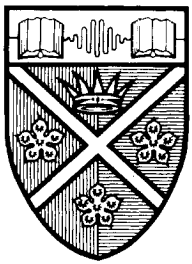
STRATHCLYDE PAPERS ON GOVERNMENT AND POLITICS



WHO COULD KILL IN 1642?

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When the political killing began in England in the autumn of 1642, it was accompanied by a debate of unprecedented extent about the propriety of armed resistance to Charles I. The participants in this debate were concerned inter alia to establish the identity of those people who could properly take human life. What was at issue here therefore was the location of the potestas gladii, the right of life and death, and not surprisingly, Royalists and Parliamentarians disagreed radically about this question, and it seems likely that following this disagreement will help us to understand something of the nature of the conflict itself.

When the Earl of Newcastle advanced from his base in the North East to York in 1642 in order (as he put it) to protect the inhabitants from the Parliamentarian intrusion of the Fairfaxes and the Hothams, he found himself accused of killing good Protestants. Rejecting this accusation, he urged the fomenters of the current horrid rebellion to look to themselves in the context of unauthorised killing:

> They that take the sword (without lawful calling) shall perish by the sword. And he that sheddeth man's blood (without a commission from the King of Heaven, who only hath original power over the lives of His creatures,and

> no multitude of men...collective or representative whatsoever) by man shall his blood be shed.

Newcastle explained that "the supreme magistrate is God's vicegerent, and beareth not the sword in vain. But those who presume to use the sword, and can derive no power from him, it were meet for them to make their accounts betimes with God, lest they die in the estate of murderers..."[1]

Newcastle gives us here the essentials of the Royalist position. For the Royalists, the potestas gladii was probably the most important power possessed by the magistrate, and charged as he was by God to maintain order within his society, this power was obviously essential to him. Small wonder, then, that Charles was deeply upset when pressed in March 1642, to make a compromise on the issue of the militia which would have involved temporary control by Parliament ("By God, not for an hour") and that he commented bitterly that what he was being asked for had never been asked of a king before.[2]

The rationale of magistracy was clearly indicated by those two hegemonic texts of the early modern period, Romans 13 and 1 Peter 2. Romans 13 promised damnation for those resisting the magistrate, who "beareth not the sword in vain", for he was "the minister of God, a revenger to execute wrath upon him that doeth

evil". 1 Peter 2 urged the faithful to "submit yourselves to every ordinance of man for the Lord's sake: whether it be to the king, as supreme; or unto governors, as unto them that are sent by him for the punishment of evil doers and for the praise of them that do well".[3] The magisterial sword was clearly necessary to fulfil this role and Bishop Thomas Morton gives in the course of his 1643 attack on the Parliamentarians an especially impressive account of what princes (properly equipped with the sword) accomplish for us: they

> protect us from evil doers, who would violently take away our lives, insolently usurp our lands, prodigally misspend our goods, laciviously deflower and ravish our wives, and mercilessly slave our children. Yea, they are the protectors and defenders of our faith, and therefore we are bound at least not to rebel since all these mischiefs have been, are, and will be, the effects of such disobedience, from which the Good Lord deliver us.[4]

And the author of the contemporaneous manuscript A Discourse Concerning Supreme Power and Common Right deplored the attempt to divest Charles of the power of the sword, for without it he would be unable to protect his subjects from "all violence foreign and domestic" and would in consequence "bear the sword in vain, or rather but the scabbard, when others have the weapon, with

endeavours to sheath it in his bowels..."[5]

It was because they were instructed by such unimpeachable mentors as Paul and Peter (who in turn followed Christ himself, who "came not to put the sword into the hands but into the bowels of his servants" and had, for instance, rebuked Peter for the ear-cutting incident)[6] that the early Christians had, according to the Royalists, conspicuously refrained from repelling with physical force the persecuting tyrants by whom they had so often been afflicted. They had recognised what the Parliamentarians had chosen to ignore, viz. the fact that the Christian faith prohibited violence not authorized by the supreme magistrate. Thus it appeared (as Henry Hammond acidly remarked) that martyrdom was no longer a "desirable thing, nor taking up Christ's cross, nor following of him... [instead] we must set up a new trade of fighting, destroying, resisting, rebelling, [and] leave enduring to those Christians which were furnished with extraordinary strength from Heaven".[7]

According to the Royalists, this crucial power to kill was conferred upon the supreme magistrate directly by God Himself. Edward Fisher found that the power to punish with death belonged "peculiarly" to His Majesty as God's vicegerent and quoted Deuteronomy 32.37 ("Vengeance is mine, saith the Lord") in support.[8] Likewise in a characteristic passage Sir Robert

Filmer (now possibly the most frequently read of the Royalist writers) argued that "the lordship which Adam by creation had over the whole world" (a lordship which in Filmer's view was the same as that enjoyed by subsequent kings within their several patrimonies) emphatically included the power of life and death, along with the power to conduct foreign relations:

> These acts of judging in capital crimes, or making war, and concluding peace, are the chiefest works of sovereignty that are found in any monarch. Not only until the Flood, but after it, this patriarchal power did continue, as the very name of Patriarch does in part prove.[9]

In the Serpent-Salve of 1643, Bishop John Bramhall, in the course of rebutting the characteristic Parliamentarian idea that the magistrate owed his position and powers to some act of popular delegation and trust, was adamant that the power of life and death in particular could not be said to have such a provenance, because the people themselves had no such power which (as Christ had reminded Pilate) had therefore to come from "above": "If Pilate had his power from Heaven, we may conclude [as] strongly for King Charles".[10]

The author of A Discourse Concerning Supreme Power and Common Right reinforced this point by claiming that because men

did not possess a power to dispose of their own lives, they could not give such a power to anyone else. The power over life was therefore "an emanation from God immediately, and so to be obeyed only where orderly settled and constituted".[11] John Maxwell took this to be no less than "an argument unanswerable", proving that sovereign power came "immediately from above": the "sovereign power is armed with the potestas vitae & necis... which cannot flow or issue from man, for no man hath it, but the living God, author of life, who killeth and giveth life again..."[12] It could not be imagined that this right of life and death had been distributed by God to all men indifferently, for "This were to destroy mankind, and make God the God of disorder and confusion"; Maxwell's conclusion being rather that God had chosen "some man" to be His deputy within each nation and had endowed him with this particular right, which was seemingly for Maxwell the most important constituent of sovereignty ("This power is from none else but God Almighty: and if this power over life be from God, why not all sovereign power?").[13]

Dudley Digges provides an interesting variation on this theme. He argues, Hobbes-like, that civil government is the consequence of an amalgamation of family units whose patriarchs, perceiving that only the most uncomfortable life is possible without a sovereign power, consent to be ruled by some agency (usually a monarch) capable of settling contentious issues.

Digges' conclusion is also neo-Hobbesian: once having given his consent, once having given up his "hurtful liberty", the individual is irrevocably committed not to undermine (by resistance) what he has himself created. But although the sovereign power was in this sense a human creation, it was in an equally important sense God's creation for it is He who dispenses with the Commandment not to kill with respect to those magistrates appointed by people to exercise sovereign power. The right to take away the lives of recalcitrants is essential to the successful operation of the sovereign power, but it is a right which the people (who do not possess it) cannot confer. It must therefore be of divine provenance: "Not anyone having jus gladii... it follows they could not bestow it upon another, for what is not cannot be alienated. And therefore the supreme magistrate hath more power than the whole people, and is vice Deus, God's vicegerent". Without the divine exoneration from the sixth Commandment, "the sword of justice is blunt, the people's agreement could not put an edge upon it to cut off offenders, this...[being] done by the magistrate as God's delegate."[14]

As the Royalists saw the matter, then, the supreme magistrate and those who acted as his agents, were charged by God first and foremost (as magistrates) with the task of suppressing

bad subject behaviour. And the literature suggests that in the context of suppressing bad subject behaviour, little attempt was made to distinguish in a qualitative way between resistance (for which an ideological justification could be - and in 1642 was - provided) and the more mundane kinds of criminal violence. Thus it seemed that the right to suppress ordinary criminals and the right to command the militia (by means of which internal resistance and external aggression could be defeated) were fundamentally the same, with resistance probably being seen as an exacerbated and extended form of ordinary criminality. Such an outlook would appropriately have followed that of the Tudor homilists, for whom (it will be recalled) "he that nameth rebellion, nameth not a singular or one only sin, as in theft, robbery, murder, and such like; but he nameth the whole puddle and sink of all sins against God and man..."[15]

The Royalists insisted that inferior magistrates owed whatever authority they possessed to the king himself, borrowing their lustre (as Robert Mossom put it) from the king, as the stars did from the sun.[16] More prosaically, Henry Ferne argued that according to both divinity and English law

> the king is the only supreme governor, and so the sword is put into his hand for preservation of order, and executing of wrath, from whom the authority of the sheriff and all other ministers of power is derived.

> But he that takes the sword by his own authority, and not by commission from or under him, commits murder, and shall perish by the sword. The law is yet to make that may derive the warrant of killing... from any other fountain of power.[17]

The Parliamentarians claimed, of course, that the violence for which they were responsible had been initiated and sanctioned by the inferior magistrates of the English polity (a circumstance which *inter alia* made their situation quite different from that of the early Christians.)[18] The Royalists for their part insisted that MPs and Peers, whatever their other attributes, remained irrevocably *subjects*, and these writers occasionally went so far as to claim that *vis-a-vis* the supreme magistrate, they became private persons with no right to coerce at all: "Have not all subordinate magistrates their power from him [the king], and therefore are they not, with respect to him, mere private persons?"[19]

Now the Royalists were very sensitive to the way in which unruly humanity could ruin the commonwealth. But what did they make of bad behaviour on the part of the magistrate, violating God's laws and/or the laws of his society? They could scarcely deny that such bad behaviour happened, but equally they could scarcely subscribe to the Parliamentarian view that just as

unruly subjects were restrained by fear of punishment by the magistrate, so the unruly magistrate was (or should be) restrained by fear of the commonwealth's resistance.[20] The standard Royalist solution (after prayers, petitions, etc., had failed) envisaged only disobedience, and emphatically ruled out resistance, for resistance (as Henry Ferne put it) "is a taking of the sword or power without him [the king], and also a using of it against that power of administration which is settled in him, and therefore against him, as he is the only supreme governor".[21]

At the same time, a leading literary supporter of the King went so far as to speak of the possibility of "personal defence...against the sudden and illegal assaults" of the king's agents, and even of the king himself, but only "thus far, to ward his blows, to hold his hands, and the like: not to endanger his person, not to return his blows..."[22] It was also pointed out that even the tyrant preserves a degree of order and stability within his society, while to countenance resistance would be to countenance a remedy worse than the disease, for resistance

> does tend to the overthrow of that order which is the life of a commonwealth, and this not only because there is still order under a tyranny, but chiefly because, if it were good and lawful to resist the power, when abused, it would open the way to people upon the like pretenses to resist and overthrow every power duly

administered for the executing of wrath upon them that do evil.

The Royalist admonition was, then, that we should when aggrieved take up "not a sword of resistance, but a buckler of patience".[23]

The Parliamentarians, naturally, could not accept the proposition that the king and those officers of state authorised by the king (nearly) monopolized the legitimate use of violence within the state. Such a monopoly could perhaps be accepted de facto in normal circumstances, but in 1642 normality was in the view of the Parliamentarians conspicuous by its absence. The doctrine that the king uniquely possessed the potestas gladii would mean that if an emergency arose because of the king's neglect or malevolence, the state would be unable to protect itself. Thus it would come about, as one Parliamentarian put it, that

> though the land lay ableeding, and...invaded by hosts and armies from abroad, and Papists and rebels at home...and the king would make no provision against them, for the suppression and withstanding of them, the Parliament must sit still, and suffer all to be lost and ruined, having neither power to raise, nor use any force without the king".[24]

What had banished normality in 1642 was the fact that the King, led astray by evil counsellors who were determined to make him an absolute ruler, had in effect declared war on the commonwealth, which was therefore put to the most unusual necessity of defending itself against internal aggressors. Thus the Houses detected an enterprise to "alter the government of this Kingdom" and to reduce it by force "to the condition of some other countries which are not governed by Parliaments, and so by laws, but by the will of the prince, or rather of those who are about him".[25] And, asked the Houses rhetorically, if His Majesty was "seduced by wicked counsel, [and] will not harken to us in those things that are necessary for the preservation of the peace and safety of the Kingdom, shall we stand and look on, while the Kingdom runs to evident ruin and destruction?"[26] Henry Parker also puts this point about the disappearance of normality particularly well. Ordinarily, he is willing to concede, there would be no question of Parliament controlling the militia or levying taxes to support that control,

> but if the kingdom's safety be upon it, and the King will not concur in saving the Kingdom in an ordinary way, they [the Houses] may have recourse to extraordinary means for the saving of it: ordinarily the people may not take up arms but in the case of extraordinary invasion by foreign or domestic force, they may justify the taking up of arms, and when the

> war itself is justifiable, all the necessary concomitants...are justifiable.[27]

In the same way, thought Parker, an individual would have been justified in taking the emergency action of running through Guy Fawkes if he had come upon him in the act of lighting the match.[28] More inclined to euphemism, William Bridge had it that the ship of state had run into a storm with which the pilot was unable to cope. In consequence, he was being required to step aside to allow the representative body to take over at the tiller: "the prince being abused by those that are about him whereby the charge is neglected, the people or representative body, may so look to it for the present, setting some at the stern, till the storm be over, lest the whole suffer shipwreck".[29]

Thus, while the Parliamentarians did not for one moment dispute that Romans 13 and 1 Peter 2 indicated the purposes of magistracy and gave to it all appropriate protection, it was clear to them that the magistrate-turned-destroyer could claim no advantage from these texts, having by his aggressive acts placed himself in an entirely different conceptual category.

At this stage of the proceedings (as indicated by the passages quoted above from Houses' Remonstrance and from Bridge's Wounded Conscience Cured) the Parliamentarian propagandists were

anxious to assure their readers that it was the King's evil counsellors ("persons too much prevailing with His Majesty [who had]...a design for overthrowing our laws, enslaving our liberties and altering our religion")[30] who were to be held responsible for the current absence of normality, rather than Charles himself, who was described as being grievously misled and who therefore (it was sometimes said) needed to be rescued from the grip of his "desperate" entourage so that he could be restored to a more rational atmosphere.[31] William Bridge went so far as to suggest that the papists surrounding the King would either kill or (worse still) convert him: "What better service therefore can a true subject perform to His Majesty's person, than by force of arms to deliver him out of the hands of those spoilers that be in wait for his precious soul?"[32] In such a more rational atmosphere he would be able to make his way back to his rightful place within the traditional English mixed government, with its interacting Estates of monarchy, aristocracy and commons.[33]

So the declared Parliamentarian objects in 1642 were to repel the assaults of the Cavaliers and to rescue Charles (without whose presence these assaults must surely collapse) by breaking the power of his mischievous entourage. Parliamentarians aimed (it was said) "at nothing but the beating down of that sword which was drawn against them". Thus it was

the intention of the Parliamentarians that Charles's hands should be "disweaponed", emphatically not that his head should be "undiademed".[34] And they were happy to leave the subjects of deposition and regicide to those whom they acknowledged as experts, the papists.[35]

Parliamentarians told themselves that because the King could not conceivably have a power to do what they held him to be doing (destroying English mixed monarchy by making himself absolute, reversing the Reformation,etc.),[36] he could authorize no one else to be his accomplice. Therefore it was possible for the Parliamentarians to claim that even the officers of state assisting Charles were to be considered as no more than private men, and to resist the assaults of private men was of course manifestly justified. This reasoning proved to Philip Hunton "that such instruments thus illegally warranted, are not authorized; and therefore their violence may be by force resisted, as the assaults of private men, by any; and then much rather by the Houses of Parliament..."[37] Moreover, it was noted that Peers and MPs were also magistrates (albeit inferior magistrates) and their Romans 13 obligation to be a terror to evil led the Parliamentarians to conclude that it was their duty to terrorise the Cavaliers.[38]

No one espousing the cause of the Houses, it was insisted, wanted to see the King killed or harmed in any way (any more than David had wanted to harm Saul),[39] but if he could not be dissuaded from being present at the battlefield along with his Cavaliers, there was no way in which his safety could be guaranteed.[40] Indeed, it was the Cavaliers themselves who were shamefully responsible for putting him in danger in these circumstances, for "if he be a murderer of his father who doth counsel his father to come to a place of danger where he may be killed....they are traitors and murderers of the King,who either counselled His Majesty to come to Edgehill...or did not violently restrain him from coming tither..."[41]

Both the repulse of the Cavaliers and the rescue of His Majesty necessitated the taking of human life and in an early appeal to the Scots, the Houses spoke of "repressing those amongst us who are now in arms, and make war, not only without consent of Parliament, but even against Parliament and for the destruction thereof".[42] The whole Parliamentarian enterprise was thus premised upon the innocence of those whom the Cavaliers sought to destroy. The potestas gladii could only properly be used against those who were guilty of some grave offence, but for the Parliamentarians there could be no question of their own guilt, and some of their number bring out explicitly this facet of their position in 1642. The House themselves protested in

July that "your Majesty, incensed by many false calumnies and slanders, doth continue to raise forces against us and your other peaceable and loyal subjects...[with the intention] by force to determine the questions...concerning the government and liberty of the kingdom..."[43] A little later, John Goodwin argued in Anti-Cavalierisme that

> men can have no lawful authority or power, by any warrant or commission from a king to take away the lives or goods, of those that are innocent and have not transgressed the law, no not of those that are not in a lawful way convicted for transgressors of the law. Therefore such men as these may lawfully be resisted in any attempts they shall make either upon our lives, or our goods, notwithstanding any warrant, commission or command they have, or pretend to have, from a king to do it.[44]

Scripture and Reason Pleaded for Defensive Armes (by several authors including Herbert Palmer) admitted that isolated "unjust violences" could well be contingent upon any widespread defence of the commonwealth's religion, laws and liberties. But the pamphlet insisted that this should not disqualify us from making such a defence and blamed accidental injuries upon the original aggressors: "Let Heaven and Earth judge, who is the wrong-doer, and whether the defenders may not as innocents call for justice,

as well as David [did] against Saul."[45]

Similarly, it seems to have been the Parliamentarian view that the innocent could rightfully, by a law of nature, defend themselves against assaults, even though the assaults were countenanced by the (misled) supreme magistrate and sometimes committed in his very presence. "Murder is murder", we are told by Samuel Rutherford in Lex Rex; and it could not be excused by a warrant from the supreme magistrate any more than David's warrant could excuse Joab's murder of Uriah.[46] And there was for Rutherford no difference of principle between the Parliamentarian army defending itself against Cavalier attack and the self-defence of "a single man unjustly invaded for his life...[by] an unjust invader." Both were entitled to act as judge in their own cause.[47] Likewise, in A Sovereign Antidote to prevent...Civil Wars and Dissentions, William Prynne argued that kings, being God's vicegerents, ought to "study to the uttermost to preserve the kingdoms in perfect peace and prosperity, and not to make war against them". If the king rushed at a subject to assault him, he might properly defend himself: and "much more...may the whole Parliament and kingdom withstand a king's open causeless hostility against them, to preserve themselves and the kingdom from destruction".[48] Elsewhere, he added that if the king put himself at the head of a

pirate crew, this would not prejudice our competence to defend ourselves when they attacked. And for Prynne the King's unjust war of 1642 was simply a pirate attack writ large. The law of nature decreed the self-defence of the innocent, whether it be the son assaulted by his father, the wife by her husband, the servant by his master, or the subject by his king; and Prynne even upheld the right of a hunted animal to turn on his pursuer in self-defence, even if the pursuer was a king.[49] To Stephen Marshall the situation was basically the same: having been able to defend themselves in the state of nature, it was unthinkable that men had abandoned the right to do so in civil society. Thus communal self-defence was in order when the King should "send, or suffer a company of thieves or murderers to go in his name, and spoil and destroy them that do well."[50] Yet another writer urged the existence of a natural law

> which teacheth every worm, much more a man, and most of all a whole nation, to provide for its safety in time of necessity...[Thus] every private person may defend himself, if unjustly assaulted, yea, even against a magistrate, when he hath no way to escape by flight. Much more lawful then is it for a whole nation to defend themselves against such assassins as labour to destroy them, though the King will not allow them defence.[51]

In fact, it seems likely that for many Parliamentarians, magistracy was itself the consequence of a decision of a group to

establish a specialised agency through which to exercise in a more effective way their several natural rights of self-defence. The power of the sword therefore belonged to the magistrate to use against internal criminals and external invaders.[52] Thus the Houses in their important Declaration of 19 May 1642, spoke of a law "as old as the Kingdom, that the Kingdom must not be without a means to preserve itself". To preserve itself "without confusion...in an orderly and regular way, for the good and safety of the whole", the sword had been entrusted to the king and the Houses. However, if the king did not discharge his trust, the kingdom might "be enforced presently to return to its first principles, and every man [would be] left to do what was right in his own eyes", unless the Houses acted independently and themselves exercised the potestas gladii, which they were now proposing to do.[53] A similar point is made in Bridge's The Wounded Conscience Cured: "...when any government is set up in a land by a people, they trust the governor, [but] they do not give away their liberties or rights, but trust them in the hand of the governor, who if [so] abused that he do not perform his stewardly trust...the people or representative body, as an act of self-preservation...are to look to it".[54] The use of the potestas gladii against the innocent was precluded not simply (as the Royalists would have argued) by God's law, but also by the fact that the magistrate's powers were a trust from the people who

expected him to act for the general good by suppressing criminality. The Parliamentarians knew, of course, that they were innocent, with their own recourse to violence being no more than an emergency response to the violence of the Cavaliers, to whom an array of disreputable motives was invariably attributed.[55]

So in England the supreme magistrate was entrusted with the sword to protect individuals more effectively than they could (usually) protect themselves. But it had never been the people's intention that he should monopolize its legitimate use, it had never been the people's intention to disqualify themselves from organized resistance;[56] and Parliamentarians wrote at length of various contingency arrangements devised or envisaged by the people to cope with a situation in which the supreme magistrate had ceased to be a protector and had become a destroyer.[57]

In what sense had Charles become a destroyer in the eyes of those who fought against him in the Civil War? The logic of the case against him was that in order to make himself an absolute monarch he was seeking to destroy the traditional English mixed regime in which the Estates of aristocracy and commons had been judiciously combined with the monarchy to produce a system which offered the benefits of each of the simple forms while at the

same time avoiding their characteristic disadvantages. A Parliamentarian writer was therefore led in 1643 to demand of a Royalist adversary whether "you think perhaps we should have yielded our throats, and made no defence against the inundations of arbitrary power...though the Law of God and Nature, and the law of the kingdom likewise, do allow us to defend ourselves...?[58]

Most Parliamentarians held that control of the sword had been entrusted jointly to the King and the Houses, such that if his Majesty failed to use the sword in an appropriate manner, the Houses, as an emergency measure, could intervene and secure the commonwealth's safety by independently exercising the potestas gladii. The Houses themselves explained that because the king as an individual was "more subject to accidents of nature and chance" which might distract him from his duty, the wisdom of this state hath entrusted the Houses of Parliament with a power to supply what should be wanting on the part of the prince".[59] And the idea of saving the state in pursuit of the maxim Salus populi suprema lex was taken up, implicitly or explicitly, by all Parliamentarian writers. Thus the most famous of them, Henry Parker, wrote that "the Parliament maintains its own counsel to be of honour and power above all other, and when it is unjustly rejected by a king seduced and abused by private flatterers, to the danger of the commonwealth, it assumes a right to judge of

that danger, and to prevent it."[60] While thus justifying Parliament's attempt to secure (at least temporarily) a monopoly control of society's agencies of coercion, these writers professed themselves aghast at the idea that the King should have such control. The implication of this idea would be that England's laws would be made irrelevant, "no better than cobwebs to us", and that the King would be able "to mow the fertile meadows of Britain as often in a summer as he pleaseth".[61]

FOOTNOTES

1. Rushworth's Historical Collections, Part III, Vol. 2, p. 135.

2. See Clarendon, The History of the Rebellion and Civil Wars in England (ed. Dunn Macray), I, p. 590.

3. See Henry Ferne, The Resolving of Conscience (1642), p. 10; Henry Ferne, A Reply to Severall Treatises (1643), p. 8; The Rebels Catechism (1643), reprinted in The Harleian Miscellany (1744), VII, p. 438; Francis Quarles, The Loyall Convert (1643), reprinted in The Complete Works (ed. A. B. Grosart), 1880, I, p. 140; Griffith Williams, Vindiciae Regum (1643), p. 9.

4. The Necessity of Christian Subjection (1643), p. 21; see also: Peter Heylyn, The Stumbling Block of Disobedience and Rebellion (1644), in Historical and Miscellaneous Works (1681), p. 716; William Ball, A Caveat for Subjects (1642), p. 12; John Maxwell, Sacro-Sancta Regum Majestas (1644), p. 168, where the conclusion is drawn that "if you provide not for the safety of the king, you cannot possibly secure the safety of the public".

5. A Discourse concerning Supreme Power and Common Right (1680, written circa 1642), p. 45.

6. A Letter of Spiritual Advice...to Mr. Stephen Marshall (1643), p. 5. Cf. A copy of a letter written to Master Stephen Marshall...by a parishioner of his (1643): "When the Lord of Peace expired, he left us a gracious legacy of peace, [and] you

are one of the executors of his last will. What is become of this legacy, we demand?" (p. 2). See also Henry Hammond, A Vindication of Christ's reprehending St. Peter, appended to the same author's Of Resisting the lawful Magistrate under colour of religion (3rd. ed., 1644), passim.

7. Hammond, Of Resisting, p. 25; see also: James Usher, The Power Communicated by God to the Prince and the Obedience Required of a Subject (1661, written circa 1640), reprinted in Works (Dublin, 1847-64), XI, pp. 285, 357; Ferne, A Reply, p. 71. On the non-resistance of David when threatened by Saul, see: Henry Ferne, Conscience Satisfied: that there is no warrant for the Arms now taken up by subjects (1643), pp. 48-9; The Rebels Catechism, p. 441.

8. An Appeal to thy Conscience (1643), p. 2.

9. Patriarcha, reprinted in Patriarcha and other Political Works of Sir Robert Filmer (ed. P. Laslett), Oxford, 1949, p. 58. On the patriarchal derivation of this power, see also James I's Speech of 1609, in The Political Works of James I (ed. C. H. McIlwain), New York, Russell & Russell, 1965, p. 308. Laslett traced the Patriarcha MS. to the years immediately preceding the Civil War (see Introduction, p. 3ff). For an alternative view suggesting a later origin, see J. W. Wallace, "The Date of Sir Robert Filmer's Patriarcha", Historical Journal, XXIII, 1980.

10. Works (1843-5), III, p. 324; see also: Hammond, Of Resisting, p. 37; Ferne, A Reply, p. 42; A Letter of Spiritual

Advice, p. 6.

11. p. 57.

12. Sacro-Sancta Regum Majestas, pp. 49-50; see also pp. 131-2.

13. Sacro-Sancta Regum Majestas, p. 52; see also: Ferne, A Reply, pp. 13, 85; Heylyn, Stumbling Block,p. 718.

14. The Unlawfulnesse of Subjects taking up Armes against their Soveraigne in what case soever (1643), pp. 63, 77. For a similar argument to the effect that it is God's exoneration which puts the edge on the magistrate's sword, see Clarendon, Transcendent and Multiplied Rebellion and Treason discovered (1645), Preface. Hobbes's account of the right to take life was, of course, quite different. For him it was founded upon the right exercised by a man in the state of nature "to do whatsoever he thought necessary to his own preservation; subduing, hurting, or killing any man thereunto" (Leviathan [1651], p. 161). And while the rest of us gave up this right when civil society was created, the sovereign retained it. Bishop Bramhall attacked this argument as leading to the outrageous conclusion that a sovereign "may lawfully kill a thousand innocents every morning to his breakfast" and preferred the more traditional account (see The Catching of Leviathan [1659] Works, IV, p. 562), as did Clarendon in his subsequent critique of Hobbes (see A Brief View and Survey of...Mr. Hobbes's Leviathan[1676] p. 40).

15. An Homily against Disobedience and wilful Rebellion (1571), reprinted in Sermons or Homilies...in the time of Queen Elizabeth (Oxford, 1810), pp. 486-7.

16. A Sermon preached...in York. (1642), p. 4.

17. Conscience Satisfied, p. 40. What was called for in an emergency therefore, was not illegal initiatives by the Houses of Parliament, but His Majesty's retention of his power to protect: see p. 29, and also Usher, The Power, pp. 275-6.

18. See e.g. William Bridge: "But if they had [had] the whole Senate of Rome with them, the representative body of the Empire, then their case had been more like unto ours, and then no question they would have taken up arms for the defence of themselves" (The Wounded Conscience Cured [1642], reprinted in Works, 1854, IV, p. 211). See also John Goodwin, Anti-Cavalierisme (1642), p. 26.

19. A Letter of Spiritual Advice, p. 5; see also: The Rebels Catechism, p. 441; Williams, Vindiciae Regum, pp. 37, 46, 52; Dudley Digges et al., An Answer to a printed Book (1642), p. 20.

20. See e.g. William Prynne, The Third Part of the Soveraigne Power of Parliaments and Kingdomes (1643), pp. 69-70.

21. Ferne, Conscience Satisfied, p. 15.

22. Henry Ferne, The Resolving of Conscience (1642), p. 9. Though the subject is seldom referred to in their publications, the Royalists' emphasis on the king's possession of the potestas gladii was clearly not intended to disallow individual

self-defence in the circumstance that the magistrate's help would be too late: see Hammond, A Vindication, pp. 76 (where Luke 22.36 is used in support), 80, 83, 86.

23. Ferne, Resolving of Conscience, p. 17; Mossom, A Sermon, p. 11.

24. A Second Plain English (1643), p. 8.

25. Declaration of the Lords and Commons...setting forth the grounds...that necessitate them at this time to take up defensive Arms (3 August, 1642), p. 14.

26. A Remonstrance of the Lords and Commons (2 November, 1642), reprinted in Edward Husbands, An Exact Collection of all Remonstrances...between the King's most excellent Majesty, and his High Court of Parliament (1643), p. 697. See also: The Vindication of Parliament (1642), reprinted in The Harleian Miscellany (1744), VIII, pp. 51, 53; the Essex Petition (2 June, 1642), quoted in A. Fletcher, The Outbreak of the English Civil War (London: Edward Arnold, 1981), p. 355; Prynne, The Third Part of the Soveraigne Power, pp. 3, 83-4.

27. Rejoinder of HP...to Mr. David Jenkins Cordial (1647), reprinted in Judge Jenkins (ed. W.H. Terry), London: Cayme Press, 1929, p. 116.

28. Parker, Rejoinder of HP, p. 116; see also The Subject of Supremacie (1643), p. 12.

29. Wounded Conscience, p. 225

30. Stephen Marshall, A Plea for Defensive Armes (1643), p. 23.

31. See e.g. the Houses' Instructions to the Earl of Essex (September 1642) reprinted in Rushworth's Historical Collections, Part III, Vol. 2, p. 17 (whence the description of Charles's entourage as "desperate" is taken). Therefore, while the Parliamentarians readily conceded that no subject should deliberately harm his king in cold blood (though his safety could not be guaranteed if he insisted on appearing at Edgehill), it was simply a non sequitur to conclude that "cut-throat Cavaliers" should not be resisted (see Prynne, The Third Part of the Soveraigne Power, p. 84). See also: The Vindication of Parliament p. 53; A Miracle: an Honest Broker (1643), p. 3; Jeremiah Burroughs, The Glorious Name of God (1643), p. 28.

32. Wounded Conscience, p. 244.

33. Indeed, many (over-optimistic) Parliamentarians had apparently seen the adoption of a posture of determined defence as in itself a way of securing a more rational atmosphere. Without such a posture, the King and his evil counsellors would "so prevail, that they would undoubtedly bring their designs to pass of a speedy introduction of popery and tyranny. Whereas if they saw the Parliament in a good posture of defence...then the King would be brought to a good accommodation and agreement with his Parliament without a blow being struck between them" (Bulstrode Whitelock, quoted in Fletcher, The Outbreak, p. 245).

34. Parker, Rejoinder of HP, p. 129.

35. See e.g. William Prynne, The First Part of the Soveraigne Power of Parliaments and Kingdomes (1643 edition of all the parts of the Soveraigne Power), p. 3; William Bridge, Wounded Conscience, p. 235.

36. See e.g. the Declaration of the Houses (3 August, 1642), especially pp. 12-13, for an account of what the war was about.

37. A Treatise of Monarchie (1643), p. 56; see also: Hunton's Vindication of the Treatise of Monarchy (1644), pp. 10, 31, 64; A Remonstrance of the Lords and Commons (2 November, 1642), p. 697; The Vindication of Parliament, p. 59.

38. See Marshall, A Plea, p. 9.

39. See The Observator Defended (1642), p. 9.

40. See Samuel Rutherford, Lex Rex (1644; reprint Edinburgh, 1843), p. 160.

41. Rutherford, Lex Rex, p. 148; see also The Subject of Supremacie, pp. 65-6.

42. Address from the two Houses to the Scots, reprinted in Clarendon, The History, II, p. 381.

43. A Humble Petition of the Lords and Commons (16 July, 1642), reprinted in Clarendon, The History, II, p. 230.

44. Anti-Cavalierisme, pp. 16-17.

45. 1643, p. 16. See also: Burroughs, Glorious Name, p. 27; Henry Parker, Animadversions Animadverted (1642), p. 7; Prynne, The Third part of the Soveraigne Power, pp. 3-4, 21,47. While

all Parliamentarians regarded themsevles as innocents, justifiably defending themselves against an aggressive group, a significant minority saw in contemporary events much more than the repulse of an adventitious attack. For these writers the struggle between the Saints and Antichrist was the reality behind the appearances of 1642, and because the Saints had an overriding commitment to destroy Antichrist, their defensive professions were sometimes accompanied by a more positively aggressive attitude which involved some sort of recognition that mere self-defence did not sum up their activities. Michael Walzer (The Revolution of the Saints [London: Weidenfeld & Nicolson, 1966] passim.) and Brian Manning (The English People and the English Revolution [Harmondsworth: Penguin Books, 1978] p. 265ff.) have given prominence to this aspect of Parliamentarian thinking. For me, this duality of attitude on the part of the opponents of Charles I appears strikingly in the Scottish Parliament's Remonstrance...shewing the lawfulness of the second coming into England to take up arms against all that shall oppose the Parliament (1643) which contains the conventional defensive professions (Scots being seen as akin to a man blockaded in his own house and "in a continual hazard of his life, not knowing when he shall be assaulted by his enemies" [p. 3]) together with very aggressive talk of chasing the Beast back to Rome, and thence "out of the world" (p. 4).

46. p. 37.

47. p. 166

48. 1642. pp. 3,7.

49. The Third Part of the Soveraigne Power, pp. 18, 21, 78.

50. A Plea, p. 8.

51. The Vindication of Parliament, pp. 63-4.

52. See especially Prynne, The Third Part of the Soveraigne Power, p. 13.

53. Reprinted in Clarendon, The History, II, p. 100.

54. p. 230.

55. For a detailed account, see The Vindication of Parliament, pp. 53-4.

56. Parliamentarians like William Prynne who emphasised a natural right to individual self-defence would probably have countenanced individual resistance (see The Third Part of the Soveraigne Power, pp. 18, 83) while others like William Bridge specifically repudiated it, requiring the individual to wait for the initiative to be taken by the lesser magistrates (see Wounded Conscience, p. 216). As in 1642 the initiative was in the hands of the lesser magistrates, this difference appears to have occasioned no sustained debate.

57. Thus William Bridge saw the Parliamentarian armies as so many serjeants-at-arms sent from Westminster to apprehend the criminous Cavaliers (see Wounded Conscience, pp. 204-5), while Charles Herle's doctrine of "supply" saw the Houses as

intervening to protect the commonwealth when the king was conspicuously failing to do so (see A Fuller Answer to treatise written by Doctor Ferne [1642], p. 2ff.)

58. A Speedy Answer to a Copy of a Letter written to Master Stephen Marshall...by a parishioner of his (1643), p. 5.

59. Declaration of the Houses against the King's Proceedings (19 May 1642), reprinted in Clarendon, The History, II, pp. 99-100.

60. Observations upon some of His Majesties Late Answers and Expresses (1642), pp. 33-4.

61. Parker, Rejoinder of HP, p. 103; A Discourse upon the Questions in debate between the King and Parliament (1642), quoted in Lois G. Schwoerer, No Standing Armies! (Baltimore: Johns Hopkins University Press, 1974), p. 57. See also Touching the Fundamental Laws (1643), pp. 11-12. Thus the pro-Parliament "Honest Broker" wrote that the true ground "of the Parliament's levying forces, [was] not whether a bishop or no bishop; no, nor whether Reformation or no Reformation; but whether law or no law?...Whether a living law, or but a dead letter...?" (A Miracle: an Honest Broker, pp. 36-7).

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