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From Non-Observance to Consent: A Neglected Aspect of Early Modern Law Formation

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ABSTRACT

Up to what Robert Palmer has called the “Democratic Revolution” at the end of the 18th century, government was an expression of lordship and did not rest upon the consent of the governed. The chapter examines the fear of widespread resistance to imposed laws when territories were incorporated through conquest. It also analyses how the common practice of non-observance and evasion of the law worked as a surrogate form of consent and played a significant part in the dynamics of early modern law-making. The argument then reviews the religious dissent and sumptuary legislation that was so characteristic of the early modern state and concludes with a comment on the liberation of property and the evolution of a propertied society in 18th-century England.

Politische Herrschaft ruhte bis zu dem, was Robert Palmer die Demokratische Revolution am Ende des 18. Jahrhunderts genannt hat, ausdrücklich nicht auf dem Konsens der Herrschaftsunterworfenen. Der Aufsatz untersucht, wie die Furcht vor dem Widerstand gegen die Unterwerfung unter fremde Gesetze bei der Inkorporation von (eroberten) Territorien in den frühneuzeitlichen Staat einerseits und die systematische Missachtung der Gesetze als Surrogatformen von Konsens wirkten und zur Dynamik der frühneuzeitlichen Gesetzgebung beitrugen. Die Argumentation erstreckt sich dabei von dem Umgang mit religiösen Dissidenten über die Luxusgesetzgebung bis zu dem rechtlichen Niederschlag, den die Herausbildung der Eigentümergeellschaft im England des 18. Jahrhunderts fand.

This chapter addresses a problem peculiar to pre-modern societies when government was an expression of lordship and did not rest upon the consent of the governed. This, of course, is not to say that the law was always regarded as oppressive by those who were subject to it. The monarch's claim to be the fountain of justice was rarely challenged by his subjects, who often looked to him as the last resort when there was no redress from lesser courts which were either corrupt or self-interested. The improvement of the ad-

ministration of justice was a key element in the process of early modern state formation because it secured legitimacy for the centre by playing the prince's justice off against the (in)justice of the nobles. Lope de Vega made this the central theme of some of his most important plays like *El Mejor Alcalde, el Rey* and *Fuenteovejuna*. Two centuries later Frederick II of Prussia recognised the propaganda value of the story about the miller of Sans Souci, who would put his trust in the Berlin judiciary even in a lawsuit against the king, however distorted the story became in the process¹. These projections of royal justice presupposed, however, that the king's justice was accepted as such and raised no worries that the law could easily and quickly turn into an instrument of repression and fiscal exploitation.

The theoretical distinction between the law as a regulatory code, which had to be accepted because it was needed to ensure survival and prosperity, and the law as an instrument of domination, was intuitively rather than consciously put into practice. Moreover, what one regarded as indispensable and legitimate depended largely on one's social station. Thus, the great revolution in government at the end of the 18th century, which Robert Palmer has called the "Democratic Revolution", abolished social privileges which had long been protected by the law. At the same time, it built a new social order around the idea of private property, although this was challenged by those who adhered to a different idea of property compatible with ideas such as the just price and the living wage². This difficulty of distinguishing clearly between the two functions of the law applies also to the use of sources. Documents dealing with transgressions of the law reflect the view of the contemporary authorities and do not as a rule distinguish between delinquency and resistance. But this admission must not obscure the fact that contemporaries did make this distinction, and that it has to be kept in mind when using legal sources³.

Historians have often approached the subject from the perspective of what Marxist scholars have called the "lower forms of the class struggle". Some, like Eric Hobsbawm, have concentrated on social banditry on the Robin Hood model. Others have pursued the points Marx made in his article on wood theft and focus on less spectacular contexts such as poaching and smuggling⁴. The conceptual and logical difficulties encountered in this line of argument are well illustrated by the work of John Rule on coastal plunder. He shows that there were whole communities whose survival depended on activities that could hardly be described as social protest⁵.

As important as the notion of law-breaking and law evasion as a form of class struggle may be, it has to be borne in mind that non-acceptance of the law occurred in a much wider context. Changes in value patterns often began as controversies about whether the behaviour in question was justifiably regarded as criminal, and could therefore be legitimately prosecuted, or whether some standard existed by which certain actions could be tolerated. Individuals and small groups could challenge existing legislation in order to find out where the limits of the law were actually drawn and what was regarded

as acceptable in the general opinion of the ruling class. The history of religious dissent illustrates the point. The theological dynamics of Protestantism proved impossible to contain and led, eventually, to the complete secularization of public authority and, indeed, the entire public sphere. The very idea that man entered into a direct relationship with God challenged the construct of a church based on ecclesiastical hierarchy and defied the very notion of the public control of belief. The politics of religious uniformity, as manifested for example in the persecution of the Huguenots or Jansenists in France or the repression of Catholics in England, demanded extraordinary efforts by early modern law enforcers, and produced long-term results which were not always the intended and expected ones. Inversely, policies pursued by rulers who attempted to introduce new standards of thought and behaviour met with a resistance which had profound effects on western political theory and culture. The doctrines of the so-called monarchomachs show how far this could go⁶.

In the later 17th century resistance and passive obedience became key concepts in English political thought and made a lasting contribution to the western idea of a political culture based on consent⁷. In theory the key principle of modern government, that to be legitimate the law has to rest upon the consent of the governed, should have solved the problem of acceptance of the law. This was not always the case, however, because the principle of consent was no guarantee of justice and had to be kept in check by a set of fundamental rights and liberties. Moreover, democratic societies have what might be called Tocquevillian structural deficiencies, such as the growth of unaccountable power, alienation between the political classes, and the over-regulation of social life. This chapter will, however, confine itself to the early modern period. The first section will examine the extent to which fear of widespread opposition to new legislation played a role in early modern state building. The second section will analyse the effects of transgressions and evasions on early modern law-making.

THE LIMITS OF EARLY MODERN SOVEREIGNTY

The question of non-observance of the law in early modern Europe cannot be dealt with on the level of ideas alone. It was inextricably linked to contemporary standards of law enforcement and with the character of early modern society. Early modern states had only very rudimentary law enforcement structures at their disposal. There was no police force in its own right. The military could be and was used for riot control and for outright oppressive measures, but was unfit for a police role⁸. On the other hand, early modern societies were easier and less costly to police than modern mass societies. In early modern Europe there simply did not exist huge cities in which all mechanisms of communal control had ceased to function. Living conditions in a city like London, for example, were untypical of the time.

Early modern rulers remained quite conscious of the essential weakness of their states and, above all, of the need to cooperate with local power elites. They were, therefore, careful not to overplay their claim to sovereignty. The desire to enforce religious uniformity was particularly prone to problems. Louis XIV's persecution of the Huguenots, which culminated in the revocation of the Edict of Nantes in 1685, outraged European opinion. It was, moreover, regarded as a gigantic blunder on the part of a misguided prince who underestimated the social and economic costs of driving the Huguenots out of the country⁹. Rivals such as the Great Elector of Brandenburg-Prussia were only too ready to receive these exiles and thereby combine religious tolerance with economic advantage.

Princes of 18th-century composite states ruled not as sovereigns of the whole, but as sovereigns only of the lands they bound together through their person and dynasty¹⁰. This required a respect for existing constitutional arrangements when a province was incorporated into a composite state. When they were tempted to probe the limits of their sovereignty, as did, for instance, the Bourbons in 18th-century Spain, the early Stuarts in Britain, or Frederick William I and Frederick II in Brandenburg-Prussia, they often confined their efforts to the institutional level and to fiscal bureaucracy, leaving the existing legal order largely intact. Even France, which came perhaps closest to a unitary state in early modern Europe, was divided into two clearly separated legal provinces, the France of the *droit écrit* and that of the *droit coutumière*. Moreover, the crown acknowledged legal peculiarities in the country by setting up local high courts of justice called *Parlements*¹¹. These were charged with examining the compatibility of royal edicts with existing law. If necessary they had the power to challenge new legislation and even to refuse officially to register it. By the 17th century this function had turned into a kind of constitutional right around which the *noblesse de robe* built a singular constitutional convention with which to challenge the monarch's claim to be *legibus absolutus*. The idea survived the triumph of absolutism and contributed decisively to the corrosion of monarchical power during the 18th century¹².

Inspired by the Enlightenment, attempts to use codification of the law as an instrument of state formation occurred first in the 18th century, although they proved to be largely ineffective. In Britain, the constituent parts of the composite monarchy, namely England and Scotland, remained legally separate despite the union of Parliaments in 1707. In Spain, the newly established Bourbons attempted to centralize governance beginning in 1707. They abolished the constitutional privileges (*fueros*) of the provinces under the crown of Aragon and pushed the Castilianization of the Spanish state to the point of dictating the general use of the Castilian language. But, in general, they stopped short of touching existing civil law. It remained for the constitution of 1812 to place legal union on the political agenda. In Prussia, the famous *Allgemeines Preussisches Landrecht*, proudly presented to the public in the 1790s as the climax to a half-century of enlightened law reform, remained for all its careful balancing of general

principles and pragmatic concessions to Old Regime realities a purely subsidiary code. Finally, Joseph II's far-reaching reforms of the 1780s were forced to take into account legal diversity within the Hapsburg Empire.

Legal unification took a decisive step forward only after the French Revolution. Given the claim to popular sovereignty as embodied in the Republic, the legal diversity of the Old Regime had to be replaced by a code of law which would apply equally throughout the national territory. The Nation was to replace all linguistic and legal particularities¹³. When the Civil Code was finally introduced in France in 1804 it was universally accepted. But when Napoleon made the Code an instrument of hegemony and imposed it upon the member states of the Confederation of the Rhine (*Rheinbund*), over which he claimed suzerainty as its protector, he met with stubborn resistance. A strange mixture of particular interests and a newly-awakened sense of German national pride inspired this opposition. The vassal states of Berg and Westphalia, which were ruled by members of the imperial family, could not avoid Napoleon's demands, but elsewhere the spectrum of resistance was wide. The Kingdom of Württemberg and the Thuringian states in central Germany could afford to ignore Napoleon's challenge, whereas an aspiring state with a well-established dynasty like Bavaria played for time. The more exposed Grand Duchy of Baden hit upon a particularly ingenious method of evading the Civil Code. Its jurists adjusted the letter of the code to the social reality in Baden through comments in footnotes¹⁴. Remarkably enough, the idea of a unified society under a unified law made its way even to the Habsburg lands. The *Allgemeines Bürgerliches Gesetzbuch* of 1812 applied to all of cis-Leithanian Austria including Bohemia. However, the territories under the Hungarian crown were exempted, in a compromise which foreshadowed the constitutional solution of the Dual Monarchy later in the century.

TOWARDS LIBERTY: RELIGIOUS UNIFORMITY AND RELIGIOUS DISSENT

The Reformation opened a new chapter in the history of religious dissent. For the first time, the justification of religious authority as such was challenged. Luther's revolution in faith concerned not only the content but also the mode of belief. No person or institution claiming power over the souls of men should stand between the believer and his (or, indeed, her) God. In principle, there was no room for a hierarchical church structure in the dynamic reciprocity between faith and grace which inspired Protestantism¹⁵. There was only one restriction in that faith had to be based on the word of God as laid down in the Bible, to which everyone was to have access. Eventually, this momentous reassessment of Christianity would lead to the privatization of religion and the secularization of the public sphere. Initially, however, religion remained the language of social intercourse and was too deeply interwoven into everyday life to be cast aside or left to individual discretion. The state was therefore called upon to fill the vacuum left by the de-legitimization of church power. The new arrangement made religious uniformity a

political matter and dissent a secular offence to be dealt with in a pragmatic manner. Various strategies were designed to reconcile the older idea of religious unity with the new dynamics of individualism, and they more or less all failed.

Disciplinary strategies could be effective if they relied on controlling church attendance and persecuting public manifestations of religious dissent, but this depended on the cooperation of the clergy, which was often in doubt¹⁶. Visitation reports from the 16th century suggest that while some clergymen had dissenting views and propagated them among their flocks, others simply did not know what religious uniformity demanded of them¹⁷. An even greater danger was that the uniformity laws were frequently infringed in private. Protestants found this alternative acceptable because Protestantism had given up on the idea of a sacred place for the worship of God anyway. Sometimes the religious authorities seem to have been overwhelmed by the fear of private worship. In the case of Spain, this grew into a national paranoia with regard to the Muslims and the Jews¹⁸. The long-term effect of these efforts is debatable. Louis XIV and his heirs soon found that the politics of uniformity could backfire. First, internal dissensions emerged within Catholicism, which required supervision. The struggle first against Jansenism and then against the Jesuits helped politicize the public sphere in Old Regime France. Moreover, Protestant or denominationally mixed cultures found it easier and were more ready to come to terms with the challenge of the Enlightenment. However, French Catholicism failed to find a convincing response to an angry and pervasive vein of religious criticism which was eventually to bring about a laicist society¹⁹.

All early modern authorities placed great hopes on the spatialization of religious dissent²⁰. Even the English recusancy laws provided, as a last resort, for confining offenders in their places of abode. Later, dissenters were to some extent encouraged to emigrate to the colonies. In France the Edict of Nantes created free zones for Protestants where the law was not enforced. The idea of a spatial exemption from the law was, however, so contrary to the notion of territorial sovereignty that state builders in 17th-century France dropped it and embarked instead upon a policy of religious uniformity which culminated in the revocation of the earlier policy of toleration and the mass emigration of the Huguenots.

The Holy Roman Empire was ideally suited for the territorialisation of religious dissent. Beginning in the 1520s the emergence of territorial churches went hand in hand with the formation of a complex code of religious coexistence which culminated in 1555 with the Peace of Augsburg and then again in 1648/49 with the Westphalian peace settlement. But, in the long run, even the spatialization of religious dissent, which reached its logical conclusion in Congregationalist England, proved no real check against the dynamics which the individualization of belief had set in motion. The problems of religious discipline merely reproduced themselves on another level and gave rise to curious manifestations of dissent. In the territorial patchwork of the Empire people could evade religious laws by crossing borders not as emigrants but as religious consumers to hear

mass or make a pilgrimage. Sometimes these so-called Sunday migrants would cross the frontier just to obtain a catechism certificate or to confess to a more trusted priest²¹.

The general pattern which emerges from early modern legislation regarding religious dissent is that the state fought to maintain confessional uniformity but failed to control the dynamics of individualism which manifested itself in neglect of religious legislation. If the state did not succeed in suppressing these manifestations of dissent it had to accept and legalize them. This is how the highly secularized religious laws of the German Empire such as the *ius religionis*, *ius emigrandi*, the *devotio domestica* and the principle of denominational parity came into being. In a very general way we can observe a progressive disestablishment of religious authority moved forward less by open resistance and conflict than by a refusal to conform.

TOWARDS EQUALITY: SUMPTUARY LAWS

The regulation of private consumption by means of police ordinances (*Polizeiordnungen*), proclamations, laws, and by-laws is one of the best known, but least understood, features of late medieval and early modern societies²². The focus of such laws ranged from elaborate dress codes to the number of guests people were allowed to invite to weddings or how much they could spend on funerals²³. The motives for the laws also varied. They ranged from the duty of a Christian prince to care for the moral welfare of his subjects, to the demands of scarcity management towards the end of the winter or when a harvest failed, as well as the desire to safeguard social order and to oversee its maintenance in everyday life. Early modern authorities were also keen on preventing overspending, especially at the lower levels of society. Even if people did not ruin themselves, as the laws often claimed, excessive consumption did involve wasting the scarce capital most people had at their disposal. Moreover, it should not be forgotten that early modern authorities were anxious to keep their subjects in shape to be taxed²⁴. The latter had to be prevented from channelling the surplus of their labour into their own pockets to the detriment of the prince and noble lord who both claimed their share.

Notwithstanding this official commitment the records of court proceedings suggest that consumption laws were not strictly enforced. There are two possible explanations for this. Firstly, that the populace observed the laws so strictly that there was little occasion for prosecution. Given the ubiquity of complaints about non-observance and the 18th-century debate on the luxury laws this is unlikely. The second possibility is that the authorities enforced the law only haphazardly, turning a blind eye to mass evasion. It may well be that there was a kind of silent consensus among the better-off that the law did not apply to them, while it was not really worth their while to prosecute infringements by the lower classes. From this perspective the numerous re-enactments of the sumptuary laws, which has traditionally been interpreted as a sign of non-observance,

could rather have been intended to serve an educational rather than a practical purpose. This was supported by occasional prosecutions which were meant to set an example²⁵.

This argument would be convincing were it not for the fact that the revenue from fines was an excellent source of national income. There can be no doubt that the authorities were aware of this financial aspect because during the 18th century sumptuary laws began increasingly to be replaced by taxation on luxury. Luxury taxes, such as levies on the number of windows in houses or on the ownership of coaches, became the market equivalent of privileges²⁶. Evasion of the laws on consumption ranged the principle of free and equal access to goods against the idea of an ordered society built around privilege and exclusive rights in which one's social station determined the modes and levels of consumption²⁷.

From the 18th century onwards these concepts began to fall into disuse at differing speeds, with the remnants of the moral economy lasting in general longer than restrictions on consumption. At the same time, luxury, conspicuous consumption, free trade, and free access to goods were debated in a new context in which economic criteria won out over ethical considerations. Practices hitherto regarded as unlawful came now to be regarded as useful from an economic point of view²⁸. Even if the revolutionary period had produced some ambiguities with respect to the principle of equality and the freedom of consumption, it was clear by the beginning of the 19th century that the future belonged to a market society in which everyone would consume what he or she could pay for.

CONCLUSION: IN DEFENCE OF OLDER RIGHTS

During a lengthy process of interrelating social and intellectual developments, the idea of ownership was freed from a variety of restrictions and became a much more abstract concept in much the same way as the notions of liberty and equality had taken shape. The idea of ownership was disentangled from the mesh of feudal and manorial law²⁹ and from the bonds of obligation with which the early modern economy of provision and the moral economy of the crowd had shackled it³⁰. New values and practices that had started out as transgressions and evasions of the law came to be accepted and legalized. Enclosures and evictions, forestalling and infringing market regulations, or even smuggling could be mentioned by way of examples. I have, however, chosen not to enlarge upon this process here as some of these problems are dealt with in the chapter by Allan Macinnes elsewhere in this book.

The model described above could also work in the opposite direction if modifications of the law proved to be unacceptable to those who lost something in the process. This has been most vividly illustrated in the context of the breakthrough of the property and market mentality in 18th-century England³¹. E.P. Thompson's notion of the moral economy, for instance, does not refer, like Marx's account of wood theft, to philosophi-

cal considerations of ownership or to some utopian golden age in the past. Rather, it argues that the concept was based on the foundations of a Tudor and Stuart economy of provision. Those who lost when the propertied class triumphed after the Glorious Revolution defended themselves, as Thompson argues, by appealing to ancient legal notions³². Indeed, this was the trademark of agrarian protest all over Europe from the German Peasants' War of 1525 to peasant unrest in the early 19th century³³.

These older rights, however, were often little more than a convenient means of providing legitimacy in class conflict. This becomes immediately apparent once we turn to another monument of Britain's 18th-century property revolution. The Black Act of 1723 was a telling example of the sharpening of the bourgeois mentality in the 18th century, but no poacher could have justified himself by appealing to times when manorial lords had allowed their deer to be hunted freely or had even permitted poaching³⁴. On the contrary, the struggle against illicit hunting and fishing had been a perennial problem in Europe's agrarian society. We must, therefore, be careful not to be misled by our model of social and legal change. Lordship and ownership had a common nucleus, and so had the transgressions of the rules laid down to protect them.

NOTES

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- ² G. Lottes, *Sansculotten und Demokraten. Zur Gründungsgeschichte kleinbürgerlicher Protestbewegungen*, in B. Wagner, E. Wangermann (eds.), *Die schwierige Geburt der Freiheit*, Vienna 1991, pp. 33-56.
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- ⁸ See case studies like T. Hayter, *The Army and the Crowd in Mid-Georgian England*, London 1978; R. Cobb, *The Police and the People: French Popular Protest, 1789-1820*, Oxford 1970.
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- ¹² J. Egret, *Louis XV et l'opposition parlementaire*, Paris 1970; R. Bickart, *Les parlements et la notion de souveraineté nationale au XVIIIe siècle*, Paris 1932.
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- ¹⁶ See the debate on "confessionalization", which has given rise to numerous publications. The concept was originally developed by Heinz Schilling and Wolfgang Reinhard. See also H. Schnabel-Schüle, *Vierzig Jahre Konfessionalisierungsforschung - eine Standortbestimmung*, in *Konfessionalisierung und Region*, Konstanz 1999, pp. 23-40; K. von Greyerz, M. Jakubowski-Tiessen, Th. Kaufmann, H. Lehmann (eds.), *Interkonfessionalität - Transkonfessionalität - binnenkonfessionelle Pluralität. Neue Forschungen zur Konfessionalisierungsthese*, Gütersloh 2003.
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- ²² M. Stolleis, *Luxusverbote*, in A. Erler et alii (eds.), *Handwörterbuch zur deutschen Rechtsgeschichte*, Berlin 1984, vol. III, cols. 119-22; D. Klippel, *Aufwandsgesetze*, in *Encyclopädie der Neuzeit*, Munich 2005, vol. I., cols. 840-844; A. Hunt, *Governance of the Consuming Passions: A History of Sumptuary Law*, London 1996.
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- ²⁴ G. Lottes, *Popular Culture and the Early Modern State in 16th-Century Germany*, in S. Kaplan (ed.), *Understanding Popular Culture: Europe from the Middle Ages to the Nineteenth Century*, Berlin 1984, pp. 142-188.
- ²⁵ See in this regard the important contribution of Saúl Martínez Bermejo in this volume.

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- ²⁷ See Prinz (ed.), *Der lange Weg in den Überfluss* cit.
- ²⁸ D. Grugel-Pannier, *Luxus. Eine begriffs- und ideengeschichtliche Untersuchung unter besonderer Berücksichtigung von Bernard de Mandeville*, Frankfurt 1996; D. Klippel, *Luxus und bürgerliche Gesellschaft. Samuel Simon Wittes Schrift Über die Schicklichkeit der Aufwandsgesetze (1782)*, in D. Schwab et alii (eds.), *Staat, Kirche, Wissenschaft in einer pluralistischen Gesellschaft: Festschrift zum 65. Geburtstag von Paul Mikat*, Berlin 1989, pp. 327-344. See also U.-C. Pallach, *Materielle Kultur und Mentalitäten im 18. Jahrhundert: wirtschaftliche Entwicklung und politisch-sozialer Funktionswandel des Luxus in Frankreich und im Alten Reich am Ende des Ancien Régime*, Munich 1987.
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- ³² Thompson, *Moral Economy* cit.
- ³³ C. Tilly, *Hauptformen kollektiver Aktion in Westeuropa 1500-1975*, in "Gesellschaft und Geschichte", 1977, 3, pp. 153-163; W. Schulze, "Geben Aufruhr und Aufstand Anlaß zu neuen heilsamen Gesetzen". *Beobachtungen über die Wirkungen bäuerlichen Widerstandes in der Frühen Neuzeit*, in W. Schulze (ed.), *Aufstände, Revolten, Prozesse. Beiträge zu bäuerlichen Widerstandsbewegungen im frühneuzeitlichen Europa*, Stuttgart 1983, pp. 261-285; P. Blickle, *Unruhen in der ständischen Gesellschaft 1300-1800*, Munich 1988.
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SOURCE

Charles Stuart's restoration to the throne of England following the revolutionary decades of the 1640s and 1650s was unconditional only in theory. In the Declaration of Breda of 1660 he outlines what he was prepared to accept from his subjects. He regarded these concessions as inevitable in order to avoid widespread evasions or breaches of the law.

The Declaration of Breda, 1660

Charles, by the Grace of God, king of England, Scotland, France and Ireland, Defender of the Faith, &c. to all our loving subjects, of what degree or quality soever, greeting. If the general distraction and confusion which is spread over the whole kingdom doth not awaken all men to a desire and longing that those wounds which have so many years together been kept bleeding may be bound up, all we can say will be to no purpose. However, after this long silence we have thought it our duty to declare how much we desire to contribute thereunto, and that, as we can never give over the hope in good time to obtain the possession of that right which God and Nature hath made our due, so we do make it our daily suit to the Divine Providence that he will, in compassion to us and our subjects, after so long misery and sufferings, remit and put us into a quiet and peaceable possession of that our right, with as little blood and damage to our people as is possible. Nor do we desire more to enjoy what is ours, than that all our subjects may enjoy what by law is theirs, by a full and entire administration of justice throughout the land, and by extending our mercy where it is wanted and deserved.

And to the end that the fear of punishment may not engage any, conscious to themselves of what is passed, to a perseverance in guilt for the future, by opposing the quiet and happiness of their country in the restoration both of king, peers and people to their just, ancient and fundamental rights, we do by these presents declare, that we do grant a free and general pardon, which we are ready upon demand to pass under our Great Seal of England, to all our subjects, of what degree or quality soever, who within forty days after the publishing hereof shall lay hold upon this our grace and favour, and shall by any public act declare their doing so, and that they return to the loyalty and obedience of good subjects (excepting only such persons as shall hereafter be excepted by parliament). Those only excepted, let all our loving subjects, how faulty soever, rely upon the word of a king, solemnly given by this present Declaration, that no crime whatsoever committed against us or our royal father before the publication of this shall ever rise in judgment or be brought in question against any of them, to the least endamage of them either in their lives, liberties or estates, or (as far forth as lies in our power) so much as to the prejudice of their reputations by any reproach or term of distinction from the rest of our best subjects, we desiring and ordaining that

henceforward all notes of discord, separation and difference of parties be utterly abolished among all our subjects, whom we invite and conjure to a perfect union among themselves, under our protection, for the resettlement of our just rights and theirs in a free parliament, by which, upon the word of a king, we will be advised.

And because the passion and uncharitableness of the times have produced several opinions in religion, by which men are engaged in parties and animosities against each other, which, when they shall hereafter unite in a freedom of conversation, will be composed and better understood, we do declare a liberty to tender consciences, and that no man shall be disquieted or called in question for differences of opinion in matter of religion which do not disturb the peace of the kingdom; and that we shall be ready to consent to such an act of parliament as, upon mature deliberation, shall be offered to us, for the full granting that indulgence.

And because, in the continued distractions of so many years and so many and great revolutions, many grants and purchases of estates have been made, to and by many officers, soldiers and others, who are now possessed of the same, and who may be liable to actions at law upon several titles, we are likewise willing that all such differences, and all things relating to such grants, sales and purchases, shall be determined in parliament, which can best provide for the just satisfaction of all men who are concerned.

And we do further declare, that we will be ready to consent to any act or acts of parliament to the purposes aforesaid, and for the full satisfaction of all arrears due to the officers and soldiers of the army under the command of General Monk, and that they shall be received into our service upon as good pay and conditions as they now enjoy.

Given under our Sign Manual and Privy Signet, at our Court at Breda, this 4/14 day of April, 1660, in the twelfth year of our reign.

From: J.P. Kenyon, *The Stuart Constitution. Comments and Documentary*. Cambridge 1966, pp. 357-358.

