

HM 4.1 – Puritan Perspectives on Ministry

Samuel Rutherford's *Lex, Rex*

Further Reading:

- Samuel Rutherford, *Lex, Rex* or The Law and the Prince – A dispute for The Just Prerogative of King and People: containing The reasons and causes of the most necessary defensive wars of the Kingdom of Scotland, and of their Expedition for the aid and help of their dear brethren of England; in which their innocence is asserted, and a full answer is given to a seditious pamphlet, entitled, SACRO-SANCTA REGUM MAJESTAS, or The Sacred and Royal Prerogative of Christian Kings; under the name of J. A., but penned by John Maxwell, the excommunicate Popish Prelate ... 1644 (Sprinkle Publications, Harrisburg VA, 1980 and now available online at <http://www.constitution.org/sr/lexrex.htm>)
- J. Clarke, 'Rutherford and Resistance' in *The Standard Bearer*, April 1989
- John Coffey, *Politics, Religion and the British Revolutions: The Mind of Samuel Rutherford*, 1997
- David Estrada, 'Samuel Rutherford as a Presbyterian Theologian and Political Thinker', *Christianity and Society*, XIII.4
- David Field, " 'Put Not Your Trust in Princes': Samuel Rutherford, the Four Causes, and the Limitation of Civil Government", pp.83-151 of Stephen Clark (ed.), *Tales of Two Cities* (Leicester: IVP, 2005)
- Mark Kishlansky, *A Monarchy Transformed*, 1996
- Kuyper Institute, "Introduction to *Lex Rex*" - <http://capo.org/LexRex.html>
- Oliver O' Donovan (ed.), *From Irenaeus to Grotius, A Sourcebook in Christian Political Thought*, 1999
- Fred Young, 'Samuel Rutherford on Christian Resistance' http://www.avision1.com/biblical_worldview/BWV-99/BWVo8-4.html

1. Background

Lex, Rex – 1644

Defence of armed resistance to the tyrant.

Maxwell's book a classic defence of the "divine right of kings". Entitled, *The Sacred and Royal prerogative of Christian Kings*, it "contended for the right of kings to rule independently of parliaments and people, and required of the people passive obedience in the most absolute and unqualified terms." (Clarke)

Note that *Lex, Rex* is subtitled, "A dispute for The Just Prerogative of King and People"

Condemned at the Restoration as "a book inveighing against monarchie and laying ground for rebellion".

2. Summary of *Lex, Rex*

Written in the form of 44 questions and answers. Coffey's summary of the questions seems fair and runs:

Qns I – XIV	the origins of government
Qns XV – XXI	the relationship between the king and the people (parliament and judges)
Qns XXII – XXVII	the relationship between the king and the law
Qns XXVIII – XXXVII	defence of the defensive war of the Scots
Qns XXXVIII – XLIV	various

The questions (not the whole wording of each):

- I Whether government be by a divine law
- II Whether or no government be warranted by the law of nature
- III Whether royal power and definite forms of government be from God
- IV Whether or no the king be only and immediately from God, and not from the people
- V Whether or no the P. Prelate proveth that sovereignty is immediately from God, not from the people
- VI Whether or no the king be so allennarly from both, in regard of sovereignty and designation of his person, as he is noway from the people, but only by mere approbation
- VII Whether the P. Prelate conclude that neither constitution nor designation of kings is from the people

VIII Whether or no the P. Prelate proveth, by force of reason, that the people cannot be capable of any power of government

IX Whether or no sovereignty is so in and from the people, that they may resume their power in time of extreme necessity

X Whether or not royal birth be equivalent to divine unction

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

XII Whether or no a kingdom may lawfully be purchased by the sole title of conquest

XIII Whether or no royal dignity have its spring from nature, and how it is true Every man is born free, and how servitude is contrary to nature

XIV Whether or no the people make a person their king conditionally or absolutely; and whether the king be tyed by any such covenant

XV Whether the king be univocally, or only analogically and by proportion, a father

XVI Whether or no a despotical or masterly dominion agree to the king, because he is king

XVII Whether or no the prince have properly the fiduciary or ministerial power of a tutor, husband, patron, minister, head, master of a family, not of a lord or dominator

XVIII What is the law or manner of the king (1 Sam. viii. 9, 11) discussed fully

XIX Whether or no the king be in dignity and power above the people

XX Whether inferior judges be essentially the immediate viceregents of God, as kings, not differing in essence and nature from kings

XXI What power the people and states of parliament hath over the king and in the state

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

XXIII Whether the king hath a prerogative royal above law

XXIV What relation the king hath to the law

XXV Whether the supreme law, the safety of the people, be above the king

XXVI Whether the king be above the law

XXVII Whether or no the king be the sole, supreme, and final interpreter of the law

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

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

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

XXXI Whether self-defence, by opposing violence to unjust violence, be lawful, by the law of God and nature

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

XXXIII Whether or no Rom. xiii. 1 make any thing against the lawfulness of defensive wars

XXXIV Whether royalists prove, by cogent reasons, the unlawfulness of defensive wars

XXXV Whether the sufferings of the martyrs in the primitive church militant be against the lawfulness of defensive wars

XXXVI Whether the king have the power of war only

XXXVII Whether the estates of Scotland are to help their brethren, the protestants of England, against cavaliers, proved by argument 13

XXXVIII Whether monarchy be the best of governments

XXXIX Whether or no any prerogative at all above the law be due to the king. Or if *jura majestatis* be any such prerogative

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

XLI Whether doth the P. Prelate with reason ascribe to us doctrine of Jesuits in the question of lawful defence

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

XLIII Whether the king of Scotland be an absolute prince, having a prerogative above laws and parliaments

XLIV General results of the former doctrine in some few corollaries, in twenty-two questions

Some of the key arguments:

i. Origin and form of government

- the fact of government is established by God
- the form of government is decided by the people - monarchy, aristocracy, democracy all have pros and cons
- Civil society is 'natural *in radice* and voluntary *in modo* of coalescing'

- “God immediately instituted and mediately constituted government” (Coffey, 163)
- “The question is, Whether the kingly office itself come from God. I conceive it is, and floweth from the people, not by formal institution, as if the people had by an act of reason devised and excogitated such a power: God ordained the power. It is from the people only by a virtual emanation, in respect that a community having no government at all may ordain a king or appoint an aristocracy. But the question is concerning the designation of the person: Whence is it that this man rather than that man is crowned king? and whence is it — from God immediately and only — that this man rather than that man, and this race or family rather than that race and family, is chosen for the crown? Or is it from the people also, and their free choice? For the pastor’s and the doctor’s office is from Christ only; but that John rather than Thomas be the doctor or the pastor is from the will and choice of men — the presbyters and people.

2. The royal power is three ways in the people: 1st, Radically and virtually, as in the first subject. 2nd, *Collative vel communicative*, by way of free donation, they giving it to this man, not to that man, that he may rule over them. 3rd, *Limitate*, — they giving it so as these three acts remain with the people. (1.) That they may measure out, by ounce weights, so much royal power, and no more and no less. (2.) So as they may limit, moderate, and set banks and marches to the exercise. (3.) That they give it out, *conditionate*, upon this and that condition, that they may take again to themselves what they gave out upon condition if the condition be violated.” IV – p.6

ii. Relationship between the King and the people

- is by covenant (use of I Sam 10, II Sam 5, I Chron 11)
(objection – this is historical fiction
reply – natural law; OT – esp esp esp Deut 17; acts of Parl presuppose it)
- this gives a conditionality to the king/people relationship - XIV
- in certain respects, then, royal power derives from the community
- “The law hath one fundamental rule, *salus populi*” – the good of the people - XXV

iii. Authority of Government

- Law is constituted by the command of God and is embedded in natural law and the Scripture. So the King does NOT create law but recognise it.
- “A king essentially is a living law, an absolute man is a creature they call a tyrant, and no lawful king.” XXIII – p.111
- “... the king as king, is a living, breathing, and speaking law.” XXII – p.101
- Government is given for the good of the people and if the King governs against the good of the people then he is to be resisted. King is to serve the good of the people - like a father, tutor, political servant, watchman. XVII
- Government is bounded by the national covenant between Scotland and the Lord. If the King violates that covenant by suppressing true religion or encouraging false then he has lost authority. The King’s failure to do his religious duty itself breaks the King / people covenant.
- If the sovereign ignored God’s law, he might retain the title of monarch, but was a king only conditionally until God removed him as a covenant-breaker. e.g. David anointed while Saul still on the throne.
- Against absolute power: “God is the author of civil laws and government, and his intention is therein the external peace, and quiet life, and godliness of his church and people, and that all judges, according to their places, be nurse-fathers to the church. Now God must have appointed sufficient means for this end; but there is no sufficient means at all, but a mere anarchy and confusion, if to one man an absolute and unlimited power be given of God, whereby, at his pleasure, he may obstruct the fountains of justice, and command lawyers and laws to speak not God’s mind, . . . And this one having absolute and irresistible influence on all the inferior instruments of justice, may, by this power, turn all into anarchy, and put the people in a worse condition than if there were no judge at all in the land. For that [saying] of politicians, that tyranny is better than anarchy, is to be taken *cum grano salis* [with a grain of salt]; but I shall never believe that absolute power of one man, which is *acto primo* [the primary act of] tyranny, is God’s sufficient way of peaceable government.” XXII – p.105

iv. Right of self-defence

- “If it be natural for one man to defend himself against the personal invasion of a prince, then it is natural and warranted to ten thousand, and to a whole kingdom, and what reason to defraud a kingdom of the benefits of self defence more than one man.” XXX – p.158

v. Lawfulness of resistance

- “That power which is contrary to law, and is evil and tyrannical, can tie none to subjection, but is a mere tyrannical power and unlawful; and if it tie not to subjection, it may lawfully be resisted. But the power of the king, abused to the destruction of laws, religion, and subjects, is a power contrary to law, evil, and tyrannical, and tyeth no man to subjection: wickedness by no imaginable reason can oblige any man.” XXVIII – p.141

vi. Three levels of resistance:

- “David used all three in order. He made his defence by words, by the mediation of Jonathan; when that prevailed not, he took himself to flight, as the next; but because he knew flight was not safe in every way, and nature taught him self-preservation and reason and light of grace taught him the means and the religious order of these means for self-preservation, therefore he addeth a third, “he took Goliath's sword, and gathered six hundred armed men,” and after that made use of an host. Now a sword and armour are not horsing and shipping for flight, but contrary to flight; so re-offending is policy's last refuge. A godly magistrate taketh not away the life of a subject if other means can compass the end of the law, and so he is compelled and necessitated to take away the life; so the private man, in his natural self-defence, is not to use re-action, or violent re-offending, in his self-defence against any man, far less against the servants of a king, but in the exigence of the last and most inexorable necessity.” XXXI - p.160

vii. But Scripture requires passive obedience?

- In his explanation of Romans 13 he contends that this passage refers to the office of magistrate (the magistrate *in abstracto*), i.e., to a person using his power lawfully. When a king acts unlawfully, he is not a "higher power", but is acting as an ordinary man. The lawful ruler is not to be resisted because he is not a terror to the good works but to the evil; but that ruler who persecutes the church becomes in these acts a terror to good works, and therefore the reason in the text proves that a man who does these things against the office is to be resisted. We are only to be subject to the power and royal authority *in abstracto*, in so far as, according to his office, he is not a terror to good works, but to evil. (Clarke) XXXIII – p.173
- but Christ was passive?
 - that was unique – “this one merely extraordinary example of Christ” – XXX – p.153
- how about the early Christians?
 - they only had two choices – suffer or deny Christ – they didn't have the chance of defensive war – XXXV – p.183

viii. Who may resist?

- individual – if King tried to force to adultery, incest or sodomy, XXXI - p.162
- lawful resistance is defensive
- estates and judges – i.e. the leaders of the people
- never argued for violent resistance by gps of private indivs nor by indivs in their private capacities
- the people are to suffer much before they resume their power
- religious oppression far more important than judicial / fiscal

3. Some particularly interesting passages

- “... for I judge they [aristocracy and democracy] are not governments different in nature, if we speak morally and theologically, only they differ politically and positively; one is aristocracy any thing but diffused and enlarged monarchy, and monarchy is nothing but contracted aristocracy, even as it is the same hand when the thumb and the four fingers are folded together and when all the five fingers are dilated and stretched out; and wherever God appointed a king he never appointed him absolute, and a sole independent angel, but joined always with him judges, who were no less to judge according to the law of God (2 Chron. xix. 6.) than the king, Deut. xvii. 15.” III – p.5
- “If the people, as God’s instruments, bestow the benefit of a crown on their king, upon condition that he will rule them according to God’s word, then is the king made king by the people conditionally; but the former is true, therefore so is the latter. The assumption is proved thus: — Because to be a king, is to be an adopted father, tutor, a politic servant and royal watchman of the state; and the royal honour and royal maintenance given to him, is a reward of his labours and a kingly hire. And this is the apostle’s argument, Rom. xiii. 6, ‘For this cause pay you tribute also, [there is the wages] for they are God’s ministers, attending continually upon this very thing.’” XIV – p.59
- “It is false that the people doth, or can by the law of nature, resign their whole liberty in the hand of a king. 1. They cannot resign to others that which they have not in themselves, *Nemo potest dare quod non habet*; but the people hath not an absolute power in themselves to destroy themselves, or to exercise those tyrannous acts spoken of, 1 Sam. viii. 11-15, &c.; for neither God nor nature’s law hath given any such power” – XIX – p.81
- “The king is a life-renter, not a lord, or proprietor of his kingdom.” – XIX – p.86
- “The king, as king, is a just creature, and by office a living and breathing law. His will, as he is king, is nothing but a just law; but the king, as a sinful man, is not a just creature, but one who can sin and play the tyrant; and his will, as a private sinful man, is a private will, and may be resisted. So the law saith, “The king, as king, can do no wrong,” but the king, as a man, may do a wrong. While as, then, the parliaments of both kingdoms resist the king’s private will, as a man, and fight against his illegal cutthroats, sent out by him to destroy his native subjects, they fight for him as a king, and obey his public legal will, which is his royal will, *de jure*...” XXIX – p.146
- “An absolute monarch is, *actu primo*, a sleeping lion, and a tyrant is a waking and a devouring lion, and they differ in accidents only.” – XXXVIII – p.191
- Every government hath something wherein it is best; monarchy is honourable and glorious-like before men; aristocracy, for counsel, is surest; democracy for liberty, and possibly for riches and gain, is best. XXXVIII – p.192
- “*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.” XLIV – p.228
- “*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 hath 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 doth well distinguish (in his Annotations on the “Loyal Convert”) betwixt the king’s power, and the king’s will, 2. The resisters do not separate king and power, but the king himself doth separate his lawful power from his will, if he work and act tyranny out of this principle, will, passion, lust; not out of the royal principle of kingly power. So far we may resist the one, and not the other.” XLIV – p.228
- “*Quest*. 16. — Whether or no, as the denial of active obedience in things unlawful is not dishonourable 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 dishonouring 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 warranteth him to command, so may he not punish as he will, but by warrant also of the Supreme Judge of all the earth; and therefore it is not dishonourable to the majesty of the ruler, that we deny passive subjection to him when he punisheth beside his warrant, more than it is against his majesty and honour that we deny active obedience when he commandeth illegally; else I see not how it is lawful to fly from a tyrannous king, as Elias, Christ, and other of the witnesses of our Lord have done; 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." XLIV - 232

4. Some queries / criticisms

Use of the Old Testament – what's good and bad about this?

Feel of special pleading in regard to the uniqueness of Christ's obedience and the early church's obedience for want of realistic alternatives ...

Does the historical fiction matter?

5. For discussion

What can we make of the "covenant" parallel with an abused wife?

Is this an issue in a "democracy"? Why might it not be? Why is it, if it is?

What would provoke you to

- a) supplication
- b) flight
- c) non-violent resistance
- d) armed resistance?

How conditional is our obedience? Submit to the authorities so far as what?

Some further background:

- 1) *Divine right of Kings* – rules with direct authority from and accountability to God. Chooses to grant powers to Parliament or to consult with it.
- 2) *Contract theories of government*
 - a) Hobbes – to escape misery and violence of chaos, people cede absolute power to the monarch – government is formed out of necessity and is absolute
 - b) Locke – groups of people come together to form societies of mutual benefit – entrust limited power to monarch to rule on their behalf – government is formed out of convenience and is limited and conditional
- 3) *Other principles*
 - a) duty of lesser magistrates to resist abuse of power by higher
 - b) *singulas major, universalis minor* 'greater than any but less than all' – "while the king was the most powerful individual, his power was less than that of the community as a whole"
 - c) doctrine of co-ordination – "that the king must govern with his parliament and that the power of any two of the three elements of king, Lords, and Commons was superior to the remaining element". (Kishlansky)
- 4) *Rutherford's position not new*

The opposition expressed against this belief by Rutherford was not the first in Scottish Presbyterianism. Almost a century before, John Knox's memorable reply to the question put to him by Queen Mary, "Think you that the subjects having the power may resist their princes?" was this: "If princes exceed their power, no doubt they may be resisted even by power. For no greater honour is to be given to kings than God has commanded to be given to father and mother. But the father may be struck with a frenzy, in which he would slay his children. Now, Madam, if the children arise, join together, apprehend their father, take the sword from him, bind his hands, keep him in prison till the frenzy is over, think you, Madam, that the children do any wrong? Even so, Madam, it is with princes that would murder the children of God that are subject to them." (Clarke)