

LEX REX:

THE LAW IS KING

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LEX REX:
THE LAW IS KING

BY SAMUEL RUTHERFORD

With an Introduction by Douglas Wilson

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INTRODUCTION

Samuel Rutherford was a great man of God. Not only so, but he was a man of God who exhibited great breadth of mind. This is simply another way of saying that he was not one who could be easily pigeon-holed.

If your only acquaintance with him came through his famous *Letters of Samuel Rutherford*, you would naturally conclude that he was a devotional writer of great piety, authority, and force. And someone once went through those *Letters* and pulled out a number of devotional gems, publishing them separately as *The Loveliness of Christ*. So if you read only *that*, you would conclude that Rutherford was a devotional writer of great genius.

And then if you picked up this book with that impression fixed in place, you would be startled to discover that you were also dealing with a tough-minded theologian and political theorist of the first rank. This might make you suspicious, and so you start to research some of his other activities, expecting to find out that he was also somehow an Olympic tri-athlete, and a world-class violinist. And a Navy SEAL. You know, *that* kind of person . . .

That is exaggeration. But it is true that Rutherford was a practical and pastoral theologian who could soar to great heights of glorious consolation. Rutherford was the one who said that when he was in the cellar of affliction, he would look for Christ's choicest wines. He also said that "dry wells send us to the fountain," and "if contentment were here, heaven were not heaven," and "there are many heads lying in Christ's bosom, but there is room for yours among the rest."

But Rutherford was also a bare-knuckle brawler who was clearly able to hold his own in the theological bar fight that was the seventeenth century. You are now holding in your hands the evidence of that.

Rutherford was one of the Scottish commissioners who attended the Westminster Assembly (1643-1649), and he was a major contributor to the famous Shorter Catechism. While serving as part of that Westminster Assembly, he also wrote this incendiary book. The title, as you no doubt noticed, is *Lex Rex*, which can be rendered as *The Law of the King*, or *The Law and the King*, or perhaps *The Law Is King*. Either way, the import of the book was that even the king must obey the law, because the king is also under the law. It is therefore not surprising that some who were in positions of authority took a dim view of his thesis.

After the interruption that was Cromwell, when Charles II returned to the throne in the Restoration, this book of Rutherford's was burned by the public hangman, indicating some marked level of official disapproval. Rutherford himself was summoned to appear before Parliament on the most serious charge of treason, but Rutherford was already on his deathbed when the summons came to him. This gave him the opportunity to deliver one of the best comebacks ever, at least if it was

directed at political authorities who were intent on executing you.

I have got a summons already before a superior judge and judicatory, and I behoove to answer my first summons, and ere your day come I will be where few kings and great folks come.

In the early 1980s, Francis Schaeffer wrote a book entitled *The Christian Manifesto*, and one of the points he made regarded the necessity of modern Christians coming to learn from the great Samuel Rutherford.

Rutherford presents several arguments to establish the right and duty of resistance to unlawful government. First, since tyranny is satanic, not to resist it is to resist God—to resist tyranny is to honor God. Second, since the ruler is granted power conditionally, it follows that the people have the power to withdraw their sanction if the proper conditions are not fulfilled. The civil magistrate is a ‘fiduciary figure’—that is, he holds his authority in trust for the people. Violation of the trust gives the people a legitimate base for resistance¹

For Schaeffer, this was no academic question. What Rutherford was confronting and what we are dealing with today are the same. It is “exactly what we are facing today.” And when we look at the issues that Schaeffer was considering the early eighties, and then consider *our* issues, we are brought to the point where we must say the root issues are exactly the same.

1. *The Complete Works of Francis Schaeffer, Vol. 5, A Christian Manifesto*, (Wheaton: Crossway, 1981), 474.

As preparations to bring this book back into print were being made, our nation was in a great deal of turmoil because of our presidential politics, because of impeachment, because of the coronavirus scare, because of the Black Lives Matter riots, and because of the feckless responses of many of our civil magistrates to all of this.

One of the most distressing things about all of it, however, was how much the political turmoil and overreach by authorities revealed about the ignorance of American Christians concerning their own political theology. Protestant Christians do have a long heritage when it comes to church/state relations (and this book is an essential part of that heritage), but we have been keeping this piece of legacy furniture in the attic for so long that it appears that most of us have forgotten completely about it.

For example, when governors and mayors ordered everyone to start wearing masks, numerous Christians simply assumed that the powers of an American governor were identical to those of an ancient Roman proconsul or worse, a Persian satrap. If someone who is in charge gives you what *looks* like a lawful order, then doesn't Romans 13 require us to obey that order, and with no backchat?

The answer is *no*. Not only is the answer *no*, but it is a thoroughly biblical *no*. It is an obedient *no*, not a disobedient *no*. But in order to be instructed in the reasons for such a response, you have to be prepared to work through books like this one.

Even a cursory acquaintance with Scripture should tell us that blind obedience must not be the whole story. It is true that the apostle Peter told us to submit ourselves to every ordinance of man for the Lord's sake, whether to the king or his governors (1 Pet. 2:13-14). But this was the same man

who escaped from jail with the help of an angel (Acts 12:7ff), resulting in the execution of the guards, and who disappeared from the book of Acts as a wanted man. According to church history, he was finally executed by Rome. It is true that the apostle Paul told us that God established our civic authorities (Rom. 13:1-7), and that trying to overthrow them was rebellion against God. But this was the same man who evaded being arrested by King Aretas (2 Cor. 11:32-33), and who also was executed by Rome as a threat to their established order.

There was not a man in Saul's kingdom who had a higher view of what it meant to be the Lord's anointed than David. When Saul came into the cave where David and his men were hiding, David was urged to take Saul's life, which he resolutely refused to do. But he did cut off a corner of Saul's cloak, and his conscience even struck him for having done *that* much. No one honored Saul more than David did (1 Sam. 24:5). And yet it has to be admitted that David spent quite a bit of time running around the countryside with an armed band (1 Sam. 23:26), resolutely not complying with Saul's ardent wishes. Multiple examples of this sort are to be found in the scriptural narrative.

But there is yet another layer to all of this. When Rutherford was presenting his arguments, they were straight from the Bible and in his era they collided with a theology that was ostensibly Christian, but alien to the Bible—that theology being called the “divine right of kings.” We must be careful here because Rutherford certainly believed that kings were established by God, and that they were accountable to Him. Rutherford's adversaries also believed the same, but they believed that the king was accountable to God *and to no other*. Rutherford believed that the accountability of the king was not just directly to God, but was also mediated by God through other

instruments, and the will of the people had to be included among those instruments.

And this brings us to the additional “layer” that I mentioned above. Although the contest was hot during the course of Rutherford’s life, it has to be acknowledged that Rutherford’s view *prevailed* in the development of the Western democracies. His teaching was later secularized (and thereby was corrupted), but the foundation of his political theory was resolutely biblical. As Douglas Kelly and others have capably demonstrated, the political thought of Calvin (and Knox, Rutherford, et al.) was instrumental in the formation of our political heritage.¹

Rutherford held that the people were the “fountain-power” of political authority, and that they were the ones who delegated this authority to the magistrates. He also demonstrated that when such authority was abused, the people had the authority to rescind that delegation. This kind of thinking was evident in Book IV of Calvin’s *Institutes*, in *Vindiciae Contra Tyrannos*, which was the work of “Junius Brutus” (a 16th century French Huguenot), John Knox and the Scottish Presbyterians, Oliver Cromwell and company, the English Puritans, and, of course, Samuel Rutherford.

This thinking shows up in phrases that we are very familiar with, phrases like “We the people . . .” Where did that come from? Among other places, it came from Samuel Rutherford.

Consider what is contained in the Idaho State Constitution:

Political power inherent in the people. *All political power is inherent in the people.* Government is instituted for their equal protection and benefit, and *they have the right*

1. Douglas Kelly, *The Emergence of Liberty in the Modern World* (Phillipsburg, NJ: Presbyterian & Reformed, 1992).

to alter, reform or abolish the same whenever they may deem it necessary; and no special privileges or immunities shall ever be granted that may not be altered, revoked, or repealed by the legislature" (Article 1, Section 2, emphasis mine).

Thanks to Rutherford, and a long line of faithful Christians with him who made this same point time and again, this conviction is an essential part of our political legacy. More than that, it is embedded in our foundational *law*.

And this means that when modern Christians exhort us to do "*whatever* the governor says," and they do this in the name of obeying Romans 13, the irony is that they are violating Romans 13 as they do this. The duty of the people to resist unlawful encroachments of those who hold office is a duty that every citizen is a part of. To say that the people do *not* have the right to do this is to kick against our established constitutional authorities.

A lot of what is going on in the name of government today is actually nothing more than well-organized disobedience. This state of constitutional disarray did not happen overnight—many decades, many lies, many controversies, and many court decisions were involved in it. But one of the central reasons why this state of affairs has developed, and has gotten as bad as it has, has been the neglect of political theology by Christians.

Fortunately, we have older brothers who can encourage and teach us across the centuries. One blessing that we have been given in this generation has been the blessing of the digital revolution when it comes to publishing—and this has been a great blessing that has enabled us to reach back into the past in order to bring older encouragements back to life. If you are

holding this book in hard copy, then that means that you have other resources available as well. *Vindiciae Contra Tyrannos*, mentioned earlier, has been republished by Canon Press as part of this same series, and *Calvin's Institutes, Book IV*, is also available.

It is hard to imagine anything more timely.

Douglas Wilson
Christ Church

THE AUTHOR'S PREFACE

Who doubts, Christian Reader, that innocence must be under the courtesy and mercy of malice, and that it is a real martyrdom to be brought under the lawless inquisition of the bloody tongue. Christ, the prophets, and apostles of our Lord went to heaven marked as traitors, seditious men, and such as turned the world upside down: accusations of treason to Caesar were an ingredient in Christ's cup, and therefore the author is the more willing to drink of that cup that touched his lip, who is our glorious Forerunner. What! If conscience toward God and credit with men cannot both go to heaven with the saints, the author is satisfied with the former companion and is willing to dismiss the other. Truth to Christ cannot be treason to Caesar, and for his choice he judges truth to have a nearer relation to Christ Jesus than the transcendent and boundless power of a mortal prince.

The author considered that popery and defection had made a large step in Britain, and that arbitrary government had over-swelled all banks of law, that it was now at the highest float, and that this sea approaching the farthest border of fancied absoluteness was at the point of ebbing, and the naked truth is that prelates, a wild and pushing cattle to the lambs

and flock of Christ, had made a hideous noise, the wheels of their chariot did run an equal pace with the blood-thirsty mind of the daughter of Babel. Prelacy, the daughter planted in her mother's blood, must verify that word. As is the mother, so is the daughter. Why, do not the prelates now suffer? True, but their sufferings are not of blood, or kindred, to the calamities of these of whom Lactantius says "*O quam honesta voluntate miseri errant!*"¹ (*De Justitia*, 5.19) The causes of their suffering are hope of gain and glory, steering their helm to a shore they much desire, even to a church of gold, of purple, yet really of clay and earth; the lie is more active upon the spirits of men, not because of its own wickedness, but because men are more passive in receiving the impressions of error than truth; and opinions lying in the world's fat womb, or of a conquering nature; whatever notions side with the world, to prelates and men of their make are very efficacious.

There is another cause of the sickness of our time, God plagued heresy to beget Atheism and security, as atheism and security had begotten heresy; even as clouds through reciprocation of causes engender rain, rain begot vapors, vapors clouds, and clouds rain, so do sins overspread our sad times in a circular generation.

And now judgment presses the kingdoms, and of all the heaviest judgments the sword, and of swords the civil sword, threatens devastation, yet not, I hope, like the Roman civil sword, of which it was said,

*Bella geri placuit nullos habitura triumphos.*²

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

That which moved the author was not (as my excommunicate adversary like a Thraso says) the escapes of some pens,

1. All Latin and Greek translations which we have added in brackets.

2. Lucan, *The Civil War* 1.12.

which demanded that he write, for many before me have learnedly trodden in this path, but so that I might add a new testimony to the times.

I have not time to examine the Popish Prelate's³ preface: I only give a taste of his gall in this preface, and of a virulent piece, of his *agnosco styllum et genium Thrasonis*,⁴ in which he labors to prove how inconsistent presbyterian government is with monarchy, or any other government.

1. He denies that the crown and scepter is under any co-active power of pope or presbytery, or censurable, or dethronable; to which we say, 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 excepts none (Mat. 16:19; 18:15-16; 2 Cor. 10:6; Jer. 1:9) if the king's sins may be remitted in a ministerial way (as Job 20:23-24) as prelates and their priests absolve kings; we think they may be bound by the hand that loosed; presbyteries never dethroned kings, never usurped that power. Your father, Popish Prelate, has dethroned many kings; I mean the Pope, whose power by your own confession differs from yours by divine right only in extent (section 5).

2. When sacred hierarchy, the order instituted by Christ, is overthrown, what is the condition of sovereignty? Ans. Surer than before, when prelates deposed kings. 2. I fear Christ shall never own this order.

3. The miter cannot suffer, and the diadem be secured. Ans. Have kings no pillars to their thrones but antichristian

3. Archbishop John Maxwell of Tuam wrote *Sacro-Sancta Regum Majestas* in defense of royal absolutism.

4. Thraso was the God of over-boldness or insolence.

prelates? Prelates have trampled diadem and scepter under their feet, as histories teach us.

4. Do they not (puritans) magisterially determine that kings are not of God's creation by authoritative commission, but only by permission, extorted by importunity, and way given, that they may be a scourge to a sinful people? Ans. Any unclean spirit from hell could not speak a blacker lie. We hold that the king by office is the church's nurse father, a sacred ordinance, the deputed power of God, but by the Prelate's way all inferior judges and God's deputies on earth, who are also our fathers in the fifth commandment style are to be obeyed by no divine law; the king, misled by popish prelates, shall forbid to obey them, who is in downright truth, a mortal civil pope, may loose and liberate subjects from the tie of a divine law.

5. His inveighing against ruling elders, and the rooting out of antichristian prelacy without any word of Scripture on the contrary I pass as the extravagancy of a malcontent, because he is deservedly excommunicated for perjury, popery, Socinianism, tyranny over men's conscience, and invading places of civil dignity, and deserting his calling, and the camp of Christ, &c.

6. None were of old anointed but kings, priests, and prophets; who then is more obliged to maintain the Lord's anointed than priests and prophets? The church has never more beauty and plenty under any government than monarchy, which is most countenanced by God, and magnified by Scripture. Ans. Pastors are to maintain the rights of people and a true church no less than the right of kings; but prelates, the court parasites, and creatures of the king that are born for the glory of their king can do no less than profess this in words, yet it is true that Tacitus writes of such *Libentius cum fortuna principis, quam cum principe loquuntur*, and it is true that the church has had plenty under kings, not so much because they

were kings, as because they were godly and zealous, except the Popish Prelate says that the oppressing kings of Israel and Judah, and the bloody horns that made war with the lamb, are not kings. In the rest of the epistle he extols the Marquis of Ormond with base flattery, from his loyalty to the king and his more than admirable prudence in the treaty of cessation with the rebels; a woe is due to this false prophet, who calls darkness light, for the former was abominable and perfidious apostasy from the Lord's cause and people of God, whom he once defended, and the cessation was a selling of the blood of many hundred thousand Protestants, men, women, and sucking children.

This cursed Prelate has written of late a treatise against the presbyterian government of Scotland, in which there is a bundle of lies, hellish calumnies, and gross errors.

1. The first lie is that we have lay elders, but they are such as rule but labor not in the word and doctrine (1 Tim. 5:7).

2. The second lie is that deacons who only attend tables are joint rulers with pastors.

3. That we never, or rarely, use the lesser excommunication, that is, debarring from the Lord's Supper.

4. That any church judicature in Scotland exacts pecuniary mulcts, and threatens excommunication to the non-payers, and refuses to accept the repentance of any who are not able to pay: the civil magistrate only fines for drunkenness, and adultery, blaspheming of God, which are frequent sins in prelates.

5. A calumny it is to say that ruling elders are of equal authority to preach the word as pastors.

6. That laymen are members of presbyteries or general assemblies. Buchanan and Mr. Melvin were doctors of divinity; and could have taught such an ass as John Maxwell.

7. That expectants are intruders upon the sacred function, because, as sons of the prophets, they exercise their gifts for trial in preaching.

8. That the presbytery of Edinburgh has a superintending power, because they communicate the affairs of the church and write to the churches what they hear prelates and hell devise against Christ and his church.

9. That the king must submit his scepter to the presbytery; the king's scepter is his royal office, which is not subject to any judicature, no more than any lawful ordinance of Christ; but if the king as a man blaspheme God, murder the innocent, advance belly-gods (such as our prelates for the most part were) above the Lord's inheritance, the ministers of Christ are to say, "The king troubles Israel, and they have the keys to open and shut heaven to, and upon the king, if he can offend."

10. It is true that king James said a Scottish presbytery and a monarchy agree as well as God and the devil, but king James meant of a wicked king; else he spoke as a man.

11. That the presbytery out of pride refused to answer king James's honorable messengers is a lie; they could not in business of high concernment return a present answer to a prince, seeking still to abolish presbyteries.

12. It is a lie that all sins, even all civil business, come under the cognizance of the church, for only sins that are publicly scandalous fall under their power (Matt. 18:15-17, &c.; 2 Thess. 3:11; 1 Tim. 5:20). It is a calumny that they search out secret crimes or that they ever disgraced the innocent, or divided families; where there be flagrant scandals and pregnant suspicions of scandalous crimes, they search out these, as the incest of Spotswood, Popish Prelate of St Andrews, with his own daughter; the adulteries of Whiteford, Popish Prelate of Brichen, whose bastard came weeping to the assembly of

Glasgow in the arms of the prostitute: these they searched out, but not with the damnable oath, *ex officio* [in their office] that the high commission put upon innocents, to cause them accuse themselves against the law of nature.

13. The presbytery hinder not lawful merchandise; scandalous exhortation and unjust suits of law they may forbid; and so does the Scripture, as scandalous to Christians, 2 Cor. 6.

14. They repeal no civil laws; they preach against unjust and grievous laws, as, Isaiah does (10:1), and censure the violation of God's holy day, which prelates profaned.

15. We know no parochial popes, we turn out no holy ministers, but only dumb dogs, non-residents, scandalous, wretched, and apostate prelates.

16. Our moderator has no dominion, the Popish Prelate absolves him, while he says, "All is done in our church by common consent."

17. It is true, we have no popish consecration, such as Popish Prelate contends for in the mass, but we have such as Christ and his apostles used, in consecrating the elements.

18. If any sell the patrimony of the church, the presbytery censures him; if any take buds of malt, meal, beef, it is no law with us, no more than the bishop's five hundred marks or a year's stipend that the entrant gave to the Lord Bishop for a church. And whoever took buds in these days (as king James by the earl of Dunbar did buy episcopacy at a pretended assembly by foul budding) they were either men for the episcopal way, or perfidiously against their oath became bishops, all personal faults of this kind imputed to presbyteries agree to them under the reduplication of episcopal men.

19. The leading men that covered the sins of the dying man, and so lost his soul, were episcopal men, and though some men were presbyterians, the faults of men cannot prejudice the

truth of God, but the prelates always cry out against the rigor of presbyteries in censuring scandals; because they themselves do ill, they hate the light; now here the Prelate condemns them of remissness in discipline.

20. Satan, a liar from the beginning, says, The presbytery was a seminary and nursery of fiends, contentions, and bloods, because they excommunicated murderers against king James' will; which is all one to say, prophesying is a nurse of bloods, because the prophets cried out against king Ahab, and the murderers of innocent Naboth: the men of God must be either on the one side or the other, or then preach against reciprocation of injuries.

21. It is false that presbyteries usurp both swords because they censure sins which the civil magistrate should censure and punish. Elijah might be said then to mix himself with the civil business of the kingdom because he prophesied against idolaters' killing of the Lord's prophets, a crime which the civil magistrate was to punish. But the truth is the assembly of Glasgow, 1637, condemned the prelates, because they being pastors would also be lords of parliament, of session, of secret council, of exchequer, judges, barons, and in their lawless high commission would fine, imprison, and use the sword.

22. It is his ignorance that he says a provincial synod is an associate body chosen out of all judicial presbyteries, for all pastors and doctors without delegation by virtue of their place and office repair to the provincial synods and without any choice at all consult and voice there.

23. It is a lie that some leading men rule all here; indeed, episcopal men made factions to rent the synods, and though men abuse their power to factions, this cannot prove that presbyteries are inconsistent with monarchy; for then the Prelate,

the monarch of his diocesan rout, should be anti-monarchical in a higher manner, for he rules all at his will.

24. The prime men, such as Mr. R. Bruce, the faithful servant of Christ, were honored and attended by all, because of their suffering, zeal, holiness, their fruitful ministry in gaining many thousand souls to Christ. So, though king James cast him off, and did swear by God's name he intended to be king (the Prelate makes blasphemy a virtue in the king) yet king James swore he could not find an honest minister in Scotland to be a bishop, and therefore he was required to promote false knaves; but he said sometimes, and wrote it under his hand that Mr. R. Bruce was worthy of the half of his kingdom; but will this prove presbyteries inconsistent with monarchies? I should rather think that knave bishops by king James' judgment were inconsistent with monarchies.

25. His lies about Mr. R. Bruce, excerpted out of the lying manuscripts of apostate Spotswood, in that he would not but preach against the king's recalling from exile some bloody popish lords to undo all, are nothing comparable to the incests, adulteries, blasphemies, perjuries, Sabbath-breaches, drunkenness, profanity, &c., committed by prelates before the sun.

26. Our General Assembly is no other than Christ's court (Acts 15). made up of pastors, doctors, and brethren, or elders.

27. They ought to have no negative vote to impede the conclusions of Christ in his servants.

28. It is a lie that the king has no power to appoint time and place for the General Assembly, but his power is not privative to destroy the free courts of Christ, but accumulative to aid and assist them.

29. 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. They may not force the conscience of the poorest beggar, nor is any Assembly infallible, nor can it lay bounds upon the souls of judges, which they are to obey with blind obedience; their power is ministerial, subordinate to Christ's law; and what civil laws parliaments make against God's word, they may authoritatively declare them to be unlawful, as though the emperor (Acts 15). had commanded fornication and eating of blood. Might not the Assembly forbid these in the synod? I conceive the prelates, if they had power, would repeal the act of parliament made, anno 1641, in Scotland, by his majesty personally present, and the three estates concerning the annulling of these acts of parliament and laws which established bishops in Scotland; therefore bishops set themselves as independent monarchs above kings and laws, and what they damn in presbyteries and assemblies that they practice themselves.

30. Commissioners from burghs, and two from Edinburgh, because of the largeness of that church, not for cathedral supereminence, sit in assemblies, not as sent from burghs, but as sent and authorized by the church session of the burgh, and so they sit there in a church capacity.

31. We desire doctors both in academies and in parishes, and our book of discipline holds forth such.

32. 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 belongs to all, even to anyone private person according to his place.

33. 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 tie my conscience conditionally, as long as the king consents, but absolutely, as all duties of the law of nature do (Jer. 22:3; Prov. 24:11; Isa. 18:6; 1:17).

34. The Popish Prelate condemns our reformation because it was done against the will of our popish queen. This shows what estimation he has of popery, and how he abhors protestant religion.

35. They deposed the queen for her tyranny, but crowned her son; all this is vindicated in the following treatise.

36. The killing of the monstrous and prodigious wicked cardinal in the Castle of St. Andrews and the violence done to the prelates who, against all law of God and man, obtruded a mass service upon their own private motion in Edinburgh anno 1637, can determine nothing against presbyterian government except our doctrine commend these acts as lawful.

37. What was preached by the servant of Christ, whom he calls the Scottish Pope,¹ is printed, and the Popish Prelate dared not, could not cite anything from it as popish or unsound; he knows that the man whom he so slanders knocked down the Pope and the prelates.

38. The making away the fat abbacies and bishoprics is a bloody heresy to the earthly-minded Prelate; the Confession of Faith commended by all the protestant churches as a strong bar against popery, and the book of discipline, in which the servants of God labored twenty years with fasting and praying and frequent advice and counsel from the whole reformed

1. Alexander Henderson, moderator of the General Assembly.

churches, are to the Popish Prelate a negative faith and devout imaginations; it is a lie that episcopacy by both sides was ever agreed on by law in Scotland.

39. And it was a heresy that Mr. Melvin taught, that presbyter and bishop are one function in Scripture, and that abbots and priors were not in God's books, *dic ubi legis* [speak where you read]; and is this a proof of inconsistency of presbyteries with a monarchy?

40. It is a heresy to the Popish Prelate that the church appoint a fast, when king James appointed an unseasonable feast, when God's wrath was upon the land, contrary to God's word (Isa. 22:12-14). And what! Will this prove presbyteries to be inconsistent with monarchies?

41. This assembly is to judge what doctrine is treasonable. What then? Surely the secret council and king in a constitute church is not synodically to determine what is true or false doctrine, more than the Roman emperor could make the church canon (Acts 15).

42. Mr. Gibson and Mr. Black preached against king James' maintaining the tyranny of bishops, his sympathizing with papists, and other notorious sins, and were absolved in a general Assembly; shall this make presbyteries inconsistent with monarchy? Nay, but it proves only that they are inconsistent with the wickedness of some monarchies, and that prelates have been like the four hundred false prophets that flattered king Ahab, and those men that preached against the sins of the king and court, by prelates in both kingdoms have been imprisoned, banished, their noses ripped, their cheeks burnt, their ears cut.

43. The godly men that kept the Assembly of Aberdeen, anno 1603, did stand for Christ's Prerogative, when king James took away all General Assemblies, as the event proved;

and the king may with as good warrant inhibit all Assemblies for word and sacrament, as much as for church discipline.

44. They excommunicate not for light faults and trifles, as the liar says: our discipline says the contrary.

45. This assembly never took on them to choose the king's counsellors, but those who were in authority took king James, when he was a child, out of the company of a corrupt and seducing papist Esme Duke of Lennox, whom the Popish Prelate names noble, worthy, of eminent endowments.

46. It is true Glasgow Assembly, 1637, voted down the high commission because it was not consented unto by the church, and yet was a church judicature, which took upon them to judge of the doctrine of ministers, and deprive them, and did encroach upon the liberties of the established lawful church judicatures.

47. This Assembly might well forbid Mr. John Graham, minister, to make use of an unjust decree, it being scandalous in a minister to oppress.

48. Though nobles, barons, and burgesses that profess the truth are elders, and thus members of the General Assembly, this is not to make the church the house and the commonwealth the hanging, for the constituent members, we are content to be examined by the pattern of synods (Acts 15:22-23). Is this inconsistent with monarchy?

49. The commissioners of the General Assembly are, 1. A mere occasional judicature. 2. Appointed by and subordinate to the General Assembly. 3. They have the same warrant of God's word that messengers of the synod (Acts. 15:22-27) have.

50. The historical calumny of the 17th day of December is known to all: 1. That the ministers had any purpose to dethrone king James, and that they wrote to John L. Marquis of Hamilton, to be king, because king James had made

defection from the true religion: Satan devised, Spotswood and this Popish Prelate vented this; I hope the true history of this is known to all. The holiest pastors and professors in the kingdom asserted this government, suffered for it, contended with authority only for sin, never for the power and office. These on the contrary side were men of another stamp, who minded earthly things, whose God was the world. 2. All the forged inconsistency between presbyteries and monarchies is an opposition with absolute monarchy and concluded with a like strength against parliaments, and all synods of either side, against the law and gospel preached, to which kings and kingdoms are subordinate. Lord establish peace and truth.

QUESTION 44.

GENERAL RESULTS OF THE FORMER DOCTRINE, IN SOME FEW COROLLARIES, IN TWENTY-TWO QUESTIONS.

Monarchy compared with other forms. How royalty is an issue of nature, and how magistrates as magistrates are natural. How absoluteness is not a ray of God's majesty, and resistance is not unlawful, because Christ and His apostles did not use it in some cases. Coronation is no ceremony. Men may limit the power that they gave not. The commonwealth is not a pupil or minor properly. Subjects are not more obnoxious to a king than clients, vassals, or children to their superiors. Whether subjection passive is natural. Whether king Uzziah was dethroned. Idiots and children are not complete kings. Children are kings in destination only. Denial of passive subjection in things is unlawful, not dishonorable 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 convene without the king. How, and in what way subjects are to pay the king's debts. Subsidies are 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.

Quest. 1. Whether all governments be but broken governments and deviations from monarchy.

Ans. 1. It is denied: there is no less some of God's authority in government by many, or some of the choicest of the people, than in monarchy; nor can we judge any ordinance of man unlawful, for we are to be subject to all for the Lord's sake (1 Pet. 2:13; Tit. 3:1; 1 Tim. 2:1-3). 2. Though monarchy should seem the rule of all other governments, in regard of resemblance of the Supreme Monarch of all, yet it is not the moral rule from which, if other governments shall err, they are to be judged sinful deviations.

Quest. 2. Whether royalty is an immediate issue and spring of nature.

Ans. No; for a man, fallen in sin, knowing naturally he has need of a law and a government, could have, by reason, devised governors, one or more; and the supervenient institution of God, coming upon this ordinance, does more fully assure us, that God, for man's good, has appointed governors; but, if we consult with nature, many judges and governors, to fallen nature, seem nearer of blood to nature than one only; for two, because of man's weakness, are better than one. Now, nature seems to me not to teach that only one sinful man should be the sole and only ruler of a whole kingdom; God, in His word, ever joined with the supreme ruler many rulers, who, as touching the essence of a judge (which is, to rule for God) were all equally judges: some reserved acts, or a longer cubit of power in regard of extent, being due to the king.

Quest. 3. Whether magistrates, as magistrates, be natural.

Ans. Nature is considered as whole and sinless, or as fallen and broken. In the former consideration, that man should stand in need of some one to compel him with the sword to do his duty, and not oppress, was no more natural to man than

to stand in need of lictors and hangmen, or physicians for the body, which in this state was not in a capacity of sickness or death; and so government by parents and husbands was only natural in the latter consideration. Magistrates, as magistrates, are two ways considered, 1. According to the knowledge of such an ordinance; 2. According to the actual erection of the practice of the office of magistrates. In the former notion, I humbly conceive that by nature's light, man now fallen and broken, even under all the fractions of the powers and faculties of the soul, does know that promises of reward, fear of punishment, and the co-active power of the sword, as Plato said, are natural means to move us, and wings to promote obedience and to do our duty; and that government by magistrates is natural. But, in the second relation, it is hard to determine that kings, rather than other governors, are more natural.

Quest. 4. Whether nature has determined that there should be one supreme ruler, a king, or many rulers, in a free community.

Ans. It is denied.

Quest. 5. Whether every free commonwealth has not in it a supremacy of majesty, which it may formally place in one or many.

Ans. It is affirmed.

Quest. 6. Whether absolute and unlimited power of royalty be a ray and beam of divine majesty immediately derived from God?

Ans. Not at all. Such a creature is not in the world of God's creation. Royalists and flatterers of kings are parents to this prodigious birth. There is no shadow of power to do ill in God. An absolute power is essentially a power to do without or above law, and a power to do ill, to destroy; and so it cannot come from God as a moral power by institution, though

it come from God by a flux of permissive providence; but so things unlawful and sinful come from God.

Quest. 7. Whether the king may in his actions intend his own prerogative and absoluteness.

Ans. He can neither intend it as his nearest end, nor as his remote end. Not the former, for if he fight and destroy his people for a prerogative, he destroys his people that he may have a power to destroy them, which must be mere tyranny, nor can it be his remote end; for, granting that his supposed absolute prerogative were lawful he is to refer all lawful power and all his actions to a more noble end, namely, to the safety and good of the people.

Quest. 8. Do not they that resist the parliament's power, resist the parliament; and they that resist the king's power, resist the king; God has joined king and power: who dare separate them?

Ans. 1. If the parliament abuse their power, we may resist their abused power, and not their power parliamentary. Mr. Bridges does well distinguish (in his Annotations on the "Loyal Convert") between the king's power, and the king's will. 2. The resisters do not separate king and power, but the king himself does separate his lawful power from his will, if he would 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.

Quest. 9. Why, if God might work a miracle in the three children's resistance active, why does he evidence omnipotence in the passive obedience of these witnesses? The kingdom of Judah was Christ's birth-right, as man and David's son. Why did he not, by legions of men and angels, rather vindicate his own flesh and blood, than triumph by non-resistance, and the omnipotence of glory to shine in his mere suffering?

Ans. Who are you that dispute with God? He that kills with the jaw-bone of an ass, thousands, and he that destroyed the numberless Midianites by only three hundred, should no more put the three children to an unlawful act in the one, if they had by three men killed Nebuchadnezzar and all his subjects, than in the other. But nothing is said against us in a sophism a *non causa pro causa*; unless it be proved, God would neither deliver his three children, nor Christ from death, and the Jews from bondage, by miraculous resistance, because resistance is unlawful. And if patient suffering is lawful, therefore, is resistance unlawful? It is a poor consequent, and a begging of the question: both must be lawful to us; and so we hold, of ten lawful means, fit to accomplish God's blessed end, He may choose one and let go nine. Shall any infer, therefore, these other nine means are unlawful, because God chose a means different from those nine, and refused them? So may I answer by retortion. The three hundred sinned in resisting Midian, and defeating them. Why? Because it should be more honor to God, if they had, by suffering patiently the sword of Midian, glorified God in martyrdom. So Christ and the apostles, who could have wrought miracles, might have wrought reformation by the sword, and destroyed kings and emperors, the opposers of the Lamb; and they did reform by suffering; therefore, the sword is unlawful in reformation. It follows not. The means Christ used, is lawful; therefore, all other means that he used not, are unlawful. It is vain logic.

Quest. 10. Whether the coronation of a king is any other thing but a ceremony.

Ans. In the coronation there is, and may be, the ceremony of a shout and an acclamation, and the placing of a scepter in his right hand who is made king, and the like; but the coronation, *in concreto*, according to the substance of the act, is no

ceremony, nor any accidental ingredient in the constitution of a king. 1. Because Israel should have performed a mere ceremonial action on Saul when they made him king, which we cannot say; for 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. 2. The people cannot, by a ceremony, make a king; they must really put some honor on him, that was not put on him before. Now this ceremony, which royalists do fancy coronation to be, is only symbolic and declarative, not really creative. It places nothing in the king.

Quest. 11. Whether subjects may limit the power that they gave not to the king, it being the immediate result (without intervening of law or any act of man) issuing from God only.

Ans. 1. Though we should allow (which in reason we cannot grant) that royal power were a result of the immediate bounty of God, without any act of man, yet it may be limited by men that it over-swell not its banks. Though God immediately make Peter an apostle, without any act of men, yet Paul, by a sharp rebuke (Gal. 2) curbs and limits his power, that he abuse it not to Judaizing. Royalists deny not, but they teach, that the eighty priests that restrained Uzziah's power "from burning incense to the Lord," gave no royal power to Uzziah. Do not subjects, by flight, lay restraint upon a king's power, that he kill not the subjects without cause? Yet they teach that subjects gave no power to the king. Certainly this is a proof of the immediate power of the King of kings that none can fly from his pursuing hand (Ps. 139:1-3; Amos 9:1-4) whereas men may fly from earthly kings. Nebuchadnezzar, as royalists teach, might justly conquer some kingdoms, for conquest is a just title to the crown, say they. Now, the conqueror then justly not only limits the royal power of the conquered,

king, but wholly removes his royalty and unking him; yet, we know, the conqueror gave no royal power to the conquered king. Joshua and David took away royal power which they never gave, and therefore this is no good reason, the people gave not to the king royal power; therefore they could not lawfully limit it and take it away. 2. We cannot admit that God gives royal power immediately, without the intervention of any act of law; for it is an act of law, that the people chooses such a king, not such a king (Deut. 17); that the people, by a legal covenant, make Saul, David, and Joash, kings, and that God exercises any political action of making a king over such subjects, upon such a condition is absurd and inconceivable; for how can God make Saul and David kings of Israel upon this political and legal condition that they rule in justice and judgment, but there must intervene a political action? And so they are not made kings immediately. If God feed Moses by bread and manna, the Lord's act of feeding is mediate, by the mediation of second causes; if he feed Moses forty days without eating anything, the act of feeding is immediate; if God made David king, as he made him a prophet, I should think God immediately made him king; for God asked consent of no man, of no people, no, not of David himself, before he infused in him the spirit of prophecy; but he made him formally king, by the political and legal covenant between him and the people. I shall not think that a covenant and oath of God is a ceremony, especially a law-covenant, or a political paction between David and the people, the contents of which were fitly *de materia gravi et onerosa*, concerning a great part of obedience to the fifth commandment of God's moral law, the duties moral concerning religion, and mercy, and justice, to be performed reciprocally between king and people. Oaths, I hope, are more than ceremonies.

Quest. 12. Whether or not the commonwealth is not ever a pupil, never growing to age, as a minor under nonage does come not to need a tutor, but the commonwealth being still in need of a tutor, a governor, or king, must always be a tutor, and so the kingdom can never come to that condition as to accuse the king, it always being minor.

Ans. 1. Then can they never accuse inferior judges, for a kingdom is perpetually in such a nonage, as it cannot want them, when sometimes it wants a king. 2. Can the commonwealth, under democracy and aristocracy, being perpetually under nonage, ever then quarrel at these governments and never seek a king? By this reason they cannot. 3. The king, in all respects, is not a tutor—every comparison in something bears a leg; for the commonwealth, in their own persons, do choose a king, complain of a king, and resist an Uzziah, and tie their elective prince to a law. A pupil cannot choose his tutor, either his dying father, or the living law does that service for him; he cannot resist his tutor, he cannot tie his tutor to a law, nor limit him, when first he chooses him. *Pupillo non licet postulare tutorem suspecti, quamdiu sub tutela est, et manet impubes.*¹

Quest. 13. Whether or not subjects are more obnoxious to a king than clients to patrons, and servants to masters, because the patron cannot be the client's judge, but some superior magistrate must judge both, and the slave had no refuge against his master, but only flight; and the king does confer infinite greater benefits on the subjects, than the master does on the slave, because he exposes his life, pleasure, ease, credit, and all for the safety of his subjects.²

1. *l. Pietatis 6, in sin. section de susp. Tutor. L. impuberem, 7, and section impuberes. Just. eod*

2. *De authorit. princip., section 3, n. 6.*

Ans. 1. It is denied, for to draw the case to fathers and lords, in respect of children and vassals, the reason why sons, clients, vassals, can neither formally judge, nor judicially punish, fathers, patrons, lords, and masters, though never so tyrannical, is a moral impotence, or a political incongruity, because these relations of patron and client, fathers and children, are supposed to be in a community, in which are rulers and judges above the father and son, the patron and the client; but there is no physical incongruity that the political inferior punish the superior, if we suppose there were no judges on the earth, and no relation but patron and client; and, because, for the father to destroy the children is a troubling of the harmony of nature, and the highest degree of violence, therefore one violence of self-defense, and that most just, though contrary to nature, must be a remedy against another violence; but in a kingdom there is no political ruler above both king and people, and therefore, though nature have not formally appointed the political relation of a king rather than many governors and subjects, yet has nature appointed a court and tribunal of necessity, in which the people may, by innocent violence, repress the unjust violence of an injuring prince, so as the people injured in the matter of self-defense may be their own judge.

2. I wonder that any should teach that oppressed slaves had of old no refuge against the tyranny of masters, but only flight; for (1) the law expressly says that they might not only fly but also change masters, which we all know was a great damage to the master, to whom the servant was as good as money in the purse; (2) I have demonstrated before, by the law of nature, and out of various learned jurists, that all inferiors may defend themselves by opposing violence against unjust violence; to say nothing that unanswerably I have proved that the kingdom is superior to the king.

3. It is true. *Qui plus dat, plus obligat*, as the Scripture says (Luke 7) he that gives a greater benefit lays a foundation of a greater obligation. But, 1. If benefit be compared with benefit, it is disputable if

a king give a greater benefit than an earthly father, to whom, under God, the son is debtor for life and being, if we regard the compensation of eminency of honor and riches, that the people puts upon the king; but I utterly deny that a power to act tyrannical acts, is any benefit or obligation, that the people in reason can lay upon their prince, as a compensation or hire for his great pains he takes in his royal watch-tower. I judge it no benefit, but a great hurt, damage, and an ill of nature, both to king and people, that the people should give to their prince any power to destroy themselves, and therefore that people do reverence and honor the prince most, who lay strongest chains and iron fetters on him, that he cannot tyrannize.

Quest. 14. But are not subjects more subject to their prince (seeing the subjection is natural, as we see bees and cranes) to obey him, than servants to their Lord?¹ For jurists teach, that servitude is beside or against nature.²

Ans. There is no question, in active subjection to princes and fathers commanding in the Lord, we shall grant as high a measure as you desire. But the question is, if either active subjection to ill and unjust mandates, or passive subjection to penal inflictions of tyranny and abused power, be natural or most natural; or if subjects do renounce natural subjection to their prince, when they oppose violence to unjust violence. This is to beg the question. And for the commonwealth of bees and cranes, and crown and scepter among them, give me leave to doubt of it. To be subject to kings is a divine moral law of God; but not properly natural to be subject to co-action of the sword. Government and subjection to parents, is natural; but that a king is *juris naturae strictim*, I must crave leave to doubt. I hold him to be a divine moral ordinance, to which, in conscience, we are to submit in the Lord.

1. *De authorit. princip. in popul.*, section 3, n. 7; *C. in Apib*, 7, 9, 1, *ex Hiero.* 4, *ad Rusic. Monach, Plin*, n. 17.

2. *l. 5, de stat. homi. sect, 2, just. et jur. pers.* section 3, *sect, et sicut Nov.* 89, *quib. med. nat. eff. sui*

Quest. 15. Whether king Uzziah was dethroned by the people?

Ans. Though we should say he was not formally unkinged and dethroned, yet if the royal power consist in an indivisible point, as some royalists say, and if Uzziah was removed to a private house, and could not reign, being a leper; certainly much royal power was taken from. It is true, Arnisaeus says he neither could be compelled to resign his power, nor was he compelled to resign his royal authority but he willingly resigned actual government, and remained king, as tutors and curators are put upon kings that are mad or stupid, and children, who yet govern all by the authority of lawful kings.³ But that Uzziah did not deprive himself of the royal power voluntarily is clear. The reason why he dwelt in a house apart, and did not actually reign, is, because he was a leper; for, "He was cut off (says the text) from the house of the Lord; and Jotham, his son, was over the king's house, judging the people of the land" (2 Chron. 26:21), by which it is clear, by the express law of God, he being a leper, and so not by law to enter into the congregation, he was cut off from the house of the Lord; and he being passive is said to be cut off from the Lord's house. Whether, then, Uzziah turned necessity to a virtue, I know not: it is evident, that God's law removed the actual exercise of his power. If we obtain this, which God's word does give us, we have enough for our purpose, though Uzziah kept the naked title of a king, as indeed he took but up room in the catalogue of kings. Now, if by law he was cut off from actual governing, whether he was willing or not willing to deprive himself of reigning, is all one. And to say that furious men, idiots, stupid men, and children, who must do all royal acts by curators and tutors, are kings *jure*, with correction, is *petitio principii*; for then has God infused immediately from heaven (as royalists teach us) a royal power to govern a kingdom on those who are as capable of royalty as blocks. I conceive that the Lord (Deut. 17:14-17) commands the

3. *De jure Pontif. Rom. in Regna et Princ.*, section 5, n. 30.

people to make no blocks kings; and that the Lord has not done that himself in a binding law to us, which we have no commandment from him to do. I conceive that God made Josiah and Joash kings typical, and in destination, for His promise sake to David, while they were children, as well as he made them kings; but not *actu completo raitione officii* to be a rule to us now, to make a child of six years of age a king by office. I conceive children are to us only kings in destination and appointment; and for idiots and fools, I shall not believe (let royalists break their faith upon so rocky and stony a point, at their pleasure) that God has made them governors of others, by royal office, who can scarce number their own fingers; or that God ties a people to acknowledge stupid blocks for royal governors of a kingdom, who cannot govern themselves. But far be it from me to argue with Bellarmine (*de paenit.* 1.3.2) from Uzziah's bodily leprosy to infer that any prince who is spiritually leprous and turned heretical is presently to be dethroned. Nothing can dethrone a king but such tyranny as is inconsistent with his royal office. Nor dared I infer that kings, nowadays, may be removed from actual government for one single transgression. It is true, eighty priests, and the whole kingdom, so serving king Uzziah (their motives, I know, were divine) proves well that the subjects may punish the transgression of God's express law in the king, in some cases even to remove him from the throne; but as from God's commanding to stone the man that gathered sticks on the Sabbath day, we cannot infer that Sabbath-breakers are now to be punished with death; yet we may well argue, Sabbath-breakers may be punished, and Sabbath-breakers are not unpunishable, and above all law; so may we argue here, Uzziah, though a king, was punished; therefore kings are punishable by subjects.

Quest. 16. Whether or no, as the denial of active obedience in things unlawful is not dishonorable to the king, as king, he being obliged to command in the Lord only, so the denial of passive subjection to the king using unjust violence, be also no dishonoring of the king.

Ans. As the king is under God's law both in commanding and in exacting active obedience, so is he under the same regulating law of God, in punishing or demanding of us passive subjection, and as he may not command what he will, but what the King of kings warrants 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 dishonorable to the majesty of the ruler, that we deny passive subjection to him when he punishes beside his warrant, more than it is against his majesty and honor that we deny active obedience when he commands illegally; else I see not how it is lawful to fly from a tyrannical king, as Elijah, Christ, and other of the witnesses of our Lord have done; and, therefore, what royalists say here is a great untruth, namely, that in things lawful we must be subject actively, in things unlawful, passively. For as we are in things lawful to be subject actively, so there is no duty in point of conscience, laying on us to be subject passively, because I may lawfully fly, and so lawfully deny passive subjection to the king's will, punishing unjustly.

Quest. 17. Whether the prince may make away any part of his dominions, as an island, or a kingdom, for the safety of the whole kingdoms he has; as if goods be like to sink an over-burdened ship, the seamen cast away a part of the goods in the sea, to save the lives of the whole passengers; and if three thousand passengers being in one ship, and the ship in a storm like to be lost, it would seem that a thousand may be cast over board, to save the lives of the whole passengers.

Ans. The kingdom being not the king's proper heritage, it would seem he cannot make away any part of his kingdom to save the whole, without the express consent of that part, though they be made away to save the whole. In things of this kind, men are not as the commodities of merchants, nor is the case alike; as when one thousand, of three thousand are to be cast into the sea to save all the rest, and that either by common consent, or by lots, or some other way; for it is one thing, when destruction is evidently inevitable, as in the casting so many

men into the sea to save the whole and many passengers, and when a king for peace, or for help from another king, makes away part of his dominion. The Lord is here to be waited on in his good providence, and events are to be committed to him; but far less, can it be imaginably lawful for a king to make away a part of his dominions without their consent, that he may have help from a foreign prince to destroy the rest: this were to make merchandise of the lives of men.¹

Quest. 18. Whether or not the convening of the subjects, without the king's will, be unlawful.

Ans. The convention of men, of itself, is an indifferent thing, and takes its specification from its causes, and manner of convening, though some convention of the subjects without the king, be forbidden; yet *ratio legis est anima legis*, the reason and intent of the law, is the soul of the law. Convention of the subjects, in a tumultuary way, for a seditious end, to make war without warrant of law is forbidden; but not when religion, laws, liberties, invasion of foreign enemies necessitate the subjects to convene, though the king and ordinary judicatures, going a corrupt way to pervert judgment, shall refuse to consent to their conventions. Upon which ground, no convention of tables at Edinburgh, or any other place (an. 1637, 1638, 1639) can be judged there unlawful; 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.

Quest. 19. Whether the subjects be obliged to pay the debts of the king.

Ans. These debts which the king contracts as king, *in throno regali*, the people are to pay. For the law of nature and the divine law does

1. Illust. quest. 1.1, section 8, n. 8.

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). If the prince be taken in a war, for the defense of the people, it is just that he be redeemed by them: so the law says (*it. F. et C. de negotiis getis, et F. et C. Manda*) But, Ferdinandus Vasquez says, 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.² Now certain it is, when the king raises war, and says, "God do so to me and mine, if I intend anything but peace," yet makes war not only against his oath, but also without consent of the parliament, and a parliament at that time convocated by his own royal writ, and not raised, and dissolved at all, but still sitting formally a parliament; if he borrow money from his own subjects, and from foreign princes, to raise war against his subjects and parliament, then the people are not obliged to pay his debts, 1. Because they are obliged to the king only as a king, and not as an enemy; but in so raising war he cannot be considered as a king. 2. Though if the people agree with him, and still acknowledge him king; it is impossible, *physice*, he can be their king, and they not pay his debts; yet they sin not, but may, *ex decentia, non ex debito legali*, pay his debts, yet are they not obliged by any law of God or man to pay his debts. But though it be true, by all law the king is obliged to pay his debt (unless we say, that all the people's goods are the king's: a compendious way, I confess, to pay all that any voluptuous Heliogabolus shall contract) yet it may easily be proved that what his subjects and foreign princes lent him to the raising of an unjust war are not properly debts, but expenses unjustly given out under the reduplication of formal enemies to the country, and so not payable by the subjects; and this is evident by law, because one may give most unjustly monies to his neighbor, under the notion of loan, which yet has nothing of the essence of loan and debt, but is mere delapidation,

2. Illust, quest. 1.1.7, n. 6, *vicesimo tertio apparet, &c*

and cannot properly be debt by God's law; for the law regulates a man in borrowing and lending, as in other politic actions. If I, out of desire of revenge, should lend monies to a robber to buy powder and fuel to burn an innocent city, or to buy armor to kill innocent men, I deny that that is legally debt. I dispute not whether A. B., borrowing money formally, that thereby he may waste it on debauchery, shall be obliged to repay it to C. D. under the reduplication of debt; or if the borrower be obliged to pay what the lender has unjustly lent. I care not pray to God that all our king's debts may be paid; I have scarce faith so to do.

Quest. 20. Whether subsidies be due to the king as king.

Ans. There is a twofold subsidy; one *debitum*, of debt; another, *charitativum*, by way of charity. A subsidy of debt is rather the kingdom's due for their necessity than the king's due, as a part of his rent. We read of customs due to the king as king, and for conscience sake (Rom. 13:6) never of a subsidy or taxation to the kings of Israel and Judah, at any convention of the states. Augustus Caesar's taxing of all the world (Luke 2) for the maintenance of wars, cannot be the proper rent of Augustus, as emperor, but the rent of the Roman empire; and it is but the act of a man. Charitative subsidies to the king, of indulgence, because, through bad husbanding of the king's rents, he has contracted debts, I judge no better than royal and princely begging. Yet lawful they are, as owe charity to my brother, so to my father, so to my politic father the king. See Ferd. Vasq who desires that superiors, under the name of charity, hide not rapine (illust. quest. 1.1.8), and cites Cicero, gravely saying (*offic.* 1.1) "*Nulla generi humano et justitios major pestis est, quam eorum, qui dum maxime fallunt, id agunt ut boni viri esse videantur.*" &c.

Quest. 21. Whether the seas, floods, roadways, castles, ports, public magazine, militia, armor, forts, and strongholds be the king's.

Ans. All these may be understood to be the king's in various notions. 1. They are the king's, *quoad custodiam, et publicam possessionem*, as a pawn is the man's in whose hand the pawn is laid down.

2. They are the king's, *quoad jurisdictionem cumulativam, non privativam*. The king is to direct, and royally to command, that the castles, forts, ports, strongholds, armor, marine, militia, be employed for the safety of we kingdom. All the ways, bridges, and public roadways, are the king's, insofar as he, as a public and royal watchman, is to secure the subject from robbers, and to cognosce of unknown murders, by himself and the inferior judges; yet may not the king employ any of these against the kingdom. 3. They are the king's, as he is king, *quoad officalem, et regale, et publicam proprietatem*; for he has a royal and princely propriety to all these, as his own, insofar as he uses them according to law. 4. And thus they are the king's also, *quoad usum*, in regard of official use. But, 1. They are the kingdom's, *quoad fructum*, in regard of the effect and fruit. 2. They are the kingdom's, *finaliter*, being destined for the safety and security of the kingdom.

3. They are the kingdom's, *quoad proprietatem propriam, et legalem strictè sumptam*, according to the proper and legal propriety; and are not the king's proper heritage as he is a man: 1. Because he may not sell these forts, strongholds, ports, magazine, bridges, &c. to a stranger, or a foreign prince. 2. When the king is dead, and his heirs and royal line interrupted, these all remain proper to the kingdom; yet so as the state cannot, as they are men, make them away, or sell them, more than the king; for no public persons, yea the multitude cannot make away the security, safety, and that which necessarily conduces to the security of the posterity. "The Lord build his own Zion, and appoint salvation for walls and bulwarks!"

