

Sovereigns vs. Subjects

1 Two constraints

1. The social contract has to give the sovereign enough power to keep the peace. At a minimum, the sovereign's rights and subjects obligations have to be compatible with that aim.
2. Subjects cannot be obliged to put their lives at risk.
3. The sovereign needs to have the right to put the subjects' lives at risk in order to keep the peace.

2 Punishment of the innocent is against the law of nature

All punishments of innocent subjects, be they great or little, are against the law of nature: For punishment is only for transgression of the law, and therefore there can be no punishment of the innocent. It is therefore a violation, first, of that law of nature, which forbiddeth all men, in their revenges, to look at any thing but some future good: For there can arrive no good to the commonwealth, by punishing the innocent. Secondly, of that, which forbiddeth ingratitude: For seeing all sovereign power, is originally given by the consent of every one of the subjects, to the end they should as long as they are obedient, be protected thereby; the punishment of the innocent, is a rendering of evil for good. And thirdly, of the law that commandeth equity; that is to say, an equal distribution of justice; which in punishing the innocent is not observed. (28.22)

3 Punishment of the innocent is not unjust

The liberty of a subject, lieth therefore only in those things, which in regulating their actions, the sovereign hath praetermitted ... Nevertheless we are not to understand, that by such liberty, the sovereign power of life and death, is either abolished, or limited. For it has been already shown, that nothing the sovereign representative can do to a subject, on what pretence soever, can properly be called injustice, or

injury; because every subject is author of every act the sovereign doth; so that he never wanteth right to any thing, otherwise, than as he himself is the subject of God, and bound thereby to observe the laws of nature. And therefore it may, and doth often happen in commonwealths, that a subject may be put to death, by the command of the sovereign power; and yet neither do the other wrong: as when *Jephtha* caused his daughter to be sacrificed: in which, and the like cases, he that so dieth, had liberty to do the action, for which he is nevertheless, without injury put to death. And the same holdeth also in a sovereign prince, that putteth to death an innocent subject. For though the action be against the law of nature, as being contrary to equity, (as was the killing of *Uriah*, by *David*;) yet it was not an injury to *Uriah*; but to *God*. Not to *Uriah*, because the right to do what he pleased, was given him by *Uriah* himself: and yet to *God*, because *David* was *God's* subject; and prohibited all iniquity by the law of nature. Which distinction, *David* himself, when he repented the fact, evidently confirmed, saying, *To thee only have I sinned.* (21.6-7)

4 Three kinds of accountability

1. Subjects cannot defend their rights by force. The fact that the state behaves unjustly is not enough to justify violent opposition to the state. Only considerations of personal safety justify that.
2. Sovereigns are not legally accountable to their subjects (except in ways that they impose on themselves). There is no legal remedy when the sovereign acts unjustly by pretence of his power (21.19).
3. Sovereigns are not morally accountable to their subjects. While it is wrong to punish the innocent, an innocent subject who is harmed by the sovereign cannot complain of injustice.