

## READING RUTHERFORD'S *LEX, REX*

*Lex, rex* is to be found in various forms and editions. The following are the most readily available:

### 1644

The original 1644 edition is in the following libraries (and maybe others too): British Library, Oxford, Cambridge, Glasgow, Edinburgh, Aberdeen, Nottingham, and the LSE. It is available as a pdf on CD-Rom from Still Waters Revival Books - <http://www.swrb.com/>

### 1843

An 1843 edition has been reprinted a number of times over the last thirty years and is available through Abe Books (<http://www.abebooks.co.uk/>) or Amazon (<http://www.amazon.co.uk/>)

### Online

*Lex, rex* is also to be found online. It may be read through *Early English Books Online* for subscribers - <http://eebo.chadwyck.com/home> . A freely available online edition is to be found at <http://www.constitution.org/sr/lexrex.htm> . Best of all, for online use, is the fully searchable digital edition with modern orthography to be seen at <http://www.lonang.com/exlibris/rutherford/index.html> . This can also be purchased as a pdf document.

You will find below a number of selections from *Lex, rex*:

- 1) **the full title page** exactly as printed in the 1644 edition (p.2 of this document)
- 2) **the table of contents** which, read carefully, gives a good sense of the argument of the book. I have tidied this up, modernized spelling somewhat and added indentation (pp.3-13 of this document)
- 3) **selected illustrative quotations** (pp.14-44 of this document)

*LEX, REX:*

The Law and the Prince.

A Dispute for the just

**PREROGATIVE**

of KING and PEOPLE.

Containing the Reasons and Causes of the  
most necessary Defensive Wars of the Kingdom  
of SCOTLAND, and of their Expedition for the ayd  
and help of their dear brethren of ENGLAND.

In which their Innocency is asserted, and a full  
ANSWER is given to a Seditious Pamphlet, Intituled,

*Sacro-sancta Regum Majestas*, or  
The Sacred and Royall Prerogative of Christian Kings.

Under the Name of J. A.

But penned by *Jo: Maxwell*, the Excommunicate P. Prelat.

With a Scripturall Confutation of the ruinous Grounds of  
*W. Barclay, H. Grotius, H. Arnisæus, Ant. de Domi*. P. Bishop of *Spalato*,  
and of other late *Anti-magistratical Royalists*; as The Author of  
*Ossorianum, D. Ferne, E. Symmons*, the Doctors of *Aberdeen*, &c.

In XLIV. QUESTIONS.

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Published by Authority

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I SAM. 12.25. *But if you shall still do wickedly, ye shall be  
consume, both ye and your King.*

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London: Printed for *John Field*, and are to be sold at his house upon  
Addle-hill, neer *Baynards-Castle*. Octob. 7. 1644.

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Quest. I - Whether Government be by a divine Law?

*Affirmed*

- How Government is from God
- Civil Power, in the Root, immediately from God

Quest. II - Whether or no Government be warranted by the Law of nature?

*Affirmed*

- Civil society natural *in radice*, in the root, voluntary *in modo*, in the manner
- Power of government, and Power of government by such and such magistrates, different
- Civil subjection not formally from nature's Law
- Our consent to Laws penal, not antecedently natural
- Government by such Rulers, a secondary Law of nature
- Family government and politic different
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*Affirmed*

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- How any form of Government is from God
- How Government is a human ordinance, 1 Pet. ii.13
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- Making a King, and choosing a King, not to be distinguished
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*Negatur*

- The Forms of Government not from God by an act of naked Providence, but by his approving will
- Sovereignty not from the people by sole approbation

- Though God have peculiar acts of providence in creating Kings, it followeth not hence that the people maketh not Kings
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*Negatur*

- The excellency of Kings maketh them not of God's only Constitution and Designation
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- God's loosing of the bonds of Kings, by the mediation of the people's despising him, proveth against the P. P. That the Lord taketh away, and giveth Royal Majesty mediately, not immediately
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- The place, Gen ix. 5, *He that sheddeth man's blood &c.* discussed

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*Negatur*

- In any community there is an active and passive power to government
- Popular Government is not that wherein the whole people are Governors
- People by nature are equally indifferent to all the three Governments, and are not under any one by nature
- The P. Prelate denieth the Pope his father to be the Antichrist
- The bad success of Kings chosen by people proveth nothing against us, because Kings chosen by God had bad success through their own wickedness
- The P. Prelate condemneth King Charles' ratifying (Parl. 2, an. 1641) The whole proceedings of Scotland in this present Reformation
- That there be any supreme Judges is an eminent act of divine providence, which hindereth not but that the King is made by the people
- The people not patients in making a King, as is water in the Sacrament of Baptism, in the Act of production of grace

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*Negatur*

- How the people is the subject of Sovereignty
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*Negatur*

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- Royalty not transmitted from father to son

- A family may be chosen to a Crown as a single person is chosen, but the tie is conditional in both
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- A Title by conquest to a Throne must be unlawful if birth be God's lawful title
- Royalists who hold conquest to be a just title to the Crown teach manifest treason against King Charles and his Royal Heirs
- Only *bona fortunæ* not honor or Royalty properly transmittable from father to son
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- Naked birth is inferior to that very divine unction, that made no man a King without the people's election
- If a Kingdom were by birth the King might sell it
- The Crown is the Patrimony of the Kingdom, not of him who is King, or of his father
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- The choice of a family to the Crown, resolveth upon the free election of the people as on the fountain cause
- Election of a family to the Crown lawful

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*Affir. posterius*

- The Elective King cometh nearer to the first King. (Deut. 17)
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- The Hereditary and the elective Prince in divers considerations, better or worse, each one than another

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*Negatur*

- A Twofold right of conquest
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- Conquest not a signification to us of God's approving will
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- Violence hath nothing in it of a King
- A bloody Conqueror not a blessing, *per se*, as a King is
- Strength as prevailing is not Law or reason
- Fathers cannot dispose of the liberty of posterity not born
- A father, as a father, hath not power of life and death
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*Affir.*

- Seven sorts of superiority and inferiority
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- Slavery not natural from four reasons
- Kings and subjects no natural order
- A man is born *consequenter*, in political relation
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- Politic Government how necessary, now natural
- That Parents should enslave their children not natural

Quest. XIV - Whether or no the people make a Person their King conditionally or absolutely; and whether the King be tyed by any such covenant?

- The King under a natural, but no civil obligation to the people, as Royalists teach
- The Covenant civilly tyeth the King proved by Scriptures and reasons, by eight Arguments
- If the condition, without which one of the parties would never have entered into Covenant, be not performed, that party is loosed from the Covenant
- The people and Princes are obliged in their places for Justice and Religion, no less than the King
- In so far as the King presseth a false Religion on the people, *eatenus*, in so far they are understood not to have a King
- The Covenant giveth a mutual co-active power to King and people to compel each other, though there be not one on earth higher than both to compel each of them
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- Adam not King of the whole earth because a father
- The King a Father Metaphorically and improperly, proved by eight Arguments

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*Negatur*

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- The King not over men as reasonable creatures to domineer
- The King cannot give away his Kingdom or his people as if they were his proper goods
- A violent surrender of liberty tyeth not
- A surrender of ignorance is in so far involuntarily as it oblige not
- The goods of the subjects not the King's, proved by eight arguments
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*Affirmed*

- The King a Tutor rather than a Father as these are distinguished
- A free Community not properly and in all respects a minor and pupil
- The King's power not properly marital and husbandly
- The King a Patron and Servant
- The Royal power only from God, *immediatione simplicis constitutionis, et solum solitudine causæ primæ*, but not *immediatione applicationis dignitatis ad personam*
- The King the Servant of the people both objectively and subjectively
- The Lord and the people by one and the same act according to the Physical relation maketh the King
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- His power fiduciary only

Quest. XVIII - What is the Law or manner of the King (1 Sam. 8.9, 11) discussed fully

- The Power and the Office badly differenced by Barclay

- What is *mišpat hammelek*, the manner of the King, by the harmony of Interpreters, ancient and modern, Protestants and Papists
- Crying out (1 Sam. 8) not necessarily a remedy of tyranny, nor a praying with faith and patience
- Resisting of Kings that are tyrannous and patience not inconsistent
- The Law of the King not a permissive Law as was the Law of Divorcement
- The Law of the King (1 Sam. 12.23, 24) not a Law of tyranny

Quest. XIX - Whether or no the King be in Dignity and Power above the people?

*Neg. Impugned by 10. Argu.*

- In what consideration the King is above the people, and the people above the King
- A mean, as a mean, inferior to the end, how it is true
- The King inferior to the people
- The Church, because the Church, is of more excellency than the King, because King
- The people being those to whom the King is given, worthier than the gift
- And the people immortal, the King mortal
- The King a mean only, not both the efficient, or Author of the Kingdom, and a mean: two necessary distinctions of a mean
- If sin had never been, there should have been no King
- The King is to give his life for his people
- The consistent cause more excellent than the effect
- The people than the King
- Impossible people can limit Royal Power, but they must give Royal Power also
- The people have an action in making a King, proved by four arguments
- Though it were granted that God immediately made kings, yet it is no consequent, God only, and not the people, can unmake him
- The people appointing a King over themselves, retain the Fountain-power of making a King
- The mean inferior to the end, and the King, as a King, is a mean
- The King as a mean, and also as a man, inferior to the people
- To swear non-self-preservation, and to swear self-murder, all one
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- The people may resume the power they give to the Commissioners of Parliament, when it is abused
- The Tables in Scotland Lawful, when the ordinary judicatures are corrupt
- *Quod efficit tale id ipsum magis tale* discussed, the fountain-power in the people derived only in the King
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- How sovereignty is in the people
- Power of life and death, how in a Community
- A Community void of Rulers, is yet, and may be a politic body
- Judges gods Analogically

Quest. XX - Whether Inferior Judges be essentially the immediate Vicegerents of God, as Kings, not differing in essence and nature from Kings?

*Affirmatur, Proved by twelve Arguments*

- Inferior Judges the immediate Vicars of God, no less than the King
- The consciences of inferior Judges, immediately subordinate to God, not to the King, either mediately or immediately
- How the inferior Judge is the deputy of the King
- He may put to death murderers, as having God's sword committed to him, no less than the King, even though the king command the contrary; for he is not to execute judgment, and to relieve the oppressed conditionally, if a mortal King give him leave; but whether the King will or no, he is to obey the King of Kings
- Inferior Judges are *ministri regni, non ministri regis*
- The King doth not make judges as he is a man, by an act of private good-will; but as he is a King by an act of Royal Justice, and by a power that he hath from the people, who made himself a supreme Judge
- The King's making inferior Judges hindereth not, but they are as essentially Judges as the King who maketh them, not by fountain-power, but power borrowed from the people
- The Judges in Israel and the Kings differ not essentially.

- Aristocracy as natural as Monarchy, and as warrantable
- Inferior Judges depend some way on the king, *in fieri*, but in *in facto esse*
- The Parliament not Judges by derivation from the King
- The King cannot make, nor unmake Judge
- No heritable Judges
- Inferior Judges more necessary than a King

Quest. XXI - What power the People and States of Parliament hath over the King and in the State?

- The Elders appointed by God to be Judges
- Parliaments may convene and judge without the King
- Parliaments are essentially Judges, and so their consciences neither dependeth on the King, *quoad specificationem, that is, that they should give out this sentence, not that, nec quoad exercitium*, that they should not in the morning execute judgment
- Unjust judging, and no judging at all, are sins in the States
- The Parliament co-ordinate Judges with the King, not advisers only; by eleven arguments
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- The Jews' Monarchy mixed
- A Power executive of Laws more in the King, a Power legislative more in the Parliament

Quest. XXII - Whether the power of the King, as King, be absolute, or dependent and limited by God's first mould and pattern of a King?

*Negatur Prius, Affirmatur Posterius*

- The Royalists make the King as absolute as the great Turk
- The King not absolute in his power, proved by nine arguments
- Why the King is a living Law
- Power to do ill not from God
- Royalists say power to ill is not from God, but power to do ill, as punishable by man, is from God
- A King, *actu primo*, is a plague, and the people slaves, if the King, by God's institution, be absolute
- Absoluteness of Royalty against Justice, Peace, Reason, and Law
- Against the King's relation of a brother
- A Damsel forced may resist the King
- The goodness of an absolute Prince hindereth not but he is *actu primo* a Tyrant

Quest. XXIII - Whether the King hath a Prerogative Royal above Law?

*Negatur*

- Prerogative taken two ways
- Prerogative above Laws a Garland proper to infinite Majesty
- A threefold dispensation, 1. Of power; 2. Of justice; 3. Of Grace
- Acts of mere grace may be acts of blood
- An oath to the King of Babylon tyed not the people of Judah to all that absolute power would command
- The absolute Prince is as absolute in acts of cruelty, as in acts of grace
- Servants are not (1 Pet. 2.18, 19) interdicted of self-defence
- The Parliament materially only, not formally, hath the King for their lord
- Reason not a sufficient restraint to keep a Prince from Acts of tyranny
- Princes have sufficient power to do good, though they have not absolute to do evil
- A power to shed innocent blood can be no part of any Royal power given of God
- The King, because he is a public person, wanteth many privileges that subjects have

Quest. XXIV - What relation the King hath to the Law?

- Human Laws considered as reasonable, or as penal
- The King alone hath not a Nomothetic power
- Whether the King be above Parliaments as their Judge
- Subordination of the King to the Parliament and co-ordination both consistent



- Each one of the three Governments hath somewhat from each other, and they cannot anyone of them be in its prevalency conveniently without the mixture of the other two
- The King as a King cannot err; as he erreth in so far, he is not the remedy of oppression and Anarchi intended by God and nature
- In the court of necessity the people may judge the King
- Human Law not so obscure as tyranny is visible and discernible
- It is more requisite that the whole people, Church, and Religion be secured than one man
- If there be any restraint by Law on the King it must be physical, for a moral restraint is upon all men
- To swear to an absolute Prince as absolute, is an oath *eatenus*, in so far unlawful, and not obligatory

Quest. XXV - Whether the supreme Law, the safety of the people, be above the King?

*Affirmed*

- The safety of the people to be preferred to the King, for the King is not to seek himself, but the good of the people
- Royalists make no Kings but Tyrants
- How the safety of the King is the safety of the people
- A King, for the safety of the people, may break through the Letter and paper of the Law
- The King's prerogative above Law and Reason, not comparable to the blood that has been shed in Ireland and England
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- The Law above the King in four things, 1. In constitution; 2. Direction; 3. Limitation; 4. Co-action
- In what sense the King may do all things
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- If, and how, the King may punish himself
- That the King transgressing in a heinous manner, is under the Co-action of Law, proved by seven arguments
- The Coronation of a King, who is supposed to be a just Prince, yet proveth after a Tyrant, is conditional and from ignorance, and so involuntary, and in so far not obligatory in Law
- Royalists confess a Tyrant in exercise may be dethroned
- How the people is the seat of the power of Sovereignty
- The place, Psalm 51, "Against thee only have I sinned, &c" discussed
- Israel's not rising in arms against Pharaoh examined
- And Judah's not working their own deliverance under Cyrus
- A Covenant without the King's concurrence lawful

Quest. XXVII - Whether or no the King be the sole, supreme, and final Interpreter of the Law?

*Negatur*

- He is not the supreme and peremptory Interpreter
- Nor is his will the sense of the Law
- Nor is he the sole and only judicial Interpreter of the Law

Quest. XXVIII - Whether or no Wars raised by the Estates and Subjects for their own just defence against the King's bloody Emissaries be lawful?

*Affir.*

- The state of the question
- If Kings be absolute, a superior Judge may punish an inferior Judge, not as a Judge but an erring man
- By Divine institution all Covenants to restrain their power must be unlawful
- Resistance in some cases lawful
- Six arguments for the lawfulness of defensive Wars in this Quest. Many others follow

Quest. XXIX - Whether, in the case of defensive War, the distinction of the Person of the King as a man, who may and can commit hostile acts of tyranny against his subjects, and of the Office and Royal power that he hath from God and the people, can have place?

*Affirmatur*

- The King's Person in concreto, and his Office in abstracto, or which is all one, the King using his Power lawfully to be distinguished (Rom. xiii.)
- To command unjustly maketh not a higher power
- The person may be resisted and yet the Office cannot be resisted, proved by fourteen arguments
- Contrary Objections of Royalists and of the P. Prelate answered
- What we mean by the person and Office in abstracto in this dispute; we do not exclude the person in concreto altogether, but only the person as abusing his power; we may kill a person as a man, and love him as a son, father, wife, according to Scripture
- We obey the King for the Law, and not the Law for the King
- The losing of habitual and actual Royalty different
- John 19.10, Pilate's power of crucifying Christ no Law-power given to him of God, is proved against Royalists, by six arguments

Quest. XXX - Whether or no passive obedience be a mean to which we are subjected in conscience by virtue of a divine commandment? *Neg.* What a mean resistance is? That flying is resistance?

- The place, 1 Pet. 2.18, discussed
- Patient bearing of injuries and resistance of injuries compatible in one and the same subject
- Christ's non-resistance hath many things rare and extraordinary, and is no leading rule to us
- Suffering is either commanded to us comparatively only, that we rather choose to suffer than deny the truth; or the manner only is commanded, that we suffer with patience
- The Physical act of taking away the life, or of offending when commanded by the Law of self-defence, is no murder
- We have a greater dominion over goods and members, (except in case of mutilation, which is a little death,) than over our life
- To kill is not of the nature of self-defence, but accidental thereunto
- Defensive War cannot be without offending
- The nature of defensive and offensive Wars
- Flying is resistance

Quest. XXXI - Whether self-defence, by opposing violence to unjust violence, be lawful, by the Law of God and Nature?

*Affirm.*

- Self-defence in man natural, but *Modus*, the way, must be rational and just
- The method of self-defence
- Violent re-offending in self-defence the last remedy
- It is Physically impossible for a Nation to fly in the case of persecution for Religion, and so they may resist in their own self-defence
- *Tutela vitæ proxima* and *remota*
- In a remote posture of self-defence, we are not to take us to re-offending, as David was not to kill Saul when he was sleeping, or in the Cave, for the same cause
- David would not kill Saul because he was the Lord's Anointed
- The King not lord of chastity, name, and conscience, and so may be resisted
- By universal and particular nature, self-defence Lawful, proved by divers arguments
- And made good by the testimony of Jurists
- The love of ourselves, the measure of the love of our neighbours, and enforceth self-defence
- Nature maketh a private man his own Judge and Magistrate, when the Magistrate is absent, and violence is offered to his life, as the Law saith
- Self-defence, how lawful it is
- What presumption is from the King's carriage to the two Kingdoms, are in Law sufficient grounds of defensive wars
- Offensive and defensive wars differ in the event and intentions of men, but not in nature and specie, nor Physically
- David's case in not killing Saul nor his men, no rule to us, not in our lawful defence, to kill the King's emissaries, the cases far different

Quest. XXXII - Whether or no the lawfulness of defensive wars can be proved from the Scripture, from the examples of David, the people's rescuing Jonathan, Elisha, and the eighty valiant Priests who resisted Uzziah?

*Affirm.*

- David warrantably raised an Army of men to defend himself against the unjust violence of his Prince Saul
- David's not invading Saul and his men, who did not aim at Arbitrary Government, at subversion of Laws, Religion, and extirpation of those that worshipped the God of Israel and opposed Idolatry, but only pursuing one single person, far unlike to our case in Scotland and England now
- David's example not extraordinary
- Elisha's resistance proveth defensive wars to be warrantable
- Resistance made to King Uzziah by eighty valiant Priests proveth the same
- The people's rescuing Jonathan proveth the same
- Libnah's revolt proveth this
- The city of Abel defended themselves against Joab, king David's general, when he came to destroy a City for one wicked conspirator, Sheba's sake

Quest. XXXIII - Whether or no Rom. 13.1 make any thing against the lawfulness of defensive wars?

*Neg.*

- The King not only understood, Rom. 13
- And the place, Rom. 13, discussed

Quest. XXXIV - Whether Royalists prove, by cogent reasons, the unlawfulness of defensive wars?

- Objections of Royalists answered
- The place, Exod. 22:28, "Thou shalt not revile the Gods, &c." answered
- And Eccles 10:20
- The place, Eccles. 8:3, 4, "Where the word of a King is, &c." answered
- The place, Job. 34:18, answered
- And Acts 23:3, "God shall smite thee, thou whited wall, &c"
- The Emperors in Paul's time not absolute by their Law
- That objection, that we have no practice for defensive resistance, and that the Prophets never complain of the omission of the resistance of Princes, answered
- The Prophets cry against the sin of non-resistance, when they cry against the Judges, because they execute not judgment for the oppressed
- Judah's subjection to Nebuchadnezzar, a conquering Tyrant, no warrant to us to subject ourselves to tyrannous acts
- Christ's subjection to Cæsar nothing against defensive wars

Quest. XXXV - Whether the sufferings of the Martyrs in the Primitive Church Militant be against the lawfulness of defensive wars?

- Tertullian neither ours nor theirs in this question of defensive wars

Quest. XXXVI - Whether the King have the power of war only?

*Negatur*

- Inferior Judges have the power of the sword no less than the King
- The people tyed to acts of charity and to defend themselves, the Church, and their posterity against a foreign enemy, though the King forbid
- Flying unlawful to the States of Scotland and England now, God's Law tying them to defend their Country
- Parliamentary Power a fountain-power above the King

Quest. XXXVII - Whether the Estates of Scotland are to help their Brethren, the protestants of England, against Cavaliers?

*Affirmatur*, proved by 13. Arg

- Helping of neighbour Nations lawful, divers opinions concerning the point
- The Law of Egypt against those that helped not the oppressed

Quest. XXXVIII - Whether Monarchy be the best of Governments?

*Affir.*

- Whether Monarchy be the best of Governments hath divers considerations, in which each one may be less or more convenient
- Absolute Monarchy is the worst of Governments.
- Better want power to do ill as have it
- A mixture sweetest of all Governments
- Neither King nor Parliament have a voice against Law and reason

Quest. XXXIX - Whether or no any Prerogative at all above the Law be due to the King? Or if *jura majestatis* be any such Prerogative?

*Negatur*

- A threefold supreme power
- What be *jura regalia*
- Kings confer not honours from their plenitude of absolute power, but according to the strait line and rule of Law, justice, and good observing
- The Law of the King, 1 Sam 8:9, 11
- Difference of Kings and Judges
- The Law of the King, (1 Sam. 8:9, 11,) no permissive law, such as the Law of Divorce
- What dominion the King hath over the goods of the subjects

Quest. XL - Whether or no the people have any power over the King, either by his Oath, Covenant, or any other way?

*Affirmed*

- The people have power over the King by reason of his Covenant and Promise
- Covenants and promises violated, infer Co-action, *de jure*, by Law, though not *de facto*
- Mutual punishments may be where there is no relation of superiority and inferiority
- Three Covenants made by Arnisæus
- The King not King while he swear the oath and be accepted as King by the people
- The oath of the Kings of France
- Hugo Grotius setteth down seven cases in which the people may accuse, punish, or dethrone the King
- The Prince a noble Vassal of the Kingdom upon four grounds
- The covenant had an oath annexed to it
- The Prince is but a private man in a contract
- How the Royal power is immediately from God, and yet conferred upon the King by the people

Quest. XLI - Whether doth the P. Prelate with reason ascribe to us doctrine of Jesuits in the Question of lawful defence?

*Negatur*

- That Sovereignty is originally and radically in the people, as in the Fountain, was taught by Fathers, ancient Doctors, sound Divines, Lawyers, before there was a Jesuit or a prelate whelped, *in rerum natura*
- The P. Prelate holdeth the Pope to be the Vicar of Christ
- Jesuits' tenets concerning Kings
- The King not the people's Deputy by our doctrine, it is only the calumny of the P. Prelate
- The P. Prelate will have power to set the bloodiest tyrannies on earth upon the Church of Christ, the essential power of a King

Quest. XLII - Whether all Christian Kings are dependent from Christ, and may be called his Vicegerents?

*Negatur*

- Why God, as God, hath a man a Vicegerent under him, but not as Mediator
- The King not head of the church
- The King a sub-mediator, and an under-redeemer, and a sub-priest to offer sacrifices to God for us if he be a Vicegerent
- The King no mixed person
- Prelates deny Kings to be subject to the Gospel

- By no Prerogative Royal may the King prescribe religious observances and human ceremonies in God's worship
- The P. Prelate giveth to the King a power Arbitrary, supreme, and independent, to govern the Church
- Reciprocation of subjections of the King to the Church, and of the Church to the King, in divers kinds, to wit, of Ecclesiastical and civil subjection, are no more absurd than for Aaron's Priest to teach, instruct and rebuke Moses, if he turn a tyrannous Achab, and Moses to punish Aaron if he turn an obstinate Idolator

Quest. XLIII - Whether the King of Scotland be an absolute Prince, having a Prerogative above Laws and Parliaments?

*Negatur*

- The King of Scotland subject to Parliaments by the fundamental Laws, Acts, and constant practices of Parliaments, ancient and late in Scotland
- The King of Scotland's Oath at his Coronation
- A pretended absolute power given to James VI. upon respect of personal endowments, no ground of absoluteness to the King of Scotland
- By Laws and constant practices the Kings of Scotland subject to Laws and Parliaments, proved by the fundamental Law of elective Princes, and out of the most partial Historians, and our Acts of Parliament of Scotland
- Coronation oath
- And again at the Coronation of James VI. that oath sworn; and again, 1 Parl. James VI. ibid and seq
- How the King is supreme Judge in all causes
- The power of the Parliaments of Scotland
- The confession of the faith of the Church of Scotland, authorised by divers Acts of Parliament, doth evidently hold forth to all the reformed Churches the lawfulness of defensive Wars, when the supreme Magistrate is misled by wicked Counsel
- The same proved from the Confessions of Faith in other reformed Churches
- The place, Rom. 13., expounded in our Confession of Faith
- The Confession, not only Saxon, exhibited to the Council of Trent, but also of Helvetia, France, England, Bohemia, prove the same
- William Laud and other Prelates, enemies to Parliaments, to States, and to the Fundamental Laws of the three Kingdoms of England, Scotland, and Ireland
- The Parliament of Scotland doth regulate, limit, and set bounds to the King's power
- Fergus the first King not a Conqueror
- The King of Scotland below Parliaments, considerable by them, hath no negative voice

Quest. XLIV - General results of the former doctrine in some few Corollaries, in 22 Questions

- Concerning Monarchy, compared with other forms
- How Royalty is an issue of Nature
- And how Magistrates, as Magistrates, be natural
- How absoluteness is not a Ray of God's Majesty
- And resistance not unlawful, because Christ and his Apostles used it not in some cases
- Coronation is no ceremony
- Men may limit the power that they gave not
- The Commonwealth not a pupil or minor properly
- Subjects not more obnoxious to a King than Clients, Vassals, Children, to their Superiors
- If subjection passive be natural
- Whether King Uzziah was dethroned
- Idiots and children not complete Kings, children are Kings in destination only
- Denial of passive subjection in things unlawful, not dishonourable to the King, more than denial of active obedience in the same things
- The King may not make away or sell any part of his Dominions
- People may in some cases without the King
- How, and in what meaning subjects are to pay the King's debts
- Subsidies the Kingdom's due, rather than the King's
- How the Seas, Ports, Forts, Castles, Militia, Magazine, are the King's, and how they are the Kingdom's

## SELECTED ILLUSTRATIVE QUOTATIONS FROM *LEX, REX*

Page numbers are from the 1843 edition, reprinted in 1980 and several times thereafter.

All words inside square brackets [ ] are my summaries, explanations or context. All words outside square brackets [ ] are Rutherford's.

### Author's Preface

Truth to Christ cannot be treason to Cæsar xxi

[Rutherford is arguing against] ... the transcendent and boundless power of a mortal prince. xxi

I hope this war shall be Christ's triumph, Babylon's ruin. xxi

Presbyteries profess that kings are under the co-active power of Christ's keys of discipline, and that prophets and pastors, as ambassadors of Christ, have the keys of the kingdom of God, to open and let in believing princes, and also to shut them out, if they rebel against Christ; the law of Christ excepteth none, (Matt 16.19; 18.15-16; 2 Cor 10.6; Jer 1.9) xxi

[The Church does not want political power] Presbyteries never dethroned kings, never usurped that power. xxi

[The king's role in relation to the Church] We hold that the king, by office, is the church's nurse father, a sacred ordinance, the deputed power of God; xxi

[The king as king and the king as man in relation to the Church] The king's sceptre is his royal office, which is not subject to any judicature, ...but if the king, as a man, blaspheme God, murder the innocent, advance belly-gods, ...above the Lord's inheritance, the ministers of Christ are to say, "The king troubleth Israel, and they have the keys to open and shut heaven to, and upon the king, if he can offend." xxii

[The Church's prophetic role] They repeal no civil laws; they preach against unjust and grievous laws, as, Isaiah (10.1) doth, and censure the violation of God's holy day, which prelates profaned. xxii

[The Church's prophetic role] It is false that presbyteries usurp both swords; because they censure sins, which the civil magistrate should censure and punish. Ilias might be said then to mix himself with the civil business of the kingdom, because he prophesied against idolators' killing of the Lord's prophets; xxiii

[The Church does not want political power] It is a lie that our General Assembly may repeal laws; command and expect performance of the king, or then excommunicate, subject to them, force and compel king, judges, and all, to submit to them. xxiii

[All are, in conscience, accountable to God. The General Assembly ...] may not force the conscience of the poorest beggar, xxiii

[The Church's prophetic role] What civil laws parliaments make against God's word, they may authoritatively declare them to be unlawful. xxiii

[Inferior judges are accountable to God] They hold, (I believe with warrant of God's word,) if the king refuse to reform religion, the inferior judges, and assembly of godly pastors, and other church-officers may reform; if the king will not kiss the Son, and do his duty in purging the House of the Lord, may not Elijah and the people do their duty, and cast out Baal's priests. Reformation of religion is a personal act that belongeth to all, even to any one private person according to his place. xxiii

[All are, in conscience, accountable to God] They may swear a covenant without the king, if he refuse; and build the Lord's house (2 Chron. 15.9) themselves; and relieve and defend one another, when they are oppressed. For my acts and duties of defending myself and the oppressed, do not tye my conscience conditionally, so the king consent, but absolutely, as all duties of the law of nature do. (Jer 22.3; Prov 24.11; Isa. 58.6, 1.17). xxiii

### **Question I - Whether government be warranted by a divine law**

[Structure of the book] I reduce all that I am to speak of the power of kings, to the author or efficient, — the matter or subject, — the form or power, — the end and fruit of their government, — and to some cases of resistance. 1

We cannot but put difference betwixt the institution of the office, viz. government, and the designation of person or persons to the office. 1

Who can deny the law of nature to be a divine law? 1

... the court of nature, which is God's court. 5

Power of government in general must be from God. 1

All civil power is immediately from God in its root. 1

### **Question II - Whether or not government be warranted by the law of nature**

As domestic society is by nature's instance, so is civil society natural *in radice*, in the root, and voluntary *in modo*, in the manner of coalescing. 1

Supposing that men be combined in societies ... it is natural that they join in a civil society, though the manner of union in a politic body, ... be voluntary. 2

[What is civil government about?] We defend ourselves by devolving our power over in the hands of one or more rulers. 2

[Civil government ... ] seemeth rather positively moral than natural. 2

[Civil government ... ] hath its rise from a positive and secondary law of nations, and not from the law of pure nature. 2

[Civil government is ... ] warranted by a positive law. 3

[Kingship is not from nature] If all men be born equally free, as I hope to prove, there is no reason in nature why one man should be king and lord over another; ... I conceive all jurisdiction of man over man to be as it were artificial and positive. 2

[Kingship is not from nature] Neither is sovereignty, nor any government, formally inherent in either the community by nature, nor in any one particular man by nature; and ... every man is born free, so as no man, rather than his brother, is born a king and a ruler. 31

King and beggar spring of one clay. 2

All are born alike and equal. 25

Family is natural; political, by magistrate, is positive. 3

Power of government is immediately from God, and this or that definite power is mediately from God, proceeding from God by the mediation of the consent of a community, which resigneth their power to one or more rulers. 3

### **Question III - Whether royal power and definite forms of government be from God**

Kings and magistrates are God's, and God's deputies and lieutenants upon earth, (Psalm 82.1, 6, 7; Exod 22.8; 4.16) and therefore their office must be a lawful ordinance of God. 4

[The three forms of government ... ] are not governments different in nature, if we speak morally and theologically, only they differ politically and positively. 5

[The king rules with others and those others are themselves accountable to God] Wherever God appointed a king he never appointed him absolute, and a sole independent angel, but joined always with him judges, who were no less to judge according to the law of God (2 Chron 19.6) than the king (Deut 17.15). And in a moral obligation of judging righteously, the conscience of the monarch and the conscience of the inferior judges are equally under immediate subjection to the King of kings; for there is here a co-ordination of consciences, and no subordination. 5

[Some government is necessary] To set no rulers over themselves I conceive were a breach of the fifth commandment, which commandeth government to be one or other. 5

[Which of the three forms is down to ... ] the aptitude and temper of every commonwealth [... because ...] all the three be from God, even as single life and marriage are both the lawful ordinances of God, and the constitution and temper of the body is a calling to either of the two. 5

[Which of the three forms is ... ] according as the necessity and temper of the commonwealth do most require. 25

#### **Question IV - Whether the king be only and immediately from God, and not from the people**

[The question about the designation of the person is ...] Whence is it that this man rather than that man is crowned king? 6

[Distinction between the establishment of the office and the appointment of a specific to that office] For the pastor's and the doctor's office is from Christ only; but that John rather than Thomas be the doctor or the pastor is from the will and choice of men — the presbyters and people.6

[The people's grant of power is limited and conditional ... ] they giving it so as these three acts remain with the people. (1.) That they may measure out, by ounce weights, so much royal power, and no more and no less. (2.) So as they may limit, moderate, and set banks and marches to the exercise. (3.) That they give it out, *conditionate*, upon this and that condition, that they may take again to themselves what they gave out upon condition if the condition be violated. 6

All living creatures have radically in them a power of self-preservation, to defend themselves from violence ... 6

[This power of self-preservation is delegated to government. People ... ] put this power of warding off violence in the hands of one or more rulers, to defend themselves by magistrates. 6

[Royal power is ... ] “virtually” in the people. 6

[Royal power not essentially in some and not others] If all men be born, as concerning civil power, alike, — for no man cometh out of the womb with a diadem on his head or a sceptre in his hand. 6

[Relation between king and inferior judges] Royal power is but the united and superlative power of inferior judges in one greater judge whom they call a king. 6

[An important conclusion] The power of creating a man a king is from the people. 6

The people made Solomon king and not Adonijah, though Adonijah was the older brother. 7

[The way providence works is such that God is involved throughout – whether directly or through means and agents] God is the first agent in all acts of the creature. Where a people maketh choice of a man to be their king, the states do no other thing, under God, but create this man rather than another; and we cannot here find two actions, one of God, another of the people; but in one and the same action, God, by the people's free suffrages and voices, createth such a man king. 7

[The people make kings] By the authoritative choice of the states the man is made of a private man and no king, a public person and a crowned king; 2 Sam 16.18 ... Judges 8.22 ... Judges 9.6 ... Judges 11.8, 11 ... 2 Kings 14.21 ... 1 Sam 12.1 ... 2 Chron 23.3. 7

[And men are ... ] never actually installed kings till the people made them kings. I prove the assumption, Deut. 17.14, 15. 7



Expressly Scripture saith, that the people made the king, though under God: Judges 9.6, 1 Sam 11.15, 2 Kings 10.5, 1 Chron 12.38. 7

[God doesn't regulate sin but he does give rules for choosing kings – pp.7, 17]

[What is needed for a man to be king? ... ] the people's consent. 8 the people's election. 47

[People's consent gives title to the crown] But there is no title on earth now to the crowns to families, to persons, but only the suffrages of the people: for, 1st, Conquest without the consent of the people is but royal robbery, as we shall see. 2nd, There is no prophetic and immediate calling to [p.9 begins] kingdoms now. 3rd, The Lord's giving regal parts is somewhat; but I hope royalists will not deny but a child, young in years and judgment, may be a lawful king. ... Therefore it remaineth only that the suffrages of the people of God is that just title and divine calling that kings have now to their crowns. 8-9

David wasn't actually king until the people made him so ... [otherwise there would have been two kings until Saul died and David should have acted like a king] no man can be formally a lawful king without the suffrages of the people. 9

David ... remained ... formally a subject, and not a king, till all Israel made him king at Hebron; ...therefore there floweth something from the power of the people, by which he who is no king now becometh a king formally, and by God's lawful call. 9

[Birth is not enough] Birth must be less than God's designation to a crown, as is clear, — Adonijah was older than Solomon, yet God will have Solomon, the younger by birth, to be king, and not Adonijah. And so Mr. Symons, and other court prophets, must prevaricate, who will have birth, without the people's election, to make a king, and the people's voices but a ceremony. 9

[The office is from God, the designation and enactment is from the people] This office is immediately from God, but the question now is, What is that which formally applieth the office and royal power to this person rather than to the other five as meet? Nothing can here be dreamed of but God's inclining the hearts of the states to choose this man and not that man. 9

Birth was not their rule, as is clear, in that they made Solomon their king, not [14 begins] Adonijah, the elder. 13-14

**Question V - Whether or no the Popish Prelate, the author of "Sac. San. Regum Majestas," called the sacred and royal prerogative of kings, proveth that God is the immediate Author of sovereignty, and that the king is no creature of the people's making**

[Using the office/person distinction] Because God is the immediate author of the pastor and of the apostle's office, does it therefore follow that it is unlawful to resist a pastor though he turn robber? 10

[Both God and the people "make" kings] The people's election at Hebron maketh him king, differeth him from his brethren, and putteth him in royal state; yet God is the principal agent. 11

[Power in the people. The people have ... ] beams of authoritative majesty, which by a divine institution they can give (Deut 17.14) to this man, to David, not to Eliab. 11

By the act of election, David is of no king, a king. 11

[Providence] God, by the people's act of constituting the man king, doth by the mediation of this act convey royal authority to the man. 12

[Providence] The Scripture saith both, the Lord exalted David to be king, and, all power is from God; and so the power of a lord mayor of a city: the people made David king, and the people maketh such a man lord mayor. It is the Anabaptists' argument, — God writeth his law in our heart, and teacheth his own children; therefore books and the ministry of men are needless. So all sciences and lawful arts are from God; therefore sciences applied to men are not from men's free will, industry and studies. 12

[Lesser magistrates] So are all the congregation of the judges; Psalm 82.1,6. The judgment of judges, inferior to the king, is the Lord's judgment, not men's. Deut 1.17, 2 Chron 19.6, 12.

[Knowing who precisely should be king ... ] The Jews had this privilege that no nation had. 12

[The royalists claim that the king is *directly and personally* designated by God proves too much – it applies to other rulers too.] Prov 8.15, "By me kings reign." The prelate cannot restrict this to kings only; it extendeth to parliaments also. ... Here, then, mayors, sheriffs, provosts, constables, are by the Prelate extolled as persons sacred, irresistible. Then, (1.) the judges of England rule not by the king of Britain, as their author, efficient, constituent, but by Jesus Christ immediately; nor doth the commissary rule by the prelate. (2.) All these, and their power, and persons, rule independently, and immediately by Jesus Christ. (3.) All inferior judges are διαταγαὶ τοῦ θεοῦ, the ordinances of God not revocable. Therefore the king cannot deprive any judge under him; he cannot declare the parliament no parliament: once a judge, and always and irrevocably a judge. 13

[How choose kings? In the absence of ... ] immediately inspired Samuels [... must act...] following the rule of God's word, (Deut 17.14) and other rules showing what sort of men judges must be, as Deut 1.16-18, 2 Chron 19.6, 7. 14

[Providence] And all power is from God only, as the first Author, and from no man. What then? Therefore men and people interpose no human act in making this man a king and not that man. It followeth not. [For example ... ] Christ only, as head of the church, excommunicateth scandalous men; therefore the church cannot do it. ... But the truth is, take this one argument from the Prelate, and all that is in his book falleth to the ground, — to wit, Sovereignty is from God only. 14

[Royalists proves too much ...] Now this P. Prelate, by all these instances, making heathen kings to be kings by as good a title as David and Hezekiah. ... From all this it shall well follow that the tyranny of bloody conquerors is immediately and only dependent from God, no less than lawful sovereignty; for Nebuchadnezzar's sovereignty over the people of God, and many other kingdoms also, was revenged of God as tyranny, Jer 1.6, 7. 16

### **Question VI - Whether the king be so from God only, both in regard of his sovereignty and of the designation of his person to the crown, as that he is no way from the people, but by mere approbation**

[Royalists proving too much again] By this reason, inferior judges are no less immediate deputies of God, and so irresistible, than the king. 18

[Providence – the way that God's sovereignty and human agency relate shows that the argument that "God did something so the people didn't do that thing" doesn't work] The victory the Lord's; therefore Israel never fought a battle. So Deut 32, The Lord alone led his people — the Lord led them in the wilderness — their bow and their sword gave them not the land. God wrought all their works for them, (Isa 26.12) therefore Moses led them not... It followeth not. God did all these as the first, eminent, principal, and efficacious pre-determinator of the creature (though this Arminian and popish prelate mind not so to honour God). The assumption is also false. 18

This is all one argument from the Prelate's beginning of his book to the end: In a most special and eminent act of God's providence kings are from God; but, therefore, they are not from men and men's consent. It followeth not. ... Many things are ascribed to God only, by reason of a special and admirable act of providence, — as the saving of the world by Christ, the giving of Canaan to Israel, the bringing his people out from Egypt and from Chaldee, the sending of the gospel to both Jew and Gentile, &c.; but, shall we say that God did none of these things by the ministry of men, and weak and frail men? 21

And what though God gave David a crown, was it not by second causes ... God gave corn and wine to Israel, (Hosea 2) and shall the prelate and the anabaptist infer, therefore, he giveth it not by ploughing, sowing, and the art of the husbandman? 21

### **Question VII - Whether or no the Popish Prelate, the aforesaid author, doth by force of reason evince that neither constitution nor designation of kings is of the people**

[Providence] God is properly King of kings, so is God properly *causa causarum*, the Cause of causes, the Life of lifes, the Joy of joys. What! shall it then follow that he worketh nothing in the creatures by their mediation as causes? Because God is Light of lights, doth he not enlighten the earth and air by the mediation of the sun? 23

[Not that there weren't discontinuities] God indeed, in the time of the Jews, was the king of Israel in another manner than he was the king of all the nations, and is the king of Christian realms now. 24

[Kingly power is in the people] As for the official authority itself, it is virtually in all in whom any of God's image is remaining since the fall, as is clear, as may be gathered from Gen 1.28. 25

[How the people give authority] Israel, parliamentarily convened, hath ... authority as to name Saul king in Mizpeh, and David king in Hebron. 25

[Government as such is good and necessary. We say ... ] that it is also natural, and founded on the law of nature, that men must have governors, either many, or one supreme ruler. ... This constitution is so voluntary, as it hath below it the law of nature for its general foundation, and above it, the supervenient institution of God, ordaining that there should be such magistrates, both kings and other judges, because without such, all human societies should be dissolved. 25

[Making a king is parallel to ... ] Suppose a city of aldermen, all equal amongst themselves in dignity and place, take one of their number and make him their mayor and provost. 26

[The way that God removes from power (mediately) shows the way he gives it (mediately) ] God doth not take the authority of the king from him immediately, but mediately, by the people's hating and despising him, when they see his wickedness, as the people see Nero a monster — a prodigious blood-sucker. Upon this, all the people contemn him and despise him, and so the majesty is taken from Nero and all his mandates and laws, when they see him trample upon all laws, divine and human, and that mediately by the people's heart despising of his majesty; and so they repeat, and take again, that awesome authority that they once gave him. And this proveth that God gave him the authority mediately, by the consent of man. 26

It followeth not that this authority and majesty is immediately given by God to the man who is king, without the intervening consent of the people. 27

### **Question VIII - Whether the Prelate proveth by force of reason that the people cannot be capable of any power of government**

[It is the people's power ... ] the power of making governors and kings; and the community doth put forth in act this power, as a free, voluntary, and active power. 29

"No man can give that which he hath not" is true, but that people have no power to make their governors is that which is in question, and denied by us. 30

[Government by popular consent] Popular government is not that wherein all the people are rulers, for this is confusion and not government, because all are rulers, and none are governed and ruled. But in popular government many are chosen out of the people to rule. 30

[The three forms of government – monarchy, aristocracy, democracy] All the three depend upon the free will of the people, all are alike afar off, and alike near hand, to the people's free choice, according as they see most conducive to the safety and protection of the commonwealth, seeing the forms of government are not more natural than politic incorporations of cities, yea, than of shires; but from a positive institution [31 begins]) of God, who erecteth this rather than that, not immediately now, but mediately, by the free will of men. 30-31

The argument from success proveth nothing. 32

### **Question IX - Whether or no sovereignty is so from the people, that it remaineth in them in some part, so as they may, in case of necessity, reside it**

[The call of the people] And if he have not the consent of the people, he is an usurper, for we know no external lawful calling that kings have now, or their family, to the crown, but only the call of the people. 33

It is the devil in the P. P., not any of us, who teach that any private man may kill a lawful king, though tyrannous in his government. 34

[The people's power] The first, and ultimate, and native subject of all power, is the community ... but the ethical and political subject, or the legal and positive receptacle of this power, is various, according to the various constitutions of the policy. In Scotland and England, it is the three estates of parliament. 34

But the truth is, the community, orderly convened, as it includeth, all the estates civil, have hand, and are to act in choosing their rulers. 34

[Tyranny] Tyranny being a work of Satan, is not from God, because sin, either habitual or actual, is not from God: the power that is, must be from God; the magistrate, as magistrate, is good in nature of office, and the intrinsic end of his office, (Rom. xiii. 4) for he is the minister of God for thy good; and, therefore, a power ethical, politic, or moral, to oppress, is not from God, and is not a power, but a licentious deviation of a power; and is no more from God, but from sinful nature and the old serpent, than a license to sin. 34

[Self-defence is inalienable] To this add, if for nature to defend itself be lawful, no community, without sin, hath power to alienate and give away this power; for as no power given to man to murder his brother is of God, so no power to suffer his brother to be murdered is of God; and no power to suffer himself, *a fortiori*, far less can be from God. Here I speak not of physical power, for if free will be the creature of God, a physical power to acts which, in relation to God's law, are sinful, must be from God. 34

[The people's consent and law] Buchanan said, Acts of parliament are not laws, obliging the people, till they be promulgated; and the people's silence, when they are promulgated, is their approbation, and maketh them obligatory laws to them; but if the people speak against unjust laws, they are not laws at all: and Buchanan knew the power of the Scottish parliament better than this ignorant statist. 34

[King and parliament go together] The power of all the parliament was never given to the king by God. The parliament are as essentially judges as the king, and, therefore, the king's deed may well be revoked, because he acteth nothing as king, but united with his great or lesser council, no more than the eye can see, being separated from the body. 35

[The king acts with parliament and people retain their right of self-defence] The king receiveth royal power with the states to make good laws, and power by his royalty to execute those laws, and this power the community hath devolved in the hands of the king and states of parliament; but the community keepeth to themselves a power to resist tyranny, and to coerce it. 35

[The king has ...] tThe law of God, as his rule. 35

[The people may resume their power in extreme situations] In an extraordinary exigent, when Ahab and Jezebel did undo the church of God, and tyrannise over both the bodies and consciences of priest, prophet and people, Elijah procured the convention of the states, and Elijah, with the people's help, killed all Baal's priests, the king looking on, without question, against his heart, in this case I think it is more than evident that the people resumed their power. 36

[But it must be extreme] We teach not that people should supply all defects in government, nor that they should use their power when anything is done amiss by the king ... The people are to suffer much before they resume their power. 36

Every act of injustice doth not unking a prince before God, as every act of uncleanness doth not make a wife no wife before God. 37

[And it was extreme in the 1630s] The king of Britain was not mad when he declared the Scots traitors (because they resisted the service of the mass) and raised an army of prelatical cut-throats to destroy them, if all the kingdom should resist idolatry (as all are obliged). The king slept upon this prelatical resolution many months ... it was as clear as written, printed proclamations, and the pressing of soldiers, and the visible marching of cut-throats, and the blocking up of Scotland by sea and land, could be visible to men having five senses. 37

[Government is necessary] We teach that government is natural, not voluntary; but the way and manner of government is voluntary. All societies should be quickly ruined if there were no government; but it followeth not, therefore, God hath made some kings, and that immediately, without the intervening consent of the people. 38

[A person is not a king by nature but it is... ] the intervening consent of the people maketh David a king, not Eliab. 38

[The covenant with the king and what the king commits to] He, and the people maketh a covenant at David's inauguration, that David shall have so much power, to wit, power to be a father, not power to be a tyrant, — power to fight for the people, not power to waste and destroy them. 38

## Question X - Whether or not royal birth be equivalent to divine unction

[Transfer of power to the king is conditional – it is to be used for the good of the people] As they transfer their power to the father, for their own safety and peace, (not if he use the power they give aim to their destruction,) the same way they tie themselves to his first-born, as to their king. As they choose the father not as a man, but a man gifted with royal grace and a princely faculty for government, so they can but tie themselves to his first-born, as to one graced with a faculty of governing; and if his first-born shall be born an idiot and a fool, they are not obliged to make him king. 39

[The kingship of Deut 17 was ... ] tied not to birth but to qualities. 39

[Arguments showing that birth does not ground kingship – pp.40-43]

The kingdom doesn't belong to the king. 42

[Anointing doesn't *make* the king] Divine unction made him not king, but only designed him to be king: the people's election must make the king. 42

[The king is a means to the end of the people's good] The king is for his kingdom as a mean for the end, as the watchman for the city, the living law for peace and safety to God's people; and, therefore, is not *heres hominum*, an heir of men, but men are rather *heredes regis*, heirs of the king. 43

[Since kingship is for the good of the people, the king must never work against that] The assumption is clear. If a nation seeth that aristocratical government is better than monarchy, *hic et nunc*, that the sequels of such a monarchy is bloody, destructive, tyrannous; that the monarchy compelleth the free subjects to Mahomedanism, to gross idolatry, they cannot, by the divine bond of any oath, captive their natural freedom, which is to choose a government and governors for their safety, and for a peaceable and godly life; or fetter and chain the wisdom of the posterity unalterably to a government or a royal line, which, *hic et nunc*, contrary to the intention of their oath, proveth destructive and bloody. 44

[Aristotle] Yet Aristotle, the flower of nature's wit, (lib. 3. polit. c. 10,) preferreth election to succession. 45

## Question XI - Whether or no he be more principally a king who is a king by birth, or he who is a king by the free election and suffrages of the people

[Elected not hereditary is best] A king by election is more principally king (*magis univoce et per se*) than an hereditary prince ... the first king is a king by election, not by birth, Deut 17.15. 45

[Nature doesn't make a king, election does] Neither is a man by nature born king of men; and, therefore, he who is made king by suffrages of the people, must be more principally king than he who hath no title but the womb of his mother. 45

[Self-preservation inalienable] That the people can make a king supreme, that is, *absolute*, and so resign nature's birthright, that is, a power to defend themselves, is not lawful, for if the people have not absolute power to destroy themselves, they cannot resign such a power to their prince. 46

[Hereditary has some advantages] In a kingdom to be constituted, election is better; in a constituted kingdom, birth seemeth less evil. In respect of liberty, election is more convenient; in respect of safety and peace, birth is safer and the nearest way to the well. 46

## Question XII - Whether or not a kingdom may lawfully be purchased by the sole title of conquest

[Conquest plus consent brings legitimacy] This title by conquest, through the people's after consent, may be turned into a just title. 47

[Consent to conquest] Though the consent be some way over-awed, yet is it a sort of contract and covenant of loyal subjection made to the conqueror, and therefore sufficient to make the title just; otherwise, if the people never give their consent, the conqueror, domineering over them by violence, hath no just title to the crown. ... Mere conquest by the sword, without the consent of the people, is no just title to the crown. 47

[For the good of the people] A king is a special gift from God, given to feed and defend the people of God, that they may lead a godly and peaceable life under him, Psalm 78.71-72; 1 Tim 2.2. 48

Either just conquest or consented to conquest is title. 48

[Assertion of liberty ... ] all men being born free from all civil subjection. 49

No lawful king may be dethroned, nor lawful kingdom dissolved. 49

[Can't argue from something being a fact to something being right] And if only success by the sword be a right of providence, it is no right of precept. God's providence, as providence without precept or promise, can conclude a thing is done, or may be done, but cannot conclude a thing is lawfully and warrantably done, else you might say the selling of Joseph, the crucifying of Christ, the spoiling of Job, were lawfully done. 49

### **Question XIII - Whether or no royal dignity have its spring from nature, and how that is true, "Every man is born free," and how servitude is contrary to nature**

[Parental is natural subjection, civil is positive] I judge that the power royal, and the fatherly power of a father over his children, shall be found to be different; and the one is founded on the law of nature, the other, to wit, royal power, on a mere positive law. 50

[Slavery is unnatural] Slavery of servants to lords or masters ... such as were of old amongst the Jews, is not natural, but against nature. 51

[Natural rights!] A man being created according to God's image, he is *res sacra*, a sacred thing, and can no more, by nature's law, be sold and bought, than a religious and sacred thing dedicated to God. ... Every man by nature is a freeman born, that is, by nature no man cometh out of the womb under any civil subjection to king, prince, or judge, to master, captain, conqueror, teacher, &c. 51

[Freedom is natural] Because freedom is natural to all, except freedom from subjection to parents; and subjection politic is merely accidental, coming from some positive laws of men, as they are in a politic society; ... Man is born by nature free from all subjection, except of that which is most kindly and natural, and that is fatherly or filial subjection, or matrimonial subjection of the wife to the husband; and especially he is free of subjection to a prince by nature ... Man by nature is born free. 51

[Political subjection is voluntary not natural] Politicians agree to this as an undeniable truth, that as domestic society is natural, being grounded upon nature's instinct, so politic society is voluntary, being grounded on the consent of men; and so politic society is natural, *in radice*, in the root, and voluntary and free, *in modo*, in the manner of their union; and the Scripture cleareth to us, that a king is made by the free consent of the people, (Deut 17.15) and so not by nature. 52

[The three forms] I believe any of the three forms are freely chosen by any society. 52

[Don't believe arguments for almost absolute power] It is false that one cannot defend the people, except he have entire power, that is to say, he cannot do good except he have a vast power to do both good and ill. 52

### **Question XIV - Whether or no the people make a person their king conditionally, or absolutely; and whether there be such a thing as a covenant tying the king no less than his subjects**

[Covenantal form and conditional grant of power] There is an oath betwixt the king and his people, laying on, by reciprocation of bands, mutual civil obligation upon the king to the people, and the people to the king; 2 Sam 5.3 ... 1 Chron 11.3 ... 2 Chron 23.2-3 ... 2 Kings 11.17 ... Eccl 8.2 ... Then it is evident there was a covenant betwixt the king and the people. 54

[Covenantal form and conditional grant of power] The people gave the crown to David covenant-wise, and upon condition that he should perform such and such duties to them. 54

[So power may be taken back if the conditions attached to its grant are breached] A covenant giveth ground of a civil action and claim to a people and the free estates against a king, seduced by wicked counsel to make war against the land, whereas he did swear by the most high God, that he should be a father and protector of the church of God. 54

[Breach of contract brings release] There be no mutual contract made upon certain conditions, but if the conditions be not fulfilled, the party injured is loosed from the contract. 54

[Covenant, conditionality, breach of contract] Religion is not given only to the king, that he only should keep it, but to all the inferior judges and people also in their kind; but because the estates never gave the king power to corrupt religion, and press a false and idolatrous worship upon them, therefore [56 begins] when the king defendeth not true religion, but presseth upon the people a false and idolatrous religion, in that they are not under the king, but are presumed to have no king. 55-6

[Covenant, conditionality, breach of contract] But he is made by God and the people king, for the church and people of God's sake, that he may defend true religion for the behalf and salvation of all. If therefore he defend not religion for the salvation of the souls of all in his public and royal way, it is presumed as undeniable that the people of God, who by the law of nature are to care for their own souls, are to defend in their way true religion, which so nearly concerneth them and their eternal happiness. 56

They both bind themselves before God to each other. 56

[Kings and people are over each other in different respects] For the king and people are each of them above and below others in divers respects: the people, because they create the man king, they are so above the king, and have a virtual power to compel him to do his duty; and the king, as king, hath an authoritative power above the people, because royalty is formally in him, and originally and virtually only in the people. 56

[The king's duties] The obligation of the king in this covenant floweth from the peculiar national obligation betwixt the king and the estates, and it bindeth, the king as king, and not simply as he is a man. [p.57 begins] It is the specific act of a king that he is obliged unto, to wit, to govern the people in righteousness and religion with his royal power. 56-7

Whoever maketh a promise to another, giveth to that other a sort of right or jurisdiction to challenge the promise. 57

[Kingship is conditional] He who is made a minister of God, not simply, but for the good of the subject, and so he take heed to God's law as a king, and govern according to God's will, he is in so far only made king by God as he fulfilleth the condition; and in so far as he is a minister for evil to the subject, and ruleth not according to that which the book of the law commandeth him as king, in so far he is not by God appointed king and ruler, and so must be made a king by God conditionally: but so hath God made kings and rulers, Rom 13.4, 2 Chron 6.16, Psalm 89.30-31, 2 Sam 7.12, 1 Chron 28.7. 57

The people maketh him a king covenantwise and conditionally, so he rule according to God's law, and the people resigning their power to him for their safety, and for a peaceable and godly life under him, and not to destroy them, and tyrannise over them. 57

[How bad does it have to be for the "conditionality" to make a difference? It is not that ... ] any one or two acts of tyranny doth denude a man of the royal dignity that God and the people gave him; ... it must be such a breach of the royal covenant as maketh the king no king, that annulleth the royal covenant, and denudeth the prince of his royal authority and power, that must be interpreted a breach of the oath of God, because it must be such a breach upon supposition whereof the people would not have given the crown, but upon supposition of his destructiveness to the commonwealth, they would never have given to him the crown. 58

[What then? ... ] such acts of tyranny as seem destructive of the royal covenant, and inconsistent therewith. 58

[And even while he remains king ... ] in these acts they were not to acknowledge him as king. 58

[Remains king until grant is recalled] Any tyrant standeth *in titulo*, so long as the people and estates who made him king have not recalled their grant; so as neither David, nor any single man, though six hundred with him, may unking him or detract obedience from him as king; so many acts of disloyalty and breaches of laws in the subjects, though they be contrary to this covenant that the states make with their prince, doth not make them to be no subjects — and the covenant mutual standeth thus. 58-9

[Condition of kingship is ruling for the good of the people] To be a king, is to be an adopted father, tutor, a politic servant and royal watchman of the state; and the royal honour and royal maintenance given to him, is a reward of his labours and a kingly hire. 59

[Tacit covenant] But the general covenant of nature is presupposed in making a king, where there is no vocal or written covenant. If there be no conditions betwixt a Christian king and his people, then those things which are

just and right according to the law of God, and the rule of God in moulding the first king, are understood to rule both king and people, as if they had been written. 59

[Division of powers is the limitation of powers] The parliaments of both kingdoms standing in possession of a nomothetic power to make Laws, proveth clearly that the king; is in no possession of any royal dignity conferred absolutely, and without any condition, upon him. 59

[Natural law and tacit conditions] When the people appointed any to be their king, the voice of nature exponeth their deed, though there be no vocal or written covenant ... so must only have made him king conditionally, so he be a father, a feeder, and tutor. 59-60

[Against absolutism] How a covenant can be made with the people, and the king obliged to God, not to the people, I conceive not. 60

[Against absolutism] If a king, because a king, were privileged from all covenant obligation to his subjects, then could no law of men lawfully reach him for any contract violated by him. 60

[Examples of conditionality] An army appointeth such a one their leader and captain, but they refuse to do it except he swear he shall not betray them to the enemy. If he doth betray them, then must the soldiers be loosed from that contract. If one be appointed pilate of a ship, and not but by an oath, if he sell the passengers to the Turks, they may challenge the pilate of his oath; and it is clear that the estates should refuse the crown to him who would refuse to govern them according to God's law, but should profess that he would make his own will a law, therefore the intention of the oath is clearly conditional. 61

### **Question XV - Whether or no the king be univocally, or only analogically, and by proportion, a father**

[Resistance to the king, though analogically a father, is permitted] For so pastors of the Word are called fathers, 1 Cor 4.15, it will not follow, that once a pastor, evermore a pastor; and that if therefore pastors turn wolves, and by heretical doctrine corrupt the flock, they cannot be cast out of the church. 62

A prince is a prince by the free suffrages of a community. 63

### **Question XVI - Whether or no a despotal and masterly dominion of men and things agree to the king because he is king**

[Born equal] It is agreed on by divines that servitude is a penal fruit of sin, and against nature ... because all men are born by nature of equal condition. 64

[The king's dominion is to serve] The king hath no proper, masterly, or lordly dominion over his subjects; his dominion is rather fiduciary and ministerial, than masterly. 64

[What sort of dominion?] It is to take care of the good of those over whom the ruler is set, and, *conservare est, rem illæsam servare*, to keep a thing safe. 64-5

[Government is a good thing] Not to be under governors and magistrates is a judgment of God, (Isa 3.1, 6, 7, Hosea 3.4, Judges 19.1-2). 65

[Absolutist dominion defined] Therefore a dominion is defined, a faculty of using of things to what uses you will. 65

[Royalists claim that once a people has ceded its liberty, it cannot recall it. R replies that self-possession and self-preservation are inalienable and so the people cannot give the "power to destruction" to the king – p.66]

[Natural rights] Liberty is a condition of nature that all men are born with, and they are not to give it away. 66

[Tacit conditionality] If a people, trusting in the goodness of their prince, enslave themselves to him, and he shall after turn tyrant, a rash and temerarious surrender obligeth not, *Et ignorantia facit factum quasi involuntarium*. Ignorance maketh the fact some way involuntary; for if the people had believed that a meek king would have turned a roaring lion, they should not have resigned their liberty into his hand; and, therefore, the surrender was tacitly conditional to the king as meek, or whom they believed to be meek, and not to a tyrannous



lord; and, therefore, when the contract is made for the utility of the one party, the law saith, their place is for after wits, that men may change their mind and resume their liberty. 66

[So far as the man who is king is a tyrant, that far he is not really king] A king and a tyrant are, by way of contradiction, contrary one to another. 68

### **Question XVII - Whether or not the prince have properly a fiduciary and ministerial power of a tutor, husband, patron, minister, head, father of a family, not of a lord or dominator**

[People give themselves to the king to be looked after. p.69]

[Government is instituted because of sin as a way of mitigating its effects] A community of itself, because of sin, is a naked society that can but destroy itself, and every one eat the flesh of his brother; therefore God hath appointed a king or governor, who shall take care of that community, rule them in peace, and save all from reciprocation of mutual acts of violence. 69

[People taking their ceded power back. The ... ] community ... may resume its power, which it gave conditionally to the ruler for its own safety and good; and in so far as this condition is violated, and power turned to the destruction of the commonwealth, it is to be esteemed as not given; and though the people be not a politic judge in their own cause, yet in case of manifest oppression, nature can teach them to oppose defensive violence against offensive. A community in its politic body is also above any ruler, and may judge what is manifestly destructive to itself. 69

[Power resides in the people] The people hath virtually all royal power in them, as in a sort of immortal and eternal fountain, and may create to themselves many kings. 69

The kingdom ... is superior to the king. 69

[The king is a servant] He is the commonwealth's servant objectively, because all the king's service, as he is king, is for the good, safety, peace and salvation of the people, and in this he is a servant. 2. He is the servant of the people representatively, in that the people hath impawned in his hand all their power to do royal service. 70

[How power is in both God and the people] It is not in the people as in the principal cause; sure all royal power that way is only in god; but it is in the people as in the instrument, and when the people maketh David their king at Hebron, in that same very act, God, by the people using their free suffrages and consent, maketh David king at Hebron. 70

[The people make the king king – 70-71; differences between domestic and political government – 71-72]

[The king as watchman] My life and religion, and so my soul, in some cases, are committed to the king as to a public watchman, even as a flock to the feeder, the city to the watchmen; and he may betray it to the enemy. 72

[The law and kingdom are the king's in trust] But the law is not the king's own, but given to him in trust. He who receiveth a kingdom conditionally, and may be dethroned if he sell it or put it away to any other, is a fiduciary patron, and hath it only in trust. 72

### **Question XVIII - What is the law of the king, and his power?**

1 Sam 8.11, “*This will be the manner of the king who shall reign over you*” etc. Barclay ... will have us to distinguish *inter officium regis, et potestatem*, between the king's office and the king's power ... But I answer, It is a vain thing to distinguish betwixt the office and the power; for the power is either a power to rule according to God's law, as he is commanded, (Deut 17) and this is the very office or official power which the King of kings hath given to all kings under him, and this is a power of the royal office of a king, to govern for the Lord his Maker; or this is a power to do ill and tyrannise over God's people; but this is accidental to a king and the character of a tyrant, and is not from God, and so the law of the king in this place must be the tyranny of the king, which is our very mind. 72

[The king has no power to sin ... ] for God can give no moral power to do wickedly: for that is licence, and a power to sin against a law of God, which is absolutely inconsistent with the holiness of God. 73

[Royalists say that God has ...] set down no remedy but tears, crying to God, and patience; therefore resistance is not lawful. 75

[But in response ...] All protestant divines say, *Ex particulari non valet argumentum negative*, — "From one particular place, a negative argument is not good." This remedy is not written in this particular place, therefore it is not written at all in other places of Scripture. 75

[Characterization of Charles' actions ...] to command twenty thousand cut-throats to kill and destroy all the children of God. 76

[On limitation of the king's power he quotes Theodatus approvingly in relation to Deut 17] The fundamental laws of the kingdom, inspired by God to temper monarchy with a liberty befitting God's people, and with equity toward a nation — to withstand the abuse of an absolute power. 77

### **Question XIX - Whether or no the king be in dignity and power above the people**

[Bit of both] All these of the people taken collectively having more of God, as being representations, are, according to this material dignity, more excellent than the king, because many are more excellent than one; and the king, according to the magistratical and royal authority he hath, is more excellent than they are, because he partaketh formally of royalty, which they have not formally. 77

[There are lots of ways that the people are greater, more precious than the king – pp.77-79]

[The king is a means and people an end – 77; the king is for the good of the people – 78; the part is less than the whole (and the king is a part) – 78]

The death and destruction of a church, and of thousand thousands of men, is a sadder and a more heavy matter than the death of a king, who is but one man. 78

Then his people, as his people, must be so much dearer and more precious in the Lord's eyes than kings, because they are kings; 78

[Kings exist because of sin] That kings should necessarily have been in the world, if man had never fallen in sin, I am not, by any cogent argument, induced to believe. I conceive there should have been no government but those of fathers and children, husband and wife, and (which is improperly government) some more gifted with supervenient additions to nature, as gifts and excellencies of engines. 79

[People can be people without king but king cannot be king without people – 80]

[People are the ...] efficient and constituent cause [of the king – the effect. And the cause is greater than the effect]. 80

[The law-making power is in the people] - The royal power to make laws with the king, and so a power eminent in their states representative to govern themselves, is in the people; for if the most high acts of royalty be in them, why not the power also? 80

[Liberty is inalienable] It is false that the people doth, or can by the law of nature, resign their whole liberty in the hand of a king. 1. They cannot resign to others that which they have not in themselves, *Nemo potest dare quod non habet*; but the people hath not an absolute power in themselves to destroy themselves, or to exercise those tyrannous acts spoken of, 1 Sam 8.11-15, &c.; for neither God nor nature's law [p.82 begins] hath given any such power. 2. He who constituteth himself a slave is supposed to be compelled to that unnatural act of alienation of that liberty which he hath from his Maker from the womb, by violence, constraint, or extreme necessity, and so is inferior to all free men; but the people doth not make themselves slaves when they constitute a king over themselves; because God, giving to a people a king, the best and most excellent governor on earth, giveth a blessing and special favour, (Isa 1.26; Hosea 1.11; Isa 3.6-7; Psalm 79.70-72) but to lay upon his people the state of slavery, in which they renounce their whole liberty, is a curse of God. (Gen 9.25, 27.29; Deut 28.32, 36). 81-82

[The people give themselves conditionally to the king] And when the people give themselves conditionally and covenant-wise to the king, as to a public servant, and patron, and tutor, ... there is even here a note of superiority. 82

[The people's power stays with them in one sense ... ] for the fountain-power remaineth most eminently in the people. 82

[If the king goes mad] If the king turn distracted, and an ill spirit from the Lord come upon Saul, so as reason be taken from a Nebuchadnezzar, it is certain the people may put curators and tutors over him who hath the royal power. 82

[Conditionality - for a purpose and with limits] Indeed they set a king above them, *quoad potestatem legum executivam*, in regard of a power of executing laws and actual government for their good and safety; but this proveth only that the king is above the people ... in some respect. But the most eminent and fountain-power of royalty remaineth in the people as in an immortal spring. 81-2

[The king as means to an end] The king, as king, hath all his official and relative goodness in the world, as relative to the end. All that you can imagine to be in a king, as a king, is all relative to the safety and good of the people, (Rom 13.4) "He is a minister for thy good." He should not, as king, make himself, or his own gain and honour, his end. 83

[Restraining the mad-man] But when he abuseth his power to the destruction of his subjects, it is lawful to throw a sword out of a madman's hand, though it be his own proper sword, and though he have due right to it, and a just power to use it for good; for all fiduciary power abused may be repealed. 84

[Quotes Molina] "The king is a life-renter, not a lord, or proprietor of his kingdom." 86

[The people's power] The sovereign power [is ] eminently, *fontaliter*, originally and radically in the people ... 86

[Lesser magistrates] Not only kings but all inferior judges are gods. Psalm 82 ... They are gods analogically only. God is infinite, not so the king. God's will is a law, not so the king's. God is an end to himself, not so the king. The judge is but God by office, and representation, and conservation of the people. 87

### **Question XX - Whether or no inferior judges be univocally and essentially judges, and the immediate vicars of God, no less than the king, or if they be only the deputies and vicars of the king**

[Do inferior judges have same basic structure/nature as king?] It is certain that, in one and the same kingdom, the power of the king is more in extension than the power of any inferior judge; but if these powers of the king and the inferior judges differ *intensive* and in *specie*, and nature is the question, though it be not all the question. 88

Inferior judges are no less essentially judges, and the immediate vicars of God, than the king. ... 2 Chron 19.6 ... they were deputies in the place of the Lord. 88

[The king's relation to the law] The king hath no power from God to pronounce what sentence he pleaseth, because the judgment is not his own but God's. 88

[Inferior judges accountable to God] Sure I am the Lord's commandments, rebukes and threats, oblige, in conscience, the inferior judge as the superior, as is manifest in these scriptures, Jer 5.1; Isa 1.17, 21; 5.7; 10.2; 59.14; Jer 22.3; Ezek 18.8; Amos 5.7; Micah 3.9; Hab 1.4; Lev 19.15; Deut 17.11; 1.17; Exod 23.2. 89

Under-judges are powers ordained of God. 89

[Lesser magistrates are ... ] as essentially judges as [90 begins] the supreme magistrate the king; ... inferior magistrates are powers from God, Deut 1.17; 19.6,7; Exod 22.7; Jer 5.1; and the apostle saith, "The powers that be are ordained of God." 89-90

[Various arguments for this: Christ says that Pilate's power is from God; lesser magistrates have the same titles and rules as kings do in OT; they are deputies of God, accountable to him who must live by conscience – pp.90-91]

They are no less essentially judges than [kings] themselves. 90

The judges are *ministri regni, non regis*; the ministers and judges of the kingdom, not of the king. 91

[No less immediately from God] To be a judge inferior is no less an immediate favour of God than to be king, though the one be a greater favour than the other. 91

The inferior judges are little kings, and the king a great and delated judge. 92

All judges, even inferior, are the immediate deputies of the King of kings, and their sentence in judgment as the sentence of the Judge of all the earth. 92

[Speaks of lesser magistrates' ... ] immediate subjection of their conscience to the King of kings. And their judgment which they execute is the Lord's immediately, and not the king's. 94

[When the king dies, the lesser magistrates are still judges because they are such from God, not from the king – 94]

[Lesser magistrates more necessary to justice in a kingdom than the king is!] These judges cannot but be univocally and essentially judges no less than the king, without which in a kingdom justice is physically impossible; and anarchy, and violence, and confusion, must follow, if they be wanting in the kingdom. But without inferior judges, though there be a king, justice is physically impossible; and anarchy and confusion, &c. must follow. Now this argument is more considerable, that without inferior judges, though there be a king in a kingdom, justice and safety are impossible; and if there be inferior judges, though there be no king, as in aristocracy, and when the king is dead, and another not crowned, or the king is minor, or absent, or a captive in the enemy's land, yet justice is possible, and the kingdom preserved. 94

### **Question XXI - What power the people and states of parliament have over the king, and in the state**

It is true the king is the head of the kingdom; but the states of the kingdom are as the temples of the head, and so, as essentially parts of the head as the king is the crown of the head. 95

[Kings always rule with elders and the elders are judges too] 2 Sam 3.17; Deut 21.19, 22.18; Josh 20.4, 12.30; 2 Sam 5.3; Num 12.14-17 ... Josh 7.4, 9.15; Micah 3.1-3; Zeph 3.3; Deut 1.17; 2 Chron 19.6-7; 1 Sam 8.2. 95

[Rutherford laments the time when ... ] the prelates were bringing in the grossest idolatry into the church — a service for adoring of altars, of bread, the work of the hand of the baker — a god more corruptible than any god of silver and gold. 96

[Inferior officers must do the job if the superior won't] Elias causeth to kill the priests of Baal, according to God's express law. It is true it was extraordinary; but no otherwise extraordinary than it is at this day. When the supreme magistrate will not execute the judgment of the Lord, those who made him supreme magistrate, under God, who have, under God, sovereign liberty to dispose of crowns and kingdoms, are to execute the judgment of the Lord. 96

[In order to do this there must be ... ] a clear warrant that the magistrate neglect his duty, either in not convening the states, or not executing the judgment of the Lord. 96

[Parliament can convene itself] The estates have intrinsically (because they are the estates, and essentially judges of the land) ordinary power to convene themselves. 96

[And must do so if need be ...] As they are to answer to God for unjust sentences, so also for no just sentences, and for not convening to judge, when religion and justice, which are fallen in the streets, calleth for them. 97

[They are not dependent on the consent of an unjust king] And shall it excuse the estates, to say, we could not judge the cause of the poor, nor crush the priests of Baal, and the idolatrous mass-prelates, because the king forbade us? ...this were as much as if the states should say, We made this man our king, and with our good-will we agree he shall be a tyrant. 97

[Conscience binds inferior judges] The inferior judge in the act of judging is as independent, and his conscience as immediately subject to God as the king. 97

If the king should sell his country, and bring in a foreign army, the estates are to convene, to take course for the safety of the kingdom. 97

[The estates' power] The estates have a power of judging with the king or prince in matters of religion, justice, and government, which concern the whole kingdom. 97

[Division of powers between parliament and the king] But the parliament hath no power in trust from the king, because the time was when the man who is the king had no power, and the parliament had the same power that they now have; and now, when the king hath received power from them, they have the whole power that they had before — that is, to make laws; and resigned no power to the king, but to execute laws; and his convening of them is an act of royal duty, which he oweth to the parliament by virtue of his office, and is not an act of grace. 98

[The king and the law] If the king as the king, be *lex animata*, a breathing and living law, the king, as king, must do by obligation of law what he doth as king, and not from spontaneous and arbitrary grace. 98

[Israel had] monarchy tempered with aristocracy [and some democracy too]. 98

[Division of powers] The power for actual execution of laws be more in the king, yet a legislative power is more in the estates. 99

### **Question XXII - Whether the power of the king as king be absolute, or dependent and limited by God's first mould and pattern of a king**

[Against absolutism] God hath given no absolute and unlimited power to a king above the law. 101

[Deut 17 – the king is under the law – 101]

[The king and the law] So politicians make this argument good: — they say, *Rex est lex viva, animata, et loquens lex*, the king as king, is a living, breathing, and speaking law. 101

[The king and the law] And so is the king the law reduced in practice. 101

[The king and the law] And so much as he hath of law, so much of a king; and in his remotest distance from law and reason he is a tyrant. 101

[The king and the law] The law, rather than the king, hath power of life and death. 102

[The people give the king his power but the people do not have absolute power to give him] The people have neither formally nor virtually any power absolute to give the king. All the power they have is a legal and natural power to guide themselves in peace and godliness, and save themselves from unjust violence by the benefit of rulers. 102

[So even if they gave him all their power, it wouldn't include absolute power ...] for they cannot give what they never had, and power to destroy themselves they never had. 102

[Against absolutism: the only right or authority of a ruler is to do good – 102]

[Tyrannical power is not of God so resisting it is not resisting God] When the magistrate doth anything by violence, and without law, in so far doing against his office, he is not a magistrate. Then, say I, that power by which he doth, is not of God. None doth, then, resist the ordinance of God who resist the king in tyrannous acts. 103

[To have a king is a blessing – power to enslave is a curse, so God has not given kings the power to enslave] The genuine and intrinsical end of a king is the good, (Rom 13.4) and the good of a quiet and peaceable life in all godliness and honesty (1 Tim 2.2) ... to preserve the law from violence, and to defend the subject; — he is the people's debtor for all happiness possible to be procured by God's sword, either in peace or war, at home or abroad. 103

[If God gave ...] power absolute to a king [it would be a power to enslave]. 104

[Shows loyalty by that it is ...] court-prophets, or rather lying-spirits, who persuade the king of Britain to make war against his three dominions. 104

[Against absolute power: if absolute power is essential to kingship then asking for king is like saying ...] "Make us slaves, Lord; take our liberty and power from us, and give a power unlimited and absolute to one man, by which he may, if he please, waste and destroy us, as all the bloody emperors did the people of God." 104

[Absolute power unnatural] An absolute power is contrary to nature, and so unlawful; for it maketh the people give away the natural power of defending their life against illegal and cruel violence. 104

[If the king breaks law he may be resisted so he is under law] If a king should force a damsel, she may violently resist, and by violence, and bodily opposing of violence to violence, defend her own chastity. 104

[Absolute power is the way to anarchy – which is not God's intention in government. It leads to ... ] a mere anarchy and confusion, if to one man an absolute and unlimited power be given of God. 105

### **Question XXIII - Whether the king hath any royal prerogative, or a power to dispense with laws; and some other grounds against absolute monarchy**

[The king and law] The king, as king, can do no more than that which upon right and law he may do. 106

[Abuse of prerogative] But there is another dispensation that royalists do plead for, and that is, a power in the king, *ex mera gratia absolutæ potestatis regalis*, out of mere grace of absolute royal power to pardon crimes which God's law saith should be punished by death. Now, this they call a power of grace; – but it is not a power of mere grace. ... These pardons are acts of mere grace to one man, but acts of blood to the community. 107

God only, univocally and essentially as God, is the judge, (Psalm 75.7) and God only and essentially king, (Psalm 97.1, 99.1) ... [so human kings and judges are to serve him and] "so are kings and all judges [108 begins] but forged intruders and bastard kings and judges, in so far as they give out the sentences of men, and are not the very mouths of the King of kings to pronounce such a sentence as the Almighty himself would do, if he were sitting on the throne or bench. 107-8

[The accusation against Charles ... absolutism is the problem] And to go so far on, by this supposed prerogative royal, that king Charles in parliament at Edinburgh, 1633, did command an high point of religion: – that ministers should use, in officiating in God's service, such habits and garments as he pleaseth, that is, all the attire and habits of the idolatrous mass-priests that the Romish priests of Baal useth in the oddest point of idolatry (the adoring of bread) that the earth has; and by this prerogative the king commanded the Service Book in Scotland, anno 1637, without or above law and reason. And I desire any man to satisfy me in this, if the king's prerogative royal may overleap law and reason in two degrees, and if he may as king, by a prerogative royal, command the body of popery in a popish book; – if he may not, by the same reason, over-leap law and reason by the elevation of twenty degrees; – and if you make the king a Julian, (God avert, and give the spirit of revelation to our king,) may he not command all the Alkoran and the religion of the heathen and Indians? 108

[Quotes approvingly Ulpian] "That the law ruleth the just prince." 109

[Accusation against Charles] Now, the Service Book commanded, in the king's absolute authority, all Scotland to commit grosser idolatry, in the intention of the work, if not in the intention of the commander, than was in Babylon. 110

[Are people commanded simply to suffer?] Servants are not commanded simply to suffer. (I can prove suffering formally not to fall under any law of God, but only patient suffering. I except Christ, who was under a peculiar commandment to suffer.) But servants, upon supposition that they are servants, and buffeted unjustly by their masters, are, by the apostle Peter, commanded (ver. 20) to suffer patiently. But it doth not bind up a servant's hand to defend his own life with weapons if his master invade him, without cause, to kill him. 111

[Absolutism] To be a king and an absolute master to me are contradictory. A king essentially is a living law; an absolute man is a creature that they call a tyrant, and no lawful king. 111

[The reason for government is that sinners irrationally and lawlessly desire to impose on others – and this must be restrained. It would be odd if government itself, made up of sinners, were allowed to do whatever it desired – 111]

[Response to royalist argument] "There is no court or judge above the king, therefore he is absolutely supreme" [is that he was made a king conditionally, the states may censure him, and the conscience of the people acts as a "court"] 111

[The inferior judge's conscience] The inferior judge's conscience hangeth not at the king's girdle. He hath no less power to judge in his sphere than the king hath in his sphere. 113

[Limits on the king's power]

1. He may not marry whom he pleaseth; for he might give his body to a leper woman, and so hurt the kingdom
2. He may not do as Solomon and Ahab, marry the daughter of a strange god, to make her the mother of the heir of the crown. He must in this follow his great senate. He may not expose his person to hazard of wars
3. He may not go over sea and leave his watch-tower, without consent
4. Many acts of parliament of both kingdoms discharge papists to come within ten miles of the king
5. Some pernicious counsellors have been discharged his company by laws
6. He may not eat what meats he pleaseth
7. He may not make wasters his treasurers
8. Nor dilapidate the rents of the crown
9. He may not disinherit his eldest son of the crown at his own pleasure
10. He is sworn to follow no false gods and false religions, nor is it in his power to go to mass
11. If a priest say mass to the king, by the law he is hanged, drawn and quartered
12. He may not write letters to the Pope, by law
13. He may not, by law, pardon seducing priests and Jesuits
14. He may not take physic for his health but from physicians, sworn to be true to him
15. He may not educate his heir as he pleaseth
16. He hath not power of his children, nor hath he that power that I other fathers have, to marry his eldest son as he pleaseth
17. He may not befriend a traitor
18. It is high treason for any woman to give her body to the king, except she be his married wife
19. He ought not to build sumptuous houses without advice of his council
20. He may not dwell constantly where he pleaseth
21. Nor may he go to the country to hunt, far less to kill his subjects and desert the parliament
22. He may not confer honours and high places without his council
23. He may not deprive judges at his will
24. Nor is it in his power to be buried where he pleaseth, but amongst the kings. Now, in most of these twenty-four points, private persons have their own liberty far less restricted than the king. 113

#### **Question XXIV - What power the king hath in relation to the law and the people, and how a king and a tyrant differ**

[The king and the highest law] God formeth being and moral aptitude to the end in all laws, to wit, the safety of the people, and the king's will is neither the measure nor the cause of the goodness of kings. 114

[Division of powers] Jer 26, It is clear the princes judge with the people. A nomothetic power differeth gradually only from a judicial power, both being collateral means to the end of government, the people's safety. But parliaments judge, therefore they have a nomothetic power with the king. 114

They make laws who make kings: therefore, this nomothetic power recurreth into the states, as to the first subject. 114

[Kings make laws with power they get from the people so they can't make laws against the people] The people being the fountain of the king must rather be the fountain of laws. ... The king is the only supreme in the power ministerial of executing laws; but this is a derived power, so as no one man is above him; but in the fountain-power of royalty the states are above him. 114

[Madness] Suppose a father in a distemper would set his own house on fire, and burn himself and his ten sons, I conceive his fatherly prerogative, which neither God nor nature gave, should not be looked to in this, but they may bind him. 115

[King as executive] The king is above the people, by eminence of derived authority as a watchman, and in actual supremacy; and he is inferior to them in fountain-power, as the effect to the cause. 115

[Three forms – actually there is something of them all in all governments] There is no one government just that hath not some of all three. Power and absolute monarchy is tyranny; unmixed democracy is confusion; untempered aristocracy is factious dominion; and a limited monarchy hath from democracy respect to public good, without confusion. From aristocracy safety in multitude of counsels without factious emulation, and so a bar laid on tyranny by the joint powers of many; and from sovereignty union of many children in one father; and all the three thus contempered have their own sweet fruits through God's blessing, and their own diseases

by accident, and through men's corruption; and neither reason nor Scripture shall warrant any one in its rigid purity without mixture. 116

[But who decides whether the king is a tyrant or not?] As the Scriptures in all fundamentals are clear, and expone themselves, and *actu primo* condemn heresies, so all laws of men in their fundamentals, which are the law of nature and of nations, are clear; and, 2. Tyranny is more visible and intelligible than heresy, and is soon discerned. If a king bring in upon his native subjects twenty thousand Turks armed, and the king lead them, it is evident they come not to make a friendly visit to salute the kingdom, and depart in peace. The people have a natural throne of policy in their conscience to give warning, and materially sentence against the king as a tyrant, and so by nature are to defend themselves. Where tyranny is more obscure, and the thread small, that it escape the dye of men, the king keepeth possession; but I deny that tyranny can be obscure long. 117

[People are not allowed to sign away their freedom – 118]

A tyrant is he who habitually sinneth against the catholic good of the subjects and state, and subverteth law. 119

### **Question XXV - What force the supreme law hath over the king, even that law of the people's safety, called "salus populi."**

[The supreme law for the king] *Salus populi, suprema lex.* The safety of the people is the supreme and cardinal law to which all laws are to stoop. 119

[The people as the source of the power and the purpose of the power - 119]

[Moses and David put welfare of the people above themselves – 119]

[The king is a means to an end] The king, as a king, is formally and essentially the "minister of God for our good," (Rom 13.4; 1 Tim 2.2) and cannot come under any notion as a king, but as a mean, not as an end, nor as that which he is, to seek himself ... And God's end in giving a king is the good and safety of his people. 120

[There have been plenty of bad kings – don't assume a king will be good] He is a base flatterer who saith, The king cannot choose, but earnestly and carefully endeavour his own and the people's happiness; that is, the king is an angel, and cannot sin and decline from the duties of a king. Of the many kings of Judah and Israel, how many chose this? All the good kings that have been may be written in a gold ring. 121

The flatterer may know, there be more foolish kings in the world than wise, and that king misled with idolatrous queens, and by name Ahab ruined himself, and his posterity and kingdom. 122

[If Royalists really cared for king then they would have stopped him sinning by absolute rule and not led him into war – 122]

[Remember the awfulness of the 1630s] ... that was not long ago, and is yet, to wit, the popery, Arminianism, idolatry, cutting off men's ears and noses, banishing, imprisonment for speaking against popery, arming of papists to slay protestants, pardoning the blood of Ireland, that I fear, shall not be soon taken away. 123

[The king as servant] What the king doth as king, he doeth it for the happiness of his people. 123

[Extreme situations call for absolutism? Never – 124]

Good laws are not contrary one to another. 124

[The prerogative is to do good] Prerogative is cumulative to do good, not privative to do ill; and so is but a mean to defend both the law and the people. 124

[How may we analyze dictatorial power?] 1. A fact, and proveth not a point of conscience. 2. His power was in an exigence of extreme danger of the commonwealth. The P. Prelate pleadeth for a constant absoluteness above laws to the kin or at all times, and that *jure divino*, 3. The dictator was the people's creature; therefore the creator, the people, had that sovereignty over him. ... 5. The dictator's power was not to destroy a state: he might be, and was resisted; he might be deposed. 125



## **Question XXVI - Whether the King be above the Law or No**

[The king and the law] Those who maintain this, "The king is not subject to the law," if their meaning be, "The king as king is not subject to the law's direction," they say nothing; for the king, as the king, is a living law. 125

[The law is above the king because it made him] It is from a civil law that there is a king rather than any other kind of governor" [and that it's this particular man chosen against the criteria the law itself gives ...] Therefore upon law-ground they make him a king, and, upon law-grounds and just demerit, they may unmake him again; for what men voluntary do upon condition, the condition being removed, they may undo again. 126

[The king and the law] Therefore, the king cannot be above the covenant and law made betwixt him and his people at his coronation-oath. 126

Those who have power to make have power to unmake kings. 126

[The king is a servant who has power entrusted to him] He must then be nothing but an eminent servant of the state, in the punishing of others. If, therefore, he be unpunishable, it is not so much because his royal power is above all law co-action, as because one and the same man cannot be both the punisher and the punished; and this is a physical incongruity rather than a moral absurdity. 127

[As a king, as a man] If a king turn a parricide, a lion, and a waster and destroyer of the [p.128 begins] people, as a man he is subject to the co-active power of the laws of the land. 127-8

[Conditional kingship may be removed] Because the estates of the kingdom, who gave him the crown, are above him, and they may take away what they gave him; as the law of nature and God saith, If they had known he would turn tyrant, they would never have given him the sword; and so, how much ignorance is in the contract they made with the king, as little of will is in it; and so it is not every way willing, but, being conditional, is supposed to be against their will. They gave the power to him only for their good, and that they may make the king, is clear. (2 Chron 22.11; 1 Sam 10.17, 24; Deut 17.14-17; 2 Kings 11.12; 1 Kings 16.21; 2 Kings 10.5; Judges 9.8). 128

[Resist and punish the tyrant] A political society, as by nature's instinct they may appoint a head, or heads, to themselves, so also if their head, or heads, become ravenous wolves, the God of nature hath not left a perfect society remediless; but they may both resist, and punish the head, or heads, to whom they gave all the power that they have, for their good, not for their destruction. 129

[History] Histories teach us there have been more tyrants than kings. 132

[Not resisting Pharaoh is hardly reason to conclude ... ] therefore we have no warrant now to fight against a foreign nation invading us. 134

[Arguing against a course of action because God is capable of using a different course is silly] What! Because God useth another mean, therefore, this mean is not lawful. It followeth in no sort. 135

[That there have been very few actual defensive wars in history doesn't mean that they are wrong – 135]

## **Question XXVII - Whether or no the king be the sole, supreme and final interpreter of the law**

[Who has right to give a public judicial exposition of the law? There is an interpretative touchstone, the health of people ... ] The law hath one fundamental rule, *salus populi*, like the king of planets, the sun, which lendeth star-light to all laws, and by which they are expounded: whatever interpretation swerveth either from fundamental laws of policy, or from the law of nature, and the law of nations, and especially from the safety of the public, is to be rejected as a perverting of the law. 137

The king is not the sole and final interpreter of the law. 137

[Inferior judges must expound the law by their own conscience] The king's pleasure, therefore, cannot be the rule of the inferior judge's conscience, for he giveth an immediate account to God, the Judge of all, of a just or an unjust sentence. 137

[God tells inferior to understand and apply the law properly and tells them off if they don't – 137]

[The king expounds law as minister and inferior judges are ministers too – so they expound law – 137]

[The king and the law] He hath no dominion of any absolute royal power to expone the law as he will, and to put such a sense and meaning of the Law as he pleaseth. 137

[You may be justly resisted if, like Saul, you expound the law ... ] after a tyrannical way, against the intent of the law, which is the diamond and pearl of all laws — the safety of the innocent people. 137

[Only God's will makes things good and just: a king is to recognize and enact the just and good. 138]

### **Question XXVIII - Whether or no wars raised by the subjects and estates, for their own just defence against the king's bloody emissaries, be lawful**

[The real question is ... ] Whether the kingdom may take up arms against the man who is the king, in their own innocent defence. 139

[Ask who is doing the resisting?] The present question is not of subjects only, but of the estates, and parliamentary lords of a kingdom. I utterly deny these, as they are judges, to be subjects to the king. 139

[Inferior judges] Nor ought the king to contend for a sole power in himself of ministering justice to all; for God layeth not upon kings burdens impossible; and God by institution hath denied to the king all power of doing all good; because it is his will that other judges be sharers with the king in that power, (Num 14.16; Deut 1.14-17; 1 Pet 2.14; Rom 13.1-4). 140

[Lawful resistance] The question is, If the king command A. B. to kill his father or his pastor, — the man neither being cited nor convicted of any fault, he may lawfully be resisted. 140

[The case in hand. What if ... ] being distracted physically or morally through wicked counsel, he command that which no father in his sober wits would command, even against law and conscience, — that the sons should yield obedience and subjection to him in maintaining, with lives and goods, [p.141 begins] a bloody religion and bloody papists. 140-1

[Rutherford denies that ... ] the power lawful and the sinful person cannot be separated. 141

[Lawful resistance] We hold, that the king using, contrary to the oath of God and his royal office, violence in killing; against law and conscience, his subjects, by bloody emissaries, may be resisted by defensive wars, at the commandment of the estates of the kingdom. 141

[Not over matters of mere property] I would think it not fit easily to resist the king's unjust exactors of custom or tribute. (1.) Because Christ paid tribute to Tiberius Cæsar, an unjust usurper, though he was free from that, by God's law, lest he should offend. (2.) Because we have a greater dominion over goods than over our lives and bodies; and it is better to yield in a matter of goods than to come to arms, for of sinless evils we may choose the least. 141

[Lawful resistance] For the lawfulness of resistance in the matter of the king's unjust invasion of life and religion, we offer these arguments. 141

[Lawful resistance] That power which is obliged to command and rule justly and religiously for the good of the subjects, and is only set over the people on these conditions, and not absolutely, cannot tie the people to subjection without resistance, when the power is abused to the destruction of laws, religion, and the subjects. But all power of the law is thus obliged, (Rom. xiii. 4; Deut. xvii. 18-20; 2 Chron. xix. 6; Ps. cxxxii. 11, 12; lxxxix. 30, 31; 2 Sam. vii. 12; Jer. xvii. 24, 25,) 141

[Argument for resistance against the tyrant] That power which is contrary to law, and is evil and tyrannical, can tie none to subjection, but is a mere tyrannical power and unlawful; and if it tie not to subjection, it may lawfully be resisted. But the power of the king, abused to the destruction of laws, religion, and subjects, is a power contrary to law, evil, and tyrannical, and tyeth no man to subjection: wickedness by no imaginable reason can oblige any man. Obligation to suffer of wicked men falleth under no commandment of God, except in our Saviour. A passion, as such, is not formally commanded, I mean a physical passion, such as to be killed. God hath not said to me in any moral law, Be thou killed, tortured, beheaded; but only, Be thou patient, if God deliver thee to wicked men's hands, to suffer these things. 141

[An example] There is not a stricter obligation moral betwixt king and people than betwixt parents and children, master and servant, patron and clients, husband and wife, the lord and the vassal, between the pilot of

a ship and the passengers, the physician and the sick, the doctor and the scholars, but the law granteth ... if these betray their trust [p.142 begins] committed to them, they may be resisted: if the father turn distracted, and arise to kill his sons, his sons may violently apprehend him, and bind his hands, and spoil him of his weapons; for in that he is not a father. ... The servant may resist the master if he attempts unjustly to kill him, so may the wife do to the husband; if the pilot should wilfully run the ship on a rock to destroy himself and his passengers, they might violently thrust him from the helm. Every tyrant is a furious man, and is morally distracted, as Althusius saith. 141-2

[If it wrong to resist tyrant when the tyrant is destroying things and persons then God has given government the power of unresisted destruction – but that is not a blessing whereas government is meant to be a blessings. 142]

[God gave the king for the good of the church so he can't have given the king the power to destroy the church. Resisting the tyrant is resisting the man not the office – 142]

[Lawful resistance] If the estates of a kingdom give the power to a king, it is their own power in the fountain; and if they give it for their own good, they have power to judge when it is used against themselves, and for their evil, and so power to limit and resist the power that they gave. 143

**Question XXIX - Whether, in the case of defensive war, the distinction of the person of the king, as a man, who can commit acts of hostile tyranny against his subjects, and of the office and royal power that he hath from God and the people, as a king, can have place**

[The king as king and the king as man – a vital distinction] This distinction, rejected by royalists, must be cleared. This is an evident and sensible distinction: — The king *in concreto*, the man who is king, and the king *in abstracto*, the royal office of the king. The ground of this distinction we desire to be considered from Rom. xiii. ... we move the question here, Whether or no to resist the illegal and tyrannical will of the man who is king, be to resist the king and the ordinance of God; we say no. Nor do we deny the king, abusing his power in unjust acts, to remain king, and the minister of God, whose person for his royal office, and his royal office, are both to be honoured, revered, and obeyed. 143

[Subjection is to the office, that is, to the king functioning as king] It is evident from Rom. xiii. that all subjection and obedience to higher powers commanded there, is subjection to the power and office of the magistrate *in abstracto*, or, which is all one, to the person using the power lawfully. 144

[Don't submit to magistrate who disobeys God] He that commandeth not what God commandeth, and punisheth and killeth where God, if personally and immediately present, would neither command nor punish, is not in these acts to be subjected unto, and obeyed as a superior power. 144

[When to offer resistance?] When they command things unlawful, and kill the innocent, they do it not by virtue of any office, and so in that they are not higher powers, but lower and weak ones. ... If a lawful prince do one or more acts of a tyrant, he is not a tyrant for that, yet his action in that is tyrannical, and he doth not that as a king, but in that act as a sinful man, having something of tyranny in him. 144

[Office / man distinction] He that resisteth the power, that is, the official power, and the king, as king, and commanding in the Lord, resisteth the ordinance of God, and God's lawful constitution. But he who resisteth the man, who is the king, commanding that which is against God, and killing the innocent, resisteth no ordinance of God, but an ordinance of sin and Satan; for a man commanding unjustly, and ruling tyrannically, hath, in that, no power from God. 144

[When to resist the king?] The lawful ruler, as a ruler, and in respect of his office, is not to be resisted, because he is not a terror to good works, but to evil; and no man who doth good is to be afraid of the office or the power, but to expect praise and a reward of the same. But the man who is a king may command an idolatrous and superstitious worship — send an army of cut-throats against them, because they refuse that worship, and may reward papists, prelates, and other corrupt men, and may advance them to places of state and honour because they kneel to a tree altar, — pray to the east, — adore the letters and sound of the word *Jesus* — teach and write Arminianism, and may imprison, deprive, confine, cut the ears, and slit the noses, and burn the faces of those who speak and preach and write the truth of God; and may send armies of cut-throats, Irish rebels, and other papists and malignant atheists, to destroy and murder the judges of the land, and innocent defenders of the reformed religion, &c., — the man, I say, in these acts is a terror to good works, — an encouragement to evil; and those that do good are to be afraid of the king, and to expect no praise, but punishment and vexation from him; therefore, this reason in the text will prove that the man who is the king, in so far as he doth those things that are against his office, may be resisted; and that in these we are not to be subject, but only we are to be subject to

his power and royal authority, *in abstracto*, in so far as, according to his office, he is not a terror to good works, but to evil. 145

[Resist the man not the office] But the man who is the king, commanding unjust things, and killing the innocent, in these acts is not the minister of God for the good of the commonwealth; — he serveth himself and papists, and prelates, for the destruction of religion, laws, and commonwealth: therefore the man may be resisted; by this text, when the office and power cannot be resisted. 145

[Man and office again] The ruler, as the ruler, and the nature and intrinsical end of the office is, that he bear God's sword as an avenger to execute wrath on him that doth evil, — and so cannot be resisted without sin. But the man who is the ruler, and commandeth things unlawful, and killeth the innocent, carrieth the papist's and prelate's sword to execute, not the righteous judgment of the Lord upon the ill-doer, but his own private revenue upon him that doth well; therefore, the man may be resisted, the office may not be resisted; and they must be two different things. 145

[Man and office again] We must needs be subject to the royal office for conscience, by reason of the fifth commandment; but we must not needs be subject to the man who is king, if he command things unlawful. 145

[Man and office again — this is not a new thought - 146]

[Man and office again] The king, as king, is a just creature, and by office a living and breathing law. Has will, as he is king, is nothing but a just law; but the king, as a sinful man, is not a just creature, but one who can sin and play the tyrant; and his will, as a private sinful man, is a private will, and may be resisted. So the law saith, "The king, as king, can do no wrong," but the king, as a man, may do a wrong. 146

Resisting the man is fighting for him as king. 146

[Examples of the man/office distinction] How Levi is not to know his father and mother, as they are sinful men, (Deut 33.9) and yet to know and honour them as parents; and how an Israelite is not to pity the wife [148 begins] that lieth in his bosom, when she enticeth him "to go a whoring after strange gods," but is to kill her, (Deut 13.6-8) and yet the husband is to "love the wife, as Christ loved his church," Eph 5.25. 147-8

[This is not about killing the king] But let not the royalist infer that I am from these examples pleading for the killing of kings; for lawful resistance is one thing, and killing of kings is another, — the one defensive and lawful, the other offensive and unlawful. 148

[In fact those around the king are more murderous — because of the counsel they give him — 148]

[What we owe to the king as a man] In that Nero, *in concreto*, to us is no power ordained of God, no minister of God, but a minister of the devil, and Satan's armour-bearer, and therefore we owe not fear, honour, subjection, or tribute to the person of Nero. 148

[Violent resistance?] The question is, if subjection be due to them, when they use their power unlawfully and tyrannically. Whatever David did, though he was a king, he did it not as king; he deflowered not Bathsheba as king, and Bathsheba might with bodily resistance and violence lawfully have resisted king David. 149

[Romans 13 doesn't disprove this] Subjection is due to Nero as an emperor, but not any subjection is due to him in the burning of Rome, and torturing of Christians, except you say that Nero's power abused in these acts of cruelty was, 1. A power from God. 2. An ordinance of God. 3. That in these he was the minister of God for the good of the commonwealth. 149

[We should disobey a command to do evil] The law clearly distinguisheth we are to obey parents in the Lord, and if Nero command idolatry, this is an excessive power. Are we obliged to obey, because the law distinguished not? 149

Authority is not so separable from the person, as that for every act of lawless will the king loseth his royal authority and ceaseth to be king. ... but every act of a king, ... in so far as it is lawless, the person in [p.150 begins] that act repugnant to law loseth all due claim of actual subjection in that act, and in that act power actual is lost, as is clear, Acts 4.19, 5.29. 149-150

If, for conscience, I am to suffer unjustly, when Nero commandeth unjust punishment, because Nero commanding so, remaineth God's minister, why, but when Nero commandeth me to worship an heathen god, I am upon the same ground to obey that unjust will in doing ill; for Nero, in commanding idolatry, remaineth the Lord's minister, his person is sacred in the one commandment of doing ill, as in inflicting ill of punishment. 151

**Question XXX - Whether or no passive obedience be a mean to which we are subjected in conscience, by virtue of a divine commandment; and what a mean resistance is. That flying is resistance**

[I Peter 2] But it is clear, the place is nothing against resistance. 152

[I Peter 2 is not against resistance because ... ] Patient suffering of wicked men, and violent resisting are not incompatible. 152

[For example, ...] David did bear most patiently the wrong that his own son Absalom, and Ahitophel, and the people inflicted on him ... yet did he lawfully resist Absalom and the conspirators, and sent out Joab and a huge army in open battle against them, (2 Sam 18.1-4 etc) and fought against them. 153

[Other examples showing ... ] resistance is in the children of God an innocent act of self-preservation, as is patient suffering, and therefore they may well subsist in one. 153

[I Peter not against resisting] The scope of the place (1 Pet 2) is not to forbid all violent resisting, as is clear he speaketh nothing of violent resisting either one way or other, but only he forbiddeth revengeful resisting of repaying one wrong with another, from the example of Christ, who, "when he was reviled, reviled not again; when he suffered, he threatened not;" therefore, the argument is a fallacy, ... Though therefore the master should attempt to kill an innocent servant, and invade him with a weapon of death suddenly, without all reason or cause, or unavoidably, Dr Ferne, (p. 3, sect. 2, p. 10,) in that case, doth free a subject from guiltiness if he violently resist his prince. 153

[Law of God does not deal with suffering simply as suffering nor with non-resistance] Neither suffering formally as suffering; and so neither can non-resisting passive fall under any moral law of God, except in two conditions: 1. In the point of Christ's passive obedience, he being the eternal God as well as man, and so lord of his own blood and life, by virtue of a special commandment imposed on him by his Father. 153

[Jesus different. He is ...] this one merely extraordinary and rare example of Christ, the like whereof was never in the world [he was to give himself up, to go to place where his enemies were coming, not to appeal for justice, not to appeal to a higher magistrate etc – this is plainly very different]. 153

But hitherto it is clear, by Christ's example, that he only was commanded to suffer. 154

[In addition to suffering patiently when suffering is unavoidable, we must suffer when the only choice is to sin] Now the second case in which suffering falleth under a commandment, is indirectly and comparatively, when it cometh to the election of the witness of Jesus, that it is referred to them, either to deny the truth of Christ and his name, or then to suffer death. The choice is apparently evident; and this choice that persecutors refer us unto, is to us a commandment of God, that we must choose suffering for Christ, and refuse sinning against Christ. But the supposition must stand, that this alternative is unavoidable, that is not in our power to decline either suffering for Christ, or denying of Christ before men; otherwise no man is to expect the reward of a witness of Jesus, who having a lawful possible means of eschewing suffering, doth yet cast himself into suffering needlessly. But I prove that suffering by men of this world falleth not formally and directly under any divine positive law; for the law of nature, ... doth not command suffering, or anything contrary to nature, as nature is sinless: I prove it thus ... 154

[We can't be commanded to suffer as such because we shouldn't do it to ourself and we can't make anyone else do it. It can't be my duty to suffer as such but rather to suffer with patience if suffering comes, and to choose suffering before sin if that is the only choice. 154]

All these places of God's word, that recommendeth suffering to the followers of Christ, do not command formally that we suffer ... if they be considered, they prove only that comparatively we are to choose rather to suffer than to deny Christ before men, (Matt 10.28, 32; Rev 2.13; Matt 10.37, 16.24, 19.29) or then they command not suffering according to the substance of the passion, but according to the manner that we suffer, willingly, cheerfully, and patiently. 155

[Lots of examples of this – p.155]

[In summary on whether we are commanded to suffer ... ] Neither Rom 13 nor 1 Pet 2 nor any other place in God's word, any common divine, natural, national or any municipal law, commandeth formally obedience passive, or subjection passive, or non-resistance under the notion of passive obedience; yea, to me, obedience passive (if we speak of obedience, properly called, as relative essentially to a law) is a chimera, a dream, and *repugnantia in adjecto*; and therefore I utterly deny that resistance passive, or subjection passive, doth formally fall under either commandment of God affirmative or negative; only the unlawful manner of resistance by way

of revenge, or for defence of popery and false religion, and out of impatient toleration of monarchy or any tyranny, is forbidden in God's word. 155

[Summary on passive obedience] Hence I argue here (Rom 13; 1 Pet 2; Tit 3) is nothing else but an exposition of the fifth [p.156 begins] commandment; but in the fifth commandment only active obedience is formally commanded, and the subordination of inferiors to superiors is ordained, and passive obedience is nowhere commanded, but only *modus rei*, the manner of suffering. 155-6

[No absolute power. In fact ... ] yea, to me, every word in the text speaketh limitedness of princes, and crieth down absoluteness. 156

[So passive non-subjection is allowed] If, then, passive subjection be not commanded, non-subjection passive cannot be forbidden, and this text, Rom 13 and 1 Pet 2 cannot a whit help the bad cause of royalists. 156

[Retaliation is not self-defence] Not because the place condemneth resistance for self-defence, but because buffeting again is formally re-offending — not defending: defending is properly a warding off a blow or stroke. If my neighbour come to kill me, and I can by no means save my life by flight, I may defend myself; and all divines say I may rather kill ere I be killed ... but if I kill him, out of malice or hatred, the act of defending, by the unlawful manner of doing, becometh an act of offending and murder; whence the mind of the blood-shedder will vary the nature of the action. 156

[No offensive action allowed] An act which is physically an act of offending my brother, yea even to the taking away of his life, is often morally and legally an act of lawful self-defence: an offending of another, necessitated from the sole invention of self-defence, is no more but an act of innocent self-defence. 156

[Self-defence explained] If David, with his men, had killed any of Saul's men in a set battle, David and his men only intending self-defence, the war on David's part was mere defensive; for physical actions of killing, indifferent of themselves, yet imperated by a principle of natural self-defence, and clothed with this formal [p.157 begins] end of self-defence, or according to the substance of the action, the act is of self-defence. 156-7

Any mean not used for preventing death must be an act of revenge, not of self-defence, for it is physically unsuitable for the intended end of self-defence. 157

[Lighter cases] When the matter is lighter, as in paying tribute, or suffering a buffet of a rough master, though unjustly, we are not to use any act of re-offending. 157

[Put up with smaller things. After all ... ] Christ, no doubt to teach us the like, would rather give of his goods, and pay tribute where it was not due, than that this scandal be in the way of Christ, that Christ was no loyal subject to lawful emperors and kings. 157

[May kill in self-defence] But I grant, to offend or kill is not of the nature of defensive war, but accidental thereunto; and yet killing of cutthroats, sent forth by the illegal commandment of the king, may be intended as a mean, and a lawful mean, of self-defence. 157

Of two ills of punishment, we have a comparative dominion over ourselves, — a man may cast his goods into the sea to redeem his life; so, for to redeem peace, we may suffer buffets, but because death is the greatest ill of punishment, God hath not made it eligible to us when lawful self-defence is at hand. 157

[Self-defence of a kingdom] If it be natural to one man to defend himself against the personal invasion of a prince, then is it natural and warrantable to ten thousand, and to a whole kingdom; and what reason to defraud a kingdom of the benefit of self-defence more than one man? 158

[How can war be self-defence] It is true, wars merely defensive cannot be but they must be offensive; but they are offensive by accident, and intended for mere defence, and they cannot be without wars sinfully offensive. 158

[Is a sword really defensive?] Nature hath appointed innocent and offending violence, against unjust violence, as a means of self-preservation. Goliath's sword is no natural means to hold Saul's hands, for a sword hath no fingers; and if king Saul suddenly, without colour of law or reason, or inevitably, should make personal invasion on David to kill him, Dr Ferne saith he may resist; but resisting is essentially a re-action of violence. 158

Defensive wars are offensive, *ex eventu et effectu*, not *ex causa*, or *ex intentione*. 158-9

Since we are not to yield active obedience to all the commandments of superiors, whether they be good or ill, by virtue of this place, Rom 13 . how is it that we may not deny passive subjection to all the acts of violence

exercised, whether of injustice, whether in these acts of violence wherein the prince *in actu exercito* and formally, punisheth not in God's stead, or in these wherein he punisheth tyrannically, in no formal or actual subordination to God, we owe passive subjection? I desire an answer to these. 159

[Flight itself is resistance] Flying from the tyranny of abused authority, is a plain resisting of rulers in their unlawful oppression and perverting of judgment. [And yet all acknowledge legitimacy of flight]. 159

### **Question XXXI - Whether or no self-defence against any unjust violence offered to the life, be warranted by God's law, and the law of nature and nations**

Self-preservation in all creatures in which is nature, is in the creatures suitable to their nature. 159

If a robber invade me, to take away my life and my purse, I may defend myself by re-action; for reason and grace both may determine the way of self-preservation. 160

[Three forms of resistance] David used all the three in order. He made his defence by words, by the mediation of Jonathan; when that prevailed not, he took himself to flight, as the next; but because he knew flight was not safe every way, and nature taught him self-preservation, and reason and light of grace taught him the means, and the religious order of these means for self-preservation, therefore he addeth a third, "He took Goliath's sword, and gathered six hundred armed men," and after that made use of an host. Now a sword and armour are not horsing and shipping for flight, but contrary to flight; so re-offending is policy's last refuge. 160

[When it does come to minimal defensive force for self-preservation then a person is ... ] not to use re-action, or violent re-offending, in his self-defence against any man, far less against the servants of a king, but in the exigence of the last and most inexorable necessity. 160

[Flight not possible for a whole community so they have to resist – 160-61]

[How things seem to Rutherford] Now the unjust invasion made on Scotland in 1640, for refusing the service-book, or rather the idolatry of the mass, therein intended, was unavoidable; it was impossible for the protestants, their old and sick, their women and sucking children to flee over sea. 161

[It must be an extreme situation] "When there is no actual invasion made by a man seeking our life, we are not to use violent re-offending. 161

[The difference with David's situation] Now the case is far otherwise between the king and the two parliaments of England and Scotland, for the king is not sleeping in his emissaries, for he hath armies in two kingdoms, and now in three kingdoms, by sea and land, night and day, in actual pursuit, not of one David, but of the estates, and a Christian community in England and Scotland, and that for religions, laws, and liberties; for the question is now between papist and protestant, between arbitrary or tyrannical government, and law government, and therefore by both the laws of the politic societies of both kingdoms, and by the law of God and nature, we are to use violent re-offending for self-preservation, and put to this necessity, when armies are in actual pursuit of all the protestant churches of the three kingdoms, to actual killing, rather than we be killed, and suffer laws and religion to be undone. 161

[Self-defence] A woman or a young man may violently oppose a king, if he force the one to adultery and incest, and the other to sodomy. 162

[Minimal defensive use of force against an authority over you in extreme cases for self-preservation is like resisting a self-harming and murderous madman – even if you are his son – 162]

[Or surgical intervention] The cutting off of a contagious member, that by a gangrene, would corrupt the whole body, is well warranted by nature, because the safety of the whole is to be preferred to the safety of a part."162 law of self-preservation. 162

[There is a duty to rescue the ... ] forced damsel. 163

[If an innocent man and a murderer are fighting and a third party comes along and the fight can only be broken up by killing, then it should be the murderer who is killed, not the innocent. By extension, a person may kill in self-defence so long as ... ] so he do it without malice or appetite of revenge. 163

[Self-defence] Chemnit. (*loc. com. de vindic. q. 3*) alloweth private defence. 1. When the violence is sudden. 2. And the violence manifestly inevitable. 3. When the magistrate is absent and cannot help. 4. When moderation

is kept as lawyers require. 1. That it be done incontinent; if it be done after the injury, it is revenge, not defence. 2. Not of desire of revenge. 3. With proportion of armour. If the violent invader invade not with deadly weapons, you must not invade him with deadly weapons. 163

[May take pre-emptive action] "If I see (saith he) the enemy take an arrow out of the quiver, before he bend the bow, it is lawful to prevent him with a blow — *cunctatio est periculosa*." The king's coming with armed men into the House of Commons to demand the five members, is very symbolical, and war was printed on that fact, "he that runneth may read." His coming to Hull with an army, saith not he had no errand there, but to ask what it was in the dock. 165

[Situation in the 1640s] Now to us, papists and prelates under the king's banner, are Philistines, introducing the idolatry of bread-worship and popery, as hateful to God as dagon-worship. 166

### **Question XXXII - Whether or not the lawfulness of defensive wars hath its warrant in God's word, from the example of David, Elisha, the eighty priests who resisted Uzziah etc**

David defended himself against king Saul, 1. By taking Goliath's sword with him. 2. By being captain to six hundred men. 166

The example of Elisha the prophet is considerable, (2 Kings 6.32). 169

[Other e.g.s – Uzziah (can't have leper as king) ... 2 Chron 21.10, that Libnah revolted from under Jehoram ... the city of Abel (2 Sam 20) did well to resist Joab, David's general, for he came to destroy a whole city for a traitor's sake. 171-2]

### **Question XXXIII - Whether or no the place, Rom 13.1, prove that in no case it is lawful to resist the king**

[Royalists make Rom 13.1 apply only to the king but a) plural b) it doesn't say so c) the situation addressed implies that other authorities than the emperor are referred to d) the rest scripture implies others too – pp.172-3]

The inferior magistrates are also immediate vicars [174 begins] and ministers of God as the king, for their throne and judgment is not the king's, but the Lord's (Deut 1.16, 2 Chronn 21.6). 173-4

### **Question XXXIV - Whether royalists by cogent reasons do prove the unlawfulness of defensive wars**

[In evaluating the king's actions we are to consider the king] as a prince, by his royal, that is, his legal will, by which he is *lex animata*, a breathing law. 176

[The king and the law] A royal power is the good gift of God, a lawful and just power. A king acting and speaking as a king, speaketh and acteth law and justice. 177

[To cede the right of self-preservation is parallel to suicide] The people can no more resign power of self-defence, which nature hath given them, than they can be guilty of self-murder. 178

The wife is obliged to bed and board with her husband, but not if she fear he will kill her in the bed. The obedience of positive duties that subjects owe to princes cannot loose them from nature's law of self-preservation. 179

[If put up minimal force, defensive violent resistance then you must have a have reasonable chance – p.180]

[Deut 13 shows that you can love someone and violently resist them (or even more than that!) – p.180]

[Evaluating the situation of the 1630s and 1640s] Royalists desire the like precedent of practice and precept for defensive wars; but, I answer, let them show us a practice where any king of Israel or Judah raised an army of malignants, of Philistines, Sidonians, or Ammonites, against the princes of Israel and Judah, convened in an assembly to take course for bringing home the captived ark of God, and vindicating the laws of the land, and



raised an army contrary to the knowledge of the elders, princes, and judges, to set up Dagon, or tolerate the worship of the Sidonian gods; and yet princes, elders, judges, and the whole people, were obliged all to flee out of God's land. 182

**Question XXXV - Whether or no the sufferings of the martyrs in the primitive church militate against the lawfulness of defensive wars**

**Question XXXVI - Whether the power of war be only in the king**

[Lesser magistrates as well as the king have the power of war] The power of the sword, by God's law, is not proper and peculiar to the king only, but given by God to the inferior judges. 184

[Even if the king does not call war as such, the duty of self-defence stands because ...] the Law of nature will necessitate them either to defend themselves ... else they must be guilty of self-murder. 185

If estates give power to declare war to the king then they must have that power themselves. 185

**Question XXXVII - Whether or no it be lawful that the estates of Scotland help their oppressed brethren, the parliament and protestants in England, against papists and prelates now in arms against them, and killing them, and endeavouring the establishment of popery, though the king of Scotland should inhibit them**

[The duty of helping a needy brother. p.187]

[He doesn't need to ask for help because, for example, rebuking, though unasked is a] duty of love. 187

[Helping the needy. Examples. p.189]

If the communion of saints be any bond, — that England and we have "one Lord, one faith, one baptism, one head and Saviour, Jesus Chris", then are we obliged to help our bleeding sister-church against these same common enemies, papists and prelates... and, besides the union in religion, we sail in one ship together, being in one island, under one king; and now, by the mercy of God, have sworn one covenant, and so must stand or fall together. 189

[Further reasons for coming to England's aid: treaty obligations; love of neighbour; debt of gratitude; get help back when need it in turn. pp.189-90]

[Loyalty] Hell and the devil cannot say that a thought was in any heart against the king's person. He slept in Scotland safe, and at Westminster in his own palace, when the estates of both kingdoms would not so much as take the water-pot from his bedside. 190

**Question XXXVIII - Whether monarchy be the best of governments**

[Limited monarchy is best] Nothing more unwillingly do I write than one word of this question. It is a dark way; circumstances in fallen nature may make things best to be, *hic et nunc*, evil, though to me it is probable, that monarchy in itself, monarchy *de jure*, that is, lawful and limited monarchy is best, even now, in a kingdom, under the fall of sin, if other circumstances be considered. 190

Absolute government in a sinful and peaceable man is a wicked government, and not a power from God, for God never gave a power to sin. 191

[Limit limit limit ... ] because all kings, since the fall of the father, king Adam, are inclined to sin and injustice, and so had need to be guided by a law, even because they are kings, so they remain men. Omnipotency in one that can sin is a cursed power. 191

So cannot that be a good government when the supreme power is in a sinful man, as inclinable to injustice by nature as any man, and more inclinable to injustice by the condition of his place than any ... What is one man

under no restraint, but made a god on earth, and so drunk with the grandeur of a sinning-god, here under the moon and clouds? who may hear good counsel from men of his own choosing, yet is under no restraint of law to follow it, being the supreme power absolute, high, mighty, and an impeccable god on earth. Certainly this man may more easily err, and break out in violent acts of injustice, than a number of rulers, grave, wise, under a law. One being a sinful man, shall sooner sin and turn a Nero (when he may go to hell, and lead thousands to hell with him gratis) than a multitude of sinful men, who have less power to do against law. 191

[Against absolutism] An absolute monarch is, *actu primo*, a sleeping lion, and a tyrant is a waking and a devouring lion, and they differ in accidents only. 191

[The three forms] Every government hath something wherein it is best; monarchy is honourable and glorious-like before men; aristocracy, for counsel, is surest; democracy for liberty, and possibly for riches and gain, is best. Monarchy obtaineth its end with more conveniency, because the ship is easier brought to land when one sitteth at the helm, than when ten move the helm. We more easily fear, love, obey, and serve one than many. He can more easily execute the laws. 192

[Limited monarchy] A limited and mixed monarchy, such as is in Scotland and England, seems to me the best government, when parliaments, with the king, have the good of all the three. This government hath glory, order, unity, from a monarch; from the government of the most and wisest, it hath safety of counsel, stability, strength; from the influence of the commons, it hath liberty, privileges, promptitude of obedience. 192

### **Question XXXIX - Whether or no any prerogative at all above the law be due to the king, or if "jura majestatis" be any such prerogative royal**

[Limit the power of the king] It is the manner of inferior judges, as we see in the sons of Eli and Samuel, to pervert judgment, as well as king Saul did; but the king may more oppress, and his tyranny hath more colour, and is more catholic than the oppression of inferior judges. 195

[The more power the worse it gets 194-7 ]

### **Question XL - Whether or no the people have any power over the king, either by his oath, covenant, or any other way**

[Conditional grants of power ...] Wherever there is a covenant and oath betwixt equals, yea, or superiors and inferiors, the one hath some co-active power over the other. 198

Then the king must come under a civil obligation to perform the covenant; even if equal to the people or superior to them – *de jure* he is obliged 198

[Not every breach justifies annulment of contract/covenant] All these are not to be excused in people, but neither every abuse of power in a king dethroneth a king, nor every abuse in people can make null their power. 199

[The Royalists' views is that ... ] he is not king because he is crowned, but he is crowned because he is king. 200

[Covenant] The man that made the covenant bringeth himself under law to fulfil his own covenant, and so must the king put himself under men's law, by a covenant at his coronation; 200

### **Question XLI - Whether doth the P. Prelate upon good grounds ascribe to us the doctrine of jesuits in these questions of lawful defensive wars**

[The people's power?] Never learned man wrote of policy, till of late, but he held power of government, by the light of nature, must be radically and originally in a community. 206

[The separation of powers] The king, in the executive power of laws, is really a sovereign above the people. 208

[Complaints about the 1630s] We must submit in monarchy (saith he) to some possible and accidental inconveniences. Here be soft words, but is subversion of religion, laws, and liberties of church and state. Introducing of popery, Arminianism, of idolatry, altar-worship, the mass, ... the pardoning of the innocent blood

of hundreds of thousand protestants in Ireland, the killing of many thousand nobles, barons, commons, by the hands of papists in arms against the law of the land, the making of England a field of blood, the obtruding of an idolatrous service-book, with armies of men, by sea and land, to block up the kingdom of Scotland, are all these inconveniences only? 209

[Grants of authority are conditional] All authority given by the people to the king is conditional, that he use it for the safety of the people; if it be used for their destruction, they break no faith to resume it, for they never made faith to give up their power to the king upon such terms, and so they cannot be said to resume what they never gave. 210

[Against absolute power ... ] power also as a tyrant to do evil, and to destroy and waste his people ... is weakness, and no part of the image of the greatness of the King of kings, whom a king representeth. 210

### **Question XLII - Whether all Christian kings are dependent from Christ, and may be called his vicegerents**

[Complaint against Charles I] In Scotland, in our parliament, 1633, he prescribed the surplice, and he commanded the service-book, and the mass-worship. 211

[Punishing the king?] But I hold that the estates of Scotland have power to punish the king, if he labour to subvert religion and laws. 213

### **Question XLIII - Whether the king of Scotland be an absolute prince. having prerogatives above Parliament and laws: the negative is asserted by the laws of Scotland, the king's oath of coronation, the confession of faith, &c**

[Various laws of Scotland, coronation promises, historical precedents to show that king should maintain true religion, is conditional not absolute etc]

[To swear absolute obedience is an unlawful oath] If this absoluteness of prerogative be given to the king, the subjects, swearing obedience, swear that he hath power from themselves to destroy themselves: this is neither a lawful oath, nor though they should swear it, doth it oblige them. 218

[The king may not judge about divine worship but should] “command God to be worshipped according to his word, to punish the superstitions or neglectors of divine worship”. 218-9

[Quotes “Confession” about resistance and the interpretation of Rom 13] “But while king and parliament do acts of tyranny against God’s law, and all good laws of men, they do not the things that appertain to their charge and the execution of their office; therefore, by our Confession, to resist them in tyrannical acts is not to resist the ordinance of God.” 220

[There is no choice but to resist ... ] When the king, by ill counsel, sent armies by sea and land to kill and destroy the whole kingdom who should refuse such a service-book as they could not in conscience receive, except they would disobey God, renounce the Confession of Faith, which the king and they had sworn unto, and prove perfidious apostates to Christ and his church, what could we do, and that the same Confession, considering our bonds to our dear brethren in England, layeth bonds on us to this, as a good work also, not to suffer their innocent blood to be shed, but to defend them, when they, against all law of God, of men, of state, of nations, are destroyed and killed. For my part, I judge it had been a guiltiness of blood upon Scotland, if we had not helped them, and risen in arms to defend ourselves and our innocent brethren against bloody cavaliers. 221

[Inferior judges are ...] formally judges, in so far as they ... act conform to the will of the King of kings. 221

### **Question XLIV - General results of the former doctrine, in some few corollaries, or straying questions, fallen off the roadway, answered briefly**

*Distinction* - The resisters do not separate king and power, but the king himself doth separate his lawful power from his will, if he work and act tyranny out of this principle, will, passion, lust; not out of the royal principle of kingly power. So far we may resist the one, and not the other. 228

[Just because God can intervene and save without means or miraculously does not mean that other means (e.g. resistance) are unlawful] So may I answer by retortion. The three hundred sinned in resisting Midian, and defeating them. Why? Because it should be more honour to God, if they had, by suffering patiently the sword of Midian, glorified God in martyrdom. ... It followeth not. The mean Christ used, is lawful; therefore, all other means that he used not, are unlawful. It is vain logic. 229

[Coronation] ... as the people's act of coronation is distinctive, so is it constitutive: it distinguished Saul from all Israel, and did constitute him in a new relation, that he was changed from no king to be a king. 229

[Dethroning?] Nothing can dethrone a king but such tyranny as is inconsistent with his royal office. Nor durst I infer that kings, now a-days, may be removed from actual government for one single transgression. 232

[The king's relation to the law] The king is under God's law both in commanding and in exacting active obedience ... and as he may not command what he will, but what the King of kings warranteth him to command, so may he not punish as he will, but by warrant also of the Supreme Judge of all the earth; and therefore it is not dishonourable to the majesty of the ruler, that we deny passive subjection to him when he punisheth beside his warrant, more than it is against his majesty and honour that we deny active obedience when he commandeth illegally; else I see not how it is lawful to fly from a tyrannous king, as Elias, Christ, and other of the witnesses of our Lord have done. 232

[May the king act coercively against private property for public good on some occasions?] ... for if these be unlawful, because they are conventions of the leagues, without express act of parliament, then the convention of the leagues to quench a house on fire, and the convention of a country to pursue a wolf entered in the land to destroy women and children, which are warranted by the law of nature, should be lawless, or against acts of parliament. 233

[When should the king's debts be paid by the people?] These debts which the king contracteth as king, *in throno regali*, the people are to pay. For the law of nature and the divine law doth prove, that to every servant and minister wages is due. (Rom 13.5, 6, compared with verse 4, and 1 Cor 9.9-12; 1 Tim 5.18.) 233 ... if the prince was not doing the business of the public, and did make war without advice and consent of the people, then are they not to redeem him. 233