

DIVINE RIGHT AND DEMOCRACY

An Anthology of Political Writing
in Stuart England

EDITED BY DAVID WOOTTON

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CHAPTER SIX

USURPATION AND TYRANNICIDE

1 Anthony Ascham, *Of the Confusions and Revolutions of Governments* (1649)

Ascham (c. 1618–50), of a distinguished gentry family, sided with Parliament on the outbreak of the Civil War. In 1647 he was made tutor to the captive James, Duke of York (later James II). He is reputed to have played a part in drawing up charges against the king in 1649. He then became the Commonwealth's agent in Hamburg, and in 1650 was sent to Spain to serve there as the Commonwealth's ambassador. He was assassinated in Madrid before he had time to present his credentials.

During the period 1648–50 he published two versions *Of the Confusions and Revolutions of Governments* and a defence of that work, along with at least two anonymous tracts, all of them in defence of the new regime. By linking acceptance of the new government directly to a recognition of self-interest, Ascham attacked established notions of legitimacy as deriving from tradition and divine sanction. His secular approach to politics is comparable to that of Hobbes, who published *Leviathan* in defence of the government in whose service Ascham died. Hobbes took easily to *de factoism* as he was naturally and self-consciously timorous; it may be wondered whether Ascham, who was fully aware of the dangers of his assignment in Spain, was as sceptical and cynical as he chose to appear in his writings.

2 Robert Sanderson, *A Resolution of Conscience* (1649)

Sanderson (1587–1663) had been appointed chaplain to Charles I, on Laud's recommendation, in 1631. Charles I was said to have declared: 'I carry my ears to hear other preachers, but I carry my conscience to

hear Dr Sanderson.' He was appointed Regius Professor of Divinity at Oxford in 1642, was ousted by Parliament in 1648, and reinstated in 1660. In that year he was also made bishop of Lincoln.

His 1646 lectures on the nature and obligation of oaths were published in 1647, and translated into English at the king's command in 1655. His 1647 lectures on the obligation of conscience were published posthumously in 1678. Sanderson's professional interest in moral philosophy and theology, his academic standing and his close ties with the king made it natural that in 1650 he should be regarded as an authoritative judge of how far royalists could make their accommodation with the new regime.

3 *An Act for the Abolishing the Kingly Office* (17 March 1649)

On 16 November 1648 the officers of the New Model Army called for the trial of the king, 'the capital and grand author of our troubles', whom they held responsible for the unnecessary bloodshed of the second Civil War. When Parliament failed to act it was 'purged' by the army in December 1648 in order to create a majority for the king's trial, which took place in January, and led inevitably to the king's execution on 30 January 1649. Parliament claimed to have brought the king before a court of law, but to do so it had had to set aside the king himself and the House of Lords, and to establish a court which had no legal precedent. Such actions led naturally to the establishment of a republic, an end result that hardly any member of the Rump Parliament would have desired when first elected, and that none would have predicted. There is, therefore, some difficulty in accepting at face value their sudden avowal of republican principles. By and large republicanism was adopted out of expediency not conviction, and Charles I was executed, not because monarchy itself was unpopular, but because he personally was distrusted.

Charles himself believed he was the victim of the novel doctrine that the people should govern themselves. On the scaffold he said: 'For the people, and truly I desire their liberty and freedom as much as anybody whatsoever; but I must tell you that their liberty and freedom consists in having of government those laws by which their life and their goods may be most their own. It is not having share in government, sirs; that is nothing pertaining to them.'

4 *An Act for Subscribing the Engagement* (2 January 1650)

Parliament had conducted the Civil War on the claim that it represented the people. But a majority even of those members of Parliament who had stayed in London (those who sided with the king having joined him in Oxford before the first Civil War) had opposed the execution of the king, an execution which was unpopular with the people at large. The Rump Parliament therefore had to take rigorous measures to ensure acceptance of its authority. Only those who engaged to be loyal to it were to be allowed to hold offices under government control or to do business in the courts of law.

Since 1648 the legitimacy of the new regime had been the subject of urgent debate. That debate was given new urgency by the test of conscience which the Engagement represented for all those who felt ties of loyalty to the old order.

5 *Some Scruples of Conscience Which a Godly Minister in Lancashire Did Entertain* (1650)

The identity of the godly minister is unknown, and we know about his scruples only because one of the supporters of the Engagement Oath selected his letter as a pithy statement of the opposition case he had taken it upon himself to refute. And indeed this letter brings out clearly just how difficult it was to find arguments in defence of the new regime, other than the arguments from self-interest and *force majeure* relied on by Ascham.

6 William Allen (i.e. Edward Sexby), *Killing Noe Murder* (1657)

Sexby (c. 1616–58) emerged from obscurity in 1647 as an army agitator and Leveller spokesman. In 1648 he acted as an intermediary between Cromwell and the Levellers, and, having been a private in 1647, he was governor of Portland, Dorset, with the rank of captain, in 1649. In 1650 he was ordered to Scotland, and was court-martialled there the next year. It seems likely that the charges against him were trumped up and, although he was cashiered, he rapidly reappears as an agent of the Council of State sent to La Rochelle and Bordeaux to assist the Frondeurs. Sexby was never one to act merely as the tool of others, and in France he translated and published the final version of the Agreement of the People. By 1653 his alienation from the

Cromwellian regime was complete and he was engaged in subversive plotting, making contact with the royalists in 1655. In September 1656 and January 1657 several attempts to assassinate Cromwell were made by Miles Sindercombe, acting on Sexby's instructions. When Sindercombe was captured Sexby returned to England, both to try his own hand at assassination, and to distribute copies of *Killing Noe Murder*, which he had written, possibly with the assistance of Silius Titus, a royalist. He was captured in July 1657, and died in the Tower, January 1658.

I Anthony Ascham, *Of the Confusions and Revolutions of Governments* (1649)

The First Part

Chapter VII: Concerning the Parties (Just or Unjust) Which, by the Variety of Success in Civil War, Command Us and Our Subsistence, and Reduce Us to These Extreme Necessities: Whether for a Justifiable Obedience to Them It be Necessary for Us to Assure Ourselves that Those Parties Have a Justifiable Cause of War, or Right to Command Us?

- (1) Wherefore difficult for us to assure our consciences in the points of right?
- (2) Whether prescription make a right?
- (3) A cause of war depending on a matter of fact, not a certain way of confirming us that we lawfully obey.
- (4) War for dominion and for possession.

These things being thus stated concerning our own persons, the lawfulness and transcendent right which we have both by God and nature in ourselves and that which is ours, yea, and in case of extreme misery in other things also, above all those rights, privileges and obligations which others may pretend upon us; I may the easilier descend now into the bottom of the question, and speak to the many parties, whether just or unjust, who, by the variety of success, may one after another command us and our estates, and in both reduce us to the forementioned extreme necessity. In which condition or confusion, the question is : What is lawful for us to do?

I find that most here seek to satisfy their scruples in searching, first, whether those parties have lawful power over us or no. That, so finding the lawfulness of their right, they may be easier assured of the lawfulness of their own obedience. Secondly, in examining the cause of their wars, whether it be justifiable or no. They supposing that if the cause be bad, all effects which have any dependence on it must needs be so too. I conceive that these two considerations serve only to add to the perplexity of a man's conscience, and are not necessary at all for us to be informed of.

(1) As for the point of right, it is a thing always doubtful, and would ever be disputable in all kingdoms if those governors who are

in possession should freely permit all men to examine their titles *ab origine*, and those large pretended rights which they exercise over the people. And though this party's title may be as good or as [a] little better than that party's, yet a man in conscience may still doubt whether he have *limpidum titulum*, a just title or clear right, especially in those things which are constituted by so various and equivocal a principle as the will of man is.

Besides, most governors on purpose take away from us the means of discovering how they come by their rights, insomuch that though they may really have that right to which they pretend, yet through the ignorance we are in of what may be omitted in their history, either through fear, flattery, negligence, or ignorance, it is dangerous for us, upon probable human grounds only, to swear their infallible right, as is shown in the following treatise of oaths. Upon this ground Tacitus says well, *Tiberii Caiique et Claudii ac Neronis res, florentibus ipsis, ob metum falsae, postquam occiderant recentibus odiis compositae sunt*. And if the party's rights be but one as good as another's, then his is the best who has possession, which generally is the strongest title that princes have. A whole kingdom may be laid waste before it can be infallibly informed concerning the party's true rights, which they require men to die for, and to avow by oath.

(2) As for prescription of long time, every man's conscience is not satisfied that that, added to possession, makes a true right. This we know, that it conduces much to public quiet; but the Canonists maintain it against the Civilians, that prescription upon an unjust beginning *et ex titulo inhabili* does by its continuance of time increase and not diminish the injustice and faultiness of the act. For the lapse of time cannot change the morality of an act. It is no plea in divinity to argue the prescription which sin has on us as an excuse. A lie is almost as old as truth, but there is no prescription against God and truth. This concerning the point of right.

(3) As for the point of fact on which we would ground matter of right, or a justifiable case, viz. that such or such things have been done, or plotted, or advised, therefore the other party may lawfully do this or that, that we know is without end, and ever is perplexed and difficult to have perfect intelligence of, especially such as a man may safely venture his own life, or take away another's, upon it. Wherefore, if we may reasonably doubt of the point of right (which yet is a more clear and uniform thing), then we may be more reasonably perplexed in the story of fact, which

depends on so many accidents, so various circumstances, both in its principle (the will), in its existence, and in evidence for the infallible knowledge of it.

From hence, therefore, I conclude that we may in this great case ease ourselves of this vast perplexity in examining whether or no the invading party have a just title or case, or no. Or whether he have a juster than he whom he opposes. But here I desire to be rightly understood, for I affirm this, not as if the knowledge of all this were not very convenient, and much to be desired, but that (as it is almost impossible for us to have, so) it is not necessary for us to search after; except in one case, which comes not out of the historical occasion of this discourse: viz. in assisting to the beginning of a war. These negatives show only what we need not ground our consciences on, in order to a lawful obedience; but it must be a positive and a clear principle which we must ground on, if we would be warranted of a just submission to the orders of one who commands us perhaps unjustly. For it is a matter which concerns the misery of others who never did us wrong.

(4) There is a war for dominion, and a war for possession. If it be for dominion, we may contribute our money, arms and oaths to the expelling perhaps of an innocent family. If it be for possession (which is the worst), then it is for the slavery of thousands of innocent families. And before either can be compassed, we may assure ourselves that thousands may be as innocently killed by the means of them who contribute to the strengthening of an unjust party. But because I state this question in a war already formed, and actually introduced upon the people, therefore in answer to this positive demand, I as positively say, *that for a justifiable obedience, it is best, and enough, for us to consider whether the invading party have us and the means of our subsistence in his possession, or no.*

The Second Part

Chapter I: Whether a Man May Lawfully and with a Good Conscience Pay Taxes to an Unjust Party during the War?

- (1) What was meant by paying tribute to Caesar.
- (2) In what case a man at the beginning of a war may contribute to it, though he finds not its cause good.
- (3) The manner of a levy.

- (4) We cannot properly scruple at that which is out of our power.
- (5) Of the condition of those who live upon frontiers.
- (6) What liberty have we, when the right governor declares that he will not have us pay anything to the invading party? Likewise, whether any law but that which derives immediately from God does indispensably oblige the conscience?

In the first part the ground for all the particular questions in this is laid and treated generally; but here we come to closer and more particular proofs: and, first, of tribute and taxes.

There are many who, not finding this liberty in their consciences, unnecessarily choose rather to give their bodies up to restraint, and to abandon their whole means of subsistence in this world, both for themselves and their children, which ought not fondly to be done, unless we would be worse than infidels, as St Paul says.

Objection: They object that they know not whether the moneys they give may not furnish to the destruction of many innocents, and perhaps of the just magistrate himself; that though a man may give away his own as he pleases, yet not in this case, when it is to the prejudice of another, etc.

They who thus scruple are in conscience obliged thus to suffer, because they have not faith to do otherwise. But the question now to be examined is whether these be necessary scruples in themselves, and such as admit of no exception or liberty? Perhaps upon examination we may find these scruples to be like scandals, whereof some are rather taken than given. And therefore, to state the question aright, I shall paraphrase a little upon another question which was propounded to our Saviour. It may possibly appear to be the same with this, though propounded with more subtlety and malice.

The Scribes and Pharisees sought two ways to entrap our Saviour. One was, as if he had blasphemously taught a new religion, and a new God, viz. himself. They hoped the people would be provoked to stone him for this, according to the 13 of Deuteronomy. The other was to bring his actions into the compass of treason, as if he could not lead great multitudes after him without traitorous designs. But this gin failed too, because the multitude which followed him was always ready to defend him. However, when he was at Jerusalem, where the Roman troops and praetor were, they thought they had him sure by propounding this subtlety to him:

- (1) 'Is it lawful for us to pay tribute to Caesar?' Which was as

much as to say: 'We who are descended from Abraham, and are the peculiar people to whom God has given the large privileges of the earth, at home to bathe ourselves in rivers of milk and honey, to have full barns and many children, yea, that God himself will be adored in no other place of the world, but at this our Jerusalem, and that abroad we should triumph over the barbarous and uncircumcised world by virtue of that militia which he never ordered for any but ourselves: how are we then in duty or conscience to submit now to the ordinances of the uncircumcised Roman? Or what right can he have to exercise supreme jurisdiction over us, the privileged seed of Abraham, by levying taxes on our estates and land, which God himself laid out for us? By which means he holds this very temple in slavery, and insults over our consciences and religion by defiling our very sacrifices with the mixture of impure blood; which, as they are the price of our souls, and a tribute far above Caesar's, payable in no other place but this temple, which God himself built, so our blood ought not to seem too dear to be sacrificed for the liberty of these altars. And though the Roman state could pretend right, yet what can this Caesar pretend? Every man's conscience knows that it was but the other day he usurped over the senate, in which resides the true jurisdiction of Rome. And if that were otherwise, yet how can he pretend to a title, unless poison be a pedigree, or violent usurpation a just election, by which he who is but the greatest thief in the world would pass now for the most sovereign and legislative prince? How then are we in conscience obliged to pay tribute to this Caesar?'

Though these lawyers thought in their consciences that they were not truly obliged to pay it, and that our Saviour likewise, as a Jew, thought so too, yet they supposed he durst not say so much in the crowd, nor yet deny it by shifting it off in silence, lest the Roman officers should apprehend him. But when our Saviour showed them Caesar's face upon the coin, and bade them render to Caesar that which was Caesar's, and to God that which was God's, his answer ran quite otherwise. Not, as some would have it, that by a subtlety he answered nothing to the point proposed, for then the sense of the whole text would sound very ill in such terms, viz. that if there be anything due to Caesar, pay him it, and if anything be due from you to God, then pay it likewise. This had been a weakening of God's right for Caesar's, and to have left a desperate doubting in a necessary truth. 'Tis beyond all cavil that our Saviour's opinion was positive

for paying of tribute to that very Caesar, because *de facto* he did pay it. And the plain reason of it appears evident in this his answer: Caesar's face was upon the coin; that is to say, Caesar, by conquest, was in possession of that coin by possessing the place where he obliged them to take it: coining of money being one prerogative of sovereign power.

And now to answer more particularly to the forementioned objections at the beginning of the chapter:

(a) In the first place, I distinguish between *perferre et inferre bellum*: the one is active, and properly at the beginning of a war, and in a place where yet no war is, and where its cause only and not its effects can be considered. In this case everything ought to be very clear for warrant of a man's conscience, because of the calamities which he helps to introduce, and is in some manner author of. The other is passive, and there where war or the power of war is actually formed, which is the cause of this discourse.

(b) Secondly, I distinguish betwixt that which cannot be had, nor the value of it, unless I actually give it; and that which may be taken whether I contribute it or no. In the force of this second distinction lies the reason wherefore I have so much examined the nature of possession in the former part. To apply all this to the objections, I say that if a man scruple, he may not *inferre bellum* by any act which may be properly his own; I say, *properly his own*.

(2) Because, though war be not yet actually formed in a place, yet a scrupling conscience which likes not the cause may be excused in contributing to it in this one case, viz. if some number of men able to take what they ask demand (with an armed power) the payment of a certain sum to be employed in war, then in such a case the man of whom we speak may pay it as a ransom for his life, or give it as a man does his purse when he is surprised in the highway. The reason is, because to this man it is as much as if the whole country were possessed by an armed power.

(3) The manner of the levy is here principally to be considered. For if the person taxed be not for the time in the full possession of him whose cause he scruples at, and that he have not a probable fear of extreme danger, nor as probable assurance that, without his help, the thing demanded, nor its value, can be taken from him, then there's little excuse remains for the act, because the said act (which his conscience dislikes) participates more of action than of passion.

But in the case of this discourse, where a man is fully possessed by an unjust invading power (from whom whole countries cannot possibly fly, nor make away all their goods and estates), there, I say; a man's paying of taxes is no gift, which if proved takes away the master scruple. Let us judge of this by that case which we all grant: if a man fall into the hands of many desperate thieves who assault him for his money, though with his own hand he put his purse into their hands, yet the law calls not that a gift, nor excuses the thief from taking it, but all contrary.

(4) By this it's apparent what a groundless scruple it is for a man thus taxed to say, 'He knows not to what evil they may employ the money so put into their desperate hands.' For this supposes a gift, and a man's proper voluntary act: of which indeed he is always to be scrupulous, because it proceeds from that principle which is totally in his own power, whereas other men's actions are as far out of our power as winds and tempests are; to which two, as we contribute nothing, so we cannot properly be scrupulous in our consciences concerning their bad effects.

For further proof I might aptly reflect on those arguments which were discussed at the beginning of the first part, concerning the transcendent right which we naturally have in the preservation of ourselves, and of those things without which we cannot be preserved. As also on the high privilege of extreme necessity, nature itself being more intent to the preservation of particular than of public bodies, which are made out of particulars, and, as much as may be, for the particular ends and preservation of each singular, no man obliging himself to any particular society of this or that country without the consideration of self-preservation, according to the right of the more general society of mankind.

(5) Thus much concerning those who are fully possessed by the unjust invading power. Now I shall speak to the condition of those who live upon frontiers; whose condition is more ticklish and deplorable because they are not fully possessed nor taken into the line of either party. These live, as it were, in the suburbs of a kingdom, and enjoy not the security or privileges of others. Though they can owe true allegiance but to one party, yet they may lawfully contribute to both. For though they be but partly possessed by one and by the other, in respect of their sudden abandoning them, yet both parties have the power of destroying them wholly. Wherefore those former

reasons which justify those fully possessed do also acquit the governments of these, for their condition here is more calamitous, so they are really but tenants at will, exposed to a perpetual alarm, that both parties wound one the other only through their sides.

(6) The last consideration in this scruple is of the wills of them whom we acknowledge our lawful governors, viz.

Objection: When they declare to us that they will not permit us to pay anything to their enemies.

Answer: To this I answer that the declared wills of governors cannot make all those our acts sins when we obey that power which is against our wills (as much as against theirs, and it may be with the consent of our misery), has divested them of the power of their rights, and deprived us of the comfort of their governments.

Question: I would not here willingly dispute whether any law that which derives immediately from God does indispensably oblige the conscience. For there is but one lawgiver who can save or destroy the soul for the observation or violation of laws, and that is God, who therefore has the sole power of obliging conscience to laws as the lord of them, through his creating, governing, and moving them. Ephesians 3: 22; James 4: 12: "There is one lawgiver who is able to save and destroy: who art thou that judgest another?" Priests cannot by their commands change the nature of [the] human condition, which is subject naturally to those forementioned changes: were they to pretend to a power of obliging us to moral impossibilities and repugnancies in the reason of government. And though their political commands were as laws, yet they ought not to be made, but to be obliging, but according to the legislative rule, which is *sensu humanae imbecillitatis*. This is that which usually is called presumptive will of a governor, or the mind of a law. For in extreme necessity it is to be presumed that both their wills recede from the rigour of what they have declared, rather than, by holding to that which is their supposed right, introduce certain misery and confusion without receiving any benefit thereby themselves.

Neither are such commands without their sense and profit, though they be not positively obeyed. For thereby governors show to all the world that they renounce no part of their right, no though it be that where they cannot exercise any part of their just power. Secondly, they may thereby help to retard their subjects from being forward in giving admittance to their enemies, or in being actively assisting

them, but rather to themselves. Besides which sense there can be no sense; for if they mean by those commands that they would not have their enemies strengthened or advantaged by them, and withal mean that they would not that their subjects should submit themselves at all to those usurpers, though it were then when they and all their subsistence are absolutely possessed by them, I say then that these are commands which dash against themselves, and the one countermands the other. For if they refuse to submit in such a case, then they do that which advantages their enemies, because at that time they will take all, whereas in case of submission they ask but a part. In all wars there are always some by whose disaffections enemies gain more than by their compliance, just as physicians do by distempers. Though after variety of successes the just governors should recover that place which so submitted to the power of their enemies, and for that reason should punish those who were pliable to extreme necessity, yet it follows not upon that, that they who so conformed sinned, or did that which was absolutely unlawful. For we know reason of state oft calls for sacrifices where there is no fault to expiate. Ostracism and jealousy make away those who are known to deserve most: *in republica idem est nimium et nihil mereri*. But in right (which is the term of this question) the just governor ought to look upon them as more unfortunate than faulty. And perhaps in equity he ought to consider that the original fault of all might possibly be on his part, God sometimes punishing the people for the prince, and sometimes the prince for the people. But of this more shall be said in the following treatises of new allegiance and of opposite oaths.

Chapter II: Whether We May Lawfully Serve an Unjust Party in Our Persons or No?

The answer to this question is very present, and negative, for here action is required to an end which our consciences allow not. Our estates are separate from us, and therefore may be had without us, or without our wills. But our persons are ourselves, and cannot be had nor act without us, and therefore a man has not the same liberty in the one as in the other.

But yet there are two cases wherein a man may lawfully serve an unjust party in his person.

First, when it is in order to a just and necessary action which

concerns not the opposing of the just party at all, but only our own necessary preservation. In which case we consider the unjust governor abstractively, not as a governor but as a man. Suppose the case were such that if the lawful governor himself were with us, he would probably command us the same thing; and though perhaps he would not command it, yet we might lawfully put ourselves into that action against his will, as if the Turk, or any other common enemy, should invade those provinces which the unjust party has divested the just of. For such an enemy would deprive one as well as the other. Wherefore, betwixt two unjust parties, it's better to follow him who is in possession, especially if his government be probably better for the society and religion of mankind. And as for the just government, he must consider that such actions are not so much *contra as praeter suam voluntatem*.

The second case relates in some manner to the opposing of our lawful magistrate, but not by a direct intention. For example, when we see much cruelty exercised upon the continuance of a war, and probable ruin of those places where the armies seek one another, then if the said armies fall into our quarters, and we be summoned to assist the unlawful party, we may then arm ourselves, not for him, but for ourselves, not in any regard of the cause of the war, but of its effects, which are destruction of life, or of livelihood. In this case nature helps us to put on our arms, and shows us the way to the place where we may redeem our lives, and find a remedy, though it be in our very disease.

Objection: But is not this to do evil to advance our own good, to cut the throats of those whose innocency our own consciences absolves? Can our extravagant fears warrant us to take away other men's real rights? *Cato habet potius qua exeat* (Seneca): brave men would rather die. How then can any of this be lawful?

Answer: Here I confess lies the knot of the scruple, but yet by the third treatise of *The Lawfulness of Some Wars*, chapter 2, it is clearly evinced, 'How innocents may be innocently killed', and this objection goes no further, nay, not so far as that which is there cleared. For children and babes could never threaten us with the sad effects of war, yet we see how they may be innocently destroyed by the course of war. For nature commends me to myself for my own protection and preservation, and that not as if I had not that right of defending myself unless they were first faulty who threaten me the danger. For

though they fight *bona fide* on their side, and ignorantly take me to be another kind of person than I really am, just as men passionately distracted (and in dreams) use to do, yet I am not for this reason obliged to desert myself, nor to suffer all which they prepare, probably, to inflict upon me: no more than I am when another man's irrational beast or dog falls upon me with fury or mistake. Governors of men are like keepers of beasts; every man, as he is an animal, participating half with the brute: *alterum nobis cum diis, alterum cum bestiis commune est*, says Sallust. When an irregular passion breaks out in a state, an irrational beast has broke out of his grate or cave, and puts the keeper to a great deal of trouble, and those whom he meets with in the way in a great deal of danger. If he invade anyone he may be killed, whether the keeper please or no, although whilst he kept his cave quietly he might not be stirred without his permission. It is a known case that if a man unjustly assault another, and be slain in the act by the other, this other shall not suffer for it.

But in this case we must be certain of two things: first, that we have tried all other means of saving ourselves and our livelihood. Secondly, that we enter not the army with an offensive mind, but *cum moderamine inculpatae tutelae*: not with a direct design to kill, but rather to frighten, weaken, and to drive away the cruel enemy. Before we may strike, we must see our danger imminent, and *in ipso pene puncto*. Then it is that we may *occupare facinus*, prevent our own deaths by the invaders' deaths. For when lives are to be lost, then the possession which we have of our own is to be preferred by us before our enemies' lives.

The rule of defence is very difficult because on every hand it is full of circumstances: yet a point in moral actions, even as in mechanical ([though] not in Euclidean geometry), is not without some breadth. Hence the law says *potentia proxima actui, pro ipso actu habetur*. The reason wherefore the law, which justly is so favourable to life, takes that for killing which immediately goes before the blow is because if it should not be favourable to us before the blow, or act, it would not be favourable to us at all. A man's life is that which can be lost but once, and, after that, nothing can make it good to us again, wherefore we are obliged to a perpetual guard of it, if not for our own sakes, yet at least for theirs whose life it may be as well as ours.

Chapter VIII: Concerning Subjects' Oaths to Their Princes

- (1) Wherefore dangerous to examine supreme rights.
- (2) Of monarchy, aristocracy, and democracy. No sort of government which can give always a certain remedy for an inconvenience of state.
- (3) Why some countries more inclined geographically to one particular sort of government than to another.
- (4) Wherefore we are abused so much in distributive justice (rewards and punishments), as also in the pleasures of sense, riches and honour, for the enjoyments whereof we so vainly torment ourselves.
- (5) Of the power of dominion, and the right of exercising it specifically in this or those hands.
- (6) Four cases wherein subjects are freed from former allegiance.
- (7) How a man may take an oath from an unjust invading party, contrary to those oaths which perhaps he took first from the just party, who possibly broke no conditions with him.
- (8) Some kingdoms for the prince alone and his benefit.
- (9) Of the harmony of oaths.
- (10) Two ways of taking opposite oaths.
- (11) Of the presumptive will of the prince.
- (12) Of the conditions of those oaths whereby we are sworn to lose our lives for our prince.
- (13) In what sense may a man swear that he has the right whom he knows is in the wrong? Of subscription in the Church of England.
- (14) Why penalties [are] better securities for princes' rights than oaths.

(9) . . . All that which has been cleared above serves mainly to help us in this difficulty, and to lead us to a true harmony of oaths; which some stretch wildly to find even in the very terms of opposite oaths, at least by a secret sense which they say the swearer has liberty to put on them for himself, *quasi propositio mixta ex mentali et vocali esset legitima*; which opinion is in some manner perhaps refuted above.

(10) I conceive but two ways of taking such opposite oaths.

[11] First, when it is in a thing wherein a man may justly presume that the right party for a time releases him of his former oath or duty to him. This is meant during the war only, at which time usurpers never declare their full intentions, because they are not as yet certain whether they shall finally possess the power whereby they may be enabled to make good what they pretend; neither can they foresee what their after-necessities may be.

(11) [i.e. 12] Secondly, a man cannot by oath, or any other way, be obliged further to any power than to do his utmost in the behalf

thereof. And though the oath for the right magistrate be taken in the strictest terms of undergoing death and danger, yet it is to be understood always conditionally, as most promises are, viz. if the action or passion may be for that power's or prince's advantage.

Let us take the case as we see it practised. In an army each man is or may be obliged by oath to lose his life for the prince whose army it is, rather than turn back or avoid any danger. Such an oath is called *sacramentum militare*. This army, after having done its utmost, is beaten, and now the soldiers can do no more for their prince than die, which indeed is to do nothing at all, but to cease from ever doing anything, either for him or for themselves. In these straits, therefore, it is not repugnant to their oath to ask quarter or a new life; and, having taken it, they are bound in a new and a just obligation of fidelity to those whom they were bound to kill [a] few hours before, neither can the prince expect that by virtue of their former oath to him they should kill any in the place where their quarter was given them. They who live under the full power of the unjust party may be said to take quarter, and to be in the same condition with the former, and to have the liberty to oblige themselves to that which the prince may now expect from them, viz. to swear to those under whose power they live that they will not attempt anything against them.

All that this amounts to is that it is *praeter non contra prius iuramentum*; and as the condition which was the ground of this promissory oath is such that it is impossible for a man in it to advance his party's cause, so is it impossible for him to be bound to an impossibility.

(13) *Question*: But what if the usurping power should exact an oath in terms more repugnant to a man's conscience? As that he shall now swear not only not to do anything against him, but to do all he can for him, and besides will have him swear that the very right of the case belongs to him, and not to the other party, as in Edward IV and Richard III's cases, etc.? In answer to this I first say:

Answer: That probably the man called to swear here formerly obliged himself to the other party by oath, but not as if that party positively had a clear right, but that he knew none who had a clearer, and therefore upon the same ground he may neither swear action nor positive right to this party. Though my hand trembles to write further of this case, perhaps as much as his would who should come

to swear it *tactis Evangeliiis*; yet I find great doctors who have taught us that which favours oaths in such terms: [that they should be understood] not as if they had a positive or grammatical sense in them, but that they require only that we should do nothing contrary to the terms of the oaths, or of their sense, which is as much as to say that though we know not wherein that party's rights positively consist, yet we take our oaths that we will not do anything to weaken his pretensions. Though this sense satisfy not the terms of the oath in their rigour, yet those doctors say it may satisfy the scope of it, beyond which a man is not obliged unless he will himself. For instance, no man could formerly be admitted to the ministry in our Church unless he subscribed first to the articles, liturgy, canons, and jurisdiction of our Church. And though there were a great contradiction betwixt the Arminian, Episcopal and Calvinists' opinions in the matter to be subscribed, yet they all concurred in this, that they might subscribe in this sense: First, that they meant not to disturb the peace of the Church for anything contained either in the articles, canons or episcopal government, whatever their positive opinions about them might be. Secondly, that they thought these in a savable condition who conformed to the strict sense of them. And this they conceived was all that was meant by subscription: witness Master Chillingworth, who [not] only writes so much, but the doctors and divinity professors at Oxford licensed the printing of it, and the Archbishop presented it to his Majesty, so that it passed an avowed sense both in Church and State.

(14) Were it not, but that usurping princes have so much of the Caesar in them that, being once by their usurpations engaged, they cannot stop till they have acquired all they aimed at (as he did who because Rubicon was passed, *et quia iacta erat alea*, could not rest until he had supped in the Capitol), they would find it a greater security to put a penalty upon those who should question their rights, than to force their subjects to acknowledge their pretensions by this oath. For such an oath may be broken in the very taking of it; and he who scruples not to forfeit his oath for fear or interest will disavow any pretended rights whensoever he shall *stare in lubrice*.