trend is broadly but not exclusively influenced by the revisionism in English history. For a comprehensive overview, see A. Hughes, The *Causes of the English Civil War*, 2nd ed. (Basingstock, 1998).

10 J. Sommerville, "Absolutism and Royalism," in J. Burns (ed.), *The Cambridge History of Political Thought, 1450-1700* (Cambridge, 1991), 348.

11 G. Burgess, *Absolute Monarchy and the Stuart* Constitution (New Haven, 1996), 29. Italics are original unless otherwise noted.

12 Ibid., 219-221.

13 Burgess, *Absolute Monarchy*, 129.

14 Ever since J. Figgis's legendary *The Theory of the Divine Right of Kings* (Cambridge, 1896).

15 J. Daly, "Cosmic Harmony and Political Thinking in Early Stuart

England", *Transactions of the American Philosophical Society* 69 (1978), 1-41; G. Burgess, "The Divine Right of Kings Reconsidered", *English Historical Review* 107 (1992), 837-861.

16 Burgess, "Divine Right", 841-842.

17 Dr. R. Kanemura labeled the TL as the full delineation of the divine right of kings without critical reception of the term. Kanemura, "The Idea of Sovereignty in English historical writing, 1599-1627", Unpublished Ph.D. thesis (Cambridge, 2012), 35.

18 Burgess, *Absolute Monarchy*, 19.

19 C. Russell, "Divine Rights in the Early Seventeenth Century", in J. Morrill, P. Slack and D. Woolf (eds.), *Public Duty and Private Conscience in Seventeenth-century England* (Oxford, 1993), 101-120.

20 TL, 66-71.

21 See "Paul on Political Obedience" in Q. Skinner, *The Foundations of Modern Political Thought, volume 2* (Cambridge, 1978); P. Matheson, "Thomas Müntzer and John Knox: Radical and Magisterial Reformers?" *Journal of Ecclesiastical History* 68 (2017): 531.

22 TL, 71-72.

23 TL, 69.

24 Junius Brutus, *A Defense of Liberty against Tyrants, a translation of the Vindiciae contra Tyrannos* with a historical introduction by Harold J. Laski (London, 1924), 73. See also Kobayashi, *Kingship of the Early Modern Scotland*, 53.

25 Brutus, *Defense of Liberty*, 143.

26 Ibid., 118-120. 1 Samuel 10:17-24

27 TL, 81.

28 Ibid.

29 Ibid., 82.

30 Ibid., 81-82.

31 Mason, "George Buchanan".

32 George Buchanan, *De Jure Regni apud Scotos* (London, 1689), 47. See also Arthur Williamson, *Scottish National Consciousness in the Age of James VI* (Edinburgh, 1979), 108.

33 TL, 70.

34 Ibid., 82.

35 Burns, *True Law of Kingship*, 232.

36 See Kobayashi, op. cit., 53. Although she cites a wrong place, 1 Samuel 8.

37 J. Allen, *Political Thought in the Sixteenth Century* (London, 1928), 268-269.

38 BD, 20-22.

39 TL, 81.

40 Ibid., 79.

41 Ibid., 67.

42 BD, 33-34. TL, 75.

43 BD, 25, 28.

44 Ibid., 30.

45 Ibid., 25-33.

46 TL, 65.

47 J. Salmon, "Catholic Resistance Theory, Ultramontanism, and the Royalist Response, 1580-1620", in *Cambridge History of Political Thought* (Cambridge, 1991), 237.

48 TL, 76-77.

49 Ibid., 77-78.

50 Ibid., 76.

51 Sommerville, "Absolutism and Royalism", 347-358.

52 TL, 78.

53 Ibid., 77.

54 D. Shuger, *Habits of Thought in the English Renaissance* (Berkeley, 1990), 218-250.

55 Ibid., 76.

56 Ibid., 65-66.

57 TL, 73.

58 Ibid., 75.

59 Ibid., 64.

60 Ibid., 65.

61 Ibid., 64.

62 Ibid.

63 Ibid., 65.

64 Ibid., 65.

65 C. McIlwain, introduction to *The Political Works of James I*, (Cambridge, M.A., 1918), xxxviii; Levack, *Foundation of the British State*, 33.

66 James I, Speech of 1607, in *The Political Works of James I*, 300.

67 A. Macinnes, "Regal Union for Britain, 1603-38", in G. Burgess (ed.), *The New British History* (London, 1999), 37.

68 Specifically, the subject matter of the 1607 speech is the union of law between England and Scotland. This issue did not arise before James came to reign both Scotland and England in 1603.

69 Kobayashi, *Kingship of the Early Modern Scotland*, 158-160.

70 Ibid., 137.

71 TL, 81.

72 Ibid., 65 and 81.

73 Ibid., 81.

74 Ibid., 64.

75 Williamson, *Scottish National Consciousness*, 108-114. Skinner, *Foundations*, 341-3.

76 TL, 72.

77 Ibid., 70.

78 Ibid., 72.

79 Ibid., 73.

80 R. Mason, "Scotching the Brut: Politics, History and National Myth in Sixteenth-century Britain," in R. Mason (ed.), *Scotland and England, 1286-1815* (Edinburgh, 1987), 73-74.

81 TL, 73.

82 BD, 46, "not Buchanans or Knoxes Chronicles".

83 McIlwain, introduction to *The Political Works of James I*, xxxviii; Allen, *Political Thought in the Sixteenth Century*, 253; Peck, "Kingship, Counsel and Law", 84-85; Burns, op. cit., 232; Salmon, "Catholic Resistance Theory", 248; Mason, "George Buchanan", 136; M. Mitsuhiko, *From Medieval Monarchy to the Modern Reason of State* [in Japanese] (Seibundo, 2007), 172-173; Kobayashi, op. cit., 109-160.

84 TL, 73.

85 A. Grant, "The Middle Ages: The Defense of Independence," in R. Mitchison (ed.), *Why Scottish History Matters* (Edinburgh, 1997), 29-40. Levack, *Formation of British State*, 33-3; Buchanan, *De Jure*, 69, "[Scotland] remained free for two thousand years".

86 TL, 73.

87 Ibid., 74.

88 Ibid.

89 TL, 74.

90 Ibid., 73.

91 Ibid., 75.

92 Ibid.

93 Ibid.

94 Ibid., 75.

[95] Ibid.
[96] Ibid., 64.
[97] TL, 73.
[98] Ibid., 74.
[99] Ibid., 73.
[100] Ibid., 65.
[101] BD, 43.
[102] K. Brown and A. Mann (eds.), Introduction to *The History of Scottish Parliament, Volume 2* (Edinburgh, 2005), 39.
[103] TL, 74.
[104] Ibid.
[105] Ibid., 73-74.
[106] TL, 75.
[107] J. Cramsie, "The Philosophy of Imperial Kingship and the Interpretation of James VI and I", In *James VI and I*, 43-60; McIlwain, introduction, xlii; Macinnes, "Regal Union for Britain", 34-38.
[108] TL, 74.
[109] BD, 21.
[110] Ibid.
[111] Wormald, "James VI and James I?", 195-201.
[112] BD, 21-22.
[113] Ibid., 21 and 43.
[114] TL, 75.
[115] Ibid.
[116] TL, 75-76.
[117] *De Jure*, 55-56.
[118] J. Burns, "George Buchanan and the Anti-monarchomachs", in *Scots and Britons*, 138-158; H. Lloyd, "The Political Thought of Adam Blackwood", *Historical Journal* 43 (2001), 915-935.
[119] TL, 82. Therefore, I believe that, when TL and BD were written, James's argument was primarily to confirm his place in Scottish throne, rather than to refute the challenge of Robert Parsons (1546-1610). Parsons insisted that James did not deserve the English crown in *A Conference abovt the next svccession to the crovvne of Ingland* (n.p., 1594).
[120] McIlwain, *The Growth of Political Thought, 384; Burns, True Law of Kingship*, 236; Bushnell, "George Buchanan, James VI and Neo-classicism", in Scots and Britons, 91-111; Williamson, *Scottish National Consciousness*, 50-55.
[121] BD, 23.
[122] TL, 82.
[123] BD, 15.
[124] Ibid., 21.
[125] TL, 76.
[126] *De Jure*, 15, 24, 34, 37-39, and 64.
[127] Ibid., 62.
[128] BD, 20.
[129] Ibid.
[130] *De Jure*, 12-13.
[131] TL, 83.
[132] *De Jure*, 5, 12, 23, 53-54, 58; F. Hall (ed), *Ane Compendious and Breue Tractate Concerning ye Office and Dewtie of Kyngis* (London, 1869), 4-7.
[133] Adam Blackwood (1539-1613), *Aduersus Georgii Buchanani Dialogum* (Pictaves, 1581); William Barclay (1546-1608), *De Regno et Regali Potestate* (Paris, 1600); Thomas Craig (c.1538-1608), *Scotland's Sovereignty Asserted* (written in 1602; trans., London, 1695).

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要旨

ジェームズ6世と王の義務：絶対主義再考

李　東宣

これまでジェームズ一世・六世（1567~1625スコットランド王ジェームズ六世、1603~1625イングランド王ジェームズ一世）の二つの政治的著作、『バシリコン・ドーロン』と『自由なる君主政の真の法』は、「絶対主義」を唱える著作とされてきた。しかし「絶対主義」という結論は、イングランド史家とスコットランド史家両方の不適切な分析枠組みによるものである。イングランド史家は両著作が執筆された時期が16世紀末、ジェームズがスコットランドのみを統治していたことを軽視して、17世紀初頭におけるジェームズと議会の対立に両著作を結びつけ、「絶対主義」的側面を強調している。他方スコットランド史家は、16世紀スコットランド史が再評価され、イングランドに劣らぬ中央集権体制が形成されつつあったという見解を基に、ジェームズの思想もその現実に沿った「絶対主義」であったと判断している。本研究は、イングランド史家のアナクロニズムとスコットランド史家の現実適合的思想観を排し、近年の「絶対主義」をめぐる議論を踏まえた上で、両著作を当時のスコットランドの知的文脈で分析する。本研究の結論は、ジェームズは王単独の立法権を主張することも、抵抗権思想排除を超えた王の権利擁護もしておらず、中世の義務論に留まった思想を論じている、という命題である。