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# **Catholic Hopes and Protestant Fears: ‘Toleration Talk’ in Elizabethan and Early Stuart England**

**by**

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**A thesis submitted in partial fulfilment of the requirements for the  
degree of  
Doctor of Philosophy in History**

**University of Warwick, Department of History**

**February 2021**

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## **Acknowledgements**

I am forever grateful and indebted to a great number of people who have helped me throughout this process. Though I cannot name them all I would like to acknowledge several particular people here.

Firstly, to the love of my life, Karissa. You are the most amazing wife, mom and supporter. I am thankful for the countless days and nights she spent alone holding our family together while I worked, travelled and completed this process. She read every page of this thesis and her support over the last decade of academics has never wavered. Words cannot express how thankful I am to have her as my partner in this wild and unpredictable life.

I also owe an enormous thanks to my supervisor Professor Peter Marshall who continually encouraged me throughout this process. His knowledge, expertise and willingness to be straight-forward with me has been an immeasurable help. His patience, insight and generosity have motivated and encouraged me in some of the more difficult times in my studies.

I also want to say thanks to the many people who have discussed my project and contributed to its completion. A special thanks to Professor Anthony Milton who helped me begin this project while I was a MA student at the University of Sheffield. His willingness to do a weekly tutorial in the first half of the term was invaluable to creating a project that was insightful and manageable. Also, to Professor Mark Knights who encouraged me to expand my early research in corpus-based analysis. His advice led me to insights which became the basis of my research. To Professor Michael Questier, though he may not know this, his early phone call to discuss my project encouraged me to apply for a PhD course and his challenge to think outside the box has motivated me throughout my research. I also want to thank Professor David Anderson who, as the previous director of Postgraduate Studies, helped me in countless ways. His encouragement to push forward, and his patience and kindness to me as I learned to balance student and home life will not be forgotten.

To the librarians and archivists at the Bodleian and British Library, who patiently put up with my endless questions and need for assistance as I learned to conduct research, thank you for your patience, kindness and expertise.

Finally, to my children, Kaiya, Selah and Arrow, thank you for the love and affection you all showed me throughout the years. For bringing me meals with a little note to say how much you love me and how great of a father I am, you are my joy, my motivation to move forward and my precious treasures in this world. I love you.

## **DECLARATION AND INCLUSION OF MATERIAL FROM A PRIOR THESIS**

Some of the materials in chapters 2 and 3 have been used in my 2016 Masters thesis for the University of Sheffield. The thesis is my own work and does not contain any collaborative research. I confirm that the thesis has not been submitted for a degree at another university.

## **Abstract**

This thesis focuses on bringing Catholic voices to the forefront of toleration history. The scope of this work examines the formulation of toleration ideas within the petitions, treatises, and other contemporary texts produced by Catholics in the reign of Elizabeth I and James I in England. Histories of toleration have tended to gloss over these periods and particularly the extent to which Catholics developed innovative approaches to the concept of toleration.

A critical aspect of this thesis is examining discussions of toleration within their political and religious context. In doing so, this thesis analyses the nexus of connected words and concepts which Catholics employed in different genres and modes as they attempted to elicit toleration. Placing toleration argument within the context in which they were produced allows us to see the extent to which Catholics formulated a language of toleration malleable enough to fit the changing circumstances. Whether in times of persecution, monarchical and regime changes, or new dictates from Rome, English Catholics were much more unconventional and opportunistic than they have been given credit for. Working within the context of historical ‘moments’ rather than attempting to analyse toleration over a broad chronological scope, this thesis argues that Catholic approaches to toleration can be understood conceptually, and in some cases practically, as being malleable rather than rigid.

Focusing on context and eliminating the draw towards conceptualising toleration as a singular phenomenon, this thesis broadens the toleration narrative to incorporate a spectrum of contemporary approaches to toleration. Though our view of toleration being a significant idea in these periods may be eclipsed by the violence and persecution which occurred, in such hostile and volatile moments the need for Catholics to develop nuanced and innovative ideas for eliciting toleration should not come as any shock. Rather, such realities should draw us into exploring the extent to which the history of toleration can be understood in its proper context.

## Abbreviations

Add. MS.	Additional Manuscripts
APC	Acts of the Privy Council of England, ed. J.R. Dasent (46 vols., 1890-1964)
BL	British Library
Bodl	Bodleian Library
CSP	Calendar of State Papers
CSPD	Calendar of State Paper Domestic
EHD	English Historical Documents (eds), Archer I.W. and F. D. Price, 10 vols (London, 2011), volume, V(A)
Harl. MS.	Harleian Manuscripts
HMC	Historical Manuscript Commission
ODNB	Oxford Dictionary of National Biography
PCR	Privy Council Registers, PC 2
SP	State Papers
SR	Statutes of the Realm, ed. A Luders et al., 11 vols (London, 1810-1828)
STC	A Short-Title Catalogue of Books Printed in England, Scotland, and Ireland and of English Books Printed Abroad, 1475-1640, 3 vols (2 <sup>nd</sup> edition, London, 1976-91)

## Introduction

Moments of political transitions are marked in history by stories of unrest and peace, continuity and change, and winners and losers. Much of the same can be said about our current history of toleration ideas and practices of the early modern era. The history of toleration in England has been written from the point of view of the victors. Alexandra Walsham and Elaine Glaser have described such history as looking to the past to find the origins of a tolerant nation in the identities of those who seem to anticipate our own current understanding of natural rights, relativism, pluralism or church-state relationships.<sup>1</sup> Complications arise in this narrative when groups such as Catholics in England began to argue for toleration, when historically they have been regarded as dogmatic and intolerant. Where hints of toleration can be found in the writings of Catholics, they are dismissed on the grounds of being underpinned by overbearing perceptions of papal authority or Catholic militancy. Yet we must accept that from at least 1559 onward Catholics faced the majority of the penalties imposed by the Protestant regime, many of which were directed at eliminating the ability to practice Catholicism and often resulted in imprisonment and bloody executions. In light of this, many Catholics turned to the hope of toleration to ease their suffering, and produced a variety of creative arguments to advance their case. In formulating such cases for toleration, Catholics generated a ‘language of toleration’ and employed a distinctive ‘toleration talk’. The terms ‘language of toleration’ and ‘toleration talk’ are used throughout this thesis to describe a nexus of connected words and concepts which Catholics employed to present themselves as worthy recipients of toleration. Within different contexts and moments of political and religious volatility Catholics adapted their toleration talk to fit their polemical and rhetorical strategies, often subverting the more pejorative notions and negative connotations associated with the term in the early modern period.<sup>2</sup> To come to a fuller understanding of the contexts and contingencies that shaped the history of toleration in England, we must be willing to acknowledge and examine more closely the role which Catholics played.

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<sup>1</sup> Alexandra Walsham, ‘Cultures of Coexistence in Early Modern England: History, Literature and Religious Toleration’, *The Seventeenth Century*, 28, 2 (2013), p. 121; Eliane Glaser, ed., *Religious Tolerance in the Atlantic World: Early Modern and Contemporary Perspectives* (Basingstoke, 2013), pp. 1-13.

<sup>2</sup> The negative connotations of toleration are well examined and acknowledged by Alexandra Walsham in *Charitable Hatred: Tolerance and Intolerance in England, 1500-1700* (Manchester, 2006). For an earlier discussion of the pejorative meaning of toleration, see Herbert Butterfield, ‘Toleration in Early Modern Times’, *Journal of the History of Ideas*, 38, 4 (1977), pp. 573-584.



In turn, we must be willing to explore the contexts which surrounded early modern discussions and pleas for toleration if we are to appreciate the weight and influence that some Catholics had on the pressing issue of toleration in England in the late sixteenth and early seventeenth century.

### **Concepts of Toleration**

Early Whiggish histories of toleration were predicated on stories of liberal triumph and a civilising process, emphasising a stark contrast from a medieval and early modern Europe controlled by the Roman Catholic Church to Lockean and enlightenment liberalism and secularisation.<sup>3</sup> While the latest resurgence of writing on toleration has looked to combat the flaws of past approaches, there continues to be a remnant of historical work with a fixation on historicising the toleration narrative as a logical, linear march towards progress and modernisation. As Jeffrey Collins has suggested, the continuation of such a perspective ‘conflates “toleration” with religious autonomy and rights to free worship, compelling us to understand religious toleration as a positive principle.’<sup>4</sup> Yet the complex political and ecclesiastical context in which toleration was discussed in the early modern era makes it problematic to overlay this understanding on sixteenth- and seventeenth-century thought. Such anachronistic approaches to the past problematically place the origins of ‘modern’ toleration within groups exemplifying ‘modern’ notions of individual rights, liberty, free choice, pluralism and a clear division between church and state. Such pressure to identify the rise of toleration continues to lead scholars to finding other ‘modernising processes’ within the toleration narrative. This tendency to focus on where modernity, or its origins, begin diverts attention away from the significance of placing historical context as the cornerstone of toleration history.

The surge of historical, political and philosophical writing centred on prescribing value and boundaries to the idea of toleration has in turn created the need for criticism and a better contextualizing of the term and its early uses. Toleration had a long association with the practice of exhibiting forbearance, patience, longsuffering in the midst of circumstances in which evil

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<sup>3</sup> Such examples include, W.K. Jordan, *The Development of Religious Toleration in England 1558-1660*, 4 vols (London, 1932-1940), esp. vol. 3-4; William Haller, *Liberty and reformation in the Puritan revolution* (London, 1955); A.S.P. Woodhouse, *Puritanism and Liberty* (London, 1938).

<sup>4</sup> Jeffrey R. Collins, ‘Redeeming the Enlightenment: New Histories of Religious Toleration’, *The Journal of Modern History*, 81, 3 (2009), p. 611.

was going unpunished, deriving its meaning from the Latin verb *tolerare*, meaning to endure, sustain, or to bear, carry.<sup>5</sup> These notions of patience and longsuffering were commonly associated with the characteristics of Christ himself, and the toleration exhibited by God against the sins of failing man. These association of Christ's suffering and God's withheld judgement meant that toleration, when appropriately applied to a situation, was a virtuous quality one could exhibit in the face of evil. Such notions of toleration are analysed in Istvan Bejczy's illuminating article, 'Toleration: A Medieval Concept'. Bejczy's work reframes Medieval toleration not as the sanctioning of evil itself, but as the withholding of punishment from it as the lesser of two evils. He identifies toleration within three broad categories: social, political, judicial, or a mixture of the three. Here Bejczy explains the extent to which ecclesiastical authorities and individuals in a community were able to allow various groups and acts to go unpunished even when they seemed counter to Christian teachings.<sup>6</sup> Throughout the early modern era, to tolerate someone, individually or as a group, was to identify them as being outside of the social, political or moral order. For example, it had long been established by church authorities such as Thomas Aquinas that Jews and infidels had renounced their allegiance to the church and were considered outside the religious establishment and thus could be tolerated within society.<sup>7</sup> But whatever degree of acceptance they were permitted, Jews and infidels were not tolerated as equals, but rather as socially and morally inferior. Indeed, one only tolerated those who were not of equal moral and social standing.<sup>8</sup> The very idea of granting toleration to any person or group, was an act of dominance or power over that person or group. Thus, more often than not, toleration was, as Alexandra Walsham has stated, a 'paradoxical policy, a casuistical stance involving a deliberate suspension of righteous hostility and, consequently, a considerable degree of moral discomfort.'<sup>9</sup> Only what was not right required to be tolerated, not because there was a natural value to that idea or person, but because to do so represented an assertion of moral superiority.

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<sup>5</sup> Alexandra Walsham, *Charitable Hatred*, p. 4; István Bejczy, 'Tolerantia: A Medieval Concept', *Journal of the History of Ideas*, 58, 3 (1997), p. 368.

<sup>6</sup> István Bejczy, 'Tolerantia: A Medieval Concept', pp. 367-372.

<sup>7</sup> Thomas Clancy, *Papist Pamphleteers: The Allen-Persons Party and the Political Thought of the Counter-Reformation in England, 1572-1615* (Chicago, 1964), p. 146; See also Ivan Bejczy, 'Tolerantia: A Medieval Concept', p. 372.

<sup>8</sup> Benjamin Kaplan, "'In Equity and Enjoying the Same Favor': Biconfessionalism in the Low Countries', in *A Companion to Multiconfessionalism in the Early Modern World*, ed., Thomas Safley (Leiden, 2011), pp. 99-126.

<sup>9</sup> Alexandra Walsham, *Charitable Hatred*, p. 4.

Those who were tolerant were holding back, restraining their corrective action against what they disapproved of. In this sense, the act of toleration was often applied in a circumstance in which the tolerated individual or individuals were subordinate to those doing the tolerating. This conception of toleration is far removed from our modern idea of toleration, but it is critical for understanding the toleration talk employed in the early modern period. For instance, in the Elizabethan author Thomas Fenne's *Fenne Fruites*, the discussion of men in war identifies the wild and drunken conduct of soldiers as something to be 'expelled out', but when comparing similar acts committed by a captain and a soldier he states, '*Alexander...dooth rather tollerate a yong souldiour, than a yong Captaine...because the leader shoulde be able both in gravitie, pollicie and wise gouernment wyth experience, to direct and guide the Souldiour.*'<sup>10</sup> The wild actions of the untamed soldier, though not approved of, are tolerated because of their young age and inexperience in handling war. Their position is subordinate to both Alexander and the captain and this subordination is expressively shown through the act of toleration.

Though tolerating the unruly acts of subordinate individuals shows a restraint to not punish what one knew to be wrong, to tolerate someone or something was a conscious choice, one which could be granted or withheld. Toleration was a privilege which could be taken away if the tolerating individual found the person, act, or idea to be dangerous to society or even more so, contrary to the word or will of God. Thus, we are describing two notions of toleration: one which was used to exemplify the virtuous nature of one's life or character, and the other the emergent forms of a more social, political toleration that involved a degree of jurisdictional boundaries.

One of the more critical conceptual junctures in the social and political theories of toleration was the formulation of toleration arguments as reason of state. Reason of state arguments had been around the debates over toleration for some time. In medieval political thought, *Ratio Status* 'denotes the superiority of the power of an estate over the rights of private persons.'<sup>11</sup> The connection, then, between reason of state and toleration is significant as it grounds the act and attitude of tolerance within the relationship between superior and inferior actors. In the case of the growing theory of absolutism, particularly in France, *raison d'etat*

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<sup>10</sup> Thomas Fenne, *Fennes Frutes which worke is devided into three severall parts* (2nd edition, London, 1590), pp. 4, 20, 91.

<sup>11</sup> Miguel Vatter, 'The Idea of Public Reason and the Reason of State', *Political Theory, The Politics of Public Reason*, 36, 2 (2008), p. 246.

became a significant rationale for developing a conception of toleration which allowed unwanted religious sects ‘to live unmolested as long as they remained loyal subjects of the crown.’<sup>12</sup> The idea was largely associated with *politique* thought during the Religious Wars in France. It was also connected to the political justifications of toleration by individuals such as Jean Bodin or, somewhat later, Cardinal Richelieu.<sup>13</sup>

The general conception for this idea of toleration was that there was a need to distinguish the spiritual role of the church from the pragmatics of leading and stabilising the state and state interests. And while the French *politiques* did not seek to ‘strengthen royal power by denying the ruler’s responsibility to govern in accordance with Christian justice’, reason of state, like toleration, often had a pejorative association with Machiavellianism, and the negative notions of being *politique*.<sup>14</sup> This notion is clear in the English Jesuit and prominent Catholic apologist Thomas Fitzherbert’s *The first part of a treatise concerning policy, and religion*. Here Fitzherbert harshly criticised the ‘politikes’, who ‘preferre in al thinges, reason of state before reason of religion, as though religion were ordained only for the service of commonwealth.’<sup>15</sup> Thus, he asserted that as ‘politikes erre no lesse in religion then in polycie, they also deserve the name of hereticke, and are so indeede in the highest degree, when obstinacy concurrerth with their error.’<sup>16</sup> Such associations of reason of state, similarly to toleration, with the idea of heresy were often an attempt to evoke negative connotations of man’s perversion of spiritual authority.<sup>17</sup> As with the attacks on Jesuits for the use of casuistry, the use of arguments such as reason of

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<sup>12</sup> William F. Church, *Richelieu and Reason of State* (Princeton, 1973), pp. 87, 53.

<sup>13</sup> Edmond Beame, ‘The Politiques and the Historians’, *Journal of the History of Ideas*, 54, 3 (1993), pp. 355-379; William F. Church, *Richelieu and Reason of State*.

<sup>14</sup> *Ibid.*, p. 53. For an examination of the connection between French *politiques* and Machiavellianism, see Edmond Beame, ‘The Use and Abuse of Machiavelli: The Sixteenth-Century French Adaptation’, *Journal of the History of Ideas*, 43, 1 (1982), pp. 33-54. Generally, the pejorative association with Machiavelli came from his work, *Prince*, which ‘it and all his other works had been place on the first Roman index of 1559.’ See Harro Hopfl, *Jesuit Political Thought: The Society of Jesus and the State, c.1540–1630* (Cambridge, 2004), p. 84.

<sup>15</sup> Thomas Fitzherbert., *The first part of a treatise concerning policy, and religion* (Douai, 1606), p. 9.

<sup>16</sup> *Ibid.*, p. 6.

<sup>17</sup> J.C. Davis, ‘Religion and the Struggle for Freedom in the English Revolution’, *The Historical Journal*, 35, 3 (1992), p. 510.

state were tied to the idea of Machiavellian ‘political duplicity, scheming and the pursuit of power and glory, regardless of religious, moral, and legal constraints and considerations.’<sup>18</sup>

Reason of state, however, was not always discussed pejoratively, and in England it became an important part of the toleration talk employed by Protestant and Catholic alike.<sup>19</sup> Richard Etherington, a Protestant lawyer during James’s reign, translated the Jesuit-trained Giovanni Botero’s *Della ragio di stato*, an Italian treatise on reason of state which attempted to recover the political theory for Christianity.<sup>20</sup> Etherington’s translation is specific in relating the positive quality which reason of state can offer when settling religious disputes. Though Etherington does state that ‘Gods true worship is to be done without any tolleration of any that doe worship any other God’, he still proposes that toleration ‘for necessity sometyme it hath been suffered by Religious Prynces, thinking better to have some Commonwealth & Religion rather than none at all.’<sup>21</sup> The conception of toleration as part of reason of state arguments was a fashionable trend throughout the later sixteenth and early seventeenth century. Though the political theory surrounding reason of state was not always associated with toleration, it was significant in underlining the positive notion of toleration and became an important part of the toleration talk for Catholics under the Tudor and Stuart regimes.

From a politically sanctioned perspective, religious toleration in our modern age allows a plurality of faiths. Though not entirely similar, there were examples in Europe through the French Wars of Religion, and within the Holy Roman Empire of agreements of civil toleration. These examples to varying degrees became the working model for those arguing for toleration in

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<sup>18</sup> Hopfl, *Jesuit Political Thought*, p. 85; J.P. Sommerville, ‘“The New Art of Lying”: Equivocation, Mental Reservation, and Casuistry’, in *Conscience and Casuistry in Early Modern Europe*, ed., Edmund Leites (Cambridge, 1988), p. 167. See also Victoria Kahn., *Machiavellian Rhetoric: From the Counter-Reformation to Milton* (Princeton, 1994); The connection of casuistry, mental reservation and Machiavellianism is explored in part 2, pp. 87-165.

<sup>19</sup> Until the 1620s, the dominate phrase used in England would have been the Italian phrase *Ragion di stato*. However, it was often replaced with *Policy* or the idiom ‘matter of state’ also *Public Reason*, see Peter Burke, ‘Tacitism, Scepticism, and Reason of State’, in *The Cambridge History of Political Thought 1450-1700* (eds, J.H. Burns and Mark Goldie (Cambridge, 1991), p. 480; Hopfl, *Jesuit Political Thought*, p. 85; Also, Vatter, ‘The Idea of Public Reason and the Reason of State’, which Vatter traces back to its origins in Medieval political thought and the idea that ‘public reason is internally connected to the claim of superiority (in terms of power) of one estate(status) over others.’ p. 245.

<sup>20</sup> Jamie Trace, ‘The Only Early English Translation of Giovanni Botero’s *Della ragion di stato*: Richard Etherington and Sloane MS. 1065’, *Electronic British Library Journal*, 4 (2016), pp. 5-6; Botero was the first to use the phrase *ragion did stato* as a title, see Hopfl, *Jesuit Political Thought*, p. 84.

<sup>21</sup> *Ibid.*, p. 23.

England. But this *de jure* form of civil toleration was not found in the late sixteenth or early seventeenth centuries in England - there was no formal toleration approved by the English state. Thus, it was the reality of the process of reformation in England that meant the Protestant regime was forced to confront questions it created with such religio-political measures as the Acts of Uniformity and Supremacy. English subjects were not so religiously homogenous as they once were and multiple, conflicting faiths had to be dealt with. In England, this meant more than just debates over who was right and who was wrong, or which was the true church and which was the false church. As Anthony Milton suggests, the arguments which the ‘doctrine of the Two Churches propounded were simply one mode of discussing religious division’ and did not make up the whole of the polemical battles waging in Reformation England.<sup>22</sup> After all, both Protestants and Catholics claimed the title of the true church and running the risk of placing too much emphasis on purifying the one or the other could easily become ammunition for separatists from the Church of England. While these debates over the identity of the church did influence the theological discourses of the Reformation period, the growing debate over Catholic toleration beginning in the early 1580s and continuing through the reign of James I went beyond this mono-rhetorical approach to church division to wrestle with defining the boundaries of the civil and spiritual sphere created within this new polarised English landscape.

The key to understanding the Catholic contribution to toleration history, then, is in analysing how these traditional senses of toleration were reformulated within the transforming political, religious and social climate of Elizabethan and Early Stuart England. Catholic approaches to applying toleration ideas within changing political environments met with both opposition and support, intellectual advancement and retreat. Identifying and analysing the malleable nature of such approaches is a critical point in correctly historicising toleration and bringing the contribution of Catholic toleration thought to the forefront of the narrative. As we have noted already, some historians have quite rightly argued that toleration as an idea or

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<sup>22</sup> Anthony Milton, ‘A Qualified Intolerance: the Limits and Ambiguities of Early Stuart Anti-Catholicism’, in *Catholicism and Anti-Catholicism in Early Modern English Texts*, ed., Arthur Marotti (Basingstoke, 1999), p. 88. Milton’s assessment here looks to broaden our understanding of the complexity of the polemical discourses, rather than putting them into simple categories of binary oppositions. A historical understanding of the discourses surrounding ideas of the true and false church for both Catholics and Protestants can be found in Milton’s impressive study, *Catholic and Reformed: The Roman and Protestant Churches in English Protestant Thought, 1600-1640* (Cambridge, 1995), chapters 1-7.

practice within the early modern period was not developed in a linear progression towards modern liberal thought and have attempted to steer clear of anachronism and decontextualised readings of the past. Yet, too often these same histories have failed to see that toleration was not fixed to a singular concept or application. Such approaches present toleration as an ideologically rigid concept in which its more innovative applications amongst contemporaries is put under great speculation for its potential to produce whiggish interpretations. However, we must approach toleration with an understanding of its conceptual malleability and the varying contexts in which contemporaries applied it, thereby allowing for its more innovative uses and application to be contextualised rather than avoided or misinterpreted.

### **The Historiography of Toleration**

Although the notion of toleration has long been utilised as a normative attribute of our modern society, our rapidly ‘modernising’ world seems to be increasingly divided and violent over coexistence and the acceptance of a pluralistic society. It is little wonder then that in the past two decades toleration history has once again returned to historical prominence. Reflecting on the interest in toleration in history, Alexandra Walsham has suggested that we would ‘be naïve to deny that the surge in writing is the result of the perception that the liberal values we applaud are being tested, threatened and subverted not just in foreign lands but in our own national boundaries.’<sup>23</sup> Such sentiments seem to abound in our current times of unsettling political and social circumstances around the globe. Warning against the rise of authoritarianism in our present day, American historian and political theorist Robert Kagan wrote in a recent op-ed article that before the rise of liberalism ushered in toleration

average people had little control of their destiny. They were imprisoned by the rigid hierarchies of traditional society — maintained by brute force when necessary — that locked them into the station to which they were born. Generations of peasants were virtual slaves to generations of landowners. People were not free to think or believe as they wished, including about the most vitally important questions in a religious age — the questions of salvation or damnation of themselves and their loved ones. The shifting religious doctrines promulgated in Rome or Wittenberg or London, on such matters as the meaning of the Eucharist, were transmitted down to the smallest parishes. The humblest peasant could be burned at the stake for deviating from orthodoxy. Anyone from the

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<sup>23</sup> Alexandra Walsham, ‘Culture of Coexistence’, p. 116.

lowest to the highest could be subjected to the most horrific tortures and executions on the order of the king or the pope or their functionaries.

Kagan insisted that ‘only with the advent of Enlightenment liberalism did people begin to believe that the individual conscience, as well as the individual’s body, should be inviolate and protected from the intrusions of state and church.’ Connecting this secularising process to the rise of scepticism he asserts that ‘not only did Enlightenment liberalism challenge traditional hierarchies, but its rationalism also challenged the traditional beliefs and social mores that had united communities over the centuries.’<sup>24</sup>

Conversely, finding glimpses of our modern notion of toleration in a pre-enlightenment England, C.J. Sommerville suggested that the transformation of English society from a religious culture to a religious faith during the English Reformation is a possible means to understanding a rise of religious toleration. Sommerville attributes this to the secularisation of English society and the process of Protestantism being divided into subcultures in an inevitable move away from the traditional association of religious practice and towards an emphasis on individual faith.<sup>25</sup> Sommerville’s secularisation process is identified within four categories: ‘the differentiation of institutions, secularisation of a particular institution or particular activity and secularisation of belief or mentality.’<sup>26</sup> This ‘process’ led to the ‘supremacy of faith and conscience and was acknowledged over all outward forms of religion.’<sup>27</sup> Sommerville’s proposal promotes a Weberian interpretation of the modernisation process, looking to revolutionary England as a key point in England’s secularisation and as a breeding ground for individualism and toleration. Other historians have questioned if toleration really meant less government involvement in religions affairs. Ethan Shagan has proposed that policies that provided a degree of toleration

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<sup>24</sup> Robert Kagan, ‘The Strongmen Strike Back: Authoritarianism has Reemerged as the Greatest Threat to the Liberal Democratic’, *Washington Post*, 14 March 2019. This article was brought to my attention in a lecture given by Robert Wilkens on his latest book, *Liberty in the Things of God: The Christian Origins of Religious Freedom* (New Haven, 2019), online video recording, YouTube, 2 August 2019.

<sup>25</sup> C.J. Sommerville, *The Secularization of Early Modern England. From Religious Culture to Religious Faith* (Oxford, 1992). See Sommerville’s discussion of secularised politics being the basis of developing religious toleration during the 1640s and ultimately reaching ‘religious liberty’ with the toleration act of 1689 in chapter 8 and 9, pp. 98-128.

<sup>26</sup> *Ibid.*, p. 5.

<sup>27</sup> *Ibid.*, p. 108.



were more likely a plausible strategy for exacting loyalty without retreating to coercion, thus creating social peace and a means for the regime to insert itself further into matters of religion.<sup>28</sup>

One must wonder, however, whether a form of individualism, or toleration for that matter, had to wait for Protestantism to take hold. In any case, reformation, Protestantism and toleration were most certainly anything but inevitable in England. As J.C.D. Clark argues quite persuasively, individualism did not wait for Protestantism, but can be traced in human conduct for centuries in Catholic Europe.<sup>29</sup> And Glenn Burgess reminds us that Revolutionary-England may have brought clarity to the demands of the individual conscience and authority, but it did not necessarily secularize contemporary understanding of authority.<sup>30</sup>

This is not to say that scepticism and secularisation did not influence the political and religious culture of the sixteenth and seventeenth centuries, nor the development of toleration. Looking for new approaches to toleration ideas outside theology, historians such as Blair Worden have suggested there could be a more richly and nuanced discourse of religious toleration if historians studied the influence and the ‘spread of lay education and of travel, the entrenchment of competing European faiths, and the expanding of church history with a growth in religious relativism.’<sup>31</sup> Alan Levine suggests that the expansion into the new world by Europeans, and the expanding knowledge of the cosmos, ‘provoked reason and tradition to be doubted in world-shattering ways, creating widespread scepticism and toleration’.<sup>32</sup> The ascription of scepticism as an enlightenment phenomena and catalyst for change has been challenged by other revisionist historians. Cary Nederman and John Laursen’s collection of essays in *Beyond the Persecuting Society* (1998) reveals toleration could be found within the

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<sup>28</sup> Ethan Shagan, *The Rule of Moderation* (Cambridge, 2011), pp. 290-291; J.C. Davis, ‘Living with the Living God: Radical Religion and the English Revolution’, in *Religion in Revolutionary England* (eds), Christopher Durston and Judith Maltby (Manchester, 2006), pp. 19-36.

<sup>29</sup> J.C.D. Clark, ‘Secularization and Modernization: The Failure of a Grand Narrative’, *The Historical Journal*, 55, 1 (2012), p. 173.

<sup>30</sup> Glenn Burgess, ‘Religious and civil society: the place of the English Revolution in the development of political thought’, in *The Experience of Revolution in Stuart Britain and Ireland* (eds), Michael Braddick and D.L. Smith (Cambridge, 2011), p. 271.

<sup>31</sup> Blair Worden, ‘Toleration and the Cromwellian Protectorate’, in *Persecution and Toleration*, ed., W.J. Sheils (Oxford, 1984), p. 206.

<sup>32</sup> Alan Levine, *Early Modern Scepticism and the Origins of Toleration* (Maryland, 1999), pp. 175-176, 10, 232.

spectrum of religious dogmatism and scepticism as early as the medieval era.<sup>33</sup> Furthermore, though scepticism may support principles of toleration, it does not necessitate the development of an attitude of tolerance or toleration practices. Thus scepticism, undoubtedly woven through the toleration narrative, was far less a matter of causation for toleration than it was a correlation in an age of increased global travel fuelled by expanding intellectual and economic interests, which brought individuals of different backgrounds into contact with new and often competing worldviews.

The scholarly push towards creating a grand narrative of transition and progress has not escaped attempted corrections by revisionist historians. Perez Zagorin's *How the Ideas of Toleration Came to the West* is a widely read history of toleration which has sparked much discussion and debate amongst toleration historians. Zagorin's work frames the development of toleration as strikingly similar to those of the classic model. He bypasses the work of revisionist historians such as Cary Nederman and John Laursen and paints a literary portrait of the medieval period as tyrannical, engulfed in legitimising persecution with repeated massacres of Jews in Europe, holy wars and papal Inquisition.<sup>34</sup> This approach allows Zagorin to place the origins of religious toleration and, in like manner, modern liberal values of individualism and pluralism, within the ideas of enlightened thinkers of the sixteenth and seventeenth centuries such as Sebastian Castellio, John Locke and Pierre Bayle.<sup>35</sup> Zagorin makes no room for 'toleration' without 'religious freedom', seeing the two concepts as entirely interconnected, at times conflating the distinction between toleration and liberty of conscience. As was the case in some of the early Whiggish histories, Zagorin's definition of toleration is restricted by a modern historical understanding of toleration as being the concessions of liberty to those who dissent in religion.<sup>36</sup> Such an approach obscures the complexity of contemporary conceptions of toleration, limiting historical analysis to those individuals who fit with more modern pre-conceptions.<sup>37</sup>

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<sup>33</sup> The necessity for toleration was justified in a dogmatic sense in connection with the need for the restoration of Jews in order for the millennium to begin. See Richard Popkin, 'Skepticism About Religion and Millenarian Dogmatism: Two Sources of Toleration in the Seventeenth Century', in *Beyond the Persecuting Society: Religious Toleration Before the Enlightenment* (eds), John C. Laursen and Cary J. Nederman (Philadelphia, 1998), pp. 232-246.

<sup>34</sup> Perez Zagorin, *How the Ideas of Toleration Came to the West* (Princeton, 2003), p. 2.

<sup>35</sup> Zagorin, *How the Ideas of Toleration*; For a discussion of Sebastian Castellio, pp. 93-144; For Locke and Bayle, pp. 240-288.

<sup>36</sup> Henry Kamen, *The Rise of Toleration* (New York, 1967), p. 7.

<sup>37</sup> Zagorin, *How the Ideas of Toleration*, pp. xi-xvi, 1-3; Shagan, *The Rule of Moderation*, pp. 290-291.

Focusing on radical puritanism as the key to the move from persecution to toleration, John Coffey's *Persecution and Toleration in Protestant England, 1558-1689* places an emphasis on the religious nature of toleration. Here Coffey works to establish a thorough analysis of the Augustinian justification for intolerance which underpins the Protestant theological basis for toleration and intolerance.<sup>38</sup> Coffey's scholarship has greatly contributed to our understanding of the significant role of a distinctively Christian and scriptural approach in the toleration arguments of individuals like Roger Williams. In this manner, Coffey has explored the dichotomy in toleration ideas generated by allusions to the Old and New Testament. Focused on Williams's explicit use of the phrase 'since the coming of his Son the Lord Jesus', Coffey emphasises the radical transformation of toleration arguments in the 1640s.<sup>39</sup> Coffey sees Williams, as well as an assortment of Baptist tolerationists, as presenting the 'classic godly defence of comprehensive religious toleration.'<sup>40</sup> Coffey's work illuminates the ways in which different religious sects developed approaches to arguing for toleration, and reminds us that many of the tolerationist ideas presented by 'radical' Puritans in the 1640s had originated from Baptists in the early years of James's reign.<sup>41</sup> Identifying the beginnings of the radical approaches to toleration in James's reign with men like Henry Jacob or Thomas Helwys, a separatist and one of the original General Baptists, Coffey does not stray far from the examination of early Stuart toleration ideas presented in W.K Jordan's *The development of Religious Toleration in England*.<sup>42</sup> Thus, Coffey's claims about religious toleration are predominantly through a Protestant-focused narrative. While his approach is significant for understanding the intellectual and theological justification of coercion and persecution, he narrowly identifies the radical Puritans between 1640 and 1689 as the predecessors of modern ideas of religious freedom.<sup>43</sup> Toleration, then, is seen as a partisan phenomenon in which one

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<sup>38</sup> John Coffey, *Persecution and Toleration in Protestant England 1558-1689* (Essex, 2000).

<sup>39</sup> John Coffey, 'Puritanism and Liberty Revisited: The Case for Toleration in the English Revolution', *The Historical Journal*, 41, 4 (1998), pp. 962-964; Roger Williams, *The bloody tenent of persecution for cause of Conscience discussed in A Conference between Truth and Peace* (1644), p. 2.

<sup>40</sup> Coffey, 'Puritanism and Liberty Revisited', p. 965.

<sup>41</sup> *Ibid.*, p. 964.

<sup>42</sup> For Coffey's treatment of toleration ideas in early Stuart England, see Coffey, *Persecution and Toleration*, esp. chapter 5. For Coffey's look at Thomas Helwys see pp. 113-114; See W.K. Jordan, *The Development of Religious Toleration*, ii, pp. 274-276.

<sup>43</sup> Calls for liberty by men like Oliver Cromwell and John Milton have been identified by Blair Worden as being less of an attempt to argue for a wide acceptance of faiths, as they were part of the larger goal to

group establishes the singular definition of toleration and, by default, distinguishes rival groups as intolerant. Thus, Coffey holds persecution and toleration to be adversely related, and the key to overthrowing Augustinian persecution rested with radical Puritans. ‘The Protestant conviction that the Christian church had fundamentally lost its way after the primitive centuries proved uniquely corrosive to the traditional theory of persecution.’<sup>44</sup> Thus, Coffey’s work pushes to the fringe the influence which Catholics had on the formulation of toleration ideas.

Such methods and approaches to the history of toleration have not been without opposition, particularly from those who have emphasised continuity over change. Alexandra Walsham and Ben Kaplan, as if in scholastic collusion, have produced rewarding studies of toleration. With a focus on England, Walsham’s book, *Charitable Hatred*, is a brilliant compilation of extensive research.<sup>45</sup> Walsham’s ambition to side-line anachronistic and teleological histories of toleration is evident from the outset of the book. Walsham’s thematic approach weaves together an encompassing social history of toleration, focusing on the practical relations between those with opposing faiths. Walsham views toleration as a ‘paradoxical policy, a casuistical stance involving a deliberate suspension of righteous hostility and, consequently, a considerable degree of moral discomfort.’<sup>46</sup> Seeing toleration as temporal and cyclical in its implementation, Walsham concludes that, on a practical level, toleration and intolerance were not adversarially related, though oftentimes intolerance was put aside for ‘a toleration of practical rationality’.<sup>47</sup> Walsham’s tendency to see continuity in toleration ideas, however, arguably places the concept of toleration into a historical straitjacket that focuses on individuals’ propensity to hate one another rather than seeing the extent to which arguments for toleration were employed in an attempt to find practical measures to deal with an increasing pluralistic religious landscape. Though Walsham’s book is unsurpassed in its use and treatment of secondary and primary sources, her attention to such crucial moments as James accession, in which Catholic (as well as Protestant reformers) anticipated a drastic reversal of the religious

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restore order and uniformity back to the church, see Blair Worden, ‘Toleration and the Cromwellian Protectorate’.

<sup>44</sup> Coffey, *Persecution and Toleration*, p. 210.

<sup>45</sup> Boasting a ‘select bibliography of secondary sources which lists over four hundred items’, noted by John Coffey’s review of Alexandra Walsham, *Charitable Hatred: Tolerance and Intolerance in England, 1500-1700* (Manchester, 2006), in *The Seventeenth Century*, 24, 1 (2009), p. 195.

<sup>46</sup> Walsham, *Charitable Hatred*, p. 4.

<sup>47</sup> *Ibid.*, p. 11.

status quo, is relatively limited. As this thesis will argue, Catholic aspirations at this time meant the development of critical approaches to formulating toleration ideas that anticipated many of those proposed by later minority groups in the mid-seventeenth century.<sup>48</sup>

Ben Kaplan's *Divided by Faith* explores the coexistence of religious groups and the social practice of toleration across Europe as a whole. For Kaplan, toleration as a social practice reveals the concept to be neither a universal ideal, nor a positive concept built on mutual acceptance. Kaplan understands toleration as arising from a need to stabilise the slow rise of confessionalism, which mobilised communities to unify as Christian communities - a 'corpus Christianum'. This produced religious cultures which aimed at common strategies and goals in order to create 'informed, conscious adherents to a particular faith', rather than simply distinction by denomination.<sup>49</sup>

These histories offer tremendous insight into the practical, social depth with which toleration and intolerance were put into practice within the early modern age. Focusing on the pragmatics of toleration, Walsham and Kaplan provide a springboard for historians of toleration to grapple with the complexity of an increasingly divided confessional England and Europe. However, though not outright denying the intellectual influence of tolerationist thinkers, the emphasis on continuity over change by historians such as Walsham and Kaplan arguably understates the role of both politically and religiously motivated individuals who were willing to push intellectual boundaries to fit changing practicalities.

The problem confronting the current historiography of toleration is that in order to find or dispute the origins of toleration ideas, or challenge the narrative of a linear development of toleration thought, historians are left to examine toleration on a broad chronological scale. This minimises the opportunity historians have of understanding the complex contingencies of the situations in which toleration was often discussed and implicated. Thus, while each of the works discussed above present valuable approaches to the study of toleration, the overarching aim of such studies is in debating general principles of continuity and change. The difficulty with this underlined premise of toleration history for those who favour change over continuity is that such

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<sup>48</sup> The discussion of petitions for toleration at James' accession is more of a highlight to point out that Protestants were optimistic about further reform. See Walsham, *Charitable Hatred*, p. 17. For Walsham's criticism of her book (*Charitable Hatred*) on this point, see Walsham, 'Culture of Coexistence', p. 118.

<sup>49</sup> Ben Kaplan, *Divided by Faith: Religious Conflict and the Practice of Toleration in Early Modern Europe* (Massachusetts, 2007), pp. 46-50; Also see Collins, 'Redeeming the Enlightenment', pp. 20-21.

scholarship can often fall prey to teleological arguments. Knowing progress was made in the idea and practice of toleration as a political theory and social value, Coffey and Zagorin have presented histories which elevate periods of time like England's 1640s or later enlightenment thinkers to the status of heroic victors ushering in a wave of modernity. On the other hand, those historians favouring continuity are often so intent on holding off modernity and progress that they neglect to fully appreciate the complexity and ideological fluctuations, advancements and regressions, which followed the development of toleration ideas and practices even within periods of political and religious intolerance.

Where much influential historical research has assessed the contribution to toleration ideas of English Protestants like Roger Williams, John Milton, and John Locke, or European influences such as Bayle, Spinoza, and Descartes much less historical attention has been placed on the toleration thoughts of Elizabethan and Early Stuart Catholics.<sup>50</sup> Current historical works focusing on toleration in England such as John Coffey's *Persecution and Toleration in Protestant England*, gloss over the contributions made by Catholics in the political and intellectual theories of resistance and compromise in putting forward a Protestant-centred narrative of persecution theory. This leaves out critical players and intellectual arguments that were cultivated by Catholic conformists and recusants in the Elizabethan and early Stuart period. Individuals like Robert Persons, William Allen and Sir Thomas Tresham have been side-lined due to the idea that they saw toleration as 'simply a temporary measure and a prelude to a reunification of the realm under one creed.'<sup>51</sup> Yet the depth of intellectual and political theories these individuals provide to the history of toleration, particularly concerning spiritual and civil authority, have yet to be properly explored. For example, by re-examining toleration in light of resistance and loyalty debates within the Elizabethan and early Stuart periods the role Catholics played in formulating toleration ideas can be seen as producing more than a second-best option to military invasion.<sup>52</sup> Allen and Persons are known for their involvement in plans to turn

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<sup>50</sup> John Marshall, *John Locke, Toleration and Early Enlightenment Culture* (Cambridge, 2006); Sharon Achinstein and Elizabeth Sauer (eds), *Milton and Toleration* (Oxford, 2007); Jonathan Israel, *A Revolution of the Mind : Radical Enlightenment and the Intellectual Origins of Modern Democracy* (Princeton, 2010); Israel, *Enlightenment Contested : Philosophy, Modernity, and the Emancipation of Man, 1670-1752* (Oxford, 2006).

<sup>51</sup> Alexandra Walsham, *Catholic Reformation in Protestant Britain* (Burlington, 2014), p. 15.

<sup>52</sup> Peter Lake, *Bad Queen Bess? Libels, Secret Histories, and the Politics of Publicity in the Reign of Queen Elizabeth I* (Oxford, 2016), pp. 149-150.

England back to the mother church, but their approach to toleration for Catholics has been far less explored. Both Allen's *True, Sincere and Modest Defence* and Persons' *Leicester's Commonwealth* reveal the connection between legitimate justifications for non-obedience and resistance and the formulation of toleration ideas. Thomas Tresham, a leading recusant, argued extensively for the need to bridge the gap between loyalty to the crown in actions and freedom in conscience for matters of religion.<sup>53</sup>

While these three individuals do not make up the entirety of Catholic voices in confronting the problems of co-existence in England, they do stand out as prominent and controversial figures: respectively, the papally-appointed head of the English mission, the foremost English Jesuit, and a man who was recognised in his lifetime as the 'leader' of Catholic lay opinion. Yet few historians seem to be asking the question of how such influential figures in the early modern Catholic community could simultaneously support the excommunication of Elizabeth in the 1570 papal bull, or maintain an argument for a degree of civil resistance, and yet still argue for toleration. It is not that Catholic history and its historians have missed or overlooked these individuals. As Alexandra Walsham has claimed, there is little doubt that 'as a subject the history of Catholicism in the British Isles has emerged from the shadows and become one of the liveliest arenas of scholarly inquiry.'<sup>54</sup> Yet elements of the scholarship on Catholics, while escaping the hagiographical concerns of past histories, continues to be rather narrowly focused on resolving and sharpening the history of Catholic identity in early modern England.

### **Historians, Catholics and Toleration**

Much of the current historical literature on the formation of Catholic identity in Reformation England stems from the debates between John Bossy and Christopher Haigh. Bossy's pivotal work, *The English Catholic Community*, emphasised the development of a Catholic community in England as the result of the missionary efforts of seminary priests and the Society of Jesus beginning in the 1570s. This mission-served Catholic community was forced to evolve or be

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<sup>53</sup> Tresham's influential role in the Catholic calls for toleration can be seen in his interrogation by the privy council after the arrest of Edmund Campion in 1581, along with his penning of a petition to Elizabeth in 1585. As it will be seen in the chapters on James's accession, Tresham was likely involved in the early petitions of 1603 and may have been the author of a petition to James in 1604 under the pseudo name John Lacey.

<sup>54</sup> Walsham, *Catholic Reformation*, p. 2.

eliminated in the midst of a Protestant faith backed by an eager Elizabethan regime set on uniformity. Bossy highlights a strict break from the old guard of communal-based Catholicism centred around the church to a necessary move towards private more individualistic worship, particularly focused around elite gentry households. The focus of Bossy on the socialising process of a new guard of English Catholicism spearheaded by the vibrant and European-trained missionaries and seminary priests was heavily criticised by Christopher Haigh.<sup>55</sup>

Haigh sought to retell this social phenomenon that was the Catholic community in England by marginalizing the efforts of the missionary and seminary priests. Haigh's revisionist approach brought him to the conclusion that it was on the backs of the old guard of Marian priests that Catholicism survived the Elizabethan Protestant onslaught. The missionary efforts of the Jesuits and seminary priests only further inhibited and sped up the decline of Catholicism throughout England by focusing on the gentry class and particularly those of the midlands and south-east of the country. Haigh's thesis challenged Bossy's interpretation and view of pre-reformation Catholicism in England as a weak and feeble religious framework held up by antiquated modes of worship. For Haigh, the medieval practices and creeds of old were vibrant and empowering in the minds of Marian priests who saw that the 'Catholic outlook in ill-governed regions of England, and in virtually all Wales was promising and strongly conservative.'<sup>56</sup> Yet Haigh's work was practically focused on a view that the Catholic elite were predominantly 'apolitical' and the lack of movement out of the homes of the southern gentry to the North and West of England by missionaries was a 'deliberate strategy rather than a tactic of evasion' from persecution.<sup>57</sup>

These debates generated a spree of historical inquiry into Elizabethan Catholicism and reinvigorated the subject.<sup>58</sup> At the forefront of much of this renewed Catholic history was the

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<sup>55</sup> Christopher Haigh, ed., *The English Reformation Revised* (Cambridge, 1987), see introduction and chapter 9; Haigh, 'The Continuity of Catholicism in the English Reformation', pp. 176-208; Haigh, 'From Monopoly to Minority: Catholicism in Early Modern England', *Transactions of the Royal Historical Society*, 31 (1981), pp. 129-147; For Haigh's telling of the tactical, religious and political manoeuvring which advanced and derailed a series of English reformations, see Haigh, *English Reformations: Religion, Politics, and Society under the Tudors* (Oxford, 1993). For the significant role that local parish churches played in resisting the Elizabethan Reformation see chapter 15.

<sup>56</sup> Haigh, 'From Monopoly', p. 132.

<sup>57</sup> *Ibid.*, p. 136.

<sup>58</sup> For an assessment of the literature, particularly as 'reformation history', see Peter Marshall, '(Re)defining the English Reformation', *Journal of British Studies*, 48, 3 (2009), pp. 564-586.



intent to re-envision the role Catholics had in English communities, politics and culture more generally. This is significant for the discussion of Catholic toleration, as Catholics were no longer proposed as being political inert, but rather active and engaged members of English society.<sup>59</sup> Peter Lake and Michael Questier have championed such scholarship and their work has served as a bridge between the sociological studies of early modern identity by Bossy, Collinson, and Haigh and studies of political culture in Elizabethan and early Stuart England.<sup>60</sup>

Particularly significant for toleration history are studies by Peter Holmes, Thomas Clancy and Arnold Pritchard, which examined the engagement of Catholics with the Protestant regime to reveal a politically conscious Catholic community that was actively engaged in various forms of civil disobedience.<sup>61</sup> Placing Catholicism back into the centre of the political narrative meant that questions of resistance and compromise had to be placed on the table for debate if one was to understand how Catholicism survived and functioned throughout the late Tudor and early Stuart periods. Alexandra Walsham's work on church Papists has been a cornerstone of the history of Catholic identity and debates over resistance and compromise. Walsham identifies the church Papists not as people looking to gain political advancement, but as individuals who found conformity to be a successful way in which the Catholic faith could survive the onslaught of Elizabethan persecution. Acknowledging the more radical opinions of individuals like Thomas Bell, who often discussed the concept of toleration, Walsham's study showed that the church Papists were more closely connected to the resilient recusants in that they each awaited a day when true faith would be restored to England.<sup>62</sup> Similarly, Michael Questier and Ethan Shagan have also projected light on the idea that one's recusancy or conformity, or partial conformity, were not the best gauge to measure religious conviction. While historians may be quick to designate those who were the true Catholics and who were not amongst the Catholic community,

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<sup>59</sup> Michael Questier, *Stuart Dynastic Policy and Religious politics 1621-1625, Camden fifth Series*, vol. 34 (Cambridge, 2009), p. 4.

<sup>60</sup> Michael Questier, *Conversion, Politics and Religion in England, 1580-1625* (Cambridge, 1996); Peter Lake and Michael Questier (eds), *Conformity and Orthodoxy in the English Church, C. 1560-1660* (Woodbridge, 2000); Lake and Questier, 'Puritans, Papist, and the "Public Sphere" in Early Modern England: The Edmund Campion Affair in Context', *Journal of Modern History*, 72, 3 (2000), pp. 587-627.

<sup>61</sup> Peter Holmes, *Resistance and Compromise: The Political Thought of the Elizabethan Catholics* (Cambridge, 1982); Thomas Clancy, *Papist Pamphleteers*; Arnold Pritchard, *Catholic Loyalism in Elizabethan England 1558-1603* (Chapel Hill, 1979).

<sup>62</sup> Alexandra Walsham, *Church Papists: Catholicism Conformity and Confessional Polemic in Early Modern England* (London, 1993).

contemporaries wrestled with this question throughout the Elizabethan period and beyond. Individuals often had a change of heart when it came to declaring their confessional camps and some even remained comfortable ‘sitting on the fence’ and holding an assortment of religious and political values which often competed against one another as political factions changed.<sup>63</sup>

The varying degrees of Catholic opinions and thoughts on issues such as obedience and resistance, recusancy and compromise, played a significant role in forming a distinctive, though not entirely cohesive, Catholic identity. In expanding our understanding of the dynamics of the Catholic community in England, historians have provided the groundwork for constructing a history of Catholicism that is significantly more contextualised and helps to bridge the gap between hagiographical histories of the past and the revisionism of scholars like Christopher Haigh and Eamon Duffy.<sup>64</sup> However, for as much as these histories have helped historians of Catholicism, the English Reformation and post-reformation England, there continues to be a lack of attention appropriated to Catholic influence on discussions of toleration in these periods.

Most recently, Peter Lake and Michael Questier have shed some light on this significant topic. Lake and Questier have revisited the transitional moment between Elizabeth and James I to present a detailed account of the Archpriest Controversy. This study bridges the historical gap between a history of Catholics during the Elizabethan reformation and the establishment of James’s ‘post-reformation’ regime. And though their discussion of toleration revolves largely around the account of Watson’s confession to the Bye Plot, there is much to be taken from their exceptional scholarship.<sup>65</sup>

Their principal contribution to understanding toleration in this moment lies in their examination of the different approaches which Jesuits and secular priests took in defining the spiritual and civil boundaries and thereby proposing different takes on the value of toleration. In the case of the secular priests, Lake and Questier propose that the secular priests arguments for toleration took the position of a politique analysis with the goal of showing it was a means to ‘achieve political stability’. This meant that they could also frame Puritans’ and Jesuits’ dissent

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<sup>63</sup> Ethan Shagan, ed., *Catholics and the 'Protestant Nation': Religious Politics and Identity in Early Modern England*, (Manchester, 2009).

<sup>64</sup> Eamon Duffy, *The Stripping of the Altars: Traditional Religion in England, 1400–1580* (Yale, 1992).

<sup>65</sup> Peter Lake and Michael Questier, *All Hail the Archpriest: Confessional Conflict, Toleration, and the Politics of Publicity in Post-Reformation England* (Oxford, 2019).

as a threat to stability and the magistrate's authority and thus linking arms with loyal, supportive Catholics such as the secular priests was a prudent step to ensure religious and political peace.

Elsewhere, Questier has offered insight into James's approach to toleration in discussions of the Oath of Allegiance and the controversy which followed, but perhaps his most detailed and analytical contribution to understanding Catholic toleration comes from his discussion of the Stuart dynastic policies of the Spanish Match.<sup>66</sup> Placing Catholics in England and abroad at the centre of his analysis, Questier provides an assessment of the Match and the significance role played by the Catholic community at large. Questier presents the discussion of Catholic toleration in this moment as primarily another aspect of the intra-Catholic debates over 'episcopal rule' in England which again featured the secular priests on one side and a mostly Jesuit faction on the other. Questier supplies a thorough introduction to the involvement of Catholic factions to promote the toleration cause and a secular episcopal appointment via the marriage negotiations, stating that 'the agitation for a grant of toleration to James's Catholic subjects was therefore integral to the campaign at Rome to secure an award of episcopal authority to an English priest.'<sup>67</sup>

This thesis is indebted to the approaches taken by these historians of Catholicism. In many ways they have illuminated the importance of detailed political contexts in understanding Catholic involvement in, and contribution to the development of toleration ideas. This study hopes to take such analysis further and contribute to the field of both toleration and Catholic histories. Thus, it is the contention of this thesis that just as the history of toleration needs to incorporate the weight and influence which many Catholics had in generating ideas about toleration, historians of Catholicism would be remiss to neglect the significant influence toleration had on the conception of what it meant to be Catholic in Protestant England.

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<sup>66</sup> Michael Questier, 'Loyalty, Religion and State Power in Early Modern England: English Romanism and the Jacobean Oath of Allegiance', *The Historical Journal*, 40, 2 (1997), pp. 311-329; Questier, 'Catholic Loyalty in Early Stuart England', *The English Historical Review*, 123, 504 (2008), pp. 1132-1165.

<sup>67</sup> Michael Questier, *Stuart Dynastic Policy*, p. 13; See also, Michael Questier, *Catholicism and Community in Early Modern England: Politics, Aristocratic Patronage, and Religion, c. 1550-1640* (Cambridge, 2006), pp. 390-391.

## **Aims and Methodology**

The intent of this thesis is to analyse the ways Catholics employed different notions, senses and concepts of ‘toleration’, and through doing so to illuminate patterns of change and continuity in the discussion of toleration more broadly. The thesis aims to bring Catholic voices to the forefront of toleration history through an examination of distinct periods of religious and political volatility in the reigns of Elizabeth I and James I. Within these periods several critical ‘moments’ have been identified, as points in time in which the political and religious context fostered and potentially incited English Catholics to express their desire for toleration in distinct ways. Rather than focusing on broad sweeps of time, attention to these moments will reveal the significance of historical context for how the theoretical and practical implications of toleration were developed and discussed.

This thesis will argue that it is within highly contextualised moments, undergirded by political transition and religious instability, that we can find a language of toleration being elevated in the midst of intolerance. This toleration talk was used during the period to provide a conceptual framework for political and ecclesiastical authors, as well as a platform on which contemporaries built and shaped an ecclesiastical and political language of toleration malleable enough to fit their rhetorical as well as practical needs. This thesis proposes that toleration was not an ideologically rigid concept, locked in a framework dominated by justifications for coercion and persecution. Nor was the concept developing into a triumphant march toward more progressive forms of religious and political pluralism. Rather, toleration talk, formulated through an assortment of treatises, religious polemics, political tracts, petitions and diplomatic negotiations, sought to utilize and often manipulate the notions of toleration present in ecclesiastical, political, and judicial debates of the time. In doing so, this thesis intends to add to the body of work promoting more in-depth studies of Catholic history, and to revitalize the historical discussion of early modern ideas of toleration.

Approaching the sources in this manner, the thesis is structured around moments in which discussions of ‘toleration’ spiked in official and unofficial texts. These spikes were identified through corpus data from the early modern book collection provided by CQPWeb.<sup>68</sup> This thesis

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<sup>68</sup> CQPWeb is developed by Andrew Hardie of Lancaster University and a continued project of ESRC Centre for Corpus Approaches to Social Science (CASS). The other corpus analysis tool that was used in

is not the product of an exercise in digital humanities, however. In the early stages of research, keyword search techniques were used as a diagnostic tool which help confirm several assumptions about particular moments in which discussions of toleration were more prevalent. The keyword searches began with simple searches for morphological variants of the word ‘tolerate’. Then, further searches were done to identify collocations of ‘toleration’ along with possible synonyms. The final step then was to examine the finding as they were distributed across the late sixteenth and early seventeenth century. Though limited by the scope of printed texts, these corpus searches for the contemporary use of ‘toleration’ supported the perception that particular contingencies at specific times in the Elizabethan and early Stuart period were accompanied by increased discussions of toleration. After completing this initial study the remainder of the research focused on contextualising the use of toleration within the moments where it spiked. By addressing the context and contingencies of the discussions of toleration within these moments, this thesis intends to provide a much-needed comparative analysis across a broad range of texts and religious-political settings.

The texts being examined and analysed in this thesis come from a variety of printed religious and polemical texts, such as those from Robert Persons and William Allen, to the more overtly political tract by William Cecil after the execution of Edmund Campion. Throughout this thesis the calendars of state papers both foreign and domestic, as well as the manuscript collection of state papers, have provided a wealth of information across each of the moments identified. The collection of the manuscripts of Sir Thomas Tresham, along with the collection of miscellaneous manuscripts, in the British Library have been a tremendous resource for looking at both court documents of Tresham’s trial as well as his hand in drafting petitions in Elizabeth’s and the early part of James’s reigns. Though several manuscript copies of petitions were found in the state papers collections, other printed copies of petitions and supplication used in this research are the result of rebuttals produced by individuals such as Gabriel Powell and Matthew Sutcliffe, written on behalf of the Stuart regime, who often provided a copy of the Catholic petitions as a means to refute them point by point. This not only provided the chance to examine the content of Catholic petitions, but to compare the toleration talk unintentionally generated

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this thesis was LanCSBox, a software package for the analysis of language data and corpora developed at Lancaster University by Vaclav Brezina and Tony McEnery. This tool allowed me to build my own collection of corpora in order to do more direct comparisons of collocations from various text types within different time periods.

when the regime decided to engage in a rhetorical parlay with the Catholic tolerationist. Since these Protestant polemicists detested the idea of tolerating Catholics, their toleration talk helped to reveal the subtle and sometime implicit ways in which Catholics subverted and manipulated commonly held conceptions and notions of toleration.

Utilising a broader source base, this approach seeks to avoid many of the puritan-centred tendencies of past scholarship and to add depth to the history of toleration during this period. It also provided the opportunity to analyse these moments and the resonance or impact which Catholic toleration talk had in shaping the social, religious and political boundaries of English society. For example, at the height of the Jesuit mission in the reign of Elizabeth, Catholics and Protestants alike were forced to formulate political and religious ‘boundaries’ in relation to heated issues over church attendance, duty and loyalty, conscience, orthodoxy and heresy. At their core, these debates revolved around who could and could not be tolerated, and what actions and behaviours could and could not be tolerated. The language of toleration entangled in these webs of political and religious polemics, treatises and pleas, intentionally and unintentionally tested the boundaries of spiritual and civil spheres. An analysis of such moments, often times that were neither peaceful nor stable, allows us to examine the malleability of both the idea of toleration and its practical realities, in contexts which forced its proponents and opponents to draw lines in the sand, while also forging new ground in the name of peace, duty, and prudence.

### **Thesis Structure and Chapter Outline**

This thesis is organised into four chapters, with each chapter covering a specific ‘moment’ of toleration talk. The first of these moments is situated in the years between 1580 and 1585. This chapter will examine the toleration talk which was formulated in the context of the political and religious tensions occurring with the arrival of Jesuit missionaries to England and Gregory XIII’s reissue of the 1570 papal bull. Events from the execution of Edmund Campion, to the recusancy legislation of 1584 created a highly charged political and religious scenario in which the Elizabethan regime was confronted with the need to defend its approach to dealing with non-conformity and the perceived threat of Catholicism. In turn, this moment also afforded Catholics the necessary means to construct their own ideas around conformity and recusancy, obedience and resistance. At the basis of these approaches a definition of what constituted ‘matters of

religion', and in turn the ascription of boundaries to the religious and spiritual spheres, became the framework for discussions of toleration. This chapter looks to investigate how definitions of the civil and spiritual spheres were pressed to the forefront of the political and religious debates and the extent to which this shaped conception of Catholic toleration.

The second chapter turns to look at the toleration talk surrounding the accession of James I to the English throne. Where a great deal of Catholic history has focused on the years surrounding the succession crisis of Elizabeth and the Archpriest Controversy, this chapter focuses on the formulation of Catholic petitions for toleration at James's accession.<sup>69</sup> Two of the key themes for examining this brief but significant moment in 1603-1604 are the limitations of the petitionary genre as well as Catholic perceptions and readings of James I. Where the Elizabethan moment was marked by toleration talk that developed around distinguishing the boundaries of the civil and spiritual spheres, this moment of accession generated a toleration talk that was adapted to meet the perceived demands of a new king and a fixation by the petitioners with demonstrating the loyalty of Catholic subjects.<sup>70</sup> This chapter's analysis of toleration talk is centred on understanding the extent to which James's view of himself and his relationship with his subjects influenced the way in which Catholics formulated their petitions for toleration.<sup>71</sup>

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<sup>69</sup> A sample of the scholarship that has discussed the succession issue is supplied in the introduction to the chapter on James's accession. For a few critical works on the succession question and Robert Persons's *Conference about the Next Succession*, particularly its place in the Catholic history under Elizabethan, see Thomas Clancy, *Papist Pamphleteers*, pp. 44-78; Peter Holmes, 'The Authorship and Early Reception of a Conference about the Next Succession to the Crown of England', *The Historical Journal*, 23, 2 (1980), pp. 415-429; Victor Houlston, *Catholic Resistance in Elizabethan England* (Aldershot, 2007), pp. 72- 92; Michael Questier, *Dynastic Politics and the British Reformations, 1558-1630* (Oxford, 2019), pp. 212-218; Peter Lake, *Bad Queen Bess*; Peter Lake, 'The King (The Queen) and the Jesuit', pp. 245-246. The problems surrounding Elizabeth's successor was not solely an issue leading up to the turn of the century and the death of the queen in March of 1603. Patrick Collison has proposed the idea of the 'the Elizabethan exclusion crisis' surrounding the attempts of the regime to exclude particular members of the royal family from the succession, thus creating a crisis which basically existed from the accession of Elizabeth until the death of Mary Stuart in 1587. See, Patrick Collinson, 'The Elizabethan Exclusion Crisis and the Elizabethan Polity', *Proceedings of the British Academy*, 84 (1995), pp. 51-92.

<sup>70</sup> Michael Questier has made similar remarks, though not as a part of discussing the impact which perceptions of James had on Catholic petitions. See, Michael Questier, 'Elizabeth and the Catholics', in Shagan, *Catholics and the 'Protestant Nation'*, p. 88.

<sup>71</sup> Though not the extent of literature on James's years in Scotland and his reign in England, the following scholarship is essential in understanding of James's attitude as a monarch: Pauline Croft, *King James* (London, 2003), esp. chapter 1 and 2; Jenny Wormald, 'James VI and I: Two Kings or One?', *History*, 68 (1983), pp. 187-209; Jenny Wormald, *Court, Kirk and Community: Scotland 1470-1625* (Edinburgh, 1981), esp. part III, pp. 169-224; W.B. Patterson, *King James VI and I and the Reunion of Christendom*

Remaining in the early years of James I, the third chapter takes a forensic look at the formulation of toleration talk before and after the Gunpowder Plot and the subsequent enactment of the Oath of Allegiance. This analysis looks to provide an understanding of how Catholics confronted the growing demands for conformity in the volatile and dangerous moment surrounding the Gunpowder Plot. It also hopes to illuminate the role toleration has in our understanding of the controversy that developed surrounding the Oath of Allegiance. There has been a productive debate in recent scholarship over the significance and meaning of the Oath by Michael Questier, Johann Sommerville, and Stefania Tutino.<sup>72</sup> This chapter will build on this scholarship by examining the extent to which the Oath was understood by Catholics to be a device of persecution, or a chance to settle some of the issues that plagued their hopes for toleration in the past. Whether seen in the second Viscount Montague's speech before parliament in 1604, the Catholic petitions for mitigation in 1605 and 1606, or the treatises defending and condemning the Oath of Allegiance from 1606 to 1612, Catholics were confronted once again with the need to both defend their faith as well as an opportunity to employ new or old arguments for toleration within challenging circumstances.

The fourth chapter analyses the diplomatic negotiations of the Anglo-Spanish marriage treaty. Beginning in the early stages of the negotiations and the disillusioned parliament, through the final stages of negotiations with Prince Charles in Madrid and James at home, this chapter analyses the discussions of Catholic toleration as they were formulated within the context of the Spanish Match between 1618 and 1624. It will contribute to existing historical literature by seeking to understand the extent to which the marriage negotiations propelled toleration talk to

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(Cambridge, 1998). Wormald's seminal work on James VI and I focused on rectifying early historical accounts which presented James as a buffoon whose rule in England was bound to end in failure. In her assessment, James's political abilities as a Scottish ruler did not entirely hinder him from adjusting to English political culture, but rather gave him thick enough skin necessary to survive the onslaught of challenges he faced. Yet still James's reputation as a king is debated. Where Pauline Croft has combed through Jacobean sources to find yet more reasons to appreciate the successes and failures of the first king to rule over England, Scotland, Ireland and the principality of Wales, others like Alan Stewart continue to see the 'Cradle King's' ineptitude as a by-product of his Scottish experience and paint James as less of a political actor and more of a political bystander lost in the fray. See Wormald, 'James VI and I', pp. 197-198; Alan Stewart, *The Cradle King: a Life of James VI and I* (London, 2003).

<sup>72</sup> Michael Questier, 'Loyalty, Religion and State Power', pp. 311-329; Questier, 'Catholic Loyalty in Early Stuart England', pp. 1132-1165; Johann P. Sommerville, 'Papalist Political Thought and the Controversy over the Jacobean Oath of Allegiance', in *Catholics and the 'Protestant Nation'*, ed., Ethan Shagan, pp. 162-184; Stefania Tutino, *Empire of Souls: Robert Bellarmine and the Christian Commonwealth* (Oxford, 2010).



the forefront of the burgeoning domestic and foreign crisis facing the Stuart regime. This will bring clarity to the significant role discussions of toleration played in the pursuit and ultimately the failure of the Spanish Match. Though anti-Spanish and anti-Catholic sentiments abounded in this moment, James's desire for peace and his push for negotiating his son's marriage provided Catholics with a means to navigate the hostile environment and to produce a toleration talk relatively novel in its conception and application. In this way this thesis hopes to explore the ways in which toleration talk bound itself to the political culture of the moment as it became an integral part of both the regime's and English Catholics' attempts to find a means to cure the pains of religious conflict.

The overarching aim of each of these four chapters is to problematise and re-think the historical narrative of toleration by examining more closely the nuanced and complex ways in which the idea of toleration and its practical realities were discussed within the changing circumstances of each of these moments. While all of these moments have featured prominently in the history of ideas, political culture, Catholic, and English Reformation history, there is still a need for a study which analyses the extent to which toleration ideas feature as a prominent theme in the complex contexts which make them up. Toleration, particularly for Catholics, was a major point of contention within each of these moments and thus was intricately entangled with the religious, political and intellectual debates on which historians of the Elizabethan and early Stuart period have focused. To engage in the task of researching the phenomenon of toleration within these periods is an opportunity to bridge the gap between the burgeoning field of Catholic history and the need for revising the history of toleration. This thesis hopes to be a starting point in fulfilling this task, and to provide an engaging and significant contribution to the field of early modern history.

## Chapter 1

### **An Elizabethan Moment: Tensions between Conformity, Resistance and Toleration**

For English Catholics, the moment between 1580 and 1585 was one of intense and seemingly relentless persecution. Increased penalties for recusancy, felony charges for possessing Catholic religious artefacts and writings, the charge of treason against any Jesuit or seminary priest on English soil, or for anyone caught harbouring Jesuits and priests, all led to an increase in both the loss of property and life.<sup>1</sup> For the Elizabethan regime, the period was one of proactive and reactive measures taken not only to defend its borders from a likely Catholic military invasion but to secure its social and political hold from the internal threat of Catholic insurgency. The danger on both sides was all too real with the ever-present threat of war from Spain, conspiracies and assassination attempts, elaborate spy networks and a long line of executions. Yet this bloody and highly volatile religious and political Elizabethan moment, as intense and as brief as it was, created the right environment for Catholics to formulate and propagate ideas of toleration; more than at any other point of the century.

The intention of this chapter is to analyse the ‘toleration talk’ generated in this Elizabethan moment in order to deepen an understanding of Catholic toleration thought more broadly. In many ways, Elizabethan toleration was grounded in the teachings of individuals such as Augustine of Hippo and Thomas Aquinas from whom both Catholics and Protestants derived their conceptual understandings of toleration. Elizabethan Catholics, laymen or clerical, manipulated these foundational concepts of toleration to fit their needs in the hostile environment of Elizabethan England. As the Protestant regime looked to solidify its religious and political hold on its subjects’ obedience, clarification of what constituted ‘matters of religion’ became an important issue. At the same time, to justify its definition of matters of religion, the regime, and in turn Catholic clerics and laymen, needed to define the boundaries of authority in the civil and spiritual spheres. At the root of this chapter’s investigation then is the question of the extent to

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<sup>1</sup> *Act Against Reconciliation to Rome, 1581*, in *Tudor Constitutional Documents A.D. 1485 – 1603*, ed., J.R. Tanner (2<sup>nd</sup> edition, Cambridge, 1930), pp. 150-151; *An Act to retain the Queen's Majesty's Subjects in their due Obedience, 1581*, *Statutes of the Realm: Printed by command of his majesty King George the Third, in pursuance of an address of the House of Commons of Great Britain. From original records and authentic manuscripts*, 11 vols (London, 1810-1828), iv, part 1, pp. 657-658 (henceforth to be abbreviated as *SR Elizabeth I*, unless otherwise specified volume is IV).

which these tentative definitions of the civil and spiritual spheres helped to shape Catholic conceptions of toleration.

In the first section of this chapter, as essential background to the crisis of the 1580s, we will look at the impact which the Northern Rebellion and papal bull of 1570 had in rupturing the relatively civil and religious calm that existed in Elizabeth's early years. The point illuminated in this section is the process by which rebellion and assassination plots, coupled with the excommunication of Elizabeth led to Catholics being punished as traitors rather than as heretics. The next section illustrates how the seminary and Jesuit missions of the early 1580s compounded the fears and suspicions of a Catholic invasion. As much as these events instigated a spree of persecution, they also forced discussion of the civil and spiritual spheres to the political surface and in turn provided a discursive arena in which Catholics could fight for their chance at toleration.

The next two sections of this chapter will examine the complex contingencies under which Robert Persons and William Allen developed highly contextualized and nuanced concepts of toleration. Utilizing texts written by these advocates for Catholic military intervention in England, these sections intend to provide an alternative presentation of Catholic toleration thought. It will be argued that the toleration ideas presented in this moment by Allen and Persons should be understood less as a second-best option for Catholics and more as an outcome of appropriate application of boundaries to the civil and spiritual spheres, a process through which non-obedience became a legitimate source of religious and political resistance. To do so, we will first turn to Robert Persons' argument for toleration in his *Reasons for Refusal* of 1580. By examining his application of the notion of liberty of conscience to the boundaries of the civil and spiritual spheres, we find the formulation of a theory of non-obedience being grounded in his distinction between the civil and spiritual spheres. It is from this premise that Persons builds an argument for Catholics refusing to go to church as a legitimate means to propose toleration for Catholics in England. Secondly, we will turn to analyse William Allen's response to William Cecil's 1583 *Execution of Justice in England*. Here, Allen's argument for toleration is formulated in light of the contested issue of what constituted 'matters of religion'. It will be seen in this comparative analysis that Allen's and Cecil's constructions of authoritative boundaries in which princes and popes could operate in the civil and spiritual spheres became the key focus in producing a legitimate claim for toleration.

Finally, this chapter turns to look at a familiar topic in studies of early modern English Catholicism: loyalty and resistance. Considering first Robert Persons' role in writing *Leicester's Commonwealth*, we see the development of Catholic toleration talk within the genres of literary dialogue and the construction of ideas which advocate for toleration as a matter of state. To move beyond the clerical influence on Catholic ideas, the final section will investigate the influence of a leading Catholic layman, Sir Thomas Tresham. The development of resistance theory became a cornerstone of the Catholic cause in the midst of growing tension with the regime. However, while it will become clear in examining *Leicester's Commonwealth* that political and civil resistance in the form of riots and rebellions were difficult to legitimise, other forms of resistance began to be used to support Catholic calls for toleration. Resistance in Tresham's case is not referring to physical resistance in the form of armed rebellion, riots or other physical demonstrations against a proposed order. If we 'expect riots and rebellions to be the default response of political subordinates to the reception of unpopular orders', then the impact of Catholic resistance on the reforming English landscape looks quite different.<sup>2</sup> Looking for armed political and civil resistance as the model response of the Catholic counter to Elizabethan reform, we find ourselves trapped in seeing Catholic resistance as fundamentally militant. Rather, resistance at this Elizabethan moment refers to an individual's use of tactics to avoid exposing his or her religious beliefs in hopes of preserving the Catholic faith, or his or her property, and life. These forms of resistance could be acts such as secretly holding mass in the privacy of one's home, having someone attend church service in one's place, or, as Thomas Tresham was known to have done, enduring the penalty of recusancy. Resistance could also be the use of equivocation when interrogated, or more simply the use of patronage to keep like-minded Catholics out of trouble or in positions of prominence.<sup>3</sup> It will be argued that, within this Elizabethan moment, Catholic resistance was anything but a rigid adherence to force, and those who argued for non-obedience and toleration were more than willing to bend and adapt as the situation called for it. It is in the context of Robert Persons' and Thomas Tresham's treatises and

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<sup>2</sup> Peter Marshall, *Heretics and Believers: A History of The English Reformation* (Yale, 2017), p. xiv.

<sup>3</sup> For a more detailed examination of the various forms of active and defensive resistance see, Sandeep Kaushik, 'Resistant, Loyalty, and Recusancy Politics: Sir Thomas Tresham and the Elizabethan State', *Midland History*, 21, 1 (1996), pp. 37-71. For an examination of Catholic patronage and kinsmen networks see, Michael Questier, *Catholicism and Community in Early Modern England: Politics, Aristocratic Patronage, and Religion, c. 1550-1640* (Cambridge, 2006).

pleas for toleration that we find the boundaries of the civil and spiritual sphere become contested and debated and the argument for toleration becoming increasingly blurred as the lines between loyalty and resistance were called into question.

### **The Growth of Conflict and the Push for Conformity**

An understanding of the changing political and religious context in mid-Elizabethan England is paramount for grasping the formulation of a toleration talk that largely revolved around defining the civil and spiritual spheres. From the Acts of Supremacy and Uniformity in 1559 to the Queen's death in 1603, the relationship between the Elizabethan regime and its Catholic subjects was one of volatility, fear, and suspicion. From rebellion by the northern earls in 1569, to the threat of a Catholic Spanish invasion envisioned by those involved in the Ridolfi and later Throckmorton plots, Catholics quickly became the focal point of suspicion and slander. For most Catholics this meant a need to legitimize their claim as loyal subjects, walking a tightrope between definitions of loyalty and duty to the state and to their Catholic faith. However, for many the tightrope on which they walked was being set on fire at both ends and would lead some to experiencing a traitor's death, while others escaped only barely through equivocation or apostasy. On the one end, the regime's increased campaign against a Catholic threat in the wake of the Northern Rebellion of 1569 sparked a rise in the execution of Catholics. On the other end, Pope Pius V's excommunication of Elizabeth through the Papal Bull of 1570 pressured Catholics to openly reject Elizabeth's authority or be excommunicated themselves. There was little room for error when it came to pledging and proving one's allegiance to the crown and the church.

The crux of this matter lay in the degree of obedience Catholic subjects were obliged and willing to express toward the queen's civil authority while maintaining spiritual obedience toward the pope and their religious creed. The basis of such challenges became the substance of much of the toleration talking in this moment. To make matters more difficult for the English Catholics, the portrayal of Catholics as traitors after the Northern Rebellion in 1569, and the presence in England of Mary Queen of Scots increased suspicions of a likely Catholic invasion and attempt to overthrow the current monarch.<sup>4</sup> With a Catholic heir alive, the ever present fear

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<sup>4</sup> For an examination of the legitimization of a Catholic threat through marriage arrangements of Mary Stuart and the Earl of Norfolk see, Peter Lake, *Bad Queen Bess? Libels, Secret Histories, and the Politics of Publicity in the Reign of Queen Elizabeth I* (Oxford, 2016), chapter 1.

of assassination attempts and foreign invasion became a driving force behind rhetoric in which Catholicism was presented as ‘an anti-religion, a perfectly symmetrical negative image of true Christianity’.<sup>5</sup> Thus, with Northern earls inciting rebellion under the Catholic banner and the proposed marriage arrangements of Mary Stuart to the duke of Norfolk being mixed up with the Ridolfi Plot, the straw house supporting Catholic loyalism was ready to catch fire at any moment and hopes for any sort of *de facto* settlement might easily go up in flames.

In an attempt to muster Catholic troops to the aid of the Northern earls of Northumberland and Westmorland, Pope Pius V issued a papal bull entitled *Regnans in Excelsis* in February 1570. The pope intended for the bull to act as a beacon for English Catholics, ushering in a new wave of counter-reformation hopes into England. Unfortunately, the efforts of Catholic exiles to excommunicate Elizabeth, and the pope’s use of papal authority to do so, came a little too late. By the time the bull arrived the rebellion was routed and the majority of the rebel leader had fled abroad, including Westmorland and Northumberland’s wife. Northumberland himself was forced to separate from his pregnant wife in Scotland and was captured on Christmas eve. Though his wife diligently attempted to negotiate his release, she failed to receive financial support from King Phillip of Spain and the duke of Alba. Northumberland’s release was thus obtained by Elizabeth and he was returned to England where he was executed in 1572.<sup>6</sup> As for the rank and file of the rebellion force, theirs was the greatest exposition of the state’s power to punish rebellion. Placing the northern areas of the rebellion, county Durham and beyond, under martial law, Lord Huntingdon recounted to Burghley that the appointed number to be executed was ‘seven hundred and some odd.’ In a similar report, Sussex’s marshal of the army, Sir George Bowes, reported to Ralph Bowes on 23 November that in his circuit around the north there were ‘six hundred and odd’ who were executed for their involvement in the rebellion. While the likes of Westmoreland managed to escape to live and plot rebellion another day, the

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<sup>5</sup> Peter Lake, ‘Anti-popery: the structure of a prejudice’ in *Conflict in Early Stuart England: Studies in Religion and Politics 1603-1642* (eds), Richard Cust and Anne Hughes (New York, 1989), p. 73.

<sup>6</sup> C. Sharpe, *Memorials of the Rebellion of 1569* (London, 1840), pp. 346-347; Julian Lock, ‘Percy, Thomas, Seventh earl of Northumberland (1528-1572), Magnate and Rebel’, ODNB; Katy Gibbons, ‘Religious and Family Identity in Exile: Anne Percy, Countess of Northumberland in the low Countries’, in *Exile and Religious Identity, 1500-1800*(eds), Jesse Spohnholz and Gary K. Waite (London, 2014), 39-50.

file and rank of those ‘poore and meane sorte’ lost both life and goods in the wake of the rebellion.<sup>7</sup>

Though coming too late to help spur on support for the Northern rebellion, the bull did complicate the situation for Catholics by illuminating the troubling question of Catholic obedience to the Protestant-dominated regime.<sup>8</sup> The push then for conformity within the established state law became paramount for the Elizabethan regime and a point of dispute for those attempting to elicit toleration. The regime needed to draw out and defend its civil and spiritual justification for the requirement to both pledge allegiance to the queen and attend Protestant church services as a singular matter of civil obedience. The regime’s response to the bull was evident in a royal proclamation of 1570 which called for the arrest of anyone circulating seditious books or bulls ‘with divers monstrous absurdities to the slander of the nobility and council of the realm.’<sup>9</sup> Further to this, the Treason Act of 1571 made it a capital offence ‘by writing, printing, preaching, speech, express words or sayings... [to] affirm that the Queen our said Sovereign Lady Queen Elizabeth is an heretic, schismatic, tyrant, infidel, or an usurper of the Crown of the said realms.’<sup>10</sup> For those looking to suppress dissent and preserve the established church, the bull provided ammunition to further drive a wedge between the Protestant state and its Catholic subjects. The pressure to conform was increasingly being turned up by the regime as the question of civil obedience and loyalty to the crown became intrinsically and explicitly tied to the queen’s spiritual authority. Nonetheless, it was said by William Cecil in a prepared speech of June 1570 that for those who were willing to observe the realms’ laws the queen would ‘accept and intreat them as hir good and obedient subjects.’<sup>11</sup> But the line between matters of religion and matters of state were becoming increasingly blurred. Both the Elizabethan regime

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<sup>7</sup> Sharpe, *Memorials of the Rebellion of 1569*, pp. 188, 163; See also Marshall, *Heretics and Believers*, pp. 485-491. For an analysis of the aftermath of the rebellion and Neville’s continued link to raising suspicion of revolt in the North see, Micheal Questier, ‘Practical Antipapistry during the Reign of Elizabeth I’, *Journal of British Studies*, 36, 4 (1997), pp. 379-380.

<sup>8</sup> Peter Marshall, *Reformation England 1480-1642* (2<sup>nd</sup> edition, London, 2012), chapter. 7; Elliot Rose, *Cases of Conscience* (London, 1975), pp. 40-41.

<sup>9</sup> Quoted in Patrick McCoog, *The Society of Jesus in Ireland, Scotland, and England 1541-1588: ‘our Way of Proceeding?’* (New York, 1996), p. 81; see also Paul L. Hughes and James F. Larkin (eds) *Tudor Royal Proclamations* (New Haven, 1969).

<sup>10</sup> Tanner, *Tudor Constitutional Documents*, p. 414.

<sup>11</sup> SP *Elizabeth I*, 12/71, ‘Substance of the Speech of the Lord Keeper in the Star Chamber’ (1570), fol. 31.

and the Catholic exiles (supported by and in support of the pope) took it upon themselves to wage polemical war in hopes of defining the boundaries of the civil and spiritual spheres.

Pope Pius claimed Elizabeth's title as queen of England and head of the English church to be a pretended title. She was excommunicated because she 'embraced the errors of Heretikes' and 'by strong hand inhibiting the exercise of the true Religion'. Her claim to be head of the English church was illegitimate because it was not hers to take, but rather she 'seized on the Kingdome, and monstrously usurped the place of supreme head of the Church in all England'. Therefore, the pope deemed it necessary to release 'the Nobility, Subjects, and People of the sayd Kingdome, and all others which have in any sort sworne unto Her to be forever absolved from any such Oath, and all manner of duty of dominion, alleageance, and obedience.' The bull absolved English Catholics from duty, obedience and loyalty to the crown. This was predicated on the fact that Elizabeth had usurped the power both civil and spiritual making her 'sole Lady in Temporall and Spirituall matters.'<sup>12</sup> By this point Catholics on the ground in England were between a rock and a hard place. On one side loyalty to Rome meant they could no longer be loyal to Elizabeth, but loyalty to Elizabeth according to the bull meant a similar sentence of excommunication from the church in Rome.<sup>13</sup> Both the regime and Catholic authorities were seeking to establish civil and spiritual boundaries governing those under their jurisdiction. For Catholics, this meant lines were being drawn as to what was an appropriate action to take in maintaining their faith while protecting themselves from persecution and promoting themselves as loyal subjects to the crown who deserved a degree of toleration in return.

### **The Growing Presence of an Enemy**

As Peter Marshall and others have suggested, English reformation(s), whether linear or cyclical in pushing England towards Protestantism, did manage to alienate a portion of English Catholic subjects who found adherence to Protestant religious practices heretical and in some cases a Protestant regime even more detestable. Thus, the reality of the religious polarisation in England was exacerbated by the Elizabethan Act of Supremacy and Uniformity and the papal bull of

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<sup>12</sup> Crosignani, McCoog, and Questier (eds), *Recusancy and Conformity in Early Modern England* (Toronto, 2010), pp. 88-89.

<sup>13</sup> Though it was soon made clear Catholics were not expected to obey the bull immediately, see below, p. 47.



1570.<sup>14</sup> However, it would be the arrival of the seminary and missionary priests in England and the regime's response to the perceived Catholic threat that would foster a language of toleration that was becoming distinctively Catholic by thrusting the discussion of the boundaries of the civil and spiritual spheres to the forefront of the religious and political debates of the moment.

Raising suspicions of a militant Catholic agenda, the establishment of the English College at Douai by William Allen in 1568 was intended to begin sending seminary priests on mission to England. The flood of exiles after the failure of the Northern Rebellion and continuing through the 1580s helped to fill Allen's College as well as the regime's suspicions of a growing foreign Catholic front.<sup>15</sup> With support from Rome and Spain, Allen was all too eager to accept exiled Catholics and send them back on mission to English soil. To support those who remained ardent Catholics at home, in 1574, four priests left the college for England, and by 1580 about 100 had been sent on the mission.<sup>16</sup> Allen was resolute in his adherence to recusancy, though at times in his later years he permitted leniency toward the laity who 'for mere feare or savinge their family, wyfe and children from ruyne are so far only fallen as to come sometimes to their (protestant) churches.'<sup>17</sup> As a prolific writer and founder of the English College, Allen's work was critical in the debates over conformity with the regime as well as with those within the Catholic community.<sup>18</sup> Other works by Allen were centred not around debating Protestants and conformists, but providing practical guides for seminary priests. By the late 1570s Allen's college had a manual for 'cases of conscience' with which seminary priests were well equipped and trained to educate those recusants (particularly of the gentry and upper class) back home in England; this training was also used as a means of correcting the erroneous ways of conformists who might not know any better, bringing them back into appropriate degrees of recusancy.<sup>19</sup>

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<sup>14</sup> Marshall, *Heretics and Believers*, pp. xi-xix, and pp. 493-494. Peter Marshall, '(Re)defining the English Reformation', *Journal of British Studies*, 48, 3 (2009), pp. 567-568; Marshall, *Reformation England*, pp. 208-212; Norman Jones, *The English Reformation: Religion and Cultural Adaptations* (Oxford, 2002).

<sup>15</sup> Katy Gibbons, *English Catholic Exiles in Late Sixteenth-century Paris* (Suffolk, 2011).

<sup>16</sup> Eamon Duffy, *William Allen*, ODNB.

<sup>17</sup> William Allen, 'Cardinal Allen to Catholics in England', in Crosignanu, et al., *Recusancy and Conformity*, p. 262.

<sup>18</sup> Allen's authority and actions were referenced throughout *Refutation of a Comfortable Advertisement*, and was critical in recruiting individuals such as Gregory Martin.

<sup>19</sup> Peter Holmes, ed., *Elizabethan Casuistry* (London, Catholic Record Society, 1981); for a condensed version of these cases see, Crosignanu, et al., *Recusancy and Conformity*, pp. 100-110.

By the turn of the decade in 1580 the seminary priests trained on the European continent had been hard at work in England. The bulk of their efforts were centred on persuading conforming Catholics into full recusancy leaving the education and conversion of those who had turned to Protestantism as a matter of secondary importance. The intent to bring about true religion in England through educating the elite and existing priesthood was not an easy task.<sup>20</sup> While boasting of the success of the seminary priests' ability to correct a vast number of Englishmen to 'hold right views about religion', Allen lamented to Jean Vendeville in a letter of 1578 that still 'many priests said mass secretly and celebrated the heretical office and supper in public, thus becoming partakers often on the same day (O horrible impiety) of the chalice of the Lord and the Chalice of devils.'<sup>21</sup> Knowing the English Catholic faith was in such dire circumstances, Allen quickly turned his attention and efforts to Rome to increase the number of troops on the ground in England. But in this case, Allen did not seek a military force or those politically inclined to support their pastoral efforts; rather, he was in pursuit of men skilled in oratory, rhetoric, and astute in the history and teachings of the Roman Catholic Church. The need to keep the missionaries out of the political spotlight was a priority for the mission.<sup>22</sup> In 1579, Allen arrived in Rome to enlist the help of the Society of Jesus in the spiritual mission to England. To lead the charge Allen proposed that the former fellow and dean of Balliol College, Robert Persons, take command. Persons, a skilled polemicist and Catholic apologist, did not have to take on the challenge alone. Allen was quick to summon from Prague the help of another Oxford-trained Catholic, Edmund Campion. His mission, Allen remarked in a letter to Campion, was God's way of answering the prayers of his fellow Englishmen. Campion, like Persons, was

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<sup>20</sup> Debates about the formation of this missionised Catholic counter-reformation and its effects on the Catholic community have been a part of much of Elizabethan Catholic history, particularly the approaches taken by John Bossy and Christopher Haigh, see introduction above for a discussion of this historiography. For an analysis of the effectiveness of the Council of Trent in implementing a missionary focused counter-reformation, see Alexandra Walsham, 'Translating Trent? English Catholicism and the Counter Reformation', *Historical Research*, 78, 201 (2005), pp. 288-310.

<sup>21</sup> Crosignanu, et al., *Recusancy and Conformity*, pp. 84-85.

<sup>22</sup> Several very good articles have been written on the topic of the political agenda of the Jesuit mission. See Peter Lake and Michael Questier, 'Puritans, Papists, and the "Public Sphere" in Early Modern England: The Edmund Campion Affair in Context', *The Journal of Modern History*, 2, 3 (2000), pp. 587-627. Also see Michael Carrafiello, 'English Catholicism and the Jesuit Mission of 1580-1581', *The Historical Journal*, 37, 4 (1994), pp. 761-774; Michael Carrafiello, *Robert Persons and English Catholicism, 1580-1610* (London, 1998); Gerard Kilroy, *Edmund Campion: Memory and Transcription* (Oxford, 2016).

to ‘devote the rest of his life and some part of his extraordinary gifts to their beloved country, which had the greatest need of his labour.’<sup>23</sup>

The mission was arranged and the Jesuits were to join the seminary priests in England by the summer of 1580. But before they departed both Campion and Persons had an audience with the pope and presented him with several questions which confronted the difficulties of co-existence in England. The questions focused on how Catholics in England were to understand and live out the potential implications of the papal bull of 1570. The question of civil obedience became the defining factor in how Catholics were to conduct themselves amongst the heretical Protestants, and how they were to deal with the question of church attendance. The manner and means in which civil obedience was to be exacted and displayed would become the crux of discussions attempting to define the civil and spiritual boundaries and the point of contention and distinction for Catholics attempting to solicit a degree of toleration from the Protestant regime. A critical adaptation to the original bull of 1570 was that Pope Gregory XIII made room to qualify the claim of Pope Pius V to absolve all English subjects from Elizabeth’s obedience. When asked whether ‘while the bull stands in force, Catholics can obey Elizabeth in civil matters’ the pope responded that ‘Catholics can with safe conscience obey Elizabeth in civil matters’ and that as subjects under Elizabeth they were to understand that it was ‘licit to cooperate in everything which is lawful under the governance of other tyrants.’<sup>24</sup> Though these questions were important in providing clarity to the Catholic community under Elizabeth’s rule, Jesuits, like the seminary priests trained in Allen’s college, were ordered to ‘not mix themselves up with affairs of state, nor write to Rome about political matters, nor speak, nor allow others to speak in their presence, against the queen.’<sup>25</sup> Their mission was to guide those lost souls to the eternal salvation found in the true church. Persons insisted, in a personal letter he penned in case he was captured, that the truth of the Society’s principles would be known, that the Jesuits were ‘proposing to do here (in England) nothing more than our comrades are doing in other parts of the world, to teach those Christians who shall receive us the rudiments of the Catholic faith and to make their habits conform to the most holy commandments of God.’<sup>26</sup> The focus then of the mission was not to

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<sup>23</sup> Letter from William Allen to Edmund Campion, 9<sup>th</sup> Dec. 1579, Printed in Richard Simpson, *Edmund Campion: A Biography* (London, 1896), pp. 133-134.

<sup>24</sup> Crosignanu et al., *Recusancy and Conformity*, pp. 94-100.

<sup>25</sup> Quoted in Simpson, *Edmund Campion*, p. 140.

<sup>26</sup> Leo Hicks, ed., *Letters and Memorials of Father Robert Persons, S.J.* (London, 1942), p. 38.

confront, head on, the political power or claims of civil authority by the queen. Rather, the mission's initial intentions were to confront the growing problem of Catholic conformity and establish clear boundaries between the civil and spiritual spheres.<sup>27</sup>

The Jesuits' mission quickly began to gain notoriety amongst the Protestant community when pieces of their work, prepared in advance in case they were arrested, began to circulate. In these works, particularly Edmund Campion's so-called 'Brag', the Jesuits called for a 'public contest and disputation...on any matters of religious controversy'<sup>28</sup> Soon secret printing presses were set up to establish the Catholic counter-front against the regime's claims and provide needed material to defend Catholics and push the regime into a polemical battle. This was a slap in the face to the regime and quickly elicited responses. However, Persons contested that it was not the intent or purpose of these works to gain such public awareness, but only to counter the claim that the mission, and Catholics more generally, were intent on arousing sedition. Whatever the intention was, the regime had little choice but to interact with these Catholic apologists whether it was in penning their own refutation or mustering a campaign to seek and find the missionaries themselves.

While the regime turned up its campaign against the missionaries, the missionaries continued to set their focus and efforts on the Catholic community. But going from safe house to safe house building up those who held the faith and rebuking those who had not was not enough to support the Catholic cause in England. Besides wrestling with Catholic conformists it was also important that there was a defence of those Catholics who refused to conform – those who were already marked as recusants were plagued under penal laws with fines and potential imprisonment for failure to attend the number of required church services. As Persons explained in a letter to the Jesuit authorities shortly after arriving in England, 'now a very severe persecution has been set on foot against the Catholics and in every county new prisons have been assigned; for the old ones are already full of recusants.'<sup>29</sup> This was a chance for Persons to brag about the extent of devotion to the old faith amongst the Catholic community, but it was also quite a concerning matter, one which Persons took upon himself to address. He turned then to what he did best. To confront the persecution of English Catholics Persons composed a treatise

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<sup>27</sup> For a political view of the Jesuit Mission, see Carrafiello, 'English Catholicism and the Jesuit Mission', pp. 761-774.

<sup>28</sup> Hicks, ed., *Letters of Robert Persons*, p. 57.

<sup>29</sup> *Ibid.*, p. 46.

in which he proposed that recusant Catholics should be tolerated on the grounds that church attendance infringed on matters of religion that were affairs of the conscience and the spiritual sphere, not affairs of the state and matters of the civil sphere.

### **‘Reasons for Refusing’ – Non-obedience and Liberty of Conscience**

Persons’ treatise, *A Brief Discourse Containing Certayne Reasons Why Catholic Refuse to go to Church*, commonly known as ‘Reasons for Refusal’, set out a defence of the Catholic community in England in which the Catholic conscience took centre stage. Persons’ defence of the Catholic conscience was the centre piece for producing an argument for toleration based on distinguishing the civil from the spiritual sphere.<sup>30</sup> Like Allen would do later in his *Defence of Catholics in England*, Persons worked to establish a spiritual boundary in which the judgement of the conscience was subject to God alone. It was this ‘affliction for their conscience’ that Persons declared was ‘laied upon the practize of certayne particulers in the Catholicke religion’, which brought on extreme penalties of ‘imprisonment perpetual, losse of goodes and lands, and lyfe also, for refusal of an othe against my religion.’<sup>31</sup> That very religion, Persons reminds Elizabeth, was the one she too was ‘borne, baptized, and brede up in’, the same as that in which her ‘forefathers lyved and dyed most holyly.’<sup>32</sup>

Persons’ outlook on the English religious landscape was shaped by the regime’s approach to handling the Catholic threat. Though Persons did not enter the Society of Jesus until 1575, the reality of the Catholic persecution in England weighed heavily on him. Persons recounts in a letter to his superiors after Campion’s arrest that when Catholics were thrown into prison the regime assured them that if ‘they should condescend merely to come to their churches or meeting places and be present at the sermons and divine service...if they would yield to the enemy in this one point they say they would be content in that, and they promise liberty of conscience in other matters.’<sup>33</sup> But Persons insisted that the regime was merely ‘imposing on them and dissembling, as experience has taught.’ It may be that Persons was referring to an English religious scene in

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<sup>30</sup> Marshall, *Heretics and Believers*, p. xiii.

<sup>31</sup> Robert Persons, *A Brief Discourse Containing Certayne Reasons Why Catholic Refuse to go to Church* (1580), pp. 5-8.

<sup>32</sup> Persons, *A Brief Discourse*, p. 8.

<sup>33</sup> Hicks, ed., *Letters of Robert Persons*, p. 58.

which, according to Patrick McGrath and Joy Rowe, 30 of those Marian priests who had been imprisoned during Elizabeth's reign had died while in prison. While this does not seem to depict the efficiency of the Elizabethan regime to suppress Catholicism, the severity of the Elizabethan regime's assault on seminary priests was relatively successful: of those '471 seminary priests who can be shown to have been active at one time or another under Elizabeth I, some 285 were caught and imprisoned – of those imprisoned approximately 116 were executed.'<sup>34</sup> The reality for Persons, then, was that there was an imminent need for redirecting the regime's focus on Catholics as the sole group of religious non-conformists. Examining the makeup of the reforming Elizabethan religious landscape Persons was keen to point out that Catholics were not the only religious sect operating in England, particularly when considering Puritans as a sect amongst the Protestants.

To make his case against the regime's treatment of Catholics and in order to propose a toleration, Persons pointed out that just as Protestantism had separated itself from the Catholic Church, Puritans, the Family of Love and other sects were distinguished and separate from Elizabethan Protestantism. As the regime focused its efforts on suppressing and punishing Catholics for non-conformity it had allowed itself to become splintered from within. Thus, Persons protested that the punishments Catholics endured for matter of conscience and religion were unlike any that had been delivered to other religions in England. Rather, those religions, 'distinct both in name, spirite, and doctrine: the Protestants, the Puritanes, and the howsholders of Love, beside al other petye sects newly borne... have bene permitted to put out their heades, to growe, to advaunce themselves in common speach, to mount to pulpites, with litle or noe controlement.'<sup>35</sup> Where other religions were allotted a degree of toleration, Catholics were 'soe beaten in, with the terror of lawes, and the rigorous execution of the same, as the verye suspition thereof, hath not escaped unpunished.' Persons' opening pages worked tirelessly to frame the plight of the English Catholics in hopes that they, though presumably they would not 'receave more favour then the rest', should at least receive 'equall tolleration with other religions disalowed by the state.'<sup>36</sup> Persons' ploy here is quite subversive. In framing Puritanism as a separate religion from Protestantism he not only weakens a defence of the regime's persecution,

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<sup>34</sup> Patrick McGrath and Joy Rowe, 'The Imprisonment of Catholics for Religion under Elizabeth I', *Recusant History*, 20, 4 (1991), pp. 415-416.

<sup>35</sup> Persons, *A Brief Discourse*, pp. 6-7.

<sup>36</sup> *Ibid.*, p. 7.

but he also belittles the regime's ability to create uniformity within its own ranks. Even if he did so disingenuously, Persons was simply saying if Catholics were to be punished as practitioners of a separate religion, then so too should these others be. Or, if toleration was to be shown to various sects within England, then Catholicism should also receive the same degree of toleration. But Persons had something more up his sleeve, and had greater intentions than to put Catholicism on an equal playing field with other religions.

Persons' construction of an argument for toleration was predicated on establishing the spiritual nature of the conscience, allowing him to turn the actions of the regime against itself.<sup>37</sup> Here, Persons alludes to a common usage of the term toleration supported by early church fathers. As Istvan Bejczy and Alexandra Walsham have pointed out, toleration 'came to denote - analogously to some incidental examples in the works of Augustine - the forbearance of bad people (the immoral, the heterodox, the infidel) by those who had the power to dispose of them.'<sup>38</sup> More importantly, the use of toleration in a social and political sense, like we see here in Persons' treatise, resembled the restraint of God, in not always punishing the sins of His people. Persons uses this sense of the term to show how Elizabeth had restrained her civil power by allowing the religious sects of England to practice various religious practices counter to the regime's laws. These were the very laws which prohibited 'the practize of other religions besides there owne, and allotteth out the same punishment to all them, that doe any waye varye from the publique communion booke.' The problem was that while Elizabeth was (allegedly) showing toleration in her restraint toward other religions, Catholics were not receiving the same treatment.

Persons uses this to turn the actions of the regime on its head. Rather than granting mercy and exemplifying the toleration God had shown to His people, the actions of the regime in penalizing Catholics were an intolerable molestation of Catholics' judgement and conscience, the very thing which if man sinned against he therefore sinned against Christ.<sup>39</sup> Persons is quick to make note of this illicit behaviour by the regime, lamenting the penalty of 'death for reconciling

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<sup>37</sup> For a recent examination of the scriptural and early defences of the conscience see, Robert Louis Wilken, *Liberty in the Things of God, The Christian Origins of Religious Freedom* (Yale, 2019), pp. 16-21.

<sup>38</sup> Ivan Bejczy, 'Tolerantia: A Medieval Concept', p. 368; See also Walsham, *Charitable Hatred*, introduction.

<sup>39</sup> Persons, *A Brief Discourse*, p. 44.

my selfe to God by my ghostly father: death, for giving the supreme Pastor supreme authoritie in causes of the Church: death, for bringing in a crucifix in remembrance of the crucified: death, for bringing in a seely payre of beades, a medal, or an agnus dei, in deuotion of the Lambe that tooke away my sins.’<sup>40</sup> But in all this ill-begotten treatment of Catholics the ‘most greevous, iniurious, and intollerable, is, the gevinge out publicuelye, that all Catholiques are enemies and traytors to your Royall Maiesty.’<sup>41</sup> Persons worked hard to separate matters of religion and the spiritual sphere from the obedience due to Elizabeth in her role as the civil authority. His list of ‘religious crimes’ against the state, which incurred the death penalty, are intentionally centred around matters of spiritual devotion that, as he intended to draw out, were the established religious practice in England for centuries.

To shore up his civil and spiritual spheres, Persons took his readers into the teaching of John Calvin, stating that Calvin, ‘not dissenting from the rest (that is Luther and Wycliffe) Teacheth That Princes lawes binden not subjects to obedience in conscience, but only for external and temporal respect.’<sup>42</sup> Persons then uses this to substantiate his argument for toleration. Obedience in temporal matters, Persons asserts, from the beginning of Elizabeth’s reign, had always been at the heart of her majesty’s ‘trustie and afflicted subiectes the Catholickes.’ He further insisted that Catholics ‘were most redye at the beginning (accordinge to their bounden duties) to place your Highnes in that Royal roome, wherin nowe by the favour of God you stand: Soe are they, and wil be alwayes in lyke sorte redye, with the uttermost droppe of their blood, to defende the same in all safetie, peace, and quietnes unto the ende.’<sup>43</sup> Where the civil authority of the queen was concerned, Persons is quick, like most other advocates of toleration, to affirm Catholics’ obedience in temporal matters. As for their conscience, this was not a matter of civil authority to control and direct, but a matter utterly devoted to the supreme authority of God.

To go against one’s judgment and conscience was a dangerous sin. Persons asserted that the conscience ‘dependeth on judgement, and not of wil.’ Thus, ‘accordinge to the testimony of our conscience: hereof it foloweth, that what soever we doe contrarye to our iudgement and conscience, is (accordinge to the Apostle) damnable.’ To force Catholics to go against their

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<sup>40</sup> Ibid., p. 8.

<sup>41</sup> Ibid., p. 12.

<sup>42</sup> Ibid., p. 15.

<sup>43</sup> Ibid., p. 20.



conscience was to force them into committing an intolerable act, one in which ‘Al Princes also, and Potentates of the world, have abstayned from the beginning... enforcing men to actes against their conscience, especially in religion.’<sup>44</sup> The regime’s push for conformity in forcing Catholics to go to Protestant church services and in doing so not permitting a degree of religious toleration was according to Persons a ‘much more gréevous and damnable sinne’ than any act the Catholics had done in refusing to go to church service.<sup>45</sup>

As we will see in Allen’s *Defence of Catholics*, Persons’ notion of toleration and particularly his conception of a liberty of conscience was not based on the idea that all faiths and people were equal. His call for a liberty of conscience was not his way of recognizing the relative value of conflicting truth claims. Nor was his call for toleration intended to be his way of proclaiming his acceptance and approval of a plurality of religious sects within the current ecclesiastical structure. In fact, it was Persons’ intention to not only point out that the regime was not giving toleration to deserving Catholics, but that the regime’s toleration of Protestantism was an inversion of the correct order.

To illustrate his point further Persons referred to the treatment of infidels by the Catholics in ‘the Indies and other farre partes of the worlde, where ‘under the government of Christian Princes, it was never yet practized, nor ever thought lawful by the Catholicke Church, that such men should be enforced to anye one acte of our religion.’<sup>46</sup> While Persons is more than a little disingenuous in his description of the Catholic Church’s approach to dealing with infidels, his notion of toleration is similar to what was proposed by Aquinas and Erasmus.<sup>47</sup> Infidels, being outside of the ecclesiastical order, enjoyed a degree of political and social toleration. Persons thus inverts the regime’s order of tolerating religious groups by reminding them that, ‘keeping stil our ould religion and having not gone out from the Protestantes, but they from us: we cannot be enforced, by anye iustice, to doe anye acte of their relygion.’<sup>48</sup> Thus, it should be the regime’s intention to wrestle back into the unity of the church those who ‘hath receaved once the Christian Catholique religion, and wil by new devises and singularitie, corrupte the same, by runninge out

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<sup>44</sup> Ibid., p. 25.

<sup>45</sup> Ibid., p. 26.

<sup>46</sup> Ibid., p. 25.

<sup>47</sup> Thomas Clancy, *Papist Pamphleteers: the Allen-Persons Party and the Political Thought of the Counter-Reformation in England, 1572-1615* (Chicago, 1964), p. 146; See also Bejczy, ‘Tolerantia: A Medieval Concept’, p. 372.

<sup>48</sup> Persons, *A Brief Discourse*, p. 27.

and makinge dissention in Christ his body.’<sup>49</sup> Persons’ contention about the regime’s willingness to tolerate Protestant sects was used to illuminate the injustice faced by Catholics. In this case, toleration of Catholics became the only logical outcome when distinguishing the civil sphere, in which Catholic loyalty was owed to the queen, from the spiritual sphere, in which the Catholic conscience and judgment in matters of religion were solely maintained and directed by God.

The danger for Catholics in attending church services, and the rationale of Persons for advocating the necessary steps toward a degree of toleration for Catholics, was a matter of the queen exercising her civil authority to remove herself from the spiritual sphere which was not hers to control in the first place. And yet, while Persons insists that the English Catholics ‘can not imagine to aske of your Majestie, any so great gifte, recompence, or benefite in this world, as should be to them, some favorable tolleration with their consciences in religion’, one cannot help but assume there is some sarcasm involved as he attempts to catch the regime at its own game. Persons’ logic implies that toleration was not simply a question of the civil magistrate restraining the power to crush civil disobedience. The resistance shown by Catholics in refusing to go to Protestant church services was not at all a matter of civil obedience, and Persons’ call for toleration was an argument for legitimate non-obedience and the logical outcome of a divided English religious landscape.

Though Persons intended to use his *Reasons for Refusal* as a defence of Catholic recusancy and to bolster Catholic support for non-conformity, the fact remained that the regime continued to propose that ‘all Catholiques are enemies and traytors to your Royall Maiestye’ and that it was not in matters of religion they were being called to prove their obedience to the queen.<sup>50</sup> The grave danger the Catholics faced at the arrival of the Jesuit mission, and the fixation on Catholics as traitors, continued to escalate when in 1581 Edmund Campion and several of his associates were captured and put on trial for treason. In December of the same year Campion and the other priests were executed as traitors. Campion’s Brag, the secret printing presses, and Persons’ *Reason for Refusal* seemed to have had little effect on anything but provoking the regime to tighten up the reins on Catholic activity. In 1581, the penalty for recusancy increased to 20 pounds a month as opposed to the original penalty of 12 pence. The burden of fines was compounded with the threat of losing one’s life when the regime made conversion to

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<sup>49</sup> Ibid., p. 26.

<sup>50</sup> Ibid., p. 11.

Catholicism a felony offence through an Act Against Reconciliation to Rome and an Act to retain the Queen's Majesty's Subjects in their due Obedience.<sup>51</sup> For Persons and the Jesuits, along with the seminary priests who were labouring in England, the public and open debate they emphatically called for never came to fruition. Though Persons had set his focus on defending the Catholics' non-obedience in refusing to attend Protestant services, and in turn proposed a degree of toleration be granted to Catholics for the liberty of their conscience, the Catholics of England remained objects of persecution, and anyone who continued to harbour priests faced the very real danger of execution themselves.<sup>52</sup>

### **Defining the Civil and Spiritual Sphere: A Clash of Heavy Weights**

Grounding or refuting Catholic toleration based on distinguishing between the spiritual and civil spheres meant that both the Elizabethan regime and Catholics had to confront the question of the queen's and pope's authority. This could not be done without also confronting the problems arising from the papal bull of 1570 and the rising number of executions in the name of defending the realm from treason. Thus the Campion affair became a hot-spot amongst those attempting to establish the boundaries of civil and spiritual authority. Not long after Campion's execution in 1581, William Cecil produced a defence of the regime's actions against the seditious and treasonous acts by Campion and the other participants in the English mission in his *The Execution of Justice in England* (1583). The work was formally anonymous and was reprinted in several languages to be distributed across the continent as a way of justifying the regime's actions to a large Catholic audience. However, the danger in writing such a tract was in opening the matter for debate and giving the defenders of Catholicism a platform on which to present their side of the argument. To this task, William Allen set his aim in defending those who had been previously executed and labelled as traitors.<sup>53</sup> In his controversial work, *A true, sincere and modest defence*, Allen presented those who had been executed for the Catholic faith as martyrs, and the Elizabethan regime as enemies of both true religion and the commonwealth.

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<sup>51</sup> See above, p. 33.

<sup>52</sup> *Act against Jesuits, Seminary Priest, and other suchlike disobedient persons (1584)*, in Tanner, *Tudor Constitutional Documents*, pp. 154-158.

<sup>53</sup> William Allen, *A true, sincere and modest defence, of English Catholiques that suffer for their faith both at home and abroad* (Rouen, 1584).

The political context in which the Allen-Cecil debate was fostered was a festering one. Beyond having to deal with the effects of the 1570 papal bull to excommunicate Elizabeth and the increased pressure to conform, the failed marriage arrangements between Elizabeth and the Duke of Anjou dealt a great blow to the Catholic front and hopes of mitigation or a degree of toleration were in short supply.<sup>54</sup> To make matters worse, where the prospects of a negotiated settlement was dwindling, the Catholic counter-attack turned to the ideas of military intervention.<sup>55</sup> However, by the time Campion and his fellow priests were arrested, Allen's support of a Spanish invasion of England via Ireland had dismal hopes of being successful and his efforts in putting together the Jesuit mission were in disarray as Campion and the priests were executed and Persons was on the run back to the continent. A case then had to be made to defend the Catholic cause in England and Cecil's *Execution of Justice* provided the means once again to call into question the boundaries of the civil and spiritual spheres and to suggest a potential rationale for toleration.

The difficulty for Protestants and Catholics alike was not in distinguishing between the matters which the civil sphere and the spiritual sphere were intended to encompass.<sup>56</sup> Both Cecil and Allen could agree that the spiritual sphere entailed tending to matters involving the soul and the conscience, or more broadly 'matters of religion'. But to what extent these spheres intertwined with one another and who was to exert authority over them became the dividing line between justifying toleration or rejecting it. God had indeed ordained for the civil sphere to deal with matters of temporal importance, matters in which Allen believed the 'Civil governour, subject to the spiritual amongst Christians, be in it self alwayes of distinct nature, qualitie, and condition from the government Ecclesiastical, and spiritual common weath called the Church or bodie mystical of Christ'.<sup>57</sup> Allen's point was to make it clear that there was a hierarchy when it came to the spiritual and civil spheres. The magistrate of a Christian realm was first and foremost responsible to God for his governance of the civil sphere. Though endowed by God to govern,

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<sup>54</sup> For a discussion of the significant part Elizabeth played in managing the marriage negotiations and its impact on her role in policy making, see Natalie Mears, 'Love-making and Diplomacy: Elizabeth I and the Anjou Marriage Negotiations, c.1578–1582', *History*, 86, 284 (2001), pp. 442-466.

<sup>55</sup> The idea of a military invasion as a strategy for reinstating Catholicism in England can be seen in, Hicks, ed., *Letters of Robert Persons*, pp. 36, 158-166. An assessment of the militancy in which the Jesuit mission to England was formed can be found in Carrafiello, 'English Catholicism and the Jesuit Mission', pp. 764-765, 770-771.

<sup>56</sup> Lake, *Bad Queen Bess*, pp. 376-414.

<sup>57</sup> Allen, *A True, Sincere, and Modest Defence*, p. 98.

this did not imply that the civil governor was an authority over the spiritual sphere but rather only responsible for governing in a Christian manner. The difficulty in organizing any argument for or against toleration of Catholics then was that it had to be grounded in definitions of the spheres of civil and spiritual authority of popes and princes, and of the extent to which these individuals' authority superseded each other, and also of the extent to which that allowed their subjects, Catholic or Protestant, to resist their magisterial authority.

For Cecil, the *Execution of Justice in England* was a defence of the regime for its actions against those who 'laboured secretly to perswade the people to allowe of the Popes foresaid Bulles and warrantes, and of his absolute authoritie over all Princes and Countries.'<sup>58</sup> Two key points come out of this. First, Cecil saw the papal bull as an unwarranted call to resistance that promoted rebellion and war. Secondly, through the bull, the Pope claimed spiritual authority over the civil sphere. Both points had to be confronted if Cecil was to insist that 'as it plainly appeare, that it is not, nor hath bene for contrarious opinions in religion' that Catholics were being punished.<sup>59</sup> Rather, resistance to the queen's civil authority was an act of treason and the Jesuits and priests who had suffered torture and execution were being justly punished for such resistance. Throughout this tract, Cecil worked to establish the clear distinction that those the Catholics claimed died as martyrs for their faith were in fact justly labelled and executed as traitors. In doing so, he gives us a construction of the civil and spiritual spheres which vilified resistance and glorified obedience to the queen.<sup>60</sup> His attack against the missionary priests had little to do with religious claims to truth and more to do with the papal bull of 1570's claim to release Elizabeth's Catholic subjects from obedience. Placing the bull of 1570 (and its reissued version in 1580) at the helm of his argument allowed Cecil to limit the power and authority the pope could wield in the civil sphere.

Through the bull, Cecil claimed, the pope had over-stepped his spiritual authority in declaring Elizabeth an illegitimate ruler of England and thus soliciting Catholics to rebel against her. This kind of action was in Cecil's mind a 'kind of tyrannous authoritie in popes to make warres upon Emperors and Kings, and to command them to be deprived'.<sup>61</sup> He added that in

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<sup>58</sup> William Cecil, *The Execution of Justice in England* (London, 1583), p. 7.

<sup>59</sup> *Ibid.*, p.13.

<sup>60</sup> He constructs what the spiritual boundaries of authority are, thus indirectly designating what the boundaries were for the civil sphere.

<sup>61</sup> Cecil, *Execution of Justice*, p. 25.

‘many ancient Lawes it is well known, howe many wayes the tyrannous power of this his excessive authoritie hath bene and still is restrained, checked and limited by lawes and pragmatiques.’<sup>62</sup> Cecil staked his claim in the limitation of the spiritual authority of the pope. To do this he designated the civil works of law as a system of checks on the spiritual sphere. To make his case against the Catholic missionaries, and in turn a case for the queen’s civil authority over the pope’s spiritual authority, it was important for Cecil to contain the pope’s authority within the spiritual sphere alone. He thus, in some ways, allowed the Pope to claim the title ‘Bishop of Rome as successor of Saint Peter’ (though he did not believe it was a legitimate claim), but added an important clause. The spiritual authority the pope wielded had no place in the civil sphere and was only that of a ‘pastor spiritual.’ This role as pastor spiritual was not for making war and rebellion, but one tasked with following the principles ‘by that which Christ the Sonne of God the onely Master of trueth sayde to Peter and his fellow Apostles...Feede my sheepe’. Such pastors were thereby ‘peremptorily forbidden to use a sworde.’<sup>63</sup>

Cecil insinuates that he was not intent on wrestling with the question of whether or not people maintained the idea that the pope was by ‘authoritie of Gods worde to be supream and only head of the Catholique Church, and onely to rule in all causes Ecclesiasticall, and that the Queenes Maiestie ought not to be the governour over all her subjectes in her realme being persons Ecclesiasticall.’<sup>64</sup> What Cecil really wanted to get to was civil obedience and, for Cecil, obedience was not a spiritual matter; those who were disobedient could not receive liberty to do so, but required correction and punishment. Cecil wanted to distinguish the spiritual sphere and the pope’s authority in matters spiritual from those of the civil sphere and the queen’s authority over her subjects, Catholic and Protestant, and the obedience that authority required of them. Through this line of thought he could claim that no person was charged for treason in maintaining the Pope’s supremacy in the spiritual sphere, but only in so far as they maintained the political aspects of the pope’s bull. The most dangerous of these political ideas were those ‘which do import that her majestie is not the lawfull Queen of England’, placing the queen’s authority in the civil sphere in question and leading to the effect of the bull in which ‘al her subjects are discharged of their othes and obedience.’<sup>65</sup> Catholics then had to first be subjects to

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<sup>62</sup> Ibid., p. 27.

<sup>63</sup> Ibid., p. 23.

<sup>64</sup> Ibid., p. 13.

<sup>65</sup> Ibid., p. 13.

the queen and, further to that, subject to her civil authority in and through obedience to the laws of the realm. Tolerating a Catholicism which insinuated otherwise was out of the question. Whether one recognised the authority of the pope over spiritual matters or not, the queen did not derive her civil authority and the right to Catholic loyalty from the spiritual sphere. Civil authority was derived from the fact that Elizabeth, as other ‘Emperours, Kings, Princes and such like...retain their soveraigne estates, either in succession hereditarie, or by consent of their people.’<sup>66</sup> For Cecil, there was no doubt then that the ‘violent tyrannous proceedings by any Pope in maintenance of traitors and rebels, would be withstoode by every Soveraigne Prince in Christendome in defence of their persons and Crownes, and maintenance of their subjectes in peace.’<sup>67</sup>

Subversions of authority in the spiritual sphere occurred when the lines between resistance against the prince and obedience to the prince were crossed. For it was ‘by all preachings, preceptes & writings, contened in the Gospel and other Scriptures of the Apostles, that obedience is expresly commaunded to all earthly Princes, yea, even to Kings by speciall name.’<sup>68</sup> Making a full circle, then, this gave Cecil an effective argument for condemning the missionary priests as seditious traitors rather than people executed for differences in religion. If Catholics were to interpret the bull as Cecil claims, then waiting until the bull was enacted before committing to open rebellion and making war constituted sedition. The pope’s authority over the spiritual sphere did not allow him to make windows into the civil sphere, let alone open the gates for outright disobedience.

The difficulty with Cecil’s interpretation of the spiritual sphere is that he was implying (as Allen would point out) a definition of religion that few contemporaries would have accepted. Though he may not have given in to the idea entirely, Cecil seems to propose that matters of religion were entirely separate from the civil sphere (or as Allen interpreted it, the joining of the spheres together to really eliminate the spiritual sphere altogether). For Cecil, matters of religion were left to the spiritual sphere, and when exercised appropriately they were a muted engagement taking place in one’s mind where potentially contrary opinions in religion could be maintained but never put into action.<sup>69</sup> This internalised religion was exemplified in ‘faithfull &

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<sup>66</sup> Ibid., p. 21.

<sup>67</sup> Ibid., p. 25.

<sup>68</sup> Ibid., p. 23.

<sup>69</sup> Marshall, *Heretics and Believers*, p. 538.

quiet subjects,' though 'in religion then manifestly differing,' who 'maintayned the Popes authoritie against the lawes of the realme' but lived in 'quiet & courteous behaviour.'<sup>70</sup> Throughout his tract Cecil was quite content with leaving questions of religious differences to the judgement of individual conscience in which 'none of these sort are for their contrary opinions in religion prosecuted or charged with any crymes or paines of treason, nor yet willingly searched...for their contrarie opinions.'<sup>71</sup> But Cecil's resolve to keep his tract from slipping into a theological debate over religious claims and his focus on religion and politics as separate spheres was an interesting and bold tactic. Cecil does not turn to what we might have expected him to do, utilizing the long history of church authorities such as Augustine who defended persecution over toleration. Perhaps this tactic of refraining from traditional persecution theory was because he foresaw the potential for more radical Puritans to use it against the regime as an attack on the Church of England. In any case, persecution, particularly the execution of heretics, invited comparison with the Marian regime, which Cecil was intent to avoid, particularly as a survivor of the Marian persecution himself. Cecil was utilizing a different tactic and it allowed him to continue to uphold his claim that for those who were willing to observe the realms' laws and not manifestly and willingly break them, then Elizabeth's 'meaning is to not have any of them molested by any inquisition or examination of their conscience in matters of religion.'<sup>72</sup> But while this gave Cecil a distinct edge in presenting Catholics as traitors rather than as heretics, it also gave William Allen an opportunity to draw his own lines in the sand when it came to the civil and spiritual spheres. Unlike Cecil's conclusion that Catholic non-obedience in spiritual matters precipitated disloyalty to the queen's civil authority Allen would conclude that Catholic resistance and non-obedience to the queen's spiritual authority was a legitimate claim for toleration.

### **Responding in Kind: Resistance and Toleration Two Sides of the Same Coin**

William Cecil's tract was written in response to the 'seditious writings, and infamous libels, full of despitefull vile termes and poysoned lyes, altogether to upholde the foresaide antichristian and

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<sup>70</sup> Cecil, *Execution of Justice*, p. 11.

<sup>71</sup> *Ibid.*, p. 11.

<sup>72</sup> SP *Elizabeth I*, 12/71 fol. 31.



tyrannous warrant of the Popes Bull'.<sup>73</sup> William Allen by contrast turned to his pen to fight for English Catholics, and assert that it was for 'matters of religion' that Catholics were being persecuted. These 'matters of religion', which Cecil relegated to the far corners of civil importance, Allen wanted to thrust into the spotlight of the debate between civil and spiritual authority in hope of making a line of argument capable of supporting the idea of toleration. But Allen had to overcome what seems to be an impossible hurdle to reach a conclusion in which toleration became an option to reconcile the English regime and its Catholic subjects. Concluding his long treatise, Allen attested that his intentions were not to detract 'any obedience due to her temporal soveraintie in spiritual matters', but rather to insist that 'her Majesty hath no charge, authoritie, or power over the Church or ecclesiastical affaires, no more then the poorest soule in her Realme; nor so much nether, til she be a member & obedient child of the Church and Sea Apostolique.'<sup>74</sup>

Allen seized the opportunity to confront Cecil with his own construction of the spiritual and civil spheres. Allen would use Cecil's concepts to set out a Catholic defence for the spiritual authority of the Pope and the legitimacy of Catholic resistance. Allen protested that it was the argument of the 'craftie Politique' (Cecil) that there was 'no difference, betwixt spiritual regiment and temporal', suggesting that the regime 'rather taketh away al ecclesiastical jurisdiction.'<sup>75</sup> This was a subversion of the natural order of ecclesiastical affairs, turning the jurisdiction of the queen in the spiritual sphere into a 'devilish confusion of thinges, and attributing al spiritual Soveraintie to the temporal Prince and power.' Allen was attempting to beat Cecil at his own game by proving Cecil was only justifying his persecution of Catholics by labelling them traitors because he was in reality eliminating the boundaries of the spiritual sphere he professed to be maintaining. Cecil's construction of the civil and spiritual spheres gave authority to care for the church to 'kings and emperors' who, Allen contested, were 'made children and members of the Church, & not Heades therof.' These boundaries of the civil and spiritual sphere in Allen's mind were 'confounding the temperal and spiritual authority... As though ther were no distinction betwixt Christes bodie mistical, and a body politique or humane Common-wealth.'<sup>76</sup>

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<sup>73</sup> Cecil, *Execution of Justice*, p. 6.

<sup>74</sup> Allen, *A True, Sincere and Modest Defence*, p. 217.

<sup>75</sup> *Ibid.*, p. 158.

<sup>76</sup> *Ibid.*, p. 159.

To turn Cecil's call to obedience on its head Allen put forward the case that it was in fact Protestants who both 'hold and practice' resistance for matters of religion against a 'prince lauffullie invested and annointed', pointing to a long line of Protestant treatises confronting the question of resistance to the princely authority.<sup>77</sup> He starts with Calvin's lectures on the book of the prophecies of Daniel, 'Praelectiones in librum prophetiarum Danielis, 6:22'. Here Allen, giving an English translation for his readers, asserts it is Calvin who permits violent resistance against authority:

Earthlie Princes doe bereave them selves of al authoritie when they doe erect them selves against God, yea they are unworthie to be accompted in the number of men: and therefore we must rather spit upon their heades, then obey them; when they become so proude, or perverse, that they wil spoile God of his right.<sup>78</sup>

One did not have to go out of England to find Protestant theory of resistance either. Allen insisted that there was no need to look to examples from biblical texts, such as those provided by Zwingli in 'fiftenth of Jeremie, wher the destruction of the people is prophecied; for that they suffred their K. Manasses, being impious and ungodly, to be unpunished.'<sup>79</sup> One could simply remember the Protestants' affirmation of 'Wiats rebellion in queen Maries dayes.'<sup>80</sup> To Allen, rebellion was a hallmark of the Protestant faith. It was a faith in which the theological foot-prints of Calvin, Zwingli, and Luther could be found in the trail of blood left behind from the 'furious attempts and rebellions of Scotland, Flaunders, Fraunce, and Germanie, against their superiours, for maintenance of their heresies.'<sup>81</sup> The task then for Allen was not so much in justifying a Catholic rebellion in like manner as the Protestants did previously in England and on the Continent. Rather, Allen wanted to differentiate between Protestant rebellion and Catholic resistance. The question over resistance was not over the 'Princes laufull creation or consecration', but more importantly over 'whether a Prince lauffullie invested and annointed, may be for anie cause, namelie for matter of Religion, resisted by his subiects.'<sup>82</sup> The key point to Allen's contrast here is that where Protestants utilized religion as a means to rebel against their supreme magistrate, Catholics, 'as men of order & obedience', do not 'raise rebellion at their

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<sup>77</sup> Ibid., p. 90.

<sup>78</sup> Ibid., p. 86.

<sup>79</sup> Ibid., p. 78.

<sup>80</sup> Ibid., p. 79; For a detailed summary of the Wyatt rebellion, see Marshall, *Heretics and Believers*, pp. 368-373.

<sup>81</sup> Allen, *A True, Sincere and Modest Defence*, p. 90.

<sup>82</sup> Ibid., p. 90.

pleasure under pretense of religion.’<sup>83</sup> For Allen, Catholic resistance to the prince was lawful in matters of religion as they concerned the soul and conscience. The authority over the soul and conscience was given to none other than the pope. Catholics were ecclesiastical subjects to the ‘supreme Bishop of al’ and so they committed to the ‘Church and to the cheefe governours of their soules’ matters concerning the conscience. Catholics had no option but to resist when the threat of their conscience was in danger and their first obligation was to the supreme head of all governments civil and ecclesiastical, God.

While Allen’s end-game may have been to see the reestablishment of Catholicism in England, his construction of the civil and spiritual spheres would lead him to conclude that ‘to graunt some libertie for exercise of their consciences, divine offices and holie devotions’ was a plausible option. As an answer to the problems confronting the English Catholics’ situation, Allen saw only a few options which could lead England back ‘to the obedience of Gods Church, and to the happy felowship of al their forefathers, & other faithful people & Princes now living’.<sup>84</sup> Allen had little faith that England was to be reunited with its Catholic roots without an act of God or human intervention taking place. His ‘first best option’, that England would have an epiphany of its error and return to Catholicism, is sandwiched between the two more plausible outcomes that Allen saw as the logical ones for Catholic subjects at the time.

Firstly, Allen proposes that ‘perhaps the wisdome of God wil sound otherwise... judging it to be farre more to his honour and glorie, and the breefer way to salvation of our whole Nation and of moe soules in particular, that we should passe through this persecution, and winne our owne and our brethrens salvation by our blood.’<sup>85</sup> Persecution of course had a long history in the Christian world since its inception under Roman rule.<sup>86</sup> The link that this statement would have sparked in the minds of Protestants and Catholics alike was with the early church and its martyrs. Allen utilized this martyrology throughout his tract to draw on the significance of those martyrs who were killed because of their excommunication of Christian kings. He retold stories such as that of Babylas Bishop of Antioch, who after excommunicating the Christian king was murdered

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<sup>83</sup> Ibid., pp. 93-94.

<sup>84</sup> Ibid., p. 226.

<sup>85</sup> Ibid., p. 225.

<sup>86</sup> For an examination of the use of martyrdom in Elizabethan literature, images and practices, see Anne Dillon, *The Construction of Martyrdom in the English Catholic Community, 1535-1603* (London, 2002); See also Peter Lake and Michael Questier, *The Trials of Margaret Clitherow: Persecution, Martyrdom and the Politics of Sanctity in Elizabethan England* (London, 2011).

by him, to reiterate his point on the spiritual authority of popes and bishops over the civil sphere in times of needed correction. Babylas' martyrdom, Allen remarked, was famous 'because he gave both by his constancie and courage in God, a notable example to al Bishops of their behaviour towards their Princes; and how they ought to use the Ecclesiastical rodde of correction towards them, what soever befall to their persons for the same.'<sup>87</sup> With this on his side, Allen could confidently claim that even in the midst of persecution 'by no humane force or wisdom they shall ever extinguish the Catholique partie, overcome the holie Church, or prevaile against God.'<sup>88</sup> Though martyrdom was always a possibility, and potentially God's chosen method to lead England back to salvation, persecution was unjustified as a legitimate means to change one's religious opinion. No Catholic 'could by no lawe of God nor man ... be compelled, to anie sect or rite of religion, which neither they nor their forefathers ever voluntarilie accepted or admitted.'<sup>89</sup>

Allen then went on to propose that the principal error of the regime 'was in the beginning, or long since, that they gave not libertie of conscience to Catholiques.'<sup>90</sup> He insisted that the 'matters of libertie of Conscience' which he proposed were not 'for our owne benefite so much, as for our adversaries weale, and worldlie securitie.'<sup>91</sup> Allen's use of toleration in this sense was not new to the Elizabethan period, but his application of it to the Catholic situation was something quite different. Throughout the Medieval period, the social sense of toleration was used particularly in the case of Jews and prostitutes. In these cases, toleration was granted to groups or acts in order to alleviate the greater danger to society. In the case of prostitution, the pent-up sexual aggression that men might exert on others if they did not have sex meant that allowing prostitution was a rational idea. In other words, one accepted the lesser of two evils and ultimately made society safer.<sup>92</sup> But where prostitution was seen as the lesser of two evils, Allen did not see Catholicism as an evil at all. As a matter of fact, Catholicism and the practices of the Catholic faith were to Allen the only sure way to eternal paradise. In fact, his claim for toleration assumed the Catholic religion to be the one true faith. Therefore, when he calls for a

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<sup>87</sup> Allen, *A True, Sincere, and Modest Defence*, p. 110.

<sup>88</sup> *Ibid.*, p. 226.

<sup>89</sup> *Ibid.*, p. 220.

<sup>90</sup> *Ibid.*, p. 224.

<sup>91</sup> *Ibid.*, p. 225.

<sup>92</sup> Bejczy, 'Tolerantia: A Medieval Concept', pp. 371-374.

degree of liberty of conscience or freedom of religious practices he continues to uphold the contemporary view of toleration which did not entail a notion of natural rights to think differently or practice whatever religion one wishes, particularly if it was deemed heretical. There was no room for the free practice of religion if that religion was considered dangerous to society. This does not negate Allen's call for a liberty of conscience, but rather makes his point even more necessary to understand. The Catholic faith was the faith from the beginning of Christianity and to him there could be no other faiths. Therefore, since the Catholic church was the true church, allowing the practices of the Catholic faith was the best action for the commonwealth to steer clear of the dangers of heresy. Even more important to his argument is that Catholic non-obedience and resistance to the queen's spiritual authority was by any measure legitimate. Thus, the only way to bring about relief for Catholics in England from 'their infinitie distressed consciences, tormented by damnable othes, articles, and exercises of Calvinisme, that were forced upon them' was 'by licence or connivence...the exercise of that faith & religion, which al their forefathers since our Countrie was converted, lived and died in; and in which them selves were baptised.'<sup>93</sup>

Toleration in some form was a viable option to negate the legal pressure and the bodily harm Catholics were experiencing in England. Allen's proposal for toleration problematised what he saw as the regime's subversion of authority being exerted over the spiritual and civil spheres. The authority to judge the conscience was a spiritual matter dealing with the soul and the spirit and one belonging to the impartial judgement of the church. For Catholics, judgement in religion and in turn the conscience could not be any surer then to take these affairs

to the highe priest of Gods Church; by whos direction our consciences, in this case, cannot lightlie erre; or surelie not so perniciouslie, when we folowe them to whom Christ hath given the charge of our soules; and must render accompt therof to him, as to the supreme Bishop of al, by whom and for whom onelie al kinges doe raigne.<sup>94</sup>

Allen's claim was that Catholics were being coerced into divulging their conscience in matters that were altogether religious rather than civil and thus were being inappropriately tried for treason. If there had been a degree of toleration, Allen claimed, then 'our aduersaries had never needed to have fallen to such extreme proceedings with their owne flesh and blood.'<sup>95</sup> But

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<sup>93</sup> Ibid., p. 220.

<sup>94</sup> Ibid., p. 94.

<sup>95</sup> Ibid., p. 219.

toleration was not just a matter of being able to preserve one's conscience. Toleration was an option because Catholics had a lawful reason for resistance to the civil authority the regime was claiming over the spiritual sphere and matters of religion.

Through placing the civil authority of the queen over the spiritual sphere, making her the 'onely Supream governour even in al causes, as wel Spiritual and Ecclesiastical as temporal & Ciuil', the regime had taken from the pope 'al jurisdictions, priviledges, superiorities and preeminences ecclesiastical.' This stripping of the pope's and priests' authority made 'the temporal prince head of the Church' and in turn made 'a King and a Priest al one.' For Allen, then, the Elizabethan regime made 'no difference betwixt the state of the Church and a temporal common wealch: giving no lesse right to heathen Princes to be governours of the Church in causes spiritual, then to a christian king.'<sup>96</sup> This created enmity between the church and its Catholic subjects as there was no chance that they could legitimately accept the queen's authority as both civil and spiritual. The answer for Allen was that Catholics in England should receive a similar 'libertie, which Catholiques enjoy in Germanie, Zuicherland, or other places among protestants; or half the freedome that the Hugonots have in Fraunce and other countries: yea, or but so much courtesie as the Christians find among the verie Turks.'<sup>97</sup>

Thus, while Cecil maintained that the regime's stance on contrary opinions in religion was acceptable on grounds of due political obedience, William Allen contented that it was in fact only because of differences in religion that Catholics were being persecuted in England. Allen's *True, Sincere and Modest defence of English Catholics* provides an extensive rebuttal of Cecil's tract. In it, Allen provides more than just a rejection of Cecil's claims for the authority of the queen in the civil sphere to trump the authority of the pope in the spiritual sphere. Though he provided a defence of the pope's authority in both spiritual and civil spheres as a matter of necessity, Allen redirected the criteria for judging resistance lawful away from the civil sphere and into the boundaries of the spiritual. In the Reformation landscape of England this was a critical distinction for Allen to make. Neither Allen nor Cecil would have been ready to accept a clean and clear break between the religious and political, nor would the two men have ever fully endorsed the idea of a pluralistic religious society. But the reality for England was that two

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<sup>96</sup> Ibid., p. 17.

<sup>97</sup> Ibid., p. 219.

opposing religions were coexisting and the problem of dealing with such matters was not going away anytime soon.

Allen's proposal for 'anie reasonable securitie of our persons, libertie of conscience, permission to exercise Christian Catholique offices, to the salvation of our owne soules and our brethren' was not explicitly framed around Catholic claims to true religion.<sup>98</sup> Rather, it was the logical result of Allen's construction of the spiritual and civil boundaries in which resistance (physically and mentally) was justified. The distinction then between civil and spiritual spheres was a critical point for constructing an argument for toleration. While at times Allen's presentation of a separate civil and spiritual sphere stretches the theoretical limits that even he would have accepted, the reality of this hostile Elizabethan moment meant that toleration, in whatever degree, had to be posited and defended as a legitimate option for those Catholics who refused to submit to the queen's authority over the spiritual sphere.

### **Constituting Treason – Loyalty and Resistance**

In 1584 the publication of a short tract entitled *The Copy of a Letter Written By a Master of Art of Cambridge* sparked a flurry of commotion amongst the regime. The tract, commonly referred to as 'Leicester's Commonwealth', was in a large part a barrage of attacks on the personal life, character, and political intentions of the 1<sup>st</sup> Earl of Leicester, Robert Dudley. The content of this 'letter' was significantly influenced by the political and social environment of the late 1570s and early 1580s. As Peter Lake and other historians before him have discussed, the 'letter' had the intention of raising suspicions of Leicester and his involvement with the succession question, particularly those involving the marriage arrangements of Queen Elizabeth, as well as Mary Stuart and the legitimacy of her claim to the English throne.<sup>99</sup> The political and social ripples from this tract reached far and wide. It elicited a response from James VI of Scotland and Queen Elizabeth herself. But despite Leicester's and his associates' fervent attempts to contain the tract and weed out the libelling culprits, by the Spring of 1585 a French translated version entitled 'Discours de la vie abominable . . . le my Lorde de Lecestre' was produced and quickly became

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<sup>98</sup> Ibid., p. 223.

<sup>99</sup> Lake, *Bad Queen Bess*, pp. 2-16; Clancy, *Papist Pamphleteers*; Dwight Peck, 'Government Suppression of Elizabethan Catholic Books: The Case of 'Leicester's Commonwealth'', *The Library Quarterly: Information, Community, Policy*, 47, 2 (1977), pp. 163-177.

the topic of discussion of those for and against Leicester.<sup>100</sup> While the attempt to hang Leicester's dirty laundry out for all to see had significant success (in terms of propagating the contents of the tract throughout England and the European continent), this tract further served to construct both in style and content the ideas with which Persons intended to guide lay Catholics in the intensifying conflict with Elizabethan regime.<sup>101</sup>

The actual authorship of *Leicester's Commonwealth* is not easy to assign. Where Persons had traditionally been credited with penning the tract, the Jesuit historian Leo Hicks re-ignited the argument about Persons' authorship by placing the blame for crediting Persons on his rivals during the Archpriest Controversy. Hicks attested that it was the Appellants Charles Paget and John Cecil who first attributed the work to Persons, in an attempt to drag their rival through the mud by associating him with work which engaged in politics and scandalous statements. The thrust of Hicks' evidence is based on Persons' own denial of authorship, along with a long list of possible suspects developed by Francis Walsingham and the earl of Leicester himself. In effect, Hicks accepts Persons' denial at face value and rather than allow him to have any involvement in authoring *Leicester Commonwealth*, he attributed full credit to Charles Arundell – Arundell was a known opponent of Leicester and literally on the top of Leicester's hit-list; he reportedly hired an Englishman to assassinate Arundell while he was in France.<sup>102</sup> Yet while others before and after Hicks have arrived at similar conclusions (J.H. Pollen and Dwight Peck respectively), Peter Holmes contends that Persons' denial must be taken in the context of the period in which he was

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<sup>100</sup> For an examination of the popularity and impact of *Leicester's Commonwealth* on the regime and amongst those on the European continent, see Dwight Peck, ed., *Leicester's Commonwealth* (Athens & London, 1985), introduction. For a copy of the French translation see, *Ibid.*, Appendix B.

<sup>101</sup> Persons' role in writing and publishing *Leicester's Commonwealth* has been debated by a number of different scholars. For the purpose of this chapter, I am concerned not so much with ascribing sole authorship to Persons as I am with analysing the content of the tract which, at minimum, was heavily influenced by Persons. For a closer debate of the authorship of *Leicester's Commonwealth*, see Leo Hick, 'The Growth of a Myth: Father Robert Persons, S.J. and Leicester's Commonwealth', *Studies: An Irish Quarterly Review*, 46, 181(1957), pp. 91-105; Peck, *Leicester's Commonwealth*, introduction. For attributions of the tract to Persons, see Peter Holmes, 'The Authorship of 'Leicester Commonwealth'', *Journal of Ecclesiastical History*, 33, 3 (1982), pp. 424-430; For Persons as influential in the construction of the tract, see Victor Houlston, *Catholic Resistance in Elizabethan England: Robert Persons's Jesuit Polemic 1580-1610* (Burlington, 2007), pp. 12-14; Gibbons, *English Catholic Exiles*, p. 95. John Bossy conceded the authorship to Persons, see John Bossy, 'The Heart of Robert Persons' in Thomas McCoog, *The Reckoned Expense: Edmund Campion and the Early English Jesuits* (Woodbridge, 1996), pp. 141-158.

<sup>102</sup> Leo Hicks, 'The Growth of a Myth', pp. 91-105; 'Thomas Morgan to Mary, Queen of Scots, Paris, 15 Jan, 1585', SP *Elizabeth I*, 12/176 fols. 456-457.



being questioned about his part in the book's creation. Holmes' point is to view Persons' denial of penning such a slanderous libel in light of the changing circumstances of the late 1590s and early 1600s. Holmes remarks that between 1580 and the early 1590s the Catholic polemic assault on the regime was driven by finding a rationale for resistance. However, by the time Persons was under pressure in the Archpriest Controversy 1598 and 1602 the best move he could make was to distance himself from such work as *Leicester's Commonwealth*, as the dominant political theory amongst European Catholics moved from resistance to reconciliation.<sup>103</sup>

In his denial of authorship Persons' made a noteworthy comment, saying 'no matter who gave the book its final form-for it is known to have passed through many hands...' <sup>104</sup> Holmes found this additional statement to be significant when understanding the composition of the tract. From this, Holmes makes room in his assessment for other individuals besides Persons in providing much of the content for the tract, but sees the style and structure as being the craftsmanship of the skilled polemicist Persons himself. Where John Leslie's defence of Mary Queen of Scotland provided substance for the debate of the succession, and Charles Arundell provided the private and personal dirt on Leicester, the style and literary strategy of *Leicester's Commonwealth* is too similar to Persons' early compositions to not attribute his sharp wit and even sharper pen to crafting *Leicester's Commonwealth*.

A critical aspect of *Leicester's Commonwealth* is its literary strategy. The stage in which *Leicester's Commonwealth* is set places three individuals, a scholar, a gentleman, and a Papist, together in a parlour around Christmas time. The selection of the three main characters is critical for what the author intends. Where one might think a debate over religious differences would take centre stage, the author uses the moderate attitudes of his characters to steer away from any extreme stances, or at least so it seems. The first character, the scholar, is not swayed either way in the discussion of religion and maintains the role of mediator between the other two characters. The most prominent character is the Protestant gentleman, whom the scholar admires for 'his great wisdom, experience, and grave judgment in affairs of the world that do occur' and for his great love of his country – the scholar could not 'remember to have heard any man in my life

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<sup>103</sup> Holmes, 'The Authorship of 'Leicester Commonwealth'', p. 427. Persons had also denied the authorship an equally dangerous political tract, *A Conference about the Next Succession to the Crown of England*. This was published under the pseudo name of R. Doleman. See above, introduction, for a brief discussion of the political importance of this tract and its connection to Persons.

<sup>104</sup> Quoted in Hicks, 'The Growth of a Myth', p. 97.

discourse more substantially, indifferently, and with less passion, more love and fidelity' than him. Finally, there is the Papist lawyer, a man the scholar claims had 'such moderation and reservation of his duty towards his prince and country, and proceedings of the same, as he seemed always to give full satisfaction in this point to us that were of contrary opinion.'<sup>105</sup> In each of these individuals any quality of religious extremism is replaced by a character of passionate devotion to his country. Dwight Peck sees this selection of moderate characters as a way for the author to make the dialogue more acceptable to a broader audience. However, the author's intentions are more than an attempt to reach a larger reading audience.<sup>106</sup> As Antoinina Zlatar has pointed out, the rhetorical construct of Elizabethan dialogues was intended as more than a means to spark the interest of a broad reading group who had little interest in theological discourses. With *Leicester's Commonwealth* as with other sixteenth-century dialogical treatises, these dialogical constructs were produced at a particular moment in the Elizabethan Reformation with the goal of educating reader.<sup>107</sup> By moving away from the extreme edges of the religious controversy, the author is able to quickly establish his stance on several important issues without engaging in a long presentation of the claims and counter claims. Rather he passes relatively quickly over supremacy, the conscience, and succession in favour of making his targeted attack more potent.<sup>108</sup>

Utilizing this tactic, the dialogue begins by engaging in a discussion over the recently published work by Cecil, the *Execution of Justice in England*. As discussed earlier, the question of supremacy was the crux of Cecil's tract and the rebuttal by Allen. However, in *Leicester's Commonwealth* the matter is eclipsed by the author's attention to Cecil's use of the term treason. The intent was to move past the question of the queen's and Pope's supremacy as if it was a matter that had already been settled – that is to say, religious differences were 'grounded upon a principle not easy to cure, which is the judgment and conscience of a man, whereunto obeyeth at

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<sup>105</sup> Peck, *Leicester's Commonwealth*, p. 48.

<sup>106</sup> In the course of my analysis of *Leicester's Commonwealth* I have chosen for simplicity to henceforth refer to the author (singular).

<sup>107</sup> A. Bevan Zlatar, *Reformation Fictions: Polemical Protestant Dialogues in Elizabethan England* (Oxford, 2011), introduction, part v. For a detailed analysis of the varying genres of recusant rhetoric and their significance in representing a priestly voice, see Ceri Sullivan, *Dismembered Rhetoric: English Recusant Writing, 1580 to 1603* (Madison, 1995).

<sup>108</sup> For a literary analysis of the themes, styles and effects of *Leicester's Commonwealth*, see Peck, *Leicester's Commonwealth*, pp. 25-34.

length his will and affection'.<sup>109</sup> This allows the author to avoid 'showing his cards' too early and pigeon-holing himself into either side of the religious camps. While supremacy was a matter of debate, there were even more important questions at stake. Thus, the three characters discussed the religious controversy which engulfed them as if the commonality between them was (besides a distaste for Leicester) that they each inherently accepted the separation between the civil and spiritual spheres as a matter of necessity and the very real danger the commonwealth faced was Leicester's entanglement and manipulation of those spheres which were meant to be distinct.

Rather than returning to the theoretical and potentially theological battle over supremacy and civil and spiritual authority, *Leicester's Commonwealth* builds on this delicate matter of distinguishing between the civil and spiritual spheres by examining the question of what constituted treason as a matter of practicality. To answer this question, the tract is constructed in three sections. The first section establishes the premise of true treason by distinguishing between two degrees of it. The next section uses Leicester to contrast the two degrees of treason by providing great detail about his treasonous heritage and private and political acts. The final section leads into Leicester's involvement in the succession question and the reality of the need for toleration in England. In framing the answer to what constitutes treason in this way, the structure served as a double-edged sword. On the one side, the slander and libellous nature of the work did result in Leicester's character being put through the ringer. As Dwight Peck has illustrated, the tract turned more than a few heads and ears as the tales of Leicester backroom dealings were thrust into the public spotlight. On the other, the author used Leicester's character as a means to provide a logical and pragmatic case for toleration by flushing out who, in this fragile and volatile Elizabethan moment, were the genuine loyal subjects to their Queen and country and who were those truly guilty of treason. The answer to what constituted treason is given early as a way of placing the dialogue between the three characters into the context of Elizabethan politics. *Leicester's Commonwealth* frames the argument over loyalty and treason as a response to Cecil's *Execution of Justice*. The focus, however, is not on responding to Cecil with a systematic point by point rebuttal like we find in Allen's *Defence*. Rather the tract is used as a springboard to launch the characters into a dialogue about the dangerous situation facing the commonwealth and to resolve what seems to be a case of mistaken identity in labelling Catholics

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<sup>109</sup> Ibid., p. 51.

as traitors when in fact the true culprit of villainy and treason was right under the nose of the magistrate all along.

To make its argument for toleration, Leicester's Commonwealth did two things. The first was to confront Cecil's claims of Catholic treason. The second was to discredit the earl of Leicester. To the first point, *Leicester's Commonwealth* problematises Cecil's application of treason to Catholics. The problem was in the broad application of Cecil's argument and the impending laws charging all Catholics with treason, which became reality in 1585 when the Act Against Jesuits and Seminarists expelled all Jesuits, seminary priests, and any other ecclesiastical person from the realm and applied the charge of high treason to any who continued to remain or attempted to enter. The lawyer, who is described as a moderate Papist, attempts to prove that condemning all Catholics with treason is not so cut and dry. He contends that there are degrees of treason which must be considered. Treason, the characters agree, was merited when one practices against the state. The lawyer explains that it can be seen in England and throughout Europe that 'men of a different religion from the state wherein they live may be said to deal against the same state in two sorts: the one, by dealing for the increase of their said different religion'. Within this first degree of treason the individual can directly or indirectly oppose the state. In the first sense, as the lawyer points out, the matter of supremacy may be said to involve direct opposition to the state (particularly of Roman Catholics within the English context). In the second sense, the individual may oppose the state indirectly in that 'every different religion divideth in a sort and draweth from the state, in that there is no man who in his heart would not wish to have the chief governor and state to be of his religion if he could, and consequently misliketh the other.'<sup>110</sup>

The key point regarding the first degree of treason, whether in the first or second sense, is that the 'traitor' is only a traitor because the laws and statutes of the land have made it so. The 'traitor' holds in his heart and mind ideas that are opposed to the laws enforced by the prince, not because he is attempting to put his plan into practice. Turning thought into action takes the traitor, in heart and mind, from this first degree of treason to the dangerous and punishable second degree of treason 'which containeth some actual attempt or treaty against the life of the prince or state, by rebellion or otherwise'.<sup>111</sup> Men of this sort of course could be found amongst

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<sup>110</sup> Ibid., p. 49.

<sup>111</sup> Ibid., p. 49.

the Catholics of England. The lawyer is quick to provide examples of those who had crossed from the first to second degree of treason. Those involved in the Northern Rebellion of 1569, and the invasion of Ireland in 1579, Westmoreland, Norton, Sanders, and the like, had crossed the line when they acted against the life of the queen by taking up arms against her.<sup>112</sup> The strategy of the regime, then, was to stop those individuals guilty of the first degree of treason from entering into the second. As the gentleman points out, the danger of the first degree of treason is that ‘the one is but a step or degree to the other, not differing in nature, but rather in time, ability, or opportunity.’<sup>113</sup> However, while the laws of England had condemned all to be punished as if they were guilty of the second degree, not all Catholics could be so quickly linked to such a degree of treason. This, the lawyer contested, was what happened to ‘divers others, namely the priests and seminaries that of late have suffered,’ in that ‘being hanged for the first, they should never be in danger to fall into the second, nor yet to draw other men to the same.’<sup>114</sup> But this is where the regime had made a critical error in its reasoning.

Here, the argument becomes grounded in a line of thought that we will later see in the pleas for toleration in the reign of James I. The individuals who are in the first degree of treason will refrain from entering the second degree because ‘the fear of servitude under foreign nations may restrain them from such attempts.’ It is this very threat which the lawyer insisted occurred in Germany, where ‘both Catholics and Protestants would join together against any stranger that should offer danger to their liberty.’<sup>115</sup> The lawyer then provides further examples from France and Flanders in which Protestants and Catholics had set aside religious differences to protect their civil liberties from a foreign invader. The use of these examples presents the idea that religious differences can be tolerated when individuals from opposing faiths believe their civil liberties are in jeopardy. Thus, the conclusion, the lawyer argues, is that ‘fear and horror of external subjection may stay men in all states, and consequently also both Papists and Puritans in the state of England, from passing to the second kind or degree of treason, albeit they were never so deep in the first and had both ability, time, will, and opportunity for the other.’<sup>116</sup>

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<sup>112</sup> Ibid., p. 51.

<sup>113</sup> Ibid., p. 50.

<sup>114</sup> Ibid., p. 51.

<sup>115</sup> Ibid., p. 50.

<sup>116</sup> Ibid., p. 51.

While the religious divide of the continent provided the reader with relevant examples in which attempts to reach peaceful coexistence took precedence over policies set on attaining uniformity in religion, *Leicester's Commonwealth* would use the well-known figure of Leicester to show that true treason is not found in the religious ideas and practices of individuals, but in the actions of those who look to gain political power by any means necessary. From here, the tract takes a turn to direct its attack at the true culprit of treason. Where we see the fear and subjection of a foreign power become the force which binds together those of opposing faiths, the author uses the plots, conspiracies and character of Leicester as an example of the very real internal fear and horror which threatens England. The author of *Leicester's Commonwealth* not only used this to build a defence of Catholic loyalty, but to also establish an argument for religious toleration.

Throughout the tract there is an intentional indirect contrast between acts motivated by religious conviction, seen in the Jesuit and seminary priests wrongfully executed for treason, and those which are motivated by Leicester's atheism and pursuit of political power. Thus, *Leicester's Commonwealth* worked to establish the character, actions, and motives of Leicester as the true villain worthy of being tried for treason. To illustrate the extent of Leicester's ambitions, the *Commonwealth* extends its attack to show how the nature of Leicester's traitorous dealings followed a long line of family members who before him were traitors. Leicester, 'descended of a tribe of traitors, and fleshed in conspiracy against the royal blood', could not be trusted so close to the queen. Trusting 'a man of such a spirit as he is known to be, of so extreme ambition, pride, falsehood, and treachery; so born, so bred up, so nuzzled in treason from his infancy' was like Caesar trusting in Brutus though 'the very day when he was going towards the place of his appointed destiny, there was given up into his hands a detection of the whole treason'.<sup>117</sup> Yet, while Leicester was born into a treasonous lineage, his treacheries far exceeded those of his father and grandfather in the reigns of Henry VIII and Mary Tudor.<sup>118</sup> In Leicester no moderation could be found - his wealth, the gentlemen proclaims, 'is excessive in all kind of riches for a private man...His strength and power is absolute and irresistible... His cunning in plotting and fortifying the same... His disposition to cruelty, murder, treason, and tyranny, and

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<sup>117</sup> Ibid., pp. 53, 119.

<sup>118</sup> Ibid., p. 54.

by all these to supreme sovereignty over other, is most evident and clear.’<sup>119</sup> Leicester was not only dangerous because of his traitorous lineage and nature, but because he lacked the very nature which guided man’s conscience and judgement; that is, one who was religious by nature. According to the tract, Leicester was not just indifferent to religion, but rather an atheist, one who was ‘never seen yet to say one private prayer within his chamber in his life.’<sup>120</sup>

This libelling of Leicester’s depraved nature was at the core of the tract’s attempt to contrast the two degrees of treason. The author needed to distinguish between Leicester’s motivation for political power, and acts against the magistrate, and those individuals who were punished for their judgment and conscience in matters of religion. Thus, Leicester is portrayed as being void of religion, a true Machiavellian whose thirst for power had led him to lie, cheat, and murder his way to prominence. But to make the matter worse, the source of his rise to power was found in pitting the different religions of England against one another. Leicester who ‘being himself of no religion, feedeth notwithstanding upon our differences in religion, to the fattening of himself and ruin of the realm.’<sup>121</sup> Thus, Leicester capitalised on the religious divide in England and used religious conflict and the threat of Catholic subversions to distract from his devious plans to control the Elizabethan regime. For Leicester, the worst possible threat to his plans would have been for the regime to advance a plan to settle the religious conflict, and especially to open its policies to a measure of religious toleration.

Where toleration in religion seemed to become a possibility, through the projected marriage between Queen Elizabeth and the Duke of Anjou, Leicester was said to have intervened and ‘for his own private lucre (fearing lest hereby his ambition might be restrained and his treachery revealed) hath bereaved the realm and done what in him lieth besides to alienate forever and make our mortal enemy this great prince’. This undermining of the royal marriage not only drove a further wedge between the regime and its Catholic subjects but also stopped Elizabeth from leaving ‘unto the realm that precious jewel so much and long desired of all English hearts, the royal heirs of her own body.’<sup>122</sup> It is with these examples that the author’s argument begins to make a full circle. Where the regime had focused its efforts on tackling the possibility of Catholics slipping into the second degree of treason, Leicester has been engaging

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<sup>119</sup> Ibid., p. 84.

<sup>120</sup> Ibid., p. 127.

<sup>121</sup> Ibid., p. 52.

<sup>122</sup> Ibid., p. 56.

in treacherous and subversive acts all along. In turn, where the Catholics of Cecil's book had been executed for treason, which the lawyer claimed to be merely of the first degree, Leicester's acts of treason were far more dangerous and threatening to the civil authority and the magistrate and provided a clear example of the second degree of treason. Though the regime believed it was generating peace and unity amongst its subjects by eliminating the threat of subversive Catholics, Leicester was utilizing his position and power to continue lighting and fanning the flames of conflict.

England, however, was not without a means to cure itself from the misery in which it was caught up. Though difficult to swallow, the *Commonwealth* provides a solution to bring about true justice in England – the regime's efforts to galvanise religious unity by suppressing religious disobedience had to take a backseat to efforts focusing on stamping out the threat to the magistrate's civil authority. The danger of religious differences (though not entirely excused) was not an imminent threat to the regime. Exposing Leicester's treachery to the queen and the public and removing him from power, however, was essential for returning England to a state of peace. With Leicester out of the way, England could once again return to the way things were in the 'first dozen years of her Majesty's reign... wherein the commiseration and lenity that was used towards those of the weaker sort, with a certain sweet diligence for their gaining, by good means, was the cause of much peace, contentation, and other benefit to the whole body.'<sup>123</sup> Where Leicester's acts of treason had created a great amount of social discord for the enhancement of his prominence and power, the lawyer claims, 'most English hearts were inclined to wish the remedy or prevention thereof by some reasonable moderation or reunion among ourselves.'<sup>124</sup> Elizabeth's early years of course were more than a little troubling and turbulent, but this did not stop the author from contrasting a prediction of doom at the hands of Leicester with a prospect of peace and tranquillity to be found in a state of toleration.

The argument for toleration was used by the author as a way of contrasting a royal council which sought the welfare of the public through toleration with a regime guided by 'the will and inclination of some great personages who meant perhaps to have gained more by the other.'<sup>125</sup> This idea of toleration was grounded in the *Commonwealth's* connection to French

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<sup>123</sup> Ibid., p. 121.

<sup>124</sup> Ibid., pp. 98, 121.

<sup>125</sup> Ibid., pp. 121-122.



*Politique* thought. We see this in the author's use of examples where the stability of the public weal was derived not from suppression of differences in religion, 'so otherwise his conversation were civil and courteous', but by placing the welfare of the commonwealth as the top priority. A policy in which the characters claimed by 'qualification, tolerance, and moderation in our realm (if I be not deceived, with many more that be of my opinion) would content all divisions, factions, and parties among us for their continuance in peace, be they Papists, Puritans, Familians.' The goal of the regime should be to bring peace to its people, and the characters agreed that if 'any sweet qualification or small toleration among us were admitted, there is no doubt but that affairs would pass in our realm with more quietness, safety'. This was found, according to the author, in the example of Flanders where 'no man is searched, demanded, or molested for his opinion or conscience, nor any act of papistry or contrary religion required at their hands, but are permitted to live quietly to God and themselves at home in their own houses, so they perform otherwise their outward obedience and duties to their prince and country.' All this, of course, is an intentionally romanticized depiction of the religious state of Europe. The author's intention was to distinguish good from evil, light from dark, innocence from treason. He accomplishes this by exonerating the virtuousness of seeking toleration and amplifying the vices of Leicester's character. Thus, while expressing this day-dream-like experience of a realm living in peace, quietness and safety, the doors to utopia are quickly slammed shut when the gentleman reminds them that toleration would not be possible when it was 'so contrary to the desires and designments of our puissant conspirators' (Leicester and his accomplices). Where Leicester had convinced the regime that it was by weeding out those in the first degree of treason that the second degree of treason would not be possible and the realm alas be in safe hands, the characters of the tract insist that toleration was the only thing 'sufficient to retain all parties within a temperate obedience to the magistrate and government for conservation of their country, which were of no small importance to the contentation of her Majesty and weal public of the whole kingdom.'<sup>126</sup>

Although Leicester's character and motives are continually under question by the author of the tract, *Leicester's Commonwealth* is more than an attempt to defame the character of Leicester in an attempt to remove him from power. At its core, the tract seeks to outline the pragmatic steps necessary to alleviate the conflict which encompassed Elizabethan England. It is

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<sup>126</sup> Ibid., p. 122.

not a theological argument over the true and false church, nor one in which the spiritual authority of princes and popes is set forth as the crux of determining the boundaries of the spiritual and civil spheres. Its targeted attack on Leicester is an attempt to depict him as a treasonous villain whose pursuit of civil power came at the expense of religious and social peace. Such an attack was intended to bring clarity to the confusion over who was the true enemy to the state and commonwealth. Yet while the tract attempts to shift the blame of civil and religious discord away from Catholics and onto Leicester, and openly talks of the benefits of toleration, it did little more than stir up the hornets' nest. Where the author enjoyed the relative safety of exile, the lay Catholics of England – many of whom would follow the principles of resistance set out in Persons' *Reasons for Refusal*, remaining firm in their recusancy – would take the full brunt of the regime's continued determination to weed out Catholicism from amongst its subjects.

### **Loyalty and Non-obedience: A Recusant's Case for Toleration**

Discussing toleration ideas presented in this Elizabethan moment, in which danger and violence towards England's Catholics was so high, would not be complete without taking into consideration those who remained in England in the midst of such adversity. Though we have thus far discussed the work of those who writing in reasonable comfort from exile on the European continent, there were many who remained Catholic in England despite the laws imposed against them. There was a group of Catholics who found themselves less at odds with the regime's demands for conformity. Occasional conformity was one of the most important matters the Jesuits and seminary priests hoped to contain and eliminate. Amongst these conformists, a group of social elites such as Viscount Montague, and the secular priests Alban Langdale and Thomas Bell stood in defence of the Catholic laity who partially conformed.<sup>127</sup> The debate over the civil and spiritual spheres then was not entirely a closed debate between the regime and Catholic clergy. However, to explore the thread and possibly the bond that joined the

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<sup>127</sup>Questier, *Catholicism and Community*; For Montague and Langdale, see p.164 – Questier points out here that, as Alexandra Walsham has said, Langdale's conformity 'was not, of itself, simply and merely compliant.' For an analysis of Langdales and Bell's impact on the wider Catholic community, see Lake and Questier, *The Trials of Margaret Clitherow*, pp. 53-82. See also Alexandra Walsham, *Church Papist: Catholicism, Conformity and Confessional Polemic in Early Modern England* (London, 1993), chapter 3; Walsham has expanded her work on the conformity controversy and Thomas Bell's influence in 'Yielding to the Extremity of the Time: Conformity and Orthodoxy' in, Alexandra Walsham, *Catholic Reformation in Protestant Britain* (Burlington, 2014), pp. 53-84.

clergy and lay Catholics in England we must explore the role of those who remained firm in their adherence to recusancy. Amongst the lay Catholics defending and actively engaged in degrees of resistance, while simultaneously proposing measures of toleration, Thomas Tresham has been identified by historians as perhaps the leading Catholic recusant of the Elizabethan period.<sup>128</sup> From the architectural design of his lodge at Rushton, to his penning of a petition to the queen for toleration, to his personal defence at the trial of Edmund Campion, Thomas Tresham was undoubtedly a determined defender of Catholics and a key figure in this Elizabethan moment.

An analysis of Tresham's trial and his hand in crafting a petition for toleration in 1585 gives us a glimpse as to how the Catholic laity of England helped to turn the toleration talk formulated by the likes of Persons and Allen into practical application. Tresham was an influential Catholic recusant with a network of lay and clerical associates. At his trial we see Tresham's casuistical stance in defending himself against the charges of harbouring Edmund Campion. From Peter Holmes' work on Elizabethan casuistry, we know that Catholic gentry and peers utilized casuistry manuals (as did the Jesuit priests sent over to England) in order to evade being detected as practicing Catholics or revealing a connection to missionary priests.<sup>129</sup> While there is no record of Tresham being personally trained in equivocation, we do know he was closely associated with Person and Campion before the unravelling of their mission. Though at his trial Tresham evaded questions associating him with Campion, Persons mentions Tresham as one who was reconciled back to Rome by the missionary.<sup>130</sup> Tresham's close association with the Jesuit missionaries and his links to Catholic recusants and conformists on the ground in England gave him an important position in absorbing and transmitting the toleration talk being formulated at the time. It is in this position that Tresham was able to employ his knowledge of toleration ideas to not only construct an argument for his own defence, but also to become the spokesman other Catholics looked to for alleviating their dire circumstances.

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<sup>128</sup> Kilroy, *Edmund Campion*; Susan Cogan, 'Catholic Gentry, Family Networks and Patronage in the English Midlands, c. 1570-1630' (unpublished doctoral thesis, University of Colorado, 2012); Kaushik, 'Resistance, Loyalty and Recusant Politics', pp. 37-72; Andrew Eburne, 'The Passion of Sir Thomas Tresham', *Garden History*, 36, 1 (2008), pp. 114-134; 'Jessie Childs, *God's Traitors: Terror and Faith in Elizabethan England* (London, 2014), esp. chapter 3.

<sup>129</sup> Holmes, ed., *Elizabethan Casuistry*; Andrew Muldoon, 'Recusants, Church-Papists, and "Comfortable" Missionaries: Assessing the Post-Reformation English Catholic Community', *The Catholic Historical Review*, 86, 2 (2000), pp. 242-256.

<sup>130</sup> Hicks, *Letters and Memorials*, p. 27; For an examination of Tresham's relationship to the Jesuit missionaries, and particularly Campion, see Kilroy, *Edmund Campion*.

Tresham's combination of Catholicism and loyalty to the magistrate went back to his grandfather who found favour with Queen Mary Tudor for his support and service. But Tresham was also connected to a network of Catholic elites through family ties and marriage arrangements.<sup>131</sup> Tresham's circle of influences included other well known Catholics such as Charles Arundel, Thomas Paget, and William Vaux, those whom Persons named as 'men of high position as well as being rich and possessed of very great influence in their own district'.<sup>132</sup> More importantly, Tresham was associated early with the Jesuit mission and the regime was privy to this information. Shortly after the mission began to unravel, Tresham, along with several other Catholic gentry, was summoned to appear before the council. It is at the trial of Campion that we find an early glimpse of Tresham's view of the civil and spiritual spheres, in which there is a familiar scene of a Catholic defence of non-obedience to the magistrate's spiritual authority over the conscience.

Tresham's defence, as Sandeep Kaushik claims, helps to extend our understanding of lay Catholic resistance and loyalty theory. While Tresham's defence of a liberty of religious conscience was sophisticated, it also made him a glaring target for the regime. But Tresham's use of the court, and later his petition to the queen, gave him an avenue in which he could present a picture of the civil and spiritual sphere where the regime's ability to enforce religious conformity would be limited and a liberty of conscience would be possible.<sup>133</sup>

The basis of Tresham's defence was his argument for refusing to take an oath - the implication was that he was building a case in which Catholics could use a similar defence in order to refuse other dictates of the state. From the outset of Tresham's defence the judges of the Star Chamber were greatly troubled by the case he was able to make. They believed that Tresham was only working to deceive them as they did not think that he had been so well studied in divinity.<sup>134</sup> It becomes evident that the counsel was intent on undermining Tresham's defence from the start as the Lord Chancellor quickly compared Tresham's unwillingness to take an oath

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<sup>131</sup> For a detailed account of the Tresham and Vaux family connection, see Childs, *God's Traitors*; For an examination of Tresham's network amongst gentry recusant families, see Cogan, *Catholic Gentry*.

<sup>132</sup> Hicks, ed., *Letters of Robert Persons*, p. 58.

<sup>133</sup> See Kaushik, 'Resistance, loyalty and recusant politics', pp. 37-72.

<sup>134</sup> *Archaeologia: Miscellaneous Tracts Relating to Antiquity*, 'Narrative of Proceedings in the Star-chamber against Lord Vaux, Sir Thomas Tresham, Sir William Catesby, and others, for a contempt in refusing to swear that they had not harboured Campion the Jesuit', (London, 1844), xxx, p. 90.

as being on par with the heretical opinions and practices of the Anabaptists.<sup>135</sup> But Tresham's defence implied more than just a refusal to take an oath on the grounds of it being illegitimate. Tresham was clear in his recognition of the civil authority and loyalty due to the magistrate, but he was also quite determined to defend and prove that that authority had limitations and his non-obedience was justified.

Tresham's defence allowed the magistrate to maintain its civil authority over its subjects in temporal matters, but left the matters of the spiritual sphere, such as those of the conscience, to God. As Lord Vaux stated just before Tresham would give his defence, both men were ready to 'depose to any interrogatories that concerneth my loialtie to her majestie, or dutie to the estate, requiring onlie to be exempted to depose in matters of conscience, which, without offending of my conscience grevouslie, I maye not consent to doe.'<sup>136</sup> Thus, swearing an oath in one respect was indeed a matter of temporal importance, but to swear an oath with the potential of it being untrue or without proper judgement was a moral sin against God. Tresham claimed that judgement was lacking in the court's order to swear an oath as to whether he had been with Campion or not:

In everye such case, I make no question, but the partie to be deposed dothe better to refuse to sweare, then in swearing...he refuse to sweare when in trew judgment he ought to swear, for in refusing to sweare in such a case as ys a mere temporall demaund, ys but temporall contempt, but to sweare to such a lawfull acte against the judgment of his conscience, ys unlawfull, and a great synne.<sup>137</sup>

For Tresham, the conscience could not be solely subject to the will of man. Tresham believed that the conscience was God's direct connection to man and all mens' consciences were subject to God's judgement. Tresham then was not only unwilling to subject himself to offending his conscience but would also 'accuse no catholique in cases of conscience.'<sup>138</sup> As Persons explained in his *Refusal*, 'whereby a man maketh another to fal, especiallye the fal of deadlye sinne: whereby a man breaketh the neck of his soul. As if a man should induce an other by his example,

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<sup>135</sup> For an evaluation of oath refusal by early Anabaptist in Europe, see Edmund Pries, 'Oath Refusal in Zuricj from 1525-1527: The Erratic Emergence of Anabaptist Practice' in *Anabaptism Revisited: Essays on Anabaptist/Mennonites Studies in Honor of C.J. Dyck*, ed., Walter Klaassen (Scottsdale, 1992), pp. 65-84.

<sup>136</sup> 'Narrative of Proceedings', p. 83.

<sup>137</sup> *Ibid.*, p. 89.

<sup>138</sup> 'Narrative of Proceedings', p. 91.

or otherwise...to take an oth against his conscience.’<sup>139</sup> Whether Tresham was employing Persons’ arguments directly is speculative, but what is clear is the working of the formulation of toleration talk which Catholics used to their advantage. This defence of the conscience was not just meant for Tresham’s case. Other Catholics, particularly those in the same position of recusancy and associated with Catholic priests, could see the strength in Tresham’s defence.<sup>140</sup> This became evident in the proceedings and the councillors were well aware of this possibility as others who followed in Tresham’s footsteps pleaded a similar defence of their consciences. Mrs. Gryffyth was said to be ‘a great receyvour of Campion, and Parsons, and many the like.’ This information was given to authorities on the confession of her husband’s brother known by the ‘name of Foster, Colte, &c.’ Though Mrs. Gryffyth stood trial without her husband present (he was said to have been hiding when his wife and his other brother Ambrose were captured by authorities), she was not without a ready defence. When asked by the Lord Chancellor why she had refused to swear her oath, she replied ‘My lords, an othe ys a thinge of greate importance, and I do not knowe the danger thereof; therefore, as one scrupulous in conscience, and being afraied to sweare for offending of my conscience, indeed I refused to sweare, which I acknowledge.’<sup>141</sup> While Mrs. Gryffyth seemed likely to be further interrogated, her questioning was cut short when William Catesby entered the room and the court’s attention turned to him. However, we see in her defence, as well as in the other individuals being arraigned in this trial, that the lay Catholic defence was grounded in a familiar understanding of the same arguments for justifying non-obedience, all of which intended to distinguish between matters of conscience and the spiritual sphere, and those matters of temporal and civil importance.<sup>142</sup>

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<sup>139</sup> Persons, *Reasons for Refusal*, p. 10.

<sup>140</sup> The prolonged impact of Tresham’s defence can be seen in his own account of the trial. Gerard Kilroy has ascribed the authorship and compilation of the Brudenell Manuscript to Thomas Tresham, in which contains 1800 pages of various topics including Tresham’s account of the trials. As Kilroy contends, this compilation of Catholic history is evident of the lay Catholic attempt to ‘keep alive their corporate memory during this period.’ See Kilroy, *Edmund Campion*, pp. 13-15 and 127.

<sup>141</sup> ‘Narrative of Proceedings’, p. 97. For an account of the arrest of Jane and Ambrose Gryffyth given to Walsingham on November 12, 1581, see *SP Elizabeth I*, 12/150 fol. 110-111.

<sup>142</sup> For details of the network of Gentry associated and influenced by the likes of Campion, Persons and Tresham, see Lake and Questier, ‘Puritans, Papists, and the “Public Sphere”’, pp. 587-627. See also Richard Simpson, *Edmund Campion, A Definitive Biography* (London, 1867), pp. 277-279, 308-310, 389-391. The connection between the Gryffyths and the Jesuit party is documented in PCR, PC 2/13, pp. 186-187, 252-253; *SP Elizabeth I*, 12/5 fol. 556-557.

The significance of Tresham's defence was not only in providing a basis for Catholics to defend themselves in matters of conscience, but in providing a defence which could affirm the legitimacy of the magistrate's civil authority while setting precedence for a legitimate degree of resistance to the magistrate's authority over matters of religion. When challenged if he knew the scripture in which he was commanded to be obedient to his superiors, Tresham quickly responded with a clear distinction between civil and spiritual matters:

I knowe yt right well, and holde yt a strickt commaundement for me dutifully to obeye and religiouslye to observe, yet your lordship knoweth that some thinges be proper to God, others to Cesar, which we maye not confounde ; but in this, yt being no mere temporall demaunde but a matter in conscience, and thereby concerneth my soule, I am to have such speciall regarde hereto in this my othe before your honors, as I maye be abled to make my accompt before the majestie of almightie God at the dredfull daie of judgment.<sup>143</sup>

As if the Chancellor's question fell perfectly into line with Tresham's argument, when asked whether Campion visiting Tresham's house was a temporal or spiritual matter, Tresham responded by claiming that he was not only asked if Campion came to his house, but 'if he sayd masse, and such lyke'; thus the attorney was 'onlie enquiryng after causes of religion, and never of causes of state, or mere temporall demaundes.'<sup>144</sup> Defining the role and acts of Campion as matters of religion, and therefore matters of conscience, Tresham distinguishes between matters of civil and spiritual authority. In doing so he indirectly removes the label of traitor from those who practice Catholicism by differentiating between matters of religion and the conscience and matters of state and the civil authority of the magistrate. It was on this same point of confronting the very problem Catholics faced, that they practised a 'relygion not warrantable' by the current laws, that Tresham would later present a defence of English Catholics in a petition to the queen for toleration. Here Tresham would continue to affirm Catholic loyalty in civil matters, but also legitimise Catholic resistance in matters of religion which fell under the spiritual sphere and the judgement of God.<sup>145</sup>

Anticipating the legislative acts passed in 1585, Tresham and a group of Catholics petitioned the queen to receive 'the lightning of some heauy yoakes, which were, intended

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<sup>143</sup> Ibid., p. 92.

<sup>144</sup> Ibid., pp. 94-95.

<sup>145</sup> Ibid., p. 96.

shortly to be layed upon our weakned and wearied neckes.’<sup>146</sup> Tresham himself, already spending time in the Tower and Fleet, had as much a need as anyone to seek toleration. However, receiving such grace and mercy from the queen was not an easy task. Just prior to this, in 1583, the Throckmorton plot had been unravelled, and even more recently Dr. William Parry’s assassination plans were uncovered not long after he railed against the ‘bill of Jesuits in the house of commons’.<sup>147</sup> The legislation that was forthcoming was in the regime’s eyes completely necessary. Thus, the critical point for the petition to overcome was in rectifying, as *Leicester’s Commonwealth* intended, the problem that in light of recent events, Catholics ‘must be condemned all for traytors.’<sup>148</sup>

Not willing to defend the stance that all Catholics were innocent, the authors of the petition were quick to affirm the charge of treason against Parry, ‘whose detestable endeavours...making ship-wrack, of all faith and Religion, hath thereby at length, loste both taste and habite of the grace and feare of God.’<sup>149</sup> But as far as these petitioners’ loyalty went, they claimed that the ‘greatest accusation ryseth upon our recusancy, or absence from the Church’, which ‘hath devoyded us of all your wonted graces, and special favours.’<sup>150</sup> They affirmed that in all their actions they remained loyal to the queen, claiming that ‘refusing and absenting our selves is not grounded in us upon any contempt of your Majesties Lawes, or any other willfull or trayterous intent, but altogether upon meere conscience, and feare to offende God.’<sup>151</sup> The petitioners stated that they were willing to attend Protestant services, if the ‘learned nowe assembled in convocations, shall bee able by sufficiente groundes of Divinitie, to proove to the learned of the catholike Church, that wee (being in Religion Catholike) may without committing mortall sinne, frequent those Churches, where the contrary religion is professed, and exercised.’<sup>152</sup> Though presenting themselves as earnest men attempting to satisfy the regime’s

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<sup>146</sup> ‘Petition of Loyal Catholics Subjects toe The Queen’, in HMC, *Report on Manuscripts in Various Collections*, 8 vol. (London, 1901-1914), iii, pp. 37-43; Also under the title, *To the Qweenes Most Excellent Majestie, the humble petition of her Catholike subiectes of England, in the 27. yeare of her raigne* (1585), reprinted in Richard Broughton, *English protestants plea, and petition, for English preists and papists* (1621), p. 34.

<sup>147</sup> Lake, *Bad Queen Bess*, p. 180.

<sup>148</sup> *The Humble Petition*, p. 35.

<sup>149</sup> *Ibid.*, p. 36.

<sup>150</sup> *Ibid.*, p. 35.

<sup>151</sup> *Ibid.*, p. 36.

<sup>152</sup> *Ibid.*, p. 37.



demands, this bargaining chip was not anything new in Catholic debates over church attendance. The call for some form of disputation could be found in the letters written by Persons and Campion in case of their arrest. In Campion's case, his 'Brag' was published by the man entrusted with carrying the letters, Thomas Pounce, and sent the regime into a frenzy. It can be inferred from the petitioners' resilience in recusancy and their insistence on refraining from 'publick places of prayers, only for feare to fal into dānable sin, & not in any hope or regard of any worldly prefermēt or policy', that they believed a disputation would amount to little as far as conversion went.<sup>153</sup> They also may have come to the same conclusion that the Jesuit missionaries before them arrived at, that there was little chance that Protestant ministers would 'submit to the test of any disputation.'<sup>154</sup> Furthermore, keeping the whole of the petition in mind, this posture of submission was far from the authors' main purpose. The intention was to make their point of being afflicted for their conscience more valid and to strengthen their position of resistance. They simply could not for conscience sake attend church services, not because they were wrong in their religious convictions, but out of their faithful obedience to God. Thus, the argument follows that because they could not attend church they had endured great penalties and afflictions – penalties that were imposed for civil non-obedience but were at root religious in principle. The petitioners lamented, 'let our deedes throughly be examined, and there shall be found harboured, neither in our willes evill affects: neither in our mindes disloyal thoughts.'<sup>155</sup> Where others had turned to treason and sedition, Tresham and the other petitioners insisted that Catholics of all degrees 'have bene and are disgested with mildnesse, and tempered with dutifulnesse: hoping that now at length our approved patience, will moove your most tender heart, to have some pitie and compassion of us.'<sup>156</sup>

The tone of the petition makes it problematic to assume that the petitioners saw this patient suffering as a means by which God was proving the truth and validity of the Catholic faith. Granted, it was a contemporary belief that one should endure patiently the pain and

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<sup>153</sup> Ibid., p. 44.

<sup>154</sup> Hicks, *Memorials and Letters*, pp. 28-41. See also Campion's 'Brag', in Simpson, *Edmund Campion*, pp. 280-282. Also printed in J.H. Pollen, 'The Blessed Edmund Campions Challenge', *The Month: An Illustrated Magazine of Literature, Science and Art*, pp. 60-62; See 'Conference at the Tower, August 31, 1581' in HMC, *Misc*, pp. 8-16. For a discussion of the role of disputation, see McCoog, "'Playing the Champion": The Role of Disputation in the Jesuit mission' in McCoog, *The Reckoned Expense*, pp. 119-139.

<sup>155</sup> *The Humble Petition*, p. 42.

<sup>156</sup> *The Humble Petition*, p. 38.

affliction which came with persecution in order to prove the innocence of one's faith. Peter Holmes has attributed this form of non-resistance theory to the remnant of Marian priests who eagerly waited Elizabeth's return to Catholicism.<sup>157</sup> But the petitioners' stance was not principally a proclamation to endure persecution even until martyrdom as a means of displaying the sanctity of their faith. Enduring 'famine, and miserable ende of divers imprisoned, the pittiful whippings, the penaltie of twentie pounce a moneth' were not God's way of purifying the Catholic heart, they were signs of the loyal obedient subject. This illustration of longsuffering was the petitioners' way of affirming that they were Catholic and yet their acts of resistance were religious and not civil. They were willing to submit to the queen's civil authority and pay the penalties for their recusancy. But they were also bound by 'divine ordinance' to 'heare, receive and obeye, with dew honour, and reverence', the Catholic 'Bishops, and Priests, lawfully called and anointed.' It was these individuals who were given 'spirituall authoritie' to instruct Catholics 'howe to live and die in the love and favour of him, who hath power to cast both the body and soule of his enemies, into perpetuall tormente of hell fyer.' For Tresham and the other Catholic petitioners, the afflictions they endured for conscience sake were unjustly imposed as they only sought the benefits which the 'Lord and Saviour Jesus Christ, hath instituted and left behinde him, moste holy and blessed sacraments, for the comfort of mankind.'<sup>158</sup>

Similarly to what was presented in Tresham's defence in 1581, the role of the priest and the practices of Catholicism were matters entirely allocated to the spiritual sphere. Where matters of the state were concerned, the priest or priests who spent time with the petitioners were said to 'have recognised your Maiestie their undoubted and lawfull Queene.' They encouraged their Catholic brethren to 'always suffer patiently what authoritie shall impose' and condemned 'any subject to lifte up his hand against his annoynted.'<sup>159</sup> The petitioners were relentless in their attempt to differentiate the spiritual from the civil. In all, this was the only way to present an argument which so clearly supported and defended Catholics' resistance to the regime. But like Persons and Allen before them, the petitioners were hard pressed to convince the Elizabethan regime of their pure intentions.

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<sup>157</sup> Peter Holmes, *Resistance and Compromise: The Political Thought of the Elizabethan Catholic* (Cambridge, 1982), pp. 13-17.

<sup>158</sup> *Ibid.*, p. 38.

<sup>159</sup> *Ibid.*, p. 39.

Tresham's petition was not well received. Its delivery man, Richard Shelley, was imprisoned in the Marshalsea prison where he died shortly after.<sup>160</sup> As for Tresham and his defence, the court found him in much contempt and unanimously called to increase his fines beyond the level of those who stood trial with him on the same account. While Tresham stands out as one who we would believe to be in need of the benefit of receiving toleration, his hand in the petition and his defence at his trial go far beyond what Dwight Peck has seen as merely Catholics 'crying out'.<sup>161</sup> There is little doubt that the latter section of the 1585 petition, beginning with such a humble postulation, was not intended to reveal the meek heart of the Catholic petitioners. 'O poore wormes! what shall become of us! what desolatione are wee brought unto!'<sup>162</sup> These phrases, and the remainder of the final sections of the petition, while bearing conventional modes of grovelling, seem to contain more than an element of disingenuousness, when put into the context of Tresham's attitude toward the regime's stance on conformity and recusancy, which he and many of his fellow recusants were ready to endure in the face of increasing threats to their life, liberty and possessions.

If we believe the petitioners were merely invoking the common rhetoric of lowly subject to an almighty queen, we will miss out on the significance of Tresham and the petitioners' tactical ploys to undermine the regime and advance their argument for toleration. Taking the petition at face value ignores the subversive nature of the text in comparing the patient suffering of the Catholic recusants with the 'lamentable griefes' the queen was inflicting on her 'catholike, natiue, english, and obedient subiects'. Thus, the petitioners called for the eyes of the queen to be opened and insisted that her 'excellent and heavenly vertues now take their chiefe effect.' This is far from an earnest attempt to flatter the queen and more of a suggestion that she had been in the wrong and needed to realign her prerogative. Once again, we see the notion of toleration as the exercise of mercy by a more powerful magistrate over a weaker subject being subverted by the implication that the queen's authority was wrongly executed in the spiritual sphere where she

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<sup>160</sup> Broughton, *English Protestants Plea, and Petition*. Richard Shelley's fate is described by Broughton in the preface to 'The Parlements unjust proceeding against Priestes and Catholiks, and persecution without all cause by their owne judgements', p. 45. Shelley's part in presenting the petition and notes from the council's questioning of him can be found in John Strype, *Annals of the Reformation and Establishment of Religion, and other Various Occurrences in the Church of England, during Queen Elizabeth's Happy Reign* (London, 1738), iii, part 1, pp. 432-433.

<sup>161</sup> Peck, *Leicester's Commonwealth*, p. 27.

<sup>162</sup> *The Humble Petition*, p. 41.

lacked true authority. Thus, the petitioners insisted that rather than being known for bringing on ‘extreame ruine, and certaine calamitie, that either we (being Catholikes) must live, as bodies without soules: or else loose the temporal vse both of body and soule’, it would better suit the queen to let ‘gratious tolleration sound out your most famous memory so tryumphantly to all nations.’<sup>163</sup> The incentive to be well known amongst all nations could be taken as an implicit criticism of the queen’s reputation to date. Tresham viewed the English religious situation very similarly to Allen and Persons. Each man would have presented the idea of practicing Catholicism as the standard. It was, as Persons pointed out, Protestantism that broke away from Catholicism. The vantage point of ardent Catholics such as Tresham would be to see Elizabeth’s compromise of Catholicism not as a triumph of virtue, but the righting of wrongs.

Placing this petition alongside another document likely authored by Tresham entitled ‘Reasons for and Against a Petition to the Queen’, one can hardly imagine that Tresham and the other leading recusants of Elizabethan England believed their petition would amount to much in the way of legislative change. Rather, the petition was Tresham’s way of ensuring that even if the queen did not act upon the petition, the her majesty’s council would ‘conceyve better of us than happelye our adversaries have insinuated against us.’<sup>164</sup> Thus the petition was not so much a plea as it was a justification for their recusancy and an attempt to establish a legitimate argument for toleration. Tresham did not believe himself, or any Catholic recusant for that matter, to be in the wrong for maintaining their faith. While the petition and his defence are ripe with flattering gestures of humility, his speech and petition are far from pleas from lowly subjects, and far more a means of making public declarations and defences of Catholic resistance in the face of the Protestant regime. This was, after all, in Tresham’s mind a rhetorical battle that had to be won if Catholicism was going to remain a viable religion in England. Tresham, just like Allen and Persons before him, had to redirect the claims of treason away from matters of religion by distinguishing the civil from spiritual spheres, and sought to present a legitimate argument for resistance in the midst of declarations of loyalty to the queen’s civil authority.

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<sup>163</sup> Ibid., pp. 42-43.

<sup>164</sup> HCM, *Misc*, iii, p. 34.

## Conclusion

The political context in which these individuals engaged in the rhetorical fight with the Elizabethan regime was fragile and volatile. Increased anti-Catholic legislation, fines and the threat of execution for treason all served to construct a social and political environment in which Catholics found themselves under greater pressure to conform. There was a very clear and present danger in being Catholic in England. Though Allen and Persons were in exile for the majority of their days, men like Sir Thomas Tresham remained both recusant and in England. The critical point, then, in looking at these three individuals' input in the debates over religious coexistence in England is to see in them the formulation of a Catholic intellectual and even pragmatic front against the Elizabethan regime. Seeing the formulation of toleration arguments within each of these tracts and petitions we are able to gain an understanding of both the measures to which English Catholics were forced to resort into searching for mitigation, and also of the innovative, although tentative, definitions of the civil and spiritual spheres which shaped these arguments for toleration.

While Catholics such as Allen and Persons are well known for their formidable stance in support of the Church in Rome and the Pope's spiritual authority, they are less known for their attempts to relieve the pressures of persecution. Their desire to see a Catholic military take-over of England is a familiar theme, but their arguments for religious co-existence with the Elizabethan regime deserves more attention than they are usually accorded. There has been a long historical narrative of the militant Allen-Persons party, in which toleration is seen as a secondary option to the development of plans for a Catholic invasion of England similar to the Ireland invasion supported by Allen.<sup>165</sup> Thus historians have seen Catholic arguments for toleration as 'simply a temporary measure and a prelude to a reunification of the realm under one creed.'<sup>166</sup> But while there is a degree of truth in this representation of Allen and Persons' actions in the Elizabethan period, it leaves little room for seeing the significance of their influence in helping to formulate toleration ideas within the context of the political atmosphere between 1580 and 1585. These were the ideas which men like Thomas Tresham adopted and

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<sup>165</sup> Arnold Pritchard, *Catholic Loyatism in Elizabethan England 1558-1603* (London, 1979); Holmes, *Resistance and Compromise*, p. 62.

<sup>166</sup> Quoted in Walsham, *Catholic Reformation in Protestant Britain* (Burlington, 2014), p. 15; Lake, *Bad Queen Bess*, pp. 143-149; Clancy, *Papist Pamphleteers*.

manipulated to suit the realities on the ground, as many of the Catholic laity remained adherents to recusancy in the face of great personal risk.

## Chapter 2

### Catholic Calls for Toleration at the Accession of James I

The accession of James I to the throne of England was shrouded in speculation, uncertainty and wishful thinking. Whether one was Catholic or Protestant, Papist or Puritan, the question of how James would confront the religiously diversified English landscape was on everyone's mind in 1603.<sup>1</sup> This chapter argues that the formulation and presentation of cases for toleration produced and presented in the perplexing and uncertain circumstances of James I's accession to the English throne were manipulated in significant ways in order to adapt to the changing political circumstances. This chapter intends to provide a contextualized account of the 'toleration talk' produced in this unique historical moment. Catholic toleration talk generated in the middle years of Elizabeth's reign revolved around distinguishing the boundaries of the civil and spiritual spheres, but the calls for toleration surrounding the accession of James I were marked by an absence of theological treatises. Here, we see toleration talk adapted to meet the perceived demands of a new king and an approach to producing petitions that presented a Catholic loyalty which went beyond religious divides.

The first section of this chapter will address the contemporary use of the petitionary genre along with the applications, and conceptual limitations, of toleration employed by petitioners at the accession of James I. Within its political and rhetorical limitations, the petition was an important tool in the arsenal of Catholics attempting to exact toleration. Situating these petitions within the broader historical context will allow us to understand the significance of this moment. The political and religious uncertainty allowed a degree of discursive space able to invert the notions of toleration subtly enough to elicit a measure of amelioration from a staunchly (yet

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<sup>1</sup> For recent discussion of the politics of the accession moment, see Susan Doran and Paulina Kewes (eds), *Doubtful and Dangerous: the Question of Succession in Late Elizabethan England* (Manchester, 2016); Nicholas Tyacke, 'Puritan politicians and King James VI and I, 1587–1604', in *Politics, Religion and Popularity in Early Stuart Britain: Essays in Honour of Conrad Russell* (eds), Thomas Cogswell, Richard Cust and Peter Lake (Cambridge, 2002), pp. 21–44; Jean-Christophe Mayer, ed., *The Struggle for the Succession in Late Elizabethan England: Politics, Polemics and Cultural Representation* (Montpellier, 2004); Pauline Kewes, 'The Puritan, the Jesuit and the Jacobean Succession', in Doran and Kewes (eds), *Doubtful and Dangerous*, pp. 47–66; Michael Questier, *Catholicism and Community in Early Modern England: Politics, Aristocratic Patronage, and Religion, c. 1550–1640* (Cambridge, 2006), esp. chapter 7; Michael Questier, 'The Politics of Religious Conformity and the Accession of James I', *Institute of Historical Research*, 71, 174 (1998), pp. 14–30.

perceived to be moderate) Protestant king. There were limitations to calling for toleration, some obviously practical, others more conceptual. Examining the conceptual limitations to calling for toleration will help us identify the continuities in toleration talk across the period, but also the nuanced changes revealing the malleability of toleration ideas within transforming circumstances.

The political and religious context surrounding the accession of James I is at the crux of this chapter's argument, thus we must attempt to situate the toleration talk produced in these petitions within the context of the most important political question of the day: who was to be the next in line to the English throne? The airing of the uncertainties behind the succession meant that any discussion of toleration, while given a degree of freedom in its expression, was subjected to the political situation of the time and had to meet the perceived demands of the next heir to the English throne if there was to be any degree of toleration allotted.

The 'question' of succession then forced James VI to engage in a self-promoting fashioning of his kingly persona. Analysing the Catholic petitions for toleration as a discursive response to the Catholic reading of James VI and I leads us to the second section of this chapter and to some critical questions for understanding this moment: what was James's view of the relationship between himself and his Catholic subjects, and to what extent might this have influenced the way in which Catholics petitioned for toleration? Through an in-depth analysis of Catholic petitions at the accession of James I, this section of the chapter will explore the circumstances in which Catholics formulated their petitions. From the first petition of 1603, signed 'The Catholikes of England', to the supplications written by John Lecey, Catholics attempted to meet the perceived demands of James I as they requested a degree of toleration for practicing Catholicism.<sup>2</sup>

The final section of this chapter extends this examination by providing a comparative analysis. In the first instance the section attempts to identify varying conceptions and presentations of toleration ideas within the writings of different Catholic factions. To understand this, we must once again place it within the context of the transition between Elizabeth and James I. Between roughly 1598 and 1602, the Jesuit faction (led by Persons) and those known as

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<sup>2</sup> A manuscript of the Catholic petition headed 'Most puissant prince and orient monarch' can be found in SP *James I*, 14/1 fol. 110. A transcription of the petition is given in the rebuttal of Gabriel Powel. Also, Christopher Muriell provides portions of the text in his refusal.



appellant priests began to develop very strong views about how to best manage the Catholics of England, including the idea of petitioning for toleration. Out of the fiery controversy surrounding the appointment of Archpriest George Blackwell, the so-called Archpriest Controversy, came an evident rupture in Catholic ranks. These divided factions each interpreted their relationship, in matters of duty, obedience, and loyalty, to the newly appointed monarch with very different and even opposing conceptions.<sup>3</sup> Looking at the appellant priest John Colleton's *Supplication to the king*, written in the same year as Lecey's *Petition Apologeticall*, we can then address how these different Catholic groupings in the early years of James I understood their relationship with the regime and to what extent this shaped their concept and presentation of toleration ideas. Finally, this section will argue that through examining these petitions, alongside subsequent refusals and rebuttals, we will see that there was more to the notions of toleration being presented than meets the eye.

### **The Art of Petitioning**

In calling for toleration, Catholics at the accession of James I had a conceptual hurdle to overcome. Simply put, the long-held political and social conception of toleration was that it was the forbearance of punishment against what was wrong. We have explored this to some degree in the previous chapter, but how did the context of the accession of James, and particularly Catholic perceptions of James, help to change this? How did Catholics manoeuvre around or within this conceptual construct? Did the petitionary form limit their ability to break from these commonly held notions of toleration? To what extent did the Catholic tolerationists break from the patristic and medieval roots of the concept of toleration and to what extent did they utilise them to their benefit? In what ways did they differ from their recent, and often Protestant, contemporaries?

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<sup>3</sup> Peter Lake and Michael Questier, *The Trials of Margaret Clitherow: Persecution, Martyrdom and the Politics of Sanctity in Elizabethan England* (London, 2011); Peter Lake and Michael Questier, 'Taking it to the street? The archpriest controversy and the issue of the succession' in Doran and Kewes (eds), *Doubtful and Dangerous*, pp. 71-91; Thomas M, McCoog, *The Society of Jesus in Ireland, Scotland, And England, 1598-1606: Lest our Lamp be Entirely Extinguished* (Netherlands, 2016); Questier, 'The Politics of Religious Conformity', pp. 14-30; Peter Lake, 'The King (The Queen) and the Jesuit: James Stuart's "True Law of Free Monarchies" in Contexts', *Transactions of the Royal Historical Society*, 14 (2004), pp. 243-260; Michael Questier, 'Sermons, Separatists, and Succession Politics in Late Elizabethan England', *Journal of British Studies*, 52 (2013), pp. 290-316.

Answering these questions will reveal the significant ways in which the changing context of James's accession influenced the formulation of innovative approaches to discussing toleration.

Toleration in early Jacobean thought was not an innate right shared by all. Rather, toleration was something that was earned, in the case of the Catholic petitioners, through obedience and displays of loyalty. The measure of toleration one could receive was dictated on one side by the mercy of the sovereign, as well as by the degree of loyalty an individual or group displayed towards their sovereign. This marks a clear distinction from modern liberal notions of toleration in that it can be taken away, just as easily as being granted. This notion of toleration as being a grant of permission, or undeserved favour, had heavy social and political weight. The Catholic petitioners in some ways then were bound by these notions in their formulation of toleration ideas. The extent to which they were able to manipulate and even forge new conceptions of toleration is then a key question regarding their petitionary efforts.

Petitions in the seventeenth century were used by individuals from all levels of society. Such petitions were often directed to parliament. By 1669, two formal resolutions put in place the right of the petitioner and the authority which the house of commons had in dealing with them, stating, 'that it is the inherent right of every commoner in England to prepare and present petitions to the house of Commons in cases of grievance, and the house of Commons to receive the same'.<sup>4</sup> That was perhaps not uniformly accepted at the start of the century, but the practice was already a familiar one. In the seventeenth century, petitions of many sorts were written and edited by professional scribes and took many forms when addressed to local magistrates, parliament, and the king. Many of these petitions took a similar form to those presented today, being signed by a large number of people in order to present the magnitude of the intentions of the petitioners. This was the case with the well-known Millenary Petition, claiming to have the backing of 'more than a thousand' ministers all seeking reform in the English church. But whether the petition was to the king and represented the interest of a group, such as the April petition of 1603 signed the 'Catholics of England', or was the act of a desperate man seeking pity from the privy council on the King's behalf, as was the case of the 1606 petition of Gervase

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<sup>4</sup> T.E. May, *Treatise on the Law, Privileges, Proceedings and Usage of Parliament* (eds), M. Hutton, et al. (24th edition, London, 2011)

Smith, who was being put on trial for allegedly denying the king's legitimacy, petitions were a significant means of interaction between authorities and their subjects.<sup>5</sup>

Petitions were a means by which individuals could 'affect almost all stages of the proceedings' in local and national government. More significantly, for those recusant Catholics, such as Thomas Tresham, who were denied the ability to hold office, the petition 'allowed those without full political rights a degree of influence.'<sup>6</sup> Of course, getting the petition to the king or parliament was crucial and petitioners often enlisted the help of those who held a higher status, socially or politically, to get their petitions in the right hands to reach the magistrates.<sup>7</sup> Sir Edward Winfield enlisted such help when he wrote 'to his Highness a petition' from the fleet in May of 1603. Having entreated some friends to deliver it, he also asked Lord Cecil to step in on his behalf to make sure the petition reached the king and some grace be given to his circumstances.<sup>8</sup> While every effort was made to ensure the petition was written with the utmost care, and steps were taken to get the petition in the hands of the right people, many petitions never made it to parliament or the king.

With the petition being seen in many respects as a right of 'all the free people' in England, there was a great need for the monarchical regime to have formalised petitionary procedures. One of the roles of the Privy Council, and of the Secretary of State, was to receive petitions, but increasingly through the sixteenth century and in the reign of James I, it was a responsibility of the Master of Requests to receive, filter, and at times pass on, petitions to the king from the many pleas made by his English subjects. In a letter of 1606, Sir Thomas Lake reported to the Earl of Salisbury of the king's dismay that 'here is no Master of Request to attend him, which he imputed to Sir Roger Wilbraham for this time', and that 'nothing was more necessary than that there should be one with him for that being officers of justice and known so in the commonwealth, his Majesty might by them give ease to many poor suitors that follow him

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<sup>5</sup> M.S. Guiseppi, ed., *Calendar of the Cecil Papers in Hatfield House*: vol 18, 1606, pp. 306-337.

<sup>6</sup> Beat Kumin and Andreas Wurgler, 'Petitions, *Gravamina* and the Early Modern State: Local Influence on Central Lslation in England and Germany (Hesse)', *Parliaments, Estates and Representation*, 17, 1 (1997), pp. 39-60.

<sup>7</sup> R.W. Hoyle, 'The Master of Request and the Small Change of Jacobean Patronage', *English Historical Review*, 124, 520 (2011), pp. 544-581.

<sup>8</sup> Cecil Papers, 'Sir Edward Winfield to Lord Cecil' May 29, 1603; Faramerz Dabhoiwala, 'Writing Petitions in Early Modern England', in *Suffering and Happiness in England 1550-1850: Narratives and Representations: A Collection to Honour Paul Slack* (eds), Michael Braddick and Joanna Innes (Oxford, 2017), pp. 129-130.

continually wheresoever he goes for relief by way of equity'.<sup>9</sup> Richard Hoyle has found that according to the surviving registers of the Master of Requests under James I, some 700-800 petitions were received per year. Caught up in the chaos of the regime change from Elizabeth to James I, Sir Ralph Wilbraham recorded that 'the Scottish knowing and the English conjecturing a facility in obtaining suits by reason of His Majesty's most benign and bountiful disposition, especially towards his old servants, they never ceased to devise and solicit suits to his majesty and complaints of all natures', thus giving some credit to the potentially inflated estimate that '840 petitions were received between May 1603 and December 1604.' But the accession of a new king was the exact time at which many seeking poor relief, offices, or clemency put every effort into gaining the king's favour.<sup>10</sup>

Just as difficult as getting one's petition to the king was the matter of receiving the king's favour: petitionary efforts could even turn the hand of the king against the petitioner. Written in Thomas Tresham's hand, there is a detailed summary of a trial in November 1604 in which one Mr. Pownde stood before the Star Chamber accused of delivering 'to his majesty a petition containing many impudent untruths.' His petition was said to contain slander of the law and justice of the realm, for which it was suggested he receive the punishment of being nailed to the pillories at Westminster and Lancaster and have one ear cut off at each.<sup>11</sup> It is no wonder then that many humble petitions attempted to use flattery. For the petitioner, to emphasise his position as a subject seeking mercy from a rightful and lawful king was critical. However, there is more to this point than just simply flattery and the Catholics of England used an emphasis on submission and deference to their advantage.

In contrast to the polemical tracts we explored for the Elizabethan era, the petitionary form was inherently submissive in nature. The rhetoric of a petition subjected the petitioners to the need for flattery and a recognition of authority which was understood to be due to the king, along with fervent displays of loyalty and obedience as the response of good subjects. Here the

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<sup>9</sup> Ibid., 'Sir Thomas Lake to the Earl of Salisbury', Oct 16, 1606.

<sup>10</sup> Hoyle, 'The Master of Request', p. 551.

<sup>11</sup> HMC, *Report on Manuscripts in Various Collections*, 8 vol. (London, 1901-1914), iii, pp. 140-42 (henceforth to be abbreviation as HMC, *Misc*); M.A. Tierney, *Dodd's Church History of England from the Commencement of the Sixteenth Century to the Revolution in 1688*, 5 vol. (London, 1839-1843), iv, p. 41.

patristic nature of the petition, so well examined by R.W. Hoyle, went hand in hand with the toleration talk being formed around the king and subject relationship.

Unsurprisingly, Catholic petitions at the start of the reign to some extent adopted the idea of toleration as a favour granted to undeserving recipients. After all, the very idea of the humble supplication was for one to acknowledge the idea that the king was the only one who could possibly relieve the individual from his present circumstances. Whether one deserved the king's favour or not, the vast jurisdictional authority that a king could wield in different spheres of society was often the first and last resort for petitioners. However, for these tolerationists writing in the first few years of James's reign, the pleas had to have more than the traditional framework of flattery and family ties. If one was to propose toleration for those who fell outside social, political and, in seventeenth-century England, religious boundaries, there was a need to present a conception of toleration which countered the idea that toleration was simply the second-best option to a fully converted Catholic England. This forced Catholic petitioners to be innovative in their formulation of toleration ideas, which can be seen in many of the petition presented in the early years of James's reign.

There is also more to the form of a petition than providing the discursive space to stroke the ego of a king. Once again, unlike the treatises and polemical tracts we explored in Elizabeth's reign defending the Catholic cause, the petition, though it was generally structured from a position of subject to authority, still had room for personalisation. On one side, the petitions produced around James's accession were ultimately intended to move their new king towards toleration. On the other side, the petitions which John Lecey or John Colleton produced were printed and thus the reading audience was relatively broader. Thus, while the content was often personalised, the petition also had the potential of reaching a different demographic of literate readers and thus needed to strike a chord with them as well. The petitioners, though maybe with the foresight and hopes of their petition entering the public sphere (as discussed with the Tresham petition in Elizabeth's reign) crafted their petition for a specific audience. This allowed the content of the petition to be personal in nature as well as confined to its traditional conventions. Emphasising shared experiences and values in the petition was a way of getting the recipient to empathise with the petitioner's circumstances. In the case of the Catholic petitioners, any points of connection they could draw on were fair game, even if as controversial as the execution of the king's mother Mary Queen of Scots. This personalization is critical to an

understanding of the Catholic texts examined in this chapter. It meant a need to address James as he saw and presented himself as king of both England and Scotland.

Keeping these petitionary conventions in mind, we must also establish the conceptual context of the term toleration as it was understood by the petitioners and their contemporaries. Though the Catholic petitioners at the accession of James I shaped their calls for toleration within the political and religious context of the time, their use of the term continued to carry more traditional connotations. Exploring the extent to which Catholic toleration talk reflected traditional senses of toleration in its patristic and medieval conception, along with examining various uses of toleration ideas employed in a spectrum of contemporary texts, will give us a basis for approaching and identifying how Catholic petitioners manipulated and subverted contemporary notions in their effort to gain a degree of toleration.

### **Old Notions – New Context**

In some ways, the concept of toleration meant much the same to the Jacobean Catholic as it did to the writers of early antiquity as described by Istvan Bejczy.<sup>12</sup> In its early context toleration ‘stood for the bearing of anything which was a burden to the human body.’<sup>13</sup> This notion of enduring suffering, or more importantly, unjust physical punishment, was deeply rooted in the medieval social and political sense of the term. As we will see, the Catholic petitioners, as was common amongst the martyrologies of the previous decades, used these long-held conceptions of toleration and portrayed themselves as the prime example of the receivers of such unjust punishment under Elizabeth.<sup>14</sup> We saw a similar approach taken in the works of Persons and Allen, in which Catholics were the ones receiving unjust punishment for their religious practices and not for crimes against the state. Yet where Persons and Allen justified toleration as a correction of inverted political and spiritual spheres, the Catholic petitions at the accession of James I used these notions of tolerating suffering to amplify their spirit of submission to authority, a much-needed ingredient in producing an effective petition. But there were other necessary illustrations which the petitioners employed, particularly the social and political senses

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<sup>12</sup> See above, introduction, for an overview of Bejczy’s discussion of toleration.

<sup>13</sup> István Bejczy, ‘Tolerantia: A Medieval Concept’, *Journal of the History of Ideas*, 58, 3 (1997), p. 368.

<sup>14</sup> Anne Dillon, *The Construction of Martyrdom in the English Catholic Community, 1535-1603* (Ashgate, 2002).

of toleration and ones more patristic in nature. The problem for Catholics was to overcome the idea that one had to be immoral in order to be tolerated. And, as we will see in non-Catholic contemporary texts, this fight was an uphill battle for the Catholic petitioners, as Protestant supporters of the Elizabethan regime, and now those defending a Protestant established regime under James I, had a discursive hold on the use of toleration as being reserved for the ungodly and immoral.

In the work of Augustine and early Church Fathers the term ‘*tolerantia*’ was utilized to describe an act of forbearance toward immoral people. Utilizing the argument of Augustine to uphold the righteousness of God when questioned about the elect facing tribulations, Walter Haddon found that God did not always ‘execute the severity of his judgement’ even against the reprobate, withholding his judgement by ‘long suffering, much lenity, and toleration of their wickedness’.<sup>15</sup> However, this tolerance, as was the case with God’s judgment over sinful man, was always granted by those who were in a position of power over individuals or groups who could be seen as a threat not only to individuals, but to society.<sup>16</sup> We see the application of this sense of the term in the work of the anti-Catholic Calvinist theologian, Dudley Fenner. In his *Antiquodlibet*, Fenner showed himself well aware of this sense of the term and sought to frame the social or political notion of toleration as a passing idea with little traction in justifying any form of official toleration. Fenner’s presentation of toleration was strictly defined as a restraint of power against a group of people who might otherwise cause greater amounts of social unrest. In Fenner’s mind, toleration might be necessary to provide a means to dull the spirits of English Catholics but nothing more. Fenner’s proposal for tolerating Catholics to keep them from ‘practices against the state’ was not too far from the allegations by the Appellant priests that the Jesuits intended to keep toleration from taking place as it would lead to laymen becoming passive about the work of the English mission.<sup>17</sup> In any case, toleration in this form was not the end game but a means to ensure social peace while evangelism ran its course. This granting of

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<sup>15</sup> Walter Haddon, *Against Ierome Osorius Byshopp of Siluane in Portingall and against his slaunderous inuectiues* (London, 1581), p. 427.

<sup>16</sup> Bejczy, ‘Tolerantia: A Medieval Concept’, p. 368.

<sup>17</sup> ‘Letter of Henry Tichborne, S.J., written from Rome, to Thomas Darbyshire, S.J., at Pont -a-Mousson, 2 Feb 1598’, in *Calender of State Papers Domestic, Elizabeth I, 1598-1601*, ed., Mary Anne Everett Green (London, 1869), BHO, pp. 356-358 (henceforth to be abbreviated as *CSPD, Elizabeth I*). Also found in Thomas G. Law, *A Historical Sketch of the Conflict between Jesuits and Seculars in the Reign of Queen Elizabeth* (London, 1889), appendix C, pp. 139-143.

toleration could be what Alexandra Walsham and Peter Lake have described as the second-best option.<sup>18</sup> However, as we look at the notion of toleration employed in the Bishop of Worcester, Gervase Babington's *A Briefe Conference Betwixt Mans Frailtie and Faith*, we find that toleration was not the second best option to enduring wickedness while the ungodly were converted to true religion, but a necessity for peace.

Babington who 'was a committed Calvinist, not a puritan in the sense of a nonconformist', tied the idea of virtue to toleration. In the case of his *Brief Conference*, Babington's use of 'toleration' came at the end of his assessment of maintaining and reconciling peace within neighbourhoods and towns. It was peace 'which being in men and women doe most mightily maintaine this blessed virtue in all and everie societis under heaven'. Serving as the chaplain to Henry Herbert, second earl of Pembroke, Babington dedicated his *Brief Conference* to the Countess. Produced as a commentary on Matthew chapter 5 and the Sermon on the Mount, Babington presents a social notion of toleration where he ascribes the most virtuous of characteristics to those who can bring about social peace.

When I marke the cours of thinges, and the causes of good agreement in anie place, I thinke but evn especiallie of these three: first a patient and meeke nature in our selves able to beare and tolerate something, without mounting into the house tope immediately, and flashing out all on fire by and by upon the sight or hearing of it.<sup>19</sup>

While having very different subjects in mind than the Catholic petitioners, this reveals those who Fenner, Babington and even James I would have considered productive members of social peace and those who 'one the other side againe the contrarie vices for the contraire effect must needs be as loathsome, hatefull and accursed.'<sup>20</sup> Thus, Babington, going slightly farther than Fenner in his connection of toleration and peace, suggested toleration was not only a necessary price for peace, but a virtue of those who obtained it.

From its basic meaning of to bear or endure, toleration's long association with the practice of exhibiting forbearance, patience, longsuffering in the midst of circumstances in which evil might go unpunished, was a critical concept in constructing toleration ideas.<sup>21</sup> These notions

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<sup>18</sup> Alexandra Walsham, *Charitable Hatred: Tolerance and Intolerance in England, 1500-1700* (Manchester, 2006) p. 3; Peter Lake, *Bad Queen Bess? Libels, Secret Histories, and the Politics of Publicity in the Reign of Queen Elizabeth I* (Oxford University Press), p. 143.

<sup>19</sup> Gervase Babington, *A Briefe Conference Betwixt Mans Frailtie and Faith* (London, 1584), p. 108.

<sup>20</sup> Babington, *A Briefe Conference*, pp. 108-109.

<sup>21</sup> Walsham, *Charitable Hatred*, p. 4; See also Bejczy, 'Tolerantia: A Medieval Concept', p. 368.



of patience and longsuffering were commonly associated with the characteristics of Christ, and the toleration exhibited by God against the sins of failing man.

Along with the use of toleration in the social and political sense, toleration was also utilized in a judicial sense. The significance of this usage is not so much in its identification of qualities which merited toleration, but in the qualities of those who tolerated wickedness or sin. While the merciful characteristic of God was a significant virtue for a king to model, the judicial notion of toleration was also concerned with the lawfulness of tolerating and the authority one had in doing so. Thomas Bell, well known for his writings defending Catholic conformity before he turned his polemical pen against Rome, provides an example of this way of looking at toleration by referencing King David's willingness to 'tolerate sin unpunished'.<sup>22</sup> Here, Bell interchanges the words *tolerate* and *pardoned*. 'King David pardoned Abner, who rebelled against him for the house of Saul. The same king tolerated Joab in his naughty dealings, albeit he was more then a little offended with his manners'.<sup>23</sup> In each case the act of toleration was a withholding of punishment for what David knew to be sin. In this, we find the use of toleration being presented as a judicial concept. Toleration was a matter of superiority, one that distinguished those who held and acted according to a firm set of disciplines and teachings from those who did not. We see this application again in texts outside of calls for religious toleration. In the *Epistle Dedicatorie* to his *Time is a Turne-Coat*, the poet John Hanson presented the work as worthy to be tested by those in authority whose 'rich banquetting-house of acceptance and toleration' is a mark of the virtuousness of their 'honorablen and worshipfull names and patronage'.<sup>24</sup> The virtuous character of those authorities who are upholding 'requisite lawes for the supplanting and depopulating of vice' are contrasted with the 'mud-mixed censors' seeking personal applause and their own reputation who act as cannibals and 'gormandize on other mens flesh, yet will not devoure themselves'.<sup>25</sup> Those who granted toleration held a higher place or position when it came to moral actions or beliefs. This judicial notion of toleration associates the

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<sup>22</sup> See Michael Questier, *Conversion, Politics and Religion in England 1580-1625* (Cambridge, 1996), pp. 51-53.

<sup>23</sup> Thomas Bell, *The regiment of the Church as it is agreable with Scriptures, all antiquities of the Fathers, and moderne writers, from the Apostles themselues, vnto this present age* (London, 1606), p. 217.

<sup>24</sup> John Hanson, 'A Epistle Dedicatorie' in *Time is a Turne-Coate, or, Englands Three-Fold Metamorphosis* (London, 1604), pp. 4-7.

<sup>25</sup> Hanson, 'A Epistle Dedicatorie', pp. 6-7.

virtuous character of those tolerating with the righteous judgement of God and His tolerance of sinful man. James's position as God's appointed assigned him the duty of discerning who was to be tolerated and what was to be tolerated. The critical part for the Catholic petitioners was to present themselves as loyal and obedient subjects, worthy of that toleration.

### **Reading James and Writing Petitions: Catholic Calls for Toleration from the New King**

At the accession of James I to the throne of England Catholic hopes for leniency towards the practice of their religion are evident through the petitions presented. It is no surprise that the focus of these early Catholic petitions was to seek a degree of religious mitigation in a time of political transition. After all, James had engaged in a degree of diplomacy with Rome, and it was claimed by the conspirator William Watson that James VI and his ministers gave him vague but encouraging assurances that Catholics in England would receive toleration at his accession. However, these claims were never substantiated and when used as his defence when questioned about the so called Bye Plot only led to an increase in the magistrate's suspicion and anger which eventually resulted in Watson meeting his fate on the gallows.<sup>26</sup> These were not the only times James's supposed kindness to Catholics were discussed. In a letter from April 1603, Thomas Howard told Robert Cecil that he believed there was a chance that recusants would attend church services on account of the leniency James was likely to show them for their willingness to present themselves. Another letter of the same year expressed excitement over the favourable tone that James's book, probably the copy of *Basilikon Doron* recently reprinted, showed to Catholics.<sup>27</sup> Catholic petitioners at the accession of James I were evidently aware of James's political thought and used it to frame their petitions. James produced two political tracts while he was in Scotland, *Basilikon Doron* and *The True Lawe of Free Monarchies*, which helped to distinguish his political thought from those of his tutor James Buchanan and rid himself of the uncertainty which circulated in the wake of Persons' *Conference*. Although Jenny Wormald has pointed out that neither of these tracts had anything new to say about the theory of absolutism, and nor were they necessarily written with the intent of a larger reading audience, especially an

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<sup>26</sup> Mark Nicholls, 'William Watson', ODNB.

<sup>27</sup> Thomas Howard to Robert Cecil, April 3, 1603, SP *James I*, 14/1 fol. 24; *Calendar of State Papers Domestic, James I, 1603-1610*, ed., Mary Anne Everett Green, 4 vols (London, 1857), BHO, i, p. 118 (henceforth to be abbreviated as *CSPD, James I*, unless otherwise specified volume is I).

English audience, by the time *Basilikon Doron* was republished in 1603 and some 12,000 copies were distributed in London, James's efforts in fashioning his royal persona was well underway and it was apparent that many English Catholics were taking note of it.<sup>28</sup>

Yet, while much discourse around the accession of James had a tone of hope for reconciled circumstances, not everyone was so caught up in the euphoria of peace at the accession of James I. The author of an anonymous letter written in May of 1603, who signed with the symbol of an eye, insisted that those who would oppose his letter and the Catholic faith would receive the king's displeasure and punishment. If force was necessary to establishing Catholicism, the king would be on the side of his Catholic subjects. He claimed that James I was the defender, upholder, and maintainer of the Holy Catholic and Roman Church, and as good a friend to the pope as any Catholic king or prince in Christendom.<sup>29</sup> It appears everyone had their opinion about the new king, but only one thing was for certain, no one quite knew in what manner James would approach the complicated religious divide he inherited.

This was equally true of the Catholic petitioners. But the uncertainty around James's intentions was at least, in their minds, better than the gloomy prospect they had under Elizabeth. By 1604, three substantial petitions or supplications had been submitted on behalf of the English Catholics. The first petition, signed 'The Catholics of England', was submitted in April of 1603 and quickly provoked Protestant responses from Gabriel Powel and Christopher Muriell. Subsequent petitions were submitted to James in 1604. The first, *A Petition Apologetical*, was the work of one John Lecey, which might have been the pen name of Sir Thomas Tresham.<sup>30</sup> The next supplication for toleration was a *Supplication to the Kings most excellent Maiestie*, written in response to the recusancy legislation being passed early in that year. This was authored

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<sup>28</sup> Jenny Wormald, 'James VI and I, Basilikon Doron' and 'The Trew Law of Free Monarchies: The Scottish Context and the English Translation', in *The Mental World of the Jacobean Court*, ed., Linda Levy Peck (Cambridge, 1991), pp. 43-49; Glen Burgess, 'The Political Thought of James VI and I', p. 149.

<sup>29</sup> SP *James I*, 14/1 fol. 260-261; CSPD, *James I*, p. 118.

<sup>30</sup> This insight was briefly discussed in A.J. Loomie, 'Toleration and Diplomacy: The Religious Issue in Anglo-Spanish Relations, 1603-1605', *Transactions of the American Philosophical Society*, 53, 6 (1963), pp. 1-60. It has since then been developed further by Victor Houlston in 'Filling in the blanks: Catholic hopes for the English succession', *Spanish and Portuguese Society for English Renaissance Studies España*, 25 (2015), pp.77-104. See also, a reference to the same by Questier, in *Catholicism and community*, pp. 265-266. I have continued to explore the idea of the text being attributed to Tresham, suggesting there is other references to his petitionary efforts which help to support such a claim. See below p. 108 and following.

by the appellant priest John Colleton and represented the ideas and propositions for toleration of the secular priests who found themselves at odds with the faction of priests said to be led by Robert Persons. These petitions, along with several other letters, shorter petitions and declarations were all intended to support the toleration efforts of Catholics in England, though each of them provided their own unique viewpoint on the religious situation at the accession of James I.

Contrasting their pleas for toleration under their new king with their suffering for conscience in the reign of Elizabeth, the Catholics of England presented James with an anonymous petition in April 1603.<sup>31</sup> Yet, while the petition was signed by ‘the Catholics of England’, in its construction we once again run into the influence of that steadfast defender of toleration for Catholics, Sir Thomas Tresham.

On the surface the petition does not give away any hints as to who its author or authors might have been. As with other Catholic petitions, the signature is simply ‘the Catholikes of England’. Though its authorship was anonymous, perhaps to save the writer from undesired consequences, the collective form was perhaps intended to present a united front within the English Catholic community. In a simple sense, the title ‘Catholikes of England’ is an explicit reminder to the new king that there was a community of Catholics present in England and in the context of the petition they were concerned about the affairs of England and less about the affairs or influence from the continent. For some time, the intra-Catholic debates over the appointment of the Archpriest George Blackwell were utilised by the Elizabethan regime to pit Catholic against Catholic. Here there is a sense of unity being displayed. No one individual or group could take credit for the ideas and arguments being presented and the effects of the petition would be endured or enjoyed by all.

We see a similar ascription in another manuscript of June 1603, this time penned in French. This document, entitled ‘Declaration to the King of England by the English Catholics’, lists eighteen statements of loyalty to the new king along with their desire for the free exercise of religion. Within the statements the Declaration also contains several nearly verbatim phrases that are contained in the April petition. This however still does not give away very much about its

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<sup>31</sup> The Catholic Petition can be found in SP *James I*, 14/1. fol. 110. The quotes within this chapter are also taken from the copies of the petition found in Gabriel Powel, *The Catholikes supplication unto the Kings Maiestie, for toleration of Catholike religion in England* (London 1603). Also in Christopher Muriell, *An answer unto the Catholiques supplication, for a tolleration of popish religion in England* (London, 1603).

authors.<sup>32</sup> There is also little evidence of who presented the April petition, though a dispatch dated May 25, from the Venetian ambassador in France, Marin di Cavalli, reported that ‘ten Catholics have presented to the King of England a petition demanding liberty of conscience.’ Cavalli also noted that the content of the petition recalled the death of James’s mother, a theme running throughout the April petition.<sup>33</sup> With the date of Cavalli’s report and the general content mentioned by him, this very well could have been the April Petition. Furthermore, within Thomas Tresham’s papers there is a copy of another early petition, also dated April 1603, which is much briefer than the petition signed by the Catholics of England. Though there is no record of this petition reaching James, it seems as if this small petition was written in order to make a quick acknowledgement of James’s rightful kingship which the petitioners proclaim was necessary in order to avoid any ‘sinister information’ which might discredit the ‘loyal dutiful affection we have shewed in our forwardness of proclaiming your majesty as the lawful and rightful king of the realms...’ The substance of this petition does have a very abbreviated version of what is contained in the other, longer April petition. In the short petition, the author also states that their hope for toleration was founded in the ‘great hope which we have conceived of your princely lenity and benign nature [which] doth in a manner assure us, that your Majesty coming to this Imperial Crown will give happy end to our miseries and troubles’. There is also an allusion to the idea that they are the kind of Catholics who ‘are and ever will be ready to spend the best blood in our bodies for your Majesty’s service.’ More importantly, the petitioners ask pardon for their boldness in addressing the new king and beg him to accept the few lines they have written as a ‘declaration of our zeal and duty until further time and better opportunity serve us to manifest the same in more ample manner.’<sup>34</sup> This could be a reference to the more thorough petition also penned before James’s arrival into London. In either case, Tresham was never mentioned as being present at the presentation of these petitions, but that is not surprising considering he was still under the Statute of Confinement forbidding recusants to travel beyond five miles of their dwellings. But as Tresham was known for being a spokesman for the lay

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<sup>32</sup> ‘Declaration p?ntee au Roy d’Angletene par les Catholiques Anglois Sus les j?ntes affaires oleson Royaulme’, found in SP *James I*, 14/2 fol. 76-78.

<sup>33</sup> ‘Marin Cavalli, Venetian Ambassador in France, to the Doge and Senate’ May 25<sup>th</sup> 1603, *Calendar of State Papers Relating To English Affairs in the Archives of Venice*, vol. 10, 1603-1607, ed., Horatio F Brown (London, 1900), BHO, No. 748, pp. 28-42 (henceforth to be abbreviated as *CSP, Venice*).

<sup>34</sup> ‘The English Catholics to King James I’ (1603, April), in HMC, *Misc*, iii, p. 124.

Catholics in Elizabeth's time, he once more put his pen to authoring this small petition and very well might have been the author of the petition signed 'the Catholikes of England'. And as we will continue to see, Tresham was more than willing not only to employ his pen and wit for Catholic toleration, but to put his life and property in danger if receiving toleration meant proving his and the Catholic laity's loyalty to the new king.

From the start of the April petition, a conciliatory tone was established as the petitioners waxed eloquently over God's anointing of James with 'rare perfections and admirable gifts of wisdom, prudence, valour and justice.' This is not surprising considering the requests the petitioners were making in their plea for 'some commiseration and favour' from the new king. Also, James's 'provident judgment' to 'foresee what concernth both the spirituall and temporall' is established early by the petitioners.<sup>35</sup> This vital quality found in the king was at the forefront of James's *Basilikon* written to his son Prince Henry. In it, James gives a more general account of the virtues needed to be a prince and the duties which came with that office. While the book is concerned with a wide array of qualities a prince must have, particular attention is given to judgement and the punishment of the guilty and the rewarding of the virtuous. Employing this in their toleration talk, the petitioners would substantiate their calls for toleration with records of their acts of virtue, particularly loyalty to James.

Unlike the authors of petitions and political treatises defending Catholic toleration in the reign of Elizabeth, the authors were not as eager to engage outright in the battle over matters concerning religious and civil spheres. This is a critical aspect of this petition. The authors intentionally create contrasts between what would be perceived as common petitioning rhetoric and slight subversions of them. In this case, James's judgement, which is informed and a matter of providence, is contrasted with persecution that was guided by the 'misinformed anger of a woman', i.e. Elizabeth.<sup>36</sup> It was these contrasting characteristics that the English Catholics used to present a notion of toleration which subverted contemporary conceptions. Within this short petition, the authors wished to present an argument for toleration which matched the political context and their perceived ideas of James's character.

As if in cadence with James's speech before parliament in 1603, the petition set out to present toleration of the Catholic faith as a favourable grant from James where 'Queene

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<sup>35</sup> Powel, *The Catholikes Supplication*, p. 6.

<sup>36</sup> *Ibid.*, p. 14.

Elizabeths severitye is changed into royall clemencye.’<sup>37</sup> Recalling James’s intention to avoid exercising punishment through laws which might ‘have bene in times past further, or more rigorously extended by judges, then the meaning of the Law was, or might tend to the hurt as well of the innocent as of guiltie persons’, the petitioners hoped James would put into action the very theory he presented to his son in his *Basilikon Doron* of rewarding the virtuous and innocent and correcting the wrongful ways of the corrupted. Yet, while all this seems consistent with the Catholics’ reading of the proposed moderate king whose ‘minde was ever so free from persecution, or thralling of my Subjects in matters of Conscience’, James also made it clear that just as he was ‘a friend to their persons if they be good subjects: so am I a vowed enemy, and doe denounce mortall warre to their errors.’<sup>38</sup>

Shortly after Elizabeth’s death, this petition is not afraid to strike a quick divide between the old persecuting regime of Elizabeth and the clemency of the Stuart line. But the petitioners needed to do more than just draw on James’s political thoughts, they needed to draw on a more personal commonality. To support their claim for toleration, the petitioners emphasised loyalty which went back to James’s mother, for whom many ‘Noble-men and worthy Gentlemen, most zealous in the Catholike Religion, have endured some losse of lands and livings, some exile, others imprisonment, some the effusion of blood & life.’<sup>39</sup> Utilizing such commonalities was intended to draw a link between James’s kin and the Catholic community. The Catholics of England were willing to sacrifice to see his lineage succeed in reaching their entitled positions as rulers of the realm. The question was, was James going to return the favour? Illuminating the loyalty many Catholics showed his mother had its dangers as well. Some of the well-known Catholic supporters of Mary Queen of Scots, particularly those amongst the Jesuits like Robert Persons, were not known for being supporters of James, particularly in the wake of the Queen of Scots’ execution. After all, Persons was quite direct when he wrote to Anthony Standen in 1595 that through the Bond of Association James’s line to the throne was cut off through his mother, ‘if she was rightly executed for the crime pretended, and if parliament had authority to determine in that matter, as few I think will deny.’ The complications of the relationship between Elizabeth and Mary Stuart did not always work in James’s favour when it came to secure his claim to the

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<sup>37</sup> Ibid., p. 12.

<sup>38</sup> J.P. Sommerville, *King James VI and I: Political Writings* (Cambridge, 1995), p. 139.

<sup>39</sup> Ibid., p. 26.

English throne. In a series of speeches prior to his accession James was forced to ask parliament for their support, particularly if funds were needed to back his claim to the throne.<sup>40</sup>

While politically astute in making deals, James was not in a position to give in to the demands when he held the upper hand, thus the petitioners had to tread lightly in this area. Invoking such a relationship with James's mother and bringing up such a 'painful memory' was reported by Cavalli to be the reason that the ten petitioners presenting a petition to the king, 'in place of being gratified in their demands... were ordered to leave the kingdom.'<sup>41</sup> Protestations of loyalty in this manner were by no means new to Catholic calls for toleration, and Michael Questier is quick to point out that these 'syrupy' loyalty pleas were not far off from those seen in the evil counsellor modes of Catholic political thought which continued to reverberate at the accession of James I.<sup>42</sup>

Though their pleas of loyalty to the English crown were not entirely novel, proving that their loyalty equated to a commitment of political obedience was another thing. James was wary of those who 'claimed to be Catholic, but in truth, they were Papist.' Within this group, James further distinguished between those who were un-educated, the 'Layickes', who simply held the faith taught to them, and those who were educated, the 'Clerickes', who maintained that the Pope was the spiritual head of the church and civil head over kings and emperors. Avoiding being seen as such Papists, the petitioners had to find a way to place themselves within James's qualification of Catholics who were 'quiet and well minded men, peaceable subjects' rather than those who through 'curiosity, affection of novelties, or discontentment in their private humours become stirrers of sedition and perturbers of the common wealth.'<sup>43</sup> This was not an easy task to accomplish for the petitioners. Though James acknowledged the 'Romane Church to be our Mother Church', he also expressed the need to 'put a difference betwixt mine owne private profession of mine owne salvation, and my politike government of the Realme for the weale and quietnes thereof.'<sup>44</sup> While James professed to agree with Catholics in some core matters of faith,

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<sup>40</sup> See *Calendar of State Papers Relating to Scotland and Mary Queen of Scots*, vol. 13, 1597-1599, ed., J.D. Mackie (London, 1969), pp. 133-134; Lake, 'The King (The Queen) and the Jesuit', pp. 247-248.

<sup>41</sup> 'Cavalli, May 25<sup>th</sup> 1603', *CSP, Venice*, x, pp. 28-42.

<sup>42</sup> Michael Questier, 'Elizabeth and the Catholics' in *Catholics and the 'Protestant Nation': Religious Political and Identity in Early Modern England*, ed., Ethan Shagan (Manchester, 2005), p. 87.

<sup>43</sup> James I, *Basilikon doron, Or His Majesties instructions to his dearest sonne, Henry the prince* (Edinburgh, 1603), p. 275.

<sup>44</sup> Sommerville, *King James VI and I*, pp. 138, 139.



he saw the Roman Church as corrupted and in great need of cleansing. This position by James, according to Kenneth Fincham, allowed him to ‘play down doctrinal differences and reserve his criticism for papal claims to supremacy.’<sup>45</sup> In doing so, James declared Catholic clerics, who upheld the doctrine of the pope’s supremacy and practice of excommunication, unfit to remain in his realm.

The petitioners then needed to establish a long line of loyalty that transcended religious divides, not excusing religious loyalties as a means for disobedience but rather promoting civil duty as a binding force bringing together Protestants and Catholics. We see this common thread of defence taking place throughout this early period, particularly at the death of Elizabeth and in proclamations of James as rightful king.

Within the Tresham Papers there is a memorandum by Thomas Tresham recalling his prominent role in proclaiming King James I. Tresham describes the uncertain atmosphere surrounding the queen’s death and the danger which would befall him if he were to proclaim James king before the queen had actually died. Though faced with this danger of being charged with high treason, Tresham’s account depicts his zeal for the Stuart king describing how on his way to Northampton he ‘proclaimed the King to all travellers & c. as he did overtake.’<sup>46</sup> There was for Tresham, and all of Northampton, an urgency in making known their proclamation. Just as the author presented in the short petition of April 1603, Tresham argued that there was a need to proclaim the king as early as possible to avoid the ‘spreading of rumours’, or ‘some pretenders to give out that Northampton town and all the Chief gentlemen there do stand against the King, whereby great calamity may ensue.’<sup>47</sup> We see here, just as we have before with Tresham, the lead role he played for the Catholic laity in supporting the Catholic communities’ call for toleration, even if it meant enduring potential punishment. This attitude of Tresham is summarised in a letter to Lord Henry Howard of July 1603. Here, Tresham remembers his ‘triple prenticeship of one and twenty years’ - a reference to his long-term confinement for his recusancy and connection to Jesuits like Campion, but, just as he had done before, Tresham was ready to once more serve a ‘like long prenticeship to prevent the forgoing of my beloved, beautiful and graceful Rachel.’ Tresham’s allusion refers to the story of Jacob’s marriage to

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<sup>45</sup> Fincham and Lake, ‘The Ecclesiastical Policies’, p. 28.

<sup>46</sup> HMC, *Misc*, iii, p. 118.

<sup>47</sup> *Ibid.*, pp. 122-123.

Rachel in Genesis 29. Here, Jacob travelled to his kinsman's family in the east where he laboured seven years for his uncle Laban in order to receive his bride Rachel as payment. However, rather than receiving Rachel for his labour, Jacob's uncle tricks Jacob into taking his elder daughter Leah as his bride. Jacob's love for Rachel was so great that he was determined to receive his desired bride. Jacob then labours another seven year for his uncle, finally receiving Rachel. Tresham's allusion is twofold. In the first insistence, Tresham's service, like Jacob's, was unjustly rewarded. Though in Tresham's sight his labour for the Catholic cause was not in vain, his incarceration was not what he believed he should have received for such labour. The second aspect of this allusion is that Rachel was of course Jacob's greatest love and she is connected throughout the Bible to God's people and the suffering which they endured at the hands of evil rulers.<sup>48</sup> Tresham's Rachel was the Church and to Tresham it represented the body of believers who had fought so diligently in the reign of Elizabeth to defend their faith and if necessary would do so again at the accession of James I. And although "perfectest bodies have their imperfections", Tresham was not going to give up labouring for his cause and was making it known that his support of the king was evermore the "object of my eye."<sup>49</sup>

Tresham's bravery did not just stop at a proclamation of the King's rightful claim to the throne. Pushing past the crowds who were appalled that Tresham would enter their town on horseback he 'dared any of them to withstand [him] in that service of the King, which if they did or dared to do he would denounce him whosoever for a traitor.' Arriving at the mayor's house, and calling twice without answer for him to come down and join him in proclaiming James's kingship, Tresham climbed the stair and entered to make his service known to the mayor. Tresham's display of loyalty might have been the perfect opportunity for a man who spent so much time in prison under Elizabeth, to seize the initiative and display his loyalty with more than rhetoric. We can only imagine that, as with other Catholics, he might have been expecting some degree of clemency, particularly in alleviating the penalty of recusancy fines which were taking their toll on Tresham's estate.<sup>50</sup> But more than that, Tresham's account suggested he was putting

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<sup>48</sup> See Matthew chapter 2 and Jeremiah chapter 31.

<sup>49</sup> 'Sir Thomas Tresame to Lord Henry Howard' 1603, July 16, in HMC, *Misc*, iii pp. 124-125.

<sup>50</sup> Tresham and 15 other recusants did receive from James I, on 23 July 1604, a release of the £20 a month penalty retroactive from the death of Queen Elizabeth. In the beginning of Lecey's *Apology* it is noted that certain recusants were taken to the privy council where they were insured that James would not hold recusancy against them as contempt and they would be relieved of their fines. See also the note by

into practice the very ideas being presented in the petitions: loyalty and obedience which did not allow religion to become a mask for disobedience. When inside the mayor's house, after saluting the gentlemen there, he proclaimed the new king saying, 'Let us pray to God to prosper him', yet one who stood next to Tresham belted out 'let us pray that the King Prove sound in religion' to which Tresham would rhetorically reply, 'as if to say if the king be not of your religion that then you owe him not duty and loyalty.' Tresham seemed determined not to fall into the trap of giving away any hint that religious affiliation predetermined loyalty, nor was he about to enter into any conversation which might put his proclamation of the new king in the same sphere with talk of the pope's power to excommunicate. When one of the gentlemen pressed him on the point Tresham threatened him that if the justice of the peace would not 'put him to silence', Tresham himself would and 'turn him down the stairs.'<sup>51</sup>

Tresham's public action had very real as well as implied political intentions. In the first case, Tresham was intentional about making a clear distinction between the old reign of Elizabeth and the new reign under James. For him, Elizabeth's reign had been tarnished by policies which were set on persecuting differences rather than rewarding loyalty. An emphasis placed on establishing James's new reign, where the old could be washed away and the new made clean would mean a fresh start for loyal Catholics. In the second instance, Tresham's determination to not only be the first to proclaim James as king, but very publicly do so was his chance of making an assertion of Catholic loyalty. Such action was not only a step towards restoring the good faith about Catholics' political obedience to the new king, but implicitly, what was due in return. A display of such bravado and loyalty was fit to be granted the king's favour and the favour Tresham desired was a toleration for him and those he represented.

Utilizing these accounts allows us to zoom in on the context in which these petitions were being drafted at the accession of James I. Tresham's role as an advocate for Catholic toleration was underlined in the farewell letter of Thomas Hill, a priest imprisoned in Newgate. Here Tresham was exalted as another Moses standing between the Catholics of England and those

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Tierney, *Dodd's Church History of England*, iv, p. 37, fn. 1:4. To this, Tresham drafted a petition in Michaelmas term to the privy council asking that since the release they also be exonerated from their payments until the current Michaelmas term, since they had already paid the fines the previous April before the release. *CSPD, James I*, x, p. 136; Thomas Tresham, 'Petition to the Privy Council', in HMC, *Misc*, iii, p. 138.

<sup>51</sup> HMC, *Misc*, iii, pp. 120-123.

ranged against them. Hill was expecting to be executed the day after he penned the letter to Tresham. Its content allows us to see the significance of Tresham's role as a defender of the Catholic faith, but also as the lead petitioner. This allusion to Tresham as another Moses signifies his prominence in two ways. Firstly, as Moses was selected by God to lead the Jewish people out of slavery, so too does Hill attribute this honour to Tresham. His conviction for the Catholic faith and his willingness to confess this with public acts of recusancy, according to Hill, made his 'very exterior countenance' as 'illustrious and bright' as Moses 'after he had been conversant in the holy mountain with Almighty God'. Tresham's position as a leader in the Catholic community came at a great price. Just as Moses removed himself from the Pharaoh's house and reunited himself with his Jewish kin, Tresham's recusancy had removed him politically and put him out of favour with the Elizabethan regime, favour he hoped to re-establish with the new Stuart regime. Secondly, although Tresham's social status made him a target for recusancy laws it also gave him an access into the political avenues in which petitions could find their way to the king. Just as Moses had greater access as the once adopted son of the pharaoh to petition for the release of his people from slavery, Tresham, though politically side-lined, had the opportunity through his petitionary efforts to stand in the gap between the Catholic laity and the king. Tresham's memoranda and his hand in drafting petitions exemplifies the lengths to which the Catholic laity were willing to go to prove their loyalty to the new king.<sup>52</sup>

Loyalty, then, would continue to be at the forefront of Catholic petitions for toleration. In an attempt to stall the legislation reviving recusancy laws, 'the Catholic priests' drafted a letter to James I in which they said they were surprised that, though they disavowed the Pope's civil authority in a submission of April 1604, they still were 'not allowed their country and liberty.'<sup>53</sup> If exemplifying loyalty was to become the cornerstone of the defence for toleration Thomas Tresham was going to be its archbuilder. The role of Tresham in the calls for toleration can further be seen in another petition drafted in the midst of these debates over Catholic recusancy in 1604. Signed by one John Lecey and said to be printed at Douay, *A Petition Apologeticall* was in fact printed on a secret press in London, and is claimed by Victor Houlston and Michael Questier to be the work of Thomas Tresham.<sup>54</sup> The apology was described by the author to be a

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<sup>52</sup> 'Thomas Hill to Sir Thomas Tresham, 1603', in HMC, *Misc*, iii, p. 114.

<sup>53</sup> *CSPD, James I*, viii, 1603-1610, p. 139.

<sup>54</sup> Houlston, 'Filling in the Blanks: Catholic Hopes for the English Succession', p. 94. See also, a reference to the same by Questier, in *Catholicism and Community*, pp. 265-266.

reprinting of the petition of the ‘lay Catholikes of England’ which he received ‘by way of Bruxels.’<sup>55</sup> However, the petitionary efforts of Tresham to halt the recusancy legislation were praised by Richard Bray in a letter of November 17 1604. Here Bray exalts Tresham for his ‘great and laborious sweats merited of all English Catholics’, in which Tresham had ‘presented for them all a petition so judicially grounded, so orderly composed, so earnestly pursued...’<sup>56</sup>

Tresham’s act of proclaiming James I king of England and the drafting of the petitions at his accession, all centred around the idea that loyalty exacted toleration. If the Catholics could prove their loyalty and convince James of their genuine adherence to his princely authority, they in turn should receive a degree of toleration. *A Petition Apologeticall* of 1604 reiterated a loyalty that went beyond religious divides, referencing the willingness of Catholic recusants in England and Ireland to fight alongside Protestants against Catholic Spain. Lecey contended that ‘if either zeale of extirping the Protestant religion thence, and firme establishing of the Catholike religion, could have prevayled with them’, then fighting alongside Protestants made no sense if a Catholic takeover was the real intention of his Catholic subjects. To Lecey, as well to the early petitioners, this proved that as far as loyalty to the king was concerned they were ‘like pure Gold, fined and refined in the fine of many yeares probation, and therein not to be any way stayned.’<sup>57</sup> The intention of recalling these displays of loyalty was important for showing that the petitioners maintained and supported James’s claim to the throne, a claim that was as old as ‘Albion’, a reference which asserts the unity of the British Isles. Lecey assured James that not even his ‘Maiesties zeale in the Protestant religion, [could] any way alter or diminish the just conceit, and dutifull consideration we carried to that justice and right, which God and nature had prepared for you from your cradell.’<sup>58</sup> Much was given up to ensure the Stuart succession was successful and to maintain the true Catholic faith which James himself professed to find ‘agreeable to all reason and to the rule of his conscience.’<sup>59</sup>

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<sup>55</sup> John Lecey, *A petition apologeticall, presented to the Kinges most excellent Maiesty, by the lay Catholikes of England* (Doway, 1604), p. 3.

<sup>56</sup> HMC, *Misc*, iii, p.139. Richard Bray could have been Father Richard Bray, a convert to Rome in 1583 and said to be involved in the conversion or reconversion of Edward Overton, a later missionary to England. See H. Chadwick, ‘Father Braye Jesuyte’, *British Catholic History*, 1, 2 (1951), pp. 125-127.

<sup>57</sup> Lecey, *A petition Apologeticall*, p. 25.

<sup>58</sup> *Ibid.*, p. 27.

<sup>59</sup> James I, ‘A Speech as it was Delivered into the Upper House of Parliament...March, 1603’, in *The Political Works of James I* ed., Charles Howard McIlwain (Cambridge, 1918), p. 274.

As was the case with the April petition of 1603, Lecey's supplication paid close attention to what James had to say about the religious climate of England. The degree to which James would accept those of the Catholic faith depended not only on religious doctrine, but also on the practicalities of social peace and unity. James's discussion of ranks and sorts of Catholics provided a political and ecclesiastical rationale for creating a de facto form of toleration. Loyal subjects who otherwise never had a chance to know truth deserved a toleration because the king 'would be sorry to punish their bodies for the error of their minds, the reformation whereof must onely come from God and the trew Spirit.' For those who were dangerous to social peace and contrary to the commonwealth, James would take 'greater heed to their proceedings, and correct their obstinacies.'<sup>60</sup> The royal supremacy over the church, entrusted to James, made it his duty to promote godly and Protestant patterns of worship and ecclesiastical government. Thus, a commitment of Catholics to the pope in ecclesiastical affairs led to a sharp divide in the ability to be Catholic by doctrine and practice and maintain loyalty to the new king. However, it was not the intention of the petitioners to present a notion of loyalty that separated them from their spiritual obedience to Rome. Loyalty here was, as Michael Questier has described, not a purely secular quality in which church and state ties were so easily separated.<sup>61</sup> To support their plea for toleration, Catholics' loyalty to James lay not just in refraining from conspiracy and subversion, but in the peaceful maintenance of the Catholic religion that was 'venerable for antiquity, majesticall for amplitude, constant for continuance, irreprehensible for doctrine, inducing to all kinde of vertue and piety, disswading from all sinne and wickednesse.'<sup>62</sup> Like James, these Catholics used a language concerning the church which spoke of a more purified Catholic religion 'so conformable to natural sense and reason, and finally so agreeable to the sacred text of God's word and Gospel.'<sup>63</sup> In this manner, the petitioners' rhetoric drew on an assortment of traditional methods to uphold their argument; but the most important detail rested in their willingness to mould their justifications outside of the traditional theological arguments presented by Elizabethan Catholics and, more pointedly, toward James's practical nature.

With loyalty and a toleration of the Catholic religion, a restoration of peace would be established in England. This peace was not to be enforced by the sword through persecution and

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<sup>60</sup> James I, 'Speech, March 1603', p. 275.

<sup>61</sup> Michael Questier, 'Catholic Loyalty', p. 1132.

<sup>62</sup> Christopher Muriell, *An answer unto the Catholiques supplication* (London, 1603), p. 29.

<sup>63</sup> *Ibid.*, p. 28.

coercion, but was to be one in which the free practice of religion would lead to ‘swords being changed into ploughs, and launces into sithes.’<sup>64</sup> This was a plea for creating productive peace that would restore England’s relationship with other Christian nations, encouraging trade, relieve excessive subsidies and taxes and discontented minds which caused unrest and trouble.<sup>65</sup> The ideal of social peace was in every way at the forefront of James’s mind when he took the throne. In his first parliament as new king James lamented the lack of peace the realm had experienced by occasion of religious division. Declaring his mind in points of religion and taking ‘occasion to discover somewhat of the secrets of my heart in that matter’, James professed to ‘wish from my heart, that it would please God to make me one of the members of such a generall Christian union in Religion, as laying wilfulnesse aside on both hands, wee might meete in the middest, which is the Center and perfection of all things.’<sup>66</sup> James’s view of a monarch’s necessity to find moderation within the extremes became an important theme in his evaluation of the English religious climate and a point of entry into discussions of toleration for the lay Catholics of England. It was peace, through the unification of his realm, that James sought after in fulfilling his duty as God’s anointed prince. Playing to these royal concerns, the Catholic petitions were not freighted with theological or philosophical arguments. The focus of the petitions framed the arguments for toleration within the realities of the political and social climate of England at the accession of James I.

James’s categories of acceptable and unacceptable groups and practices, and in turn the perceptions of him by his Catholic subjects, became the framework of calls for toleration in the first years of his reign. The context in which the toleration petitions of the early Jacobean era were presented was politically and ecclesiastically shaky. Pushing the limits of religious practice beyond the previously established status quo forced petitioners to be subtle yet forceful, traditional and yet imaginatively nuanced. In this way, they had to navigate the way in which James perceived his role as God’s appointed over the church, all the while confronting fear of disloyalty, political and ecclesiastical subversion, heresy, and schism. The task of the Catholic petitioners was to construct their pleas with a language which did not merely find the balance between unity and disunity, but which made its way through the cracks between civil unity and

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<sup>64</sup> Ibid., p. 27.

<sup>65</sup> Ibid., p. 26.

<sup>66</sup> Sommerville, *King James VI and I*, pp. 137-140.

religious uniformity. In the early months of James reign, little was known about exactly how the king was going to work out the details of bringing unity to the religious climate of England. The Catholic hope was that the moderate king's idea of uniformity made a little wiggle room for variations of religious practices to exist, as long as civil obedience was first and foremost. James had to be convinced that a measure of toleration would produce not merely occasional conformity, but political loyalty and a means to social peace.

### **The Tolerable and Intolerable: Catholic Claims and Protestant Refusals**

The connection between loyalty and peace in the rhetoric of Catholic petitioners was a logical argument for toleration. Where historians have looked to the ideas of later Puritan writers, such as Roger Williams, for the origins of the idea of peaceful existence amongst differing confessional groups, those petitioners associated with the Appellants wanted to distinguish themselves from the stained reputation of the Jesuits looking to re-establish Catholicism as the only religion of England. The importance of this separation would become a distinguishing feature of the toleration petitions presented by those known as the appellant priests.

The Archpriest Controversy reached its height in 1602, but the development of religious and political thought associated with the group of the so-called Appellant Priests continued to be forged after the controversy ended. In the transitional environment of James I's accession the appellant priests found an avenue in which they could express their own thoughts on how to settle the religious division plaguing James's newly inherited realm. In the wake of the renewal of recusancy laws in 1604, the appellant priest John Colleton set out in a *Supplication to the Kings most excellent Maiestie wherein, seuerall reasons of state and religion are briefly touched* to construct an argument in favour of toleration for Catholics. Colleton, however, did not have all Catholics in mind. Those who he believed to be the instigators of Catholic troubles in England, the Jesuits, he and other appellant priests were more than willing to give over to exile if it meant toleration for the rest of the Catholics in England.

Colleton was originally sent from the English College in Douai on the mission to England in 1580. It was on this mission that Colleton was arrested in the company of Campion in July 1581. Moving to the Marshalsea prison from the Tower of London, Colleton was eventually exiled in 1586. Having met Persons at Rouen, Colleton was presumably familiar with his writings and influence. Eventually settling back in England by 1587, Colleton found himself



closely associated with John Mush, who had his own run-ins with Persons earlier over conformity. Like Mush, Colleton would become entangled in the Archpriest Controversy and was suspended by George Blackwell. Being the author of *A Just Defence of the Slandered Priests* (1602), Colleton was familiar with arguments surrounding the authority within the Catholic church and eventually would publicly deny the pope's deposing power.<sup>67</sup>

In his supplication of 1604, Colleton explained that a requirement to fully restore the Catholic Church in England would not be needed if the free exercise of the Catholic faith was allowed. In his mind, 'toleration of Catholike religion seemeth very convenient for strengthening and securing your Majesty against all worldly attempts foraine and domesticall.'<sup>68</sup> While we have seen this argument before, Colleton attempted to provide a very practical approach to toleration, particularly when it came to advantages for the state. The Appellant party's chances of reaching a settlement with the new regime were to some extent grounded in utilizing the idea that the Jesuit party favoured papal supremacy. And it was known that the Appellants were more than willing to give up the Jesuits, helping to expel them from the realm, if it meant being able to experience a degree of freedom in exercising their religion. With this in mind, there is little doubt that Colleton was alluding to the previous decades riddled with plots and war against Elizabeth and England. However, with the exercise of the Catholic faith permitted, the attempts to restore the church through foreign or domestic subversion and conspiracies would be eliminated. Toleration then, in this sense, did not need to come necessarily by official decree, as much as it was desired in practice. When the early Catholic petitioners requested toleration, there was commonly a plea for 'the free use of Religion, if not in publike Churches, at least in private houses; if not with approbation, yet with toleration, without molestation.'<sup>69</sup>

The free practice of religion was also, in the minds of the petitioners, a means to challenge and reveal error. As John Colleton argued, if not the free practice thereof, at least the ability to dispute publicly over points of faith and truth was the root of extinguishing false religion and teachings. This was, 'of all other meanes, the most potent, to reunite all parties in

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<sup>67</sup> Theodor Harmsen, 'Colleton, John (1548–1635), Roman Catholic priest,' ODNB; McCoog, *The Society of Jesus in Ireland, Scotland, And England*, p. 245; Stefania Tutino, *Law and Conscience: Catholicism in Early Modern England, 1570-1625* (Burlington, 2007), pp. 70-71.

<sup>68</sup> John Colleton, *A supplication to the Kings most excellent Maiestie wherein, seuerall reasons of state and religion are briefly touched* (London, 1604), p. 5.

<sup>69</sup> 'Catholiques Supplication' in Muriell, *Catholiques Supplication*, p. 29.

one, the deceived being hereby let to see their errors. So that by the graunt thereof, no doubt your Majestie shall get eternall praise over the Christian world, the Protestant religion everlasting fame if she prevaile.’<sup>70</sup> Just as we see in the previous petitions there is a sense of toleration here that not only lifts England from its social unrest due to religious controversy, but of a toleration that would actually bring about religious unity. Though Colleton’s point about the triumph of Protestantism is entirely hypothetical, and probably also tactical, he opens the door to show that Catholics were willing to openly dispute their points of faith and be convinced otherwise. Colleton would even take his plea one step further in distinguishing the teachers of Catholicism from the laity. Here, toleration is granted to some degree ‘at least by granting a publike Disputation, to the end we may be heard, our cause tried, and our teachers receive confutation, and the deserved shame of their false doctrine if in case they have misled us.’<sup>71</sup> This was an overt connection to James’s claim that only the spirit of truth was able to convert and not the sword. In each of these cases, the Catholic petitioners sought to make a public display of both the truth in their faith, as well as the truth in their devotion to being loyal subjects of the king.

These lines of justification for toleration also contained more overt attempts to frame Catholics as the archetype of loyal subjects at the expense of others, particularly Puritans. This was a long-standing tactic of both Puritans and Catholics at attempting to portray the ‘other’ as politically subversive.<sup>72</sup> After all, James’s disgust with Puritans was just as strong as his distaste for the corruption of the Roman Church or those he deemed Papist. In a speech before parliament in 1604, James had already distinguished between the religious groups active in England and declared his detestation for those that ‘lurked in the bowels of his nation.’ The Puritans whom James despised were those who were subversive in their discontent ‘with the present government and impatient to suffer any superiority’. Those Puritans who desired to rid the church of its hierarchical structure were those whom he believed could not be ‘suffered in any well governed Commonwealth.’<sup>73</sup> What James desired from his subjects, Catholics and Protestants alike, was

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<sup>70</sup> Colleton, *A Supplication to the King*, p. 49.

<sup>71</sup> *Ibid.*, p.49.

<sup>72</sup> Peter Lake, ‘Anti-popery’, pp. 72-106. For Catholic presentations of Calvinism and Calvin himself as politically subversive and the common ground they could find with anti-Calvinists, see Peter Marshall, ‘John Calvin and the English Catholics, c.1565-1640’, *The Historical Journal*, 53, 4 (2010), pp. 849-870.

<sup>73</sup> James I, ‘A Speech, March 1603’, pp. 274-275.

moderation and loyalty. He made this emphasis clear in the preface to the 1603 edition of his *Basilikon Doron*. James rebuked those labelled ‘puritan’ as

Those brainsick and heady preachers who show their disloyalty by teaching to hold the civil magistrate in contempt, leaning to their own dreams and revelations...making for every particular question of policy of the Church as great commotion...making the scriptures to be ruled by their conscience and not their conscience by the scriptures.<sup>74</sup>

The early calls for church reform by Puritans reminded James of his difficulty in maintaining authority over Presbyterians in Scotland, and thoughts of social disorder and rebellion led him to limit his approval of any large-scale changes. If Catholics were to gain any degree of toleration, they would have to address not only James’s view of differing Catholic factions, but also emphasise the distinction between religious factions which already existed and were receiving toleration before James’s accession to the English throne. Colleton’s argument for the ‘dipenall use or toleration of their religion’ was that the Puritans’ numbers increased daily and in their ‘presuming, imperilous, and hotter disposition and zeale, ever strongly burning in desire to reduce all things to the forme of his owne Idea,... attempt the overthrow of the Protestant, and bring the kingdome, especially the Ecclesiasticall state to a partie or popular forme of government.’<sup>75</sup> It was unsettling enough to James that on entering England he was having to deal with ‘dissentions in the Church, of many disorders, as he heard, and much disobedience to the lawes, with a great falling away to Popery.’<sup>76</sup> As he saw it, the duty of the prince was to provide peace and unity and James saw himself as the physician who was not an ‘emie to the life of a sicke man, because he would have his bodie purged of ill humours’; no more was he an enemy to the church because he would ‘push to have them reform their errors.’<sup>77</sup> In this manner, James was the defender of the faith and head of the English church; thus to be loyal to James meant loyalty to the church and the doctrine established by the church.

Whether James liked it or not, the reality of the waning year of Elizabeth’s reign saw the increase of religious divisions within England. The Catholic petitioners, regardless of which side they fell on in the Archpriest Controversy used this to their advantage. Just as Persons had done

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<sup>74</sup> James I, *Basilikon Doron*. found in the preface to the reader, p. 16.

<sup>75</sup> Colleton, *A Supplication to the King*, p. 4. A similar argument is presented by Richard Broughton in 1601, see Questier, ‘Catholic Loyalty’, p. 1133.

<sup>76</sup> William Barlow, *The summe and substance of the conference which, it pleased his excellent Majestie to have with the lords, bishops, and other of his clergie, in his Maiesties privy-chamber, at Hampton Court* (London, 1604), p. 5.

<sup>77</sup> James I, ‘A Speech, March 1603’, p. 274.

before, the Catholic petitioners placed Puritans on par with the Protestants as they described four distinct religions being present at James accession:

Protestants, who have dominiered all the former Queenes daies: Puritanes, who have crept up apace among them: Atheists or Polititians, who were bred vpon their brawles and contentions in matters of faith: And Catholikes, who as they are opposite to all, so are they detested of all.

Assuring James that Puritans and atheists could hardly be suppressed without great difficulty, they insisted that Catholics should receive as ‘much favour, as others of contrarie religion (to that which shall be publicly professed in England) shall obtaine at your hands.’<sup>78</sup> While pointing out that Puritans existed alongside Protestants would have not settled well with James, as he detested the group, it also served to address a very plain but significant idea – a degree of free religious practices already existed in England. Toleration, whether de facto or de jure, was being dispended to other religious groups, and Catholics being ‘not inferiour to the Protestant or Puritane, either in number, or alliance, or generositie of spirit and resolution amongst them’, should rightfully receive just as much freedom in their public profession.<sup>79</sup> While not a profound theoretical or theological argument for toleration, this point drove home what James already knew and disliked about his newly inherited and religiously divided kingdom.

These associations of Puritans with Protestants were a thorn in the side for those who understood that James had a significant distaste for what he deemed religious fanaticism. The presence of these petitions circulating at such a transitional and unsettling time sent quite an alarm through Protestant circles and incited responses by Gabriel Powel, Christopher Muriell and Matthew Sutcliff. Just as these Catholic petitions were well versed in inverting Catholic and Puritan reputations, the rebuttals to these calls for toleration did not hold back on framing Catholics as of the greatest threat to the Jacobean regime.

In an overwhelmingly anti-papist culture, the Catholic petitioners’ endeavours to separate themselves from their popish stigma proved difficult. The rebuttals to these calls for toleration were filled with references to the princely duty to uphold and protect the church from such acts as blasphemy and heresy which often incited schism. The Jacobean intellectual rationale for justifying persecution and coercion largely centred on the theological reasoning proposed by St. Augustine, and systematised by Aquinas. Through this, the church and the state were justified in

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<sup>78</sup> Powel, *The Catholikes Supplication*, p. 10.

<sup>79</sup> Colleton, *A Supplication to the King*, p. 3.

using coercion to bring the church back into uniformity.<sup>80</sup> The fervent anti-papal polemicist Gabriel Powel, for example, denounced the toleration of Catholics and hoped his ‘Majestie will tolerate no Papists to live and to blaspheme our God with Idolatrie and false worship among your Christian Subjects.’<sup>81</sup> Powel, like other Church of England clergymen such as Matthew Sutcliffe, was zealous in his opposition to Catholic toleration. Although Powel was a staunch anti-Catholic polemicist, his hard-line conformist stance also led him into confrontation with non-conforming Puritans as well. Both Sutcliffe and Powel represented the ‘centre’ of the ecclesiastical establishment. Yet neither of these two men believed that Papists were on par with Puritans, and Powel made it clear throughout his writing that he believed Papists were the greater threat to the king and state.<sup>82</sup> Thus, Powel and other supporters of the Protestant regime remained adamant that the duty of the Protestant magistrate was to ‘purge their lands of Catholic idolatries’ and falsehood; even Catholic worship in private places was intolerable.’<sup>83</sup>

The evils of tolerating Catholicism, as described in Powel’s and Muriell’s rebuttals, left a seemingly uncrossable chasm between the proposition of the Catholic tolerationists and the practical realities of a king called to uphold God’s truths. On both sides of the religious divide the act of tolerating blasphemy or idolatry was unacceptable. In fact, as Alexandra Walsham has pointed out, the attachment of toleration to such acts is largely what allowed the idea of toleration to hold negative connotations throughout the sixteenth and seventeenth centuries. Where the Catholic petitioners invoked toleration in a social, political sense, a notion of toleration that allowed a degree of wickedness or wrongdoing in order to attain social peace, the rebuttals emphasised a more judicial notion of the word. This was a move Persons made in the early years of the Jesuit mission when writing in response to those who supported occasional conformity. Persons illustrated his point by referring to the biblical story found in 2 Kings. He confronted the question of toleration of idolatry utilizing the story of Naaman the Syrian and the king. Persons was explicit that Naaman was given a ‘toleration...to do this temporal service unto the king’ by accompanying him to his temple, but the prophet, Elisha, could not have ‘licensed

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<sup>80</sup> Walsham, *Charitable Hatred*, pp. 40-42.

<sup>81</sup> Powel, *The Catholikes Supplication*, p. 11.

<sup>82</sup> Todd, M. ‘Powel, Gabriel (bap. 1576, d. 1611), Church of England clergyman and polemicist’, ODNB; Anthony Milton, *Catholic and Reformed: the Roman and protestant churches in English protestant thought, 1600–1640* (Cambridge, 1995), p. 45.

<sup>83</sup> Quoted in Coffey, *Persecution and Toleration*, p. 29; Thomas Bilson, *The True Difference between Christian Subjection and Unchristian Rebellion* (1585), pp. 16, 26-28.

him' to commit idolatry.<sup>84</sup> What we see here is a limitation to the jurisdictional notion of toleration, whereby Elisha the prophet could not grant a toleration of idolatry because he did not have authority to pardon such a sin. Allowing idolatry, according to Gabriel Powel, was not 'warranted by the law of God; such as toleration of popish idolatrie can never be.'<sup>85</sup> Where toleration is linked to the licensing of heresy, idolatry or blasphemy, the pejorative sense of the word toleration dominates the discourse. Toleration in these cases was a result of a subversion of authoritative boundaries and thus often used to show the dangerous nature and potential slippery slope which toleration of various religious practices and beliefs could lead to.<sup>86</sup>

The position of Powel against Catholic toleration was predicated on restoring both uniformity and correcting the erring ways which could lead to two contrary religions and the potential for division. Powel and others, such as Matthew Sutcliff, were adamant that tolerating the idolatry of the Papists 'is a meanes to harden them, whereas otherwise there might be hope of them.'<sup>87</sup> This line of argument was not simply upheld to rid the nation of unwanted Catholics, forcing them into excommunication or exile, but rather as a means to reprove and correct their erring ways and return them to the true faith. While these justifications for intolerance had a theological basis, the importance of maintaining a peaceful and unified society was just as significant to creating doctrinal uniformity.

One great danger of heresy and blasphemy was its ability to create schism. Schism within the church brought division, not just within the church itself, but also between individuals and groups in wider society. This division was a danger to maintaining social peace and a balance within society. As order and harmony was at the root of a functional early modern society, many saw religious division as distorting God's plan for Christian unity. The danger then of the heretic or blasphemer was not just theological impurity, but subversion of the order of church and civil authority put into place by God.<sup>88</sup> In William Barlow's account of the Hampton Court Conference of 1604, James made it clear that he would have 'one Doctrine and

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<sup>84</sup> Robert Parsons, *A brief discours contayning certayne reasons why Catholiques refuse to goe to church* (Doway, 1580), pp. 62-64.

<sup>85</sup> Gabriell Powel, 'A Briefe Consideration of the Catholikes Reasons for Toleration of Their Religion in England, intimated in their Supplication to his Highnes', in *The Catholikes Supplication*, p. 21.

<sup>86</sup> See more of this analysis in K. Thomas, 'Cases of Conscience', in J. Morrill, P. Slack, and D. Woolf (eds), *Public Duty and Private Conscience in Seventeenth-Century England* (Oxford, 1993), pp. 29-56.

<sup>87</sup> Powel, 'Supplicatorie Counterpoysse of the Protestant', in *The Catholikes Supplication*, p. 34.

<sup>88</sup> Conrad Russel, 'Arguments for Religious Unity in England, 1530-1650', *The Journal of Ecclesiastical History*, 18, 2 (1967), pp. 201-226.

one discipline, one Religion in substance, and in ceremonie.’<sup>89</sup> Division was not an option, and through a continuation of the contemporary church government, James would work to maintain unity throughout his realm.

We have seen the way in which the Catholic petitioners shaped the language of toleration around their perceived ideas of who James was, or at least who James said he was, and who he should be as king. The rebuttals to these toleration arguments attempted to rectify the subversions of who and what could and could not be tolerated. This exposes the fluidity and malleability of the tolerationists in presenting arguments for toleration which did not conform to traditional ideas of doctrinal supremacy, or more importantly the pope’s supremacy, and the battle over spiritual and civil spheres as we saw in the middle years of Elizabeth’s reign. Rather, we see a more nuanced manipulation of toleration ideas fit for a king who above all else desired not just obedience but loyalty that would lead to social peace. The Catholic petitioners analysed in this chapter knew James’s stance on the religious divide in England and understood that an attempt to play the doctrinal trump card was not going to work.

## Conclusion

The Catholic toleration talk formulated in this moment made every effort to separate and invert the negative connotations associated with the toleration of wickedness. But it was the pejorative notion of toleration that would become the fiery dart thrown by Protestant defenders such as Powel and Muriell against their Catholic enemy. The intent of those against tolerating Catholics was to remind James that God’s toleration of the wicked, the toleration of Catholics envisaged in Dudley Fenner’s *An Antiquodlibet*, or the peaceable nature of toleration mentioned above was not a free license to practice licentiousness or wickedness. This jurisdictional toleration was seldom if at all applied to ‘the free exercise of idolatry’ which Fenner explicitly claims would ‘displant and remove Christ Jesus from among us, being a capital sin and high degree of treason against the majesty of God...the said toleration ought not...to receive place and entertainment with us.’<sup>90</sup> Yet Catholics would have wholeheartedly agreed with these more pejorative notions

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<sup>89</sup> Barlow, *The Summe and Substance of the Conference*, p. 72.

<sup>90</sup> Dudley Fenner, *An Antiquodlibet or An advertisement to beware of secular priests* (British Library, 1602), p. 192.

of toleration presented by men like Powel, Muriell or Fenner, and they made it their intention in their pleas and petitions to frame their Catholic toleration in a contrasting light.

It is not the intention here to claim that the Catholic petitioners intended to produce ideas of toleration which pushed the boundaries of the concept of religious liberty as it was understood in the early modern period. As Ben Kaplan and Alexandra Walsham have shown, it is questionable whether social behaviour in the seventeenth century progressively changed to accept the ideas of pluralism in religion.<sup>91</sup> According to István Bejczy, toleration, particularly the idea of pluralism and the need for religious toleration, had little to do with the more general arguments concerning toleration of heretics, infidels, Jews and prostitution as they pertained to social peace in the Medieval period. Moreover, Bejczy's analysis of Thomas Aquinas clarifies that one did not have to like the individual being tolerated, and in fact that one had to dislike someone to be tolerant of them, 'for tolerance only applied to evil.'<sup>92</sup> This has led individuals like Jeffery Collins to identify toleration in Bejczy's work as something 'that requires the good to remain passive when confronted with the bad...for this reason as is well known, the term *toleration* had pejorative connotations for centuries.'<sup>93</sup>

Within the writings of tolerationists throughout the sixteenth and seventeenth centuries, toleration was generally requested for one's own religious denomination while simultaneously rejecting toleration for other religious groups. And yet while some early concepts of toleration carry a sense of virtuous attitude and character towards others, one cannot and should not look past the ways in which 'toleration' throughout the late sixteenth and seventeenth centuries was pejorative. 'Toleration' was often 'a weapon in polemic controversy, a word used to wound, hurt, brand, stigmatise and slur.'<sup>94</sup> This being so, the necessity to understand how and why individuals such as those Catholic petitioners at the accession of James I used positive notions of 'toleration' becomes even more important. Though there is no doubt that toleration in this period held negative connotations, it is the subversion of these uses and the presentation of toleration in a positive, even normative, way which must draw us deeper into historical inquiry. Analysing calls

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<sup>91</sup> Benjamin Kaplan, *Divided by Faith: Religious Conflict and the Practice of Toleration in Early Modern Europe* (Cambridge, Mass, 2007); Walsham, *Charitable Hatred*.

<sup>92</sup> *Ibid.*, p. 372.

<sup>93</sup> Jeffery R. Collins, 'Redeeming the Enlightenment: New Histories of Religious Toleration', *The Journal of Modern History*, 81, 3 (2009), p. 612.

<sup>94</sup> Walsham, *Charitable Hatred*, p. 5.



for toleration in the context of James's accession, in contrast with pre-existing notions of toleration, we can begin to unravel the more innovative approaches taken by Catholics within the petitionary forms. Such inquiry will not only broaden our understanding about how ideas and practices of toleration functioned in the early modern period, but of how different genres of texts influenced the conception and presentation of such ideas.

### Chapter 3

#### **Conspiracy, Recusancy Laws and the Oath of Allegiance: Exactng Toleration in the midst of Intolerance and Controversy**

This chapter will examine the toleration talk in the years surrounding the Gunpowder Plot of 1605 and the Oath of Allegiance of 1606. James's approach to dealing with his Catholic subjects was relatively moderate between 1604 and before the Gunpowder Plot of 1605, thus framing an interpretation of the years from 1606 onward, where the Oath of Allegiance became a significant part of the political and religious debate, as a new and unprecedented manoeuvre by James to secure political and spiritual authority in England. In these years, the direction of James's political approach to dealing with his Catholic subjects, and in turn the Catholic response to dealing with the Protestant regime, took a 180-degree turn in which new forms of exacting loyalty and displaying it, coercing religious obedience and rejecting it, were promoted. It is important to recognise the severity with which the Protestant regime under James responded in penal action against Catholics in the aftermath of the Plot. However, I will argue that through an examination of toleration talk both before and after the instigation of the Oath we can better appreciate the continuity in James's approach to dealing with religious division.

In the previous chapter we examined the Catholic petitions for toleration from the accession of James I through to 1604, and close attention was paid to the conceptual construction, and the limitations, of toleration talk as it was presented in the petitionary form. This chapter will now build on that understanding as a starting point for a discussion about toleration in the wake of the Gunpowder Plot and Oath of Allegiance. The first section of this chapter provides an overview of Catholics' attempts to gain toleration as their hope for a settlement came to a stalemate as James's attention turned away from accommodation and moved towards enforcement of conformity. It is in the reality of a deteriorating state of Catholic hopes that we can understand the attraction for some of seeking to extract toleration by force, rather than through the king's favour. Though the previous petitions we examined made nuanced attempts to manipulate notions of toleration to fit Catholic perceptions of their new king, some Catholics continued to employ more traditional approaches to formulating their toleration talk. The first section considers an example of this in the efforts of the second Viscount Montague to halt the recusancy legislation in the parliament of 1604. This involved a public declaration arguing for mitigation. In this open profession, at least in the words of those who recorded the

speech, the viscount intended to follow in the footsteps of his grandfather, who in 1559 stood in favour of a liberty of conscience at the debates over the Oath of Supremacy under Elizabeth. This discussion will provide the groundwork for a comparative look at the divergence of Catholic toleration talk in the aftermath of the Gunpowder Plot, and the extent to which Catholics manipulated their pleas for toleration to meet changing and continuing demands of the regime through the years of the Oath controversy.

The next section analyses four petitions written in 1605, which were later published in Richard Broughton's *The English Protestants Plea* (1621). According to Broughton's account, the petitions were written after the Gunpowder Plot but just before the enactment of the Oath. We find within them a continuum of grievances on which the Catholic authors built their cases for toleration; each of them drew less on claims of loyalty to the king in the midst of such a great conspiracy and emphasised more the legal issues around being charged and penalised for the crimes of others. These petitions are critical for understanding how Catholics looked to formulate arguments for toleration in the midst of the most intolerant of contexts. We see from these petitions that once again Catholics were attempting to frame and manipulate their toleration talk, not simply to distract or divert attention away from the association of Catholicism with acts of treason, but rather as a catalyst for producing nuanced and innovative approaches to toleration. Comparing these petitions not only to each other, but to those we examined previously, we can see the evolution of both the toleration argument and the 'tolerationists' themselves. These documents seemingly move away from a notion of toleration predicated on loyalty and obedience alone to one based on legal arguments advanced by English subjects under natural and English common law.

The final part of this chapter will provide an analysis of the arguments and events that led up to the controversy between the Protestant regime and the Catholic community in England over the Oath of Allegiance. It is the intention of this section to provide a critical account of the toleration talk that is presented in attacks against the Oath as well as in the writings of those who sought to use the Oath as a means of obtaining a measure of religious relief. At the core of this section is the question of the extent to which the Oath forced Catholics to reconstruct their approach to toleration. Toleration talk in this moment was not simply a response to the Oath by Catholics attempting to hold onto any sliver of hope for mitigation, or an outright attempt to save face (and life and property) from the fall-out that followed the Gunpowder Plot. Rather, it can be

understood as revealing a dialectic discourse in which many Catholics decided that the Oath offered an opportunity to negotiate or bargain with the regime. The dialectic nature of toleration talk within the Oath controversy is seen in the expressed way in which Catholics attempted to intellectually navigate the clauses of the Oath. This is evident in the formulation of a matrix of ideas that all could draw from, as well as in the various forms in which Catholics modified the Oath and the fashion in which they took it.

Much scholarly energy has been expended on discussing the purposes and impact of the Oath of Allegiance.<sup>1</sup> Thus, the significance for this study of revisiting the Oath controversy is to look at it in the context of the toleration talk which began in 1604. Rather than being overwhelmed by the pressure of the Stuart regime to conform in response to the Oath, leaders of the Catholic community once again attempted to utilise the controversy as a way to negotiate some degree of a religious and political settlement. By 1604 James's need for domestic diplomacy, and any discussion of making accommodations for Catholics, became less pressing as he turned his prerogative towards establishing his authority in the realm. The Gunpowder Plot did not necessarily provide a turning point in his approach to Catholicism, but rather a stimulus to his already steady pace toward greater authority in both the spiritual and civil spheres. Thus, we can see the toleration talk generated around the Oath controversy as part of the plurality of contextualised approaches which Catholics utilised in their attempt to reach toleration.

Though Viscount Montague's speech was delivered before parliament, and the early petitions in 1605 were initially intended for the king alone, on the stage of the Oath controversy we once again encounter a discursive battle hoping to engage a wider public. This time it was not only between the English Catholics and the Protestant regime, but between the Catholic powers (including Rome) and James I, as well as between the anti-Jesuit Catholics in England and the clerical voices (Bellarmine and Persons in particular) overseas.

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<sup>1</sup> Stefania Tutino, *Empire of Souls: Robert Bellarmine and the Christian Commonwealth* (Oxford, 2010); Michael Questier, 'Loyalty, Religion and State Power in Early Modern England: English Romanism and the Jacobean Oath of Allegiance', *The Historical Journal*, 40, 2 (1997), pp. 311-329; Questier, 'Catholic Loyalism in Early Stuart England', *The English Historical Review*, 123, 504 (2008), pp. 1132-1165; Johann P. Sommerville, 'Papalist Political Thought and the Controversy over the Jacobean Oath of Allegiance', in *Catholics and the 'Protestant Nation': Religious Politics and Identity in Early Modern England*, ed., Ethan Shagan (Manchester, 2009), pp.162-184.

## **Making Private Matters Public: The Second Viscount Montague's Personal Plea for Toleration**

The following section will analyse the speech of the second Viscount Montague as he attempted to halt the passing of a bill against recusants in June 1604. Placing the delivery of his speech within the context of James's move towards greater uniformity we can begin to understand the degree to which Catholics were willing to go in their attempts to elicit a settlement for toleration. Unlike what we have seen before, the viscount did not go about defending Catholicism by writing a treatise against the evils of the Stuart regime or having one printed on a secret press for a public audience to read. Nor did he endorse a petition or become the means by which a petition from the Catholic community was passed through the network of Catholics involved in parliament. His defence was made on the parliament floor as a personal speech just as it had been done in the first year of Elizabeth's reign by his Catholic grandfather. The significance of the second viscount's speech does not lie in any profound content which helped to shape the conceptual framework of toleration arguments for future Catholics. Rather, the significance of such an attempt to elicit toleration rests in the delivery of toleration talk in the public space of parliament and in a manner that was strikingly confrontational. Though the second viscount's plea for toleration was not the only time a Catholic had argued for toleration in parliament, we can nonetheless see the progression of toleration talk taking place in the new political context as the Stuart regime became fixed on greater uniformity.<sup>2</sup> Assessing this speech will also provide an opportunity to compare the significant transition that the toleration talk took in the aftermath of the Gunpowder Plot.

The political context in which Catholics, such as the second viscount, found themselves in 1604 was significantly different than what they had hoped for at the arrival of James I in England. Though we saw in the previous chapter that James had pardoned some recusants, in a letter to Archbishop Whitgift in December of 1603 he showed that he was intent on continuing a

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<sup>2</sup> Robert Atkinson's speech before parliament in 1563 against the bill which would become an act 'for the Assurance of the Queen's Majesty's Royal Power' was a plea for toleration substantiated on the basis that the charge and punishment of treason had never been assigned to a case in which it was affirmed that a spiritual person could be charged in temporal court, then 'much less were it treason to affirm the same in spiritual matters.' See the transcription of Atkinson's speech in, John Strype, *Annals of the Reformation and Establishment of Religion: And Other Various Occurrences in the Church of England, during Queen Elizabeth's Happy Reign* (Cambridge, 1824), i, pp. 446-455, 448. For a contextual discussion of the bill and Atkinson's plea for toleration, see Peter Marshall, *Heretics and Believers*, pp.455-456. See also, Geoffrey Rudolph Elton, *The Parliament of England, 1559-1581* (Cambridge, 1986), pp. 180-181.

push towards taking action against them.<sup>3</sup> For James, the need to take action largely came down to the matter of his subjects ‘being infected with superstitious opinions in matter of religion’, which was a ‘ready way and means to corrupt their duty and allegiance.’<sup>4</sup> To stop this from taking place, in February 1604 James and parliament initiated a move towards eliminating Catholic priests by reinstating the old law issued under Elizabeth to banish all Jesuit and Seminary priests from the realm.<sup>5</sup> Following this act, in June 1604, parliament would begin working on bolstering the recusancy laws with a bill that would later become ‘An Acte for the due Execution of the Statues against Jesuits, Seminary Priest, Recusants &c’.<sup>6</sup>

The recusancy bill presented to parliament in 1604 was generally crafted around the idea that Catholicism was spreading not only through the work of priests, but because Catholicism was often passed down from one generation to the next. The first three provisions of the 1604 act revolved around the response of the potential recusants’ heirs. The act claimed that reconciliation could still be made to the church and the king’s authority by the heir of a recusant and thus they would be ‘freed and discharged of all and singular the Penalties Charges...of any of his or her Auncestors Recusancie.’ Beyond the attempt to entice the heirs of recusants from following in their parents’ footsteps by removing the charge of £20 and the potential loss of up to two parts land, the act levied a £100 fine for sending a child overseas to be instructed in the Catholic religion. To strengthen the potency of this penalty, those who planned to do so and suffer the fine also made their heirs ‘incapable to inherit, purchase, take, have or enjoy any manors, lands, tenements, profits, etc.’ This act reveals a great deal of James’s understanding and approach toward dealing with the polarising condition of England’s religious landscape. And though it would be one of the second Viscount Montague’s points to undermine such contentions about

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<sup>3</sup> *Calendar of State Papers Domestic, James I, 1603-1610*, ed., Mary Anne Everett Green 4 vols (London, 1857), BHO, i, p. 60 (henceforth to be abbreviated as *CSPD, James I*, unless otherwise specified volume is I).

<sup>4</sup> M.A. Tierney, *Dodd’s Church History of England from the Commencement of the Sixteenth Century to the Revolution in 1688*, 5 vol. (London, 1839-1843), iv, p. lviii.

<sup>5</sup> *An Act to retain the Queen’s Majesty’s Subjects in their due Obedience*, 1581, in *Statutes of the Realm: Printed by command of his majesty King George the Third, in pursuance of an address of the House of Commons of Great Britain. From original records and authentic manuscripts*, 11 vols (London, 1810-1828), iv, part 1, pp. 657-658 (henceforth to be abbreviated as *SR Elizabeth I*, unless otherwise specified volume is IV); *Act Against Jesuits and Seminary Priests*, 1585, in, *SR Elizabeth I*, pp. 706-708; *An Act Against Popish Recusants*, 1593, in, *SR Elizabeth I*, p. 843.

<sup>6</sup> *SR James I*, pp. 1020-1022; I have taken the quotes in this section from the copy found in Tierney, *Dodd’s Church History*, pp. lxxix-lxxxii.

Catholicism, his approach to mitigating the recusancy legislation only further proved the idea that Catholicism was often passed on from generation to generation.

In 1559 Anthony Browne, first viscount Montague, used his position as a leading peer to raise an objection to the passing of the Supremacy Act. And though his open profession of the Catholic faith was most likely the reason for his dismissal from the privy council and the loss of his appointment as lord lieutenant of his county, the Browne family continued to hold a great deal of power in Sussex. Though Montague was not a hard-line Catholic recusant, his network in the Catholic community was extensive and he was looked to as a leading figure throughout the Elizabethan era.<sup>7</sup> This position of influence was taken up by his grandson, another Anthony Browne, second viscount Montague.

The political context in which the first viscount gave his speech was in many ways different from that in which his grandson gave his. The speech in 1559 was delivered at the transitional point from a Catholic regime to a Protestant one under Elizabeth, and the viscount was defending a faith that was recently held as the national religion. In the case of the second viscount's attempt to argue for toleration, the Elizabethan regime had already worked heavily to establish a Protestant state and James had made it known that he intended to keep it that way. In late June 1604, the second viscount made his attempt to position himself as a leading Catholic just as his grandfather did before him. However, his plea for toleration, while performing a fundamentally different operation as Michael Questier has pointed out, substantiated the claims for Catholic mitigation on relatively similar grounds to those his grandfather had used to argue against the Oath under Elizabeth.<sup>8</sup> And while the second viscount had to contend against a completely different set of religious and political obstacles, his speech was laced with similar sentiments of legitimising Catholicism based on its historical precedence as England and Europe's official religion.

However, several features of the second viscount's speech were a result of the current political atmosphere and his position as a Catholic in a parliament that was overwhelming Protestant. Though the rhetoric of the first viscount speech was wrapped in professions of the duty given to him by God to take care of his king and country, the second viscount's speech was

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<sup>7</sup> Prichard, *Catholic Loyalism in Elizabethan England*, pp. 44-49; Michael Questier, *Catholicism and Community in Early Modern England: Politics, Aristocratic Patronage, and Religion, c. 1550-1640* (Cambridge, 2006), pp. 162-169.

<sup>8</sup> Questier, *Catholicism and Community*, p. 274.

not entirely driven by the same motivations. His speech was not, like his grandfather's, presented as a direct result of his 'dutie towards god, my prynce and cuntrye' or out of a fear for the 'prince's sure estate and ruin of my native country.'<sup>9</sup> The second viscount announced his motivation came 'out of the necessarye discharge of my conscience in this most important cause', that the laws against recusants 'bee in every parte full of severitie.'<sup>10</sup>

Where his grandfather's speech employed a relatively moderate tone in that he 'appeared not as a stern figure pronouncing the judgement of God on his enemies', the second viscount was in many ways discomforting to his peers.<sup>11</sup> In his different claims against the legislation, he attacked the proposition that children being educated as Catholics was the reason for a growing Catholic population. Rather, the viscount proposed it was 'some extraordinarye matter in our religion that draweth awaye so great numbers from that wherin they have beene brought upp from their infancies.' Thus, it was not the young being schooled in Catholicism that were falling away from Protestantism, but 'persons of ripe yeares'.<sup>12</sup> This went hand in hand with Montague's claim that the Catholic faith he promoted was the Christianity of old and that in it God's providence was undefiled. Rather than seeing a decrease in converts to Catholicism from the previous and current persecution, they were seeing an increase, 'for yt hath never beene that the churche hath beene suppressed by persecution, but hath beene therby increased.' Yet, as Michael Questier clearly illustrates, these ideas had been around for some time and they had recently been promoted in Robert Persons' tract *A Treatise of Three Conversions*.<sup>13</sup>

The second viscount's speech then made little headway in producing any new conceptions of toleration. For the viscount, the Catholic faith was the true religion and he assured the lords that it was 'unreasonable...that from it we should be drawne unto that religion which is now professed here in England.' He supports his claim by arguing against Protestants and the king's claims that 'error or impurytie had by curruption entered into our religion.' He contended that if one was to argue that corruption had defiled the church then he would be arguing against God's providence. For it was 'the providence of god evermore in the propagacion or publishing

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<sup>9</sup> First Viscount speech. I am taking this from the collection of manuscripts found in Oxford, Bodleian Library, MS Eng. Th. b2, fol. 841–844. The speech of the first and second viscounts follow one another in this collection.

<sup>10</sup> MS Bodl Eng. Th. b2, fol. 845.

<sup>11</sup> Prichard, *Catholic Loyalism*, p. 47.

<sup>12</sup> Second Viscount's speech, fol. 846.

<sup>13</sup> *Ibid.*, fol. 846; Questier, *Catholicism and Community*, p. 275.



of any thinge among his people...to use the best men that then lyved.’<sup>14</sup> Just as he used Abraham, Moses and David in the Old Testament, he passed on the task of propagating the gospel to the apostles and from the apostles to the heirs of the church. And rather than suspect the Catholic church of altering the gospel, he charged that if any had altered or reformed, ‘or if any thinge might have beene amisse after theis mens labores’, it was found in ‘the Religion now used in England’ which was collected from ‘Luther and Calvyn and the rest of that company.’<sup>15</sup> In his argument for mitigation the second viscount claimed that it was by the Catholic religion that England came to know Christianity. He went on to say that the religion that ‘I and those I speake for doo holde and professe’ was the religion which St. Augustine and St Gregory held to be the true faith.<sup>16</sup> Mitigation of the penal laws was owed to Catholics both on account that they practised the true religion and because Catholicism had long been the established religion of England and was still the dominating official religion of much of Europe. This was not too far removed from his grandfather’s warning to the parliament of his day that acts against Catholics would only further injure the relationship between England and the Catholic nations of Europe.<sup>17</sup> There is very little in the second viscount’s speech as far as nuanced approaches to confronting the legislation and bringing about a mitigation for Catholics. Though his argument was framed around the current demands of arguing against the recusancy legislation, it did not stray far from the arguments proposed by his grandfather before him or many of the other Catholic apologists under Elizabeth. Yet, there is still a significance to the viscount’s speech. In one sense, this reveals the degree to which Catholics were willing, or forced, to take relatively drastic measures, putting reputation and political favour on the line for toleration. The viscount’s speech also demonstrates the process by which toleration was being formed into a language of toleration which illustrated the connection between people and ideas within the Catholic community. Though this was not the only time a Catholic stood against anti-Catholic legislation, it is a great example in seeing the way Catholic toleration talk moved from petitioning through pen and paper to making public declarations of Catholicism in the face of the Protestant regime.

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<sup>14</sup> MS Bodl Eng. Th. b2, fol. 846, v.

<sup>15</sup> Ibid., fol. 846.

<sup>16</sup> Ibid., fol. 846, iiiii.

<sup>17</sup> ‘Viscount Montague's Speech in the House of Lords’, in *EHD* (eds), Ian W. Archer and F. Douglas Price, 10 vols (London, 2011), v (A), p. 32.

One of the great problems Catholics faced in defending their faith – and their loyalty for that matter – was with their ability to gain an audience with those who could make changes to their circumstances. Hence, the purpose of the petition was to stand in place of the petitioners as a representation of their voices to the king or parliament. However, the second viscount had a completely different opportunity than the signatories of petitions or authors of treatises. With his position in the peerage and his active presence in parliament, the viscount had a chance to make a public defence for the Catholic cause.<sup>18</sup> The significance of the viscount's speech then has less to do with the content and more with the manner and space in which the toleration talk he invoked was presented.

The first viscount framed his speech as his duty as a member of parliament to give sound counsel. His rhetoric resounds with humble sentiments, stating that to speak on such matters he must, 'remember my vocation and this place, the place being the highest and supreme Council of this realm.'<sup>19</sup> Where the first viscount was concerned with fashioning a speech which drew on the commonalities between himself and the other members of parliament through their duties to their country, the second viscount described his attempt to secure mitigation as a necessary plea 'out of the dutie which I owe unto all my brethren whichin one and the same bodie are with are fellowe members.' Throughout his speech the use of the personal pronouns 'us', 'our', or 'we', and his continual reiteration that he was speaking for those of his religion, served to both separate him from the overwhelmingly Protestant audience to which he was giving his speech and identify himself as both Catholic and someone who would share in suffering the consequences of the coming legislation. In making such an open declaration in parliament about the validity of the Catholic religion the second viscount made it clear that his reserved conscience could not be withheld any longer. He insisted that if any other Catholic was given the chance to speak in such a place to defend their faith, they too would do so. But it was his duty to 'speake on the behalf of all' against the coming legislation.<sup>20</sup> Michael Questier has rightfully

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<sup>18</sup> The publicness of such parliamentary debates and speeches along with the use of petitions as a way to engage in the public sphere has been thoroughly examined by Peter Lake. For a more recent examination of the historiography of the public sphere and our understanding of various places which may be considered 'public'. See Peter Lake, 'Publics and Participation: England, Britain, and Europe in the "Post-Reformation"', *Journal of British Studies*, 56, 4 (2017), pp. 836-854. See also Peter Lake and Steve Pincus, 'Rethinking the Public Sphere in Early Modern England', *Journal of British Studies*, 45, 2 (2006), pp. 270-292.

<sup>19</sup> 'Viscount Montague's Speech in the House of Lords', *EHD*, p. 32.

<sup>20</sup> MS Bodl Eng. Th. b2, fol. 847.

pointed to the significance of this speech in establishing the viscount as a leading figure amongst the Catholic community. It also did what few Catholics were capable of doing (outside the veiled signatures of petitions and lamenting speeches before the gallows): making public before those in the highest seats of the Stuart regime an argument for tolerating Catholics.

Whether Montague actually believed he could make a significant change in the current circumstances is highly speculative. But his arguments were warmly received by the Catholic community. According to Sir Thomas Chaloner, many members of parliament were upset at the way that Catholics responded to his bravado, calling for him to be prayed for till the end of time.<sup>21</sup> His speech was condemned in the House of Lords for speaking ‘generally against the whole State of Religion established’, yet Lord Burghley (Earl of Exeter) stated that ‘the best and fittest Punishment would be to let him pass unregarded and unpunished; because he supposed that the Lord Viscount Montague did affect a Glory therein, and would be glad to get the more Reputation among the Papists, both at Home and Abroad.’<sup>22</sup> Montague’s speech did not lead to any change in the present circumstances of Catholics. But perhaps that was not the only reason for its being delivered. Perhaps he took his chance at gambling his reputation amongst his Protestant peers for a chance to improve his reputation amongst his co-religionists. And while this all seems very likely, there is more to be gleaned from the viscount’s act of bravado and his formulation of an argument for toleration as he attempted to stop the anti-Catholic legislation.

### **The Legal Side of Toleration: Appealing as an English Subject**

In the wake of the Plot, and before the discursive atmosphere would be occupied by debates over the Oath of Allegiance, some Catholics attempted to capitalise on this moment of absolute crisis to once again use the extreme measures of a few to spin a new line of toleration talk. The following section will analyse the series of petitions produced in this moment of crisis. However, this time it would not be traditional modes of rhetoric or petitions lamenting the spilled blood of loyal Catholics for the cause of the crown that the petitioners would appeal to in their pleas for

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<sup>21</sup> SP *James I*, 14/8 fol.167; CSPD, *James I*, p. 127. Also quoted in Questier, *Catholicism and Community*, p. 278.

<sup>22</sup> ‘25 June 1604’, *Journal of the House of Lords: Volume 2, 1578-1614* (London, 1767-1830), BHO, pp. 327-328.

toleration. Rather, these petitioners turned their attention to a defence which united all free Englishmen together, regardless of religious belief: the English common law.

In the aftermath of the Gunpowder Plot members of the Catholic community were once again at odds with the regime as they attempted to disassociate Catholicism from treason. As we saw in the wake of the plots in Elizabeth's reign, Catholics quickly attempted to disconnect the views of the few radicals from those Catholics who esteemed themselves as loyal subjects to their crown and country. After all, as we will see in the petitions to follow, even in the hot-tempered aftermath of the Plot James himself was explicit in continuing to support the claim that not all Catholics were in favour of such radical steps. He supported this idea in action when he intervened to calm the extreme measures proposed in the enhanced recusancy legislation after the Plot was uncovered.<sup>23</sup> This crucial distinction between groups of Catholics had already been at the crux of James's early approach to dealing with the religious sects within his kingdom. Anthony Milton has contributed to our understanding of such distinctions at the closure of the Appellant Controversy and the crafting of the Royal Proclamation of 1602, as well as the 1604 Canon in which ministers were 'to distinguish Popish recusants from those popishly given.'<sup>24</sup> Separating one's self from such extremes then became important, and denials of any involvement with the Gunpowder Plot were common especially amongst the Catholic peerage.<sup>25</sup> To all intents and purposes, the conspirators, all having extensive connections in the Catholic network, were entirely disowned by the community from which they came.<sup>26</sup> And though the conspirators' actions put English Catholics at risk, it also gave some the opportunity to use the conspirators as

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<sup>23</sup> 'His Majesties speech in this last session of Parliament, 1605' in *The Political Works of James I*, ed., Charles Howard McIlwain (Cambridge, 1918), p. 285. For the account of James's intervention in parliament to restrict the repercussions for Catholics, see Sommerville, 'Papalist political thought', pp. 165-166. Sommerville traces James's claim that he had interfered with the recusancy laws after the Gunpowder Plot to make them less severe than parliament originally desired.

<sup>24</sup> Anthony Milton, *Catholic and Reformed: The Roman and Protestant Churches in English Protestant thought, 1600-1640* (Cambridge, 1995), p. 256. For a discussion of the Royal Proclamation of 1602, see Pritchard, *Catholic Loyalty in Elizabethan England*, pp. 128-129. For the content of the 1604 Canon, see Charles Henry Davis, ed., *The English Church Canons of 1604: With Historical Introduction and Notes* (London, 1865), p. 101.

<sup>25</sup> See Jessie Childs' account of Lord Vaux's denial according to John Gerard the Jesuit priest who hid from authorities in the Vaux residence: *God's Traitors: Terror and Faith in Elizabethan England*, pp. 308-320.

<sup>26</sup> For an examination of the Catholic network with those of such plotters as Francis Tresham, see Pauline Croft, 'The Catholic Gentry, the Earl of Salisbury and the Baronets of 1611', in (eds), *Conformity and Orthodoxy in the English Church, c. 1560-1660* Peter Lake and Michael Questier (Suffolk, 2000), pp. 262-281.

an example of the legal process owed to the king's subjects through the common law of England. Just as the conspirators were examined for their crimes and gave testimony of their offences, these petitioners called for a similar process of being granted the opportunity to defend themselves if they were to be charged with the penal laws for recusancy.

In 1621 the Catholic priest Richard Broughton printed his *An English protestants plea, and petition*. It provided the first printed version of the Shelley petition we examined in the first chapter, along with four previously unprinted petitions of 1605.<sup>27</sup> Little information is provided by Broughton as to who the authors of the first two petitions were, other than describing them as 'the Catholiks of England'. The title of the third petition indicated that it was authored by 'the chiefe Catholike Recusants of England' who presented their petition by the hands of Sir Francis Hastings and Sir Richard Knightly. The fourth petition was not presented in parliament, but rather given to the Earl of Salisbury and was 'subscribed with 23 handes of the chiefest Catholike gentlemen of England.'<sup>28</sup> Though Broughton claims that each of these petitions were presented after the Gunpowder Plot and before the Oath of Allegiance was enacted, the content of the second petition leaves out any reference to the Plot which is in contrast to the other three petitions which discuss it directly. The content of this lone petition is almost entirely centred on the laws enacted against recusant in 1604 and 1605. It includes references to the supplication presented to the king 'before the ende of the laste parliament' as well as those to Elizabeth by the lay Catholics, an allusion to the petition penned by John Lecey in 1604, as well as Sir Thomas Tresham's hand in the petition presented after the law against recusants was proposed in 1585. While it does not contain direct reference to such a significant event as the Powder Plot, Broughton does claim that it was presented to the king with the first petition which confronted the conspiracy directly. It can also be seen in the first paragraph of the second petition that the legislation being discussed is directed at the new recusancy laws being developed in the wake of the conspiracy. For instance, the petition's reference to 'Children, servants, kinsmen and neighbours to be made hired espials, to betray their parents, maisters kindred...' may be referring to early drafting of what became the opening section of the *Act to prevent and avoid dangers*

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<sup>27</sup> Joseph Sterrett, *The Unheard Prayer: Religious Toleration in Shakespeare's Drama* (Leiden, 2012), p. 16.

<sup>28</sup> Richard Broughton, *English Protestants plea, and petition, for English preists [sic] and papists to the present court of Parliament, and all persecutors of them: divided into two parts* (Saint-Omer, 1621), pp. 63-88.

*which may grow by Popish Recusants*, in which a reward was offered for individuals who ‘first discover to any Justice of Peace any Recusant.’ This lone petition also references the penalties for husbands with recusant wives as being ‘new and strange’. These penalties are included in the above act in which it is stated that no man who has a ‘wife being a Popishe Recusant convict...shall exercise anye publique Office or Charge in the Common Wealth.’ This is compounded with a clause that if the wife had not conformed, even if ‘her Husband not standing convicted of Popishe Recusancy’, she was liable to have ‘two parts of her Jointure, and two partes of her Dower’ to be confiscated by the king.<sup>29</sup> Though this act was not formally enacted at the time when the first two petitions were said to be presented to James, it is reasonable to accept that the second petition, though not discussing the recent conspiracy, was most likely constructed when the new recusancy legislation was being drafted and news of the severity of its measures were circulating. Though each of these four petitions had presumably been drafted separately, their contents all revolve around presenting a proposed mitigation of the penalties and persecution experienced after the Gunpowder Plot.

The tone of these petitions is far removed from the pleas for clemency as a favourable grant from their king which were consistently woven throughout the rhetoric in the early petitions of James’s reign. In two of the four petitions it is noted that the authors were said to be the ‘chiefe’ Catholics of England. It may be that if this referred to the petitioners’ social status, and by the general legal content of the petitions, that these individuals had a working knowledge of English political theory and knew very well the significant role the English law had played in the relationship between the king and the peerage. They not only reference specifically the proclamations and speeches James had made so far in his reign, but make mention of the Magna Carta Cap. 14, ‘Nullus liber homo amercietur, se secundum modum delicti ipsius salvo tenement suo’, in which a free man should receive a penalty that matches his offence, without prejudice to his way of living.<sup>30</sup>

The use of Magna Carta, composed when English kings and subjects were all Catholic, as a point of reference underlined their argument that their rights as Englishmen had been set out long before James, or any Protestant for that matter, had come to the throne. Thus they insisted

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<sup>29</sup> *SR James I*, iv, pp. 1077-1082.

<sup>30</sup> Broughton, *English Protestants Plea*, p. 80.

that James follow the ‘auntient lawes in our great charter of England’.<sup>31</sup> At its judicial basis the reference alludes to the idea that there were fundamental principles in place to guide the king and parliament as they made and executed laws. The very point then of recalling the Magna Carta was a backhanded way to present the idea of limited authority, a sure way to remind a king of the limitations to his sovereignty.<sup>32</sup>

As English subjects, these petitioners were proposing that they were entitled to be tried under the English common law, which many believed was a ‘fundamental law, inviolable and the source of the identity of the English polity itself.’<sup>33</sup> James would become very aware of this fact during his reign and in a speech before parliament in 1610 he declared that the common law of England was the most ‘favourable and advantageous for a king’, and that in all his ruling he would rule his actions according to those laws.<sup>34</sup> Thus, the petitioners were calling on James to act according to the customs that had been tried and affirmed through time. Such a line of thought was promoted even within James’s closer circle, as men like Francis Bacon would have adhered to the thought that if common law was fundamental, then regardless of the magistrate or parliament that was in power, they could not make laws against it.<sup>35</sup>

In the conceptual framing of the petitioners’ toleration talk following the Gunpowder Plot, fundamental laws were ‘just laws’ and the Magna Carta was certainly a great reference to utilise. And although the petitions conform to the rhetorical sentiments of loyalty and obedience to their king, they were also filled with heavy rebuke and warnings of injustice. Quoting from Isaiah chapter ten, the petitioners in the third petition intended to not only support their argument with English law, but also the word of God ‘from whence the irrevocable law is proceeded’. ‘Woe to them that make unjust lawes, and writing, have written injustice, that in judgement they might oppresse the poore, and do violence to the cause of the humble of my people, that widdowes might be their prey, and the spoyle of fatherles.’<sup>36</sup> The debate about whether just or unjust laws and rulers could be resisted was at the crux of much of the arguments over the

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<sup>31</sup> Ibid., p. 80; Glenn Burgess, *British Political Thought, 1550-1660, The Politics of the Post-Reformation* (New York, 2009), pp. 169-172.

<sup>32</sup> Glen Burgess, *The Politics of the Ancient Constitution, An Introduction to English Political Thought 1600-1642* (London, 1992), pp. 82-84.

<sup>33</sup> Burgess, *British Political Thought*, p. 163.

<sup>34</sup> McIlwain, ed., *The Political Works of James I*, pp. 310-311; Glenn Burgess, *Absolute Monarchy and the Stuart Constitution* (New Haven, 1996).

<sup>35</sup> Burgess, *The Politics of the Ancient Constitution*, pp. 54-58.

<sup>36</sup> Richard Broughton, *English Protestants Plea*, p. 81.

Catholic legislation during Elizabeth's reign. It was often the defence of Catholics such as William Allen and Robert Persons to remind the Protestant regime of the resistance theory proposed in Lutheran circles that individuals could resist unjust rulers and repel unjust violence against them.<sup>37</sup> James would have been very aware of the theory of resistance toward unjust laws, as his tutor George Buchanan's work, *De Jure Regni apud Scots*, was a defence of preserving just laws against tyrants. The petitioners were presenting the notion that it was a slippery slope from unjust laws to tyranny in the eyes of both Protestant and Catholic subjects alike.

This dichotomy of just and unjust laws which the petitioners were emphasising was the perfect comparison to contrast the action and beliefs of the conspirators with those such as themselves who they claimed were faithful subjects. Drawing their argument from outside of the theological theories of the deposing power of the pope, which James believed the conspirators followed to their destruction, these petitioners were grounding their arguments in English political theory and the accepted code of law – to which they were simultaneously calling James to adhere to as well. Though they could not argue against James's authority to create and impose laws over his subjects, they could hope to distinguish between just and unjust laws and thus gain a degree of leniency in practicing their faith.

The petitioners used both the Gunpowder Plot and the laws against recusants in two ways. In the first instance, they did as one might expect by simply decrying the act of the conspiracy as evil. To make it clear these petitioners were on the right side, the opening lines to the first petition state that 'The late intended conspiracie against the life of your royall maiestie... was so heynous an impietie, that nothing which is holy, can make it legittimate, no pretence of Religion can be alleaged to excuse it, God and heaven condemne it, men and earth detest it, innocents bewaile it.'<sup>38</sup> The petition to the Earl of Salisbury further condemned it as 'a most impious, unnatural, barbarous, and execrable offence, against the lawe of nature, the sacred word of God, and the canons and practise of the holy Catholike Church.'<sup>39</sup> This self defence allowed the petitions to make their stance, as others had before them, about the correct

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<sup>37</sup> Burgess, *British Political Thought*, p. 60.

<sup>38</sup> Broughton, *English Protestants Plea*, p. 63.

<sup>39</sup> *Ibid.*, p. 84.



boundaries of the spiritual and civil sphere, as well as designate in which sphere their allegiance and obedience to the king would fall.

IF the corrupted and obscured understanding of men not knowing God, could among other cloudes and mystes of ignorance, be so far blinde in that wherein the lawe & light of nature it selfe doth give sufficient instruction to all people and nations, that Princes and rulers in authoritie are to be honoured and obeyed: yet the heavenly and supernatural illumination doth clearly deliver all Christians (especially Catholikes) from such darkenesse and want of dutie, giving knowledge that everie soule must be subject to superiour powers; that God is he, per quem reges regnant: and, he that resisteth power, resisteth the ordinance of God.<sup>40</sup>

This extract from the opening lines of the petition to Robert Salisbury reveals a similar attempt as we saw in Elizabeth's reign when the Catholic laity attempted to dissociate themselves from the actions and beliefs of those tried for treason. The recent plotters' offence was that they desired to rid themselves of a prince to whom they owed their civil obedience and allegiance. Broughton then frames these petitions as opposing the deposing power of the pope and utilised Henry Garnet's confession, taken while in the Tower, to show that the Protestant accusers were wrong in attributing the crimes of a few to the many. Though it seems like a very major concession of what Henry Garnet's trial revealed, Broughton claims, before presenting these petitions, that it was in the published examination of Garnet in which he conceded that the king was never subject to the pope and therefore the pope could not depose him, nor could he allow any Catholic to do so either. Broughton suggests that such evidence, provided by Protestants, only proved that 'both priests and catholikes', being subjected to persecution under the pretense of supporting the deposing power of the pope over kings, 'were upon this pretense most unjustly persecuted.'<sup>41</sup>

The second means of turning the conspiracy and recusancy laws to their advantage was to contrast the legal process by which conspirators were found guilty and penalised for a crime, with the legal process they were due if they were to be charged and penalised under the recusancy laws. This came in two ways which are intertwined and follow logically from one another. In the first case, they used the Plot to emphasise that the penalties for those who did not follow natural law and God's law to obey their temporal prince in civil matters were enforced against all Catholics when it was only a few who were guilty. The petitioners argued that it was evident through the recent investigation into all supposed Catholics and the increased pressure to

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<sup>40</sup> Ibid., p. 83.

<sup>41</sup> Ibid., p. 62.

flush out recusants that there was little evidence to show that the majority of them were ‘consenting, conspiring, or privie to that, or any such wiked designement.’<sup>42</sup>

The three petitions discussing the conspiracy agreed with the just application of the penalties for those Catholics who were tried for treason. But in all the regime’s ‘most diligent searches and examinations, thus innocent, and which detest all disloyaltie, are 500 to one of those which you prove guiltie.’ The petitioners insisted that there was no ‘universal disobedience, or disloyaltie in us all’ and thus there was no justice in condemning all to be guilty for the crimes of a few.<sup>43</sup> The petition to the Earl of Salisbury claimed only a ‘fewe unhappie men of our religion have made transgression of their alleageance’, and therefore it was ‘undue to impose a burthen upon innocents, for the fact of the guiltie.’<sup>44</sup> The hopes of this legal argument rested on convincing James that as he favoured the rule of law in bringing together his subjects under his authority, he would stay the same course when it came time to execute the law. Thus they implored him that to ‘retaine the name of lawe-makers, you will retaine some proportion & anologie (as all so named must doe) with the most auntient lawe of God, of nature, nations, and this kingdome, not to punish twice one and the same offence.’<sup>45</sup> The intent was to draw up a legal argument whereby Catholics could substantiate their claims for mitigation through the same legal process Protestants and even Catholic conspirators were given in the courts. If they could not convince the Protestant regime to give them a public dispensation, as many petitions and supplications had called for in the past, then at least it should grant them a public trial where they could provide a defence for the charges against them.

Though the second petition does not have a direct reference to the conspiracy, it seems from the Broughton text that the first two petitions were presented together to the king in parliament. It seems from their content that these two petitions were not presented as different agitations from different Catholic groups. Rather, their intent was to show that the recusancy laws were unjustly applied. The petitioners argued that the penalties were being enforced in ‘general’ rather than according to the crime committed. Thus, the arguments come together that just as they could not all be charged with the crimes of the conspirators so too could they not all be penalised under the recusancy laws if they did not actually commit a crime. The second

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<sup>42</sup> Ibid., p. 85.

<sup>43</sup> Ibid., pp. 73, 74.

<sup>44</sup> Ibid., p. 86.

<sup>45</sup> Ibid., p. 80.

petition argued for instance that ‘The bodies, honors, reputations and riches of the husbands’ were being ‘punished for their wives religion and soules, to which they are neither husbands nor superiours.’<sup>46</sup> The regime’s move to increase restrictions on men with recusant wives was quite a significant expansion of the penal laws, and a closing of a loophole which some Catholic families had exploited successfully for some time. Thus, arguing that husbands were neither ‘husbands nor superiours’ over their wives’ souls marked out a sphere of conscience over which political headship did not apply. This implied that there was not only a line to be drawn when it came to being penalised for the actions of others, but a limitation to the political and judicial intrusion into such affairs, particularly matters concerning the conscience. A theme throughout each of the petitions was that it was evident through the latest recusancy laws that they were experiencing an increase in the severity of their persecution and now in the aftermath of the Plot, if persecution was going to continue to be increased, any attempt to ‘cloath or shadow it, with any cloake or colour of justice, it must be founded upon some probable conviction.’<sup>47</sup> From this first point, the petitions were able to construct the second line of argument on whether a conviction could be just if they were not given a trial in which to defend themselves. The construction of this argument used the strategy of calling for a public disputation but turned it from a matter of debating true and false religion into a defence of just and unjust laws against subjects.

The use of disputations had been around for some time. During the Reformation period they were often instigated by both Catholics and Protestants to develop arguments about what distinguished the true church from a false church.<sup>48</sup> Disputations could be held by an individual attempting to prove and solve theological or philosophical questions, as was the case with academic disputation conducted to fulfil the requirements of a degree. This form of disputation was often made public by publishing the ideas of one’s academic disputation. But disputations were also structured as a debate between two opposing individuals. We see both of these cases in the disputation between the Oxford academic and protestant John Rainolds and the Catholic

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<sup>46</sup> Ibid., p. 66.

<sup>47</sup> Ibid., p. 73.

<sup>48</sup> Joshua Rodda, *Public Religious Disputation in England, 1558-1626* (Ashgate, 2014), pp. 25-27; Milton, *Catholic and Reformed*, pp. 128-172; Michael Questier, *Conversion, Politics and Religion in England, 1580-1625* (Cambridge, 1996).

John Hart.<sup>49</sup> Printed in Rainolds' *The summe of the conference between Iohn Rainoldes and Iohn Hart touching the head and the faith of the Church* were Rainolds' ideas which he had presented in his academic disputation in Oxford of 1579. Here, the argument against the Catholic Church's claim to be 'the' church was that the term Catholic Church signified the aggregation of all churches, thus the Catholic Church in Rome was only one member of the universal church.<sup>50</sup> Disputations were also used to settle religious questions that would become political matters. Such was the case with the *Book of Common Prayer* under king Edward. Before being put forth in a bill to have a new prayer book issued there was a disputation in parliament about the sacrament.<sup>51</sup> Similarly, the Westminster conference in 1559 was a disputation 'between the Popish Bishops and some Learned men of the Protestant Religion', held on the grounds of 'Her Majesties godly desire to abolish superstition, and to preserve Unity and Truth in the Church.'<sup>52</sup> Set to take the form of an academic disputation to help 'ease the passage of the Acts of Supremacy and Uniformity', the disputation quickly took on political overtones as it was attended by not only clerics, but the privy council, member of the nobility and parliament.<sup>53</sup> The outcome of the disputation was detrimental to the bishops' hope of solidifying Catholicism's foothold in England and the two acts were passed shortly after.<sup>54</sup>

Though disputation generally evolved to be centred around arguing theological questions, it was used widely in the university systems across Europe and England as a formal method of instruction. Its main purpose was to bring reasoning and argument to bear on contradictory positions in order to bring truth to light. The critical aspect of the disputation was that the problems or question was intended to be open-ended, and that a decision about its truth was not already obvious or decided. To get to truth one had to present claims and rigorously subject them

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<sup>49</sup> Feingold, Mordechai, 'Rainolds [Reynolds], John (1549–1607), Theologian and College Head', ODNB. Hart was to be executed along with Edmund Campion but had saved himself just before the execution by recanting, in this case he was now being sent to Oxford to confer with Rainold.

<sup>50</sup> Milton, *Catholic and Reformed*, p. 140.

<sup>51</sup> Craig Hardin, 'Religious Disputation in Tudor England', *The Rice Institute Pamphlet*, 37, 1 (1950), p. 23.

<sup>52</sup> 'Simonds d'Ewes, April 1559', in *Journal of the House of Commons 1547-1629* (London, 1802), BHO, i, pp. 53-55.

<sup>53</sup> Rodda, *Public religious disputation in England*, pp. 74, 75-79.

<sup>54</sup> Gary W. Jenkins, 'Whoresome Knaves and Illustrious Subjects at the 1559 Westminster Disputation: the Intent and End of an Ecclesio-political Exercise', *Anglican and Episcopal History*, 75, 3 (2006), pp. 315-339.

to critique, and the hope was that if one would accept the authenticity and better argument of the opposing side, then everyone would be moved closer to the truth.<sup>55</sup>

It was not solely in the universities that these petitioners wanted to engage in disputation over doctrinal differences, but rather that the matter ‘be brought to tryall, by the learned of both parites’ through some manner of public disputation.<sup>56</sup> This would settle the petitioners’ anxieties that all their efforts in producing ‘suites, supplication, reasons, and examples’ were being wasted because the regime had already settled on their resolution, ‘without any answeere or defence by us, to be our accusers, judges, and executioners.’<sup>57</sup> The case for toleration in this point was that Catholics should not be persecuted for civil causes because even before James’s accession to the throne his Catholic subjects had proven to be ‘his most dutiful, faithful, and obedient subjects, in whom he could finde nothing to revenge or punish.’ Nor should they be punished for religion because such a high judgement should only be ‘imposed upon men (subjects, friends, and kinsmen, so generally) except guiltie of some most heinous, or execrable fact or offence against God, our King and countrey.’<sup>58</sup> Since they had yet to give a defence for such offences they hoped that the king would ‘not in a Courte from whence no appeale is allowed, and in matters of such consequence, proceede to judgement, or determine of execution, before the arraigned is summoned to answeere, hath receaved or refused trial, is, or can be prooved guiltie.’<sup>59</sup> While the regime had legitimately tried and found guilty those conspirators of the Gunpowder Plot, the ‘Catholics of England,’ protested that they had yet to be proven guilty of such disobedience. Rather, above all else they did ‘swear, protest, promise and performe to your Majestie, whatsoever loyaltie, obedience and dutie, is due from a subiect to his temporall prince, by the word of God, lawe of nature.’<sup>60</sup>

Just as we see in other cases, the Catholic petitioners believed their religion to be true and thus they were ready to openly defend it. The argument put forward in these petitions was that if they were capable of proving Catholicism was true religion, at the very least it should be allowed to be practiced without interference. However, these petitions, though they rather disingenuously

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<sup>55</sup> Olga Weijers, *In Search of the Truth: A History of Disputation Techniques from Antiquity to Early Modern Times* (Belgium, 2013).

<sup>56</sup> Broughton, *English Protestants Pplea*, p. 86.

<sup>57</sup> *Ibid.*, p. 79.

<sup>58</sup> *Ibid.*, pp. 72, 73.

<sup>59</sup> *Ibid.*, p. 65.

<sup>60</sup> *Ibid.*, p. 63.

suggested the matter of debating the true and false church were intended to meet your ‘Lordships most christian desire, of one uniformitie in true religion in this kingdom’, were not intent on proving at this point that Catholics should be tolerated because of the validity of their faith.<sup>61</sup> As with Viscount Montague’s speech before parliament, the ploy for mitigation based on arguments that Catholicism was the true faith because it had been passed down from earlier generations long before it was associated with treason and traitors was not enough to move James to tolerate Catholics. Moving on from the failed attempts of other Catholics before them, and framing their toleration talk under the precedence of law, was more than just a matter to ‘prove or defend any, or every substantial article, which we now professe to be agreeable unto (and not, dissenting) the knowne publike Catholike doctrine of that mother Church, in those your mentioned incorrupted days of Christianitie.’ The critical part of their petition rested on the idea that toleration was justified by the same judicial process as should apply to any other individual being charged with a crime. This meant that, firstly, if they were not given a trial to defend themselves against the charges being placed upon them, then the accusation was unlawful and any penalties would be unjust. Therefore, toleration should be granted to them until they received such a chance to defend themselves. The second point follows from this first in that when a trial was held, if the evidence suggests they did not commit a crime such as the conspirators had, then they could not legally be punished for the crimes of others and should only be held accountable for the crime they had been proven guilty of.

Toleration then was justified as a result of being English subjects under the king, and Catholics were entitled to what we might term due process. The conception of such an argument would not again become as significant to the relationship between the king and his subjects until men like John Lilburne resuscitated it and systematised it in his defence in the late 1640s.<sup>62</sup> For the purpose of these petitions, if Catholics were to be subjected to the recusancy penalties, then it would have to be proven through a formal process that it was lawful for them to attend protestant churches. Arguments would be submitted on both side before a judgement could be rendered. If they were not allowed a formal testing or proving in which they could provide a defence, then the laws were unjustly imposed on them. The petitioners’ argument goes beyond just a matter of

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<sup>61</sup> Ibid., p. 86.

<sup>62</sup> Diane Parkin-Speer, ‘John Lilburne: A Revolutionary Interprets Statutes and Common Law Due Process’, *Law and History Review*, 1, 2 (1983), pp. 276-296.

trying to prove that they were not traitors. There was the coinciding argument that they should not be punished for practicing Catholicism before a formal disputation had proved to their satisfaction that Catholicism was false.

There are instances in each of these four petitions in which the toleration talk follows similar lines to those that Catholics used in Elizabeth's reign or in the petitions by Lecey and Colleton in 1604. When discussing attendance at protestant services the common polemical defence was provided in that 'neither catholiques nor protestants do teach, that men so far differing therein as we and you, can in conscience communicate together in such things.'<sup>63</sup> Thomas Throckmorton, the known recusant and uncle of two of the conspirators, Robert Catesby and Francis Tresham, though openly declaring he would not come to church until being resolved in his conscience, did offer to attend services if the king would arrange a meeting of 'learned divines' who could convince them that it was legitimate.<sup>64</sup> Similarly, the petitioners called for a public disputation to be held over the legitimacy of Catholic practices. If Catholics could be convinced of the error in the Catholic teachings or persuaded that attendance at protestant churches was not a damnable offence, then they shall 'absolutely offer to performe it, without delay of further exception.' If they continue in their recusancy then the regime may at its 'pleasure proceede against' them.<sup>65</sup> Though this common rhetoric is woven within the language of the petitions, the crux of the argument for toleration goes beyond proving true religion from idolatry. In each of these petitions the toleration talk is heavily grounded in legal language. The basis of their challenge to the Stuart regime was that as English subjects, Catholic or Protestant, if they were bound by the law of nature and God to render to Caesar what was Caesar's then equally they should be tried and punished under those same laws. To do this, they employed the tactic of using the conspiracy, and the consequent recent attention on recusancy, to their advantage.

Constructing such legal arguments, the petitioners could not avoid the question of James's spiritual and civil authority. The petitions' discussion of these boundaries is, however,

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<sup>63</sup> Ibid., p. 78.

<sup>64</sup> Peter Marshall, *Faith and Identity in a Warwickshire Family: The Throckmortons and the Reformation* (Stratford-upon-Avon, 2010), p. 23. For the relationship of Thomas Throckmorton and the conspirators, as well as his connection to the network of Catholic peerage, see Michael Hodgetts, 'Coughton and the Gunpowder Plot' in Peter Marshall and Geoffrey Scott (eds), *Catholic Getry in English Society: The Throckmortons of Coughton from Reformation to Emancipation* (Ashgate, 2009), pp. 93-122.

<sup>65</sup> Broughton, *English Protestant Plea*, p. 87.

implied rather than explicitly defined. Where one might think that the petitioners would use a legal argument to designate the authority of the king to one sphere or the other, they simply acknowledge that the king and ‘that honorable Consistory now assembled, are holden in your doctrine, to be supreamer sentencer, even in spiritual busines in this kingdome.’<sup>66</sup> Their point is not necessarily to allow any over-stepping of civil and spiritual boundaries, but to use such notions to subject the king and his parliament to both the law of God and the law of nature in which they must remember that ‘Execution before conviction is preposterous and cruel in justice...Correction without instruction is but tyranny.’<sup>67</sup> Though the king’s authority in spiritual matters never comes under direct attack, there were indeed limitations placed on the king’s ability to exercise it through the law if those laws were unjustly founded.

Though these petitioners desired a reprieve from their present persecution, their arguments were not intended to describe a situation in which toleration was a right owed to them by the king and in which the legal system was there to support and enforce that right. Rather, they put forward the legal process as a means by which toleration was the only legitimate and just course of action that could be taken until the due process of the law was executed. Their hope was that through this process some degree of a permanent settlement over the religious divide that plagued James’s early reign would come about.

We have here in these petitions an extensive move away from the toleration talk influenced so heavily by reasons of state, or the more general petitionary form of pleas for favour from the civil magistrate. Examining these legal lines of thought it is pertinent to call to attention James’s speech before parliament in March of 1604, in which he asked his parliament if they considered the recently enacted recusancy laws satisfactory. Although James often attempted to counter-balance the extreme views of his parliaments, we may presume that his question was not concerned about the religious ramifications for his Catholic subjects, but the practicality of the recusancy law’s legal application. As A.J. Loomie summarises, James’s question was directed ‘not to theology but to the practice of the law courts.’<sup>68</sup> In the aftermath of the Gunpowder Plot, the petitioners of 1605 would have soundly answered ‘no’. And it is with this singular voice that we see in their petitions a substantiated argument for toleration which no longer skirted the line

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<sup>66</sup> Ibid., p. 65.

<sup>67</sup> Ibid., p. 77.

<sup>68</sup> A.J. Loomie, ‘Diplomacy and Toleration: The Religious Issue in Anglo-Spanish Relations, 1603-1605’, pp. 28-29.



of attempting to solely rely on receiving favour from the king in respect of their loyalty and obedience. In return for their testimonies of loyalty and swearing of obedience to the king as English Catholics they demanded that toleration be given until a trial and conviction was made just under God's and nature's laws.

### **The Oath of Allegiance: Spiritual or Political, Persecution or Opportunity for Toleration**

This final section addresses the Catholic response to the Oath of Allegiance, which was put into practice shortly after the Gunpowder Plot was discovered. Within the responses for and against the Oath we see Catholics engaging in a degree of negotiations with the Stuart regime and the wider Catholic community. In these lines of controversy we see a dialectic relationship emerging within the toleration talk through which individuals were attempting to define the civil and spiritual authority of the king and the pope. In this dialectic we see individuals with varying positions on the oath drawing on a nexus of ideas and concepts about toleration to reach an understanding about the degree to which Catholics could engage with the regime in meeting the Oath's demands. This analysis will suggest that Catholic attempts to reach a settlement for toleration were interwoven within the Oath controversy and thus the Catholic reaction to the Oath, whether in favour of or rejecting it, must be understood within the broader discussion of toleration underway since the arrival of the new king.

Much like the previous moments discussed in this chapter, the context in which the Oath of Allegiance was being drafted was largely hostile towards the Catholic community. A petition sent to Salisbury, with the intent that he would deliver it to the king, made quite clear some individuals' expectation and feeling towards Catholics. Thomas Elliot desired that the conspirators be quickly 'lapped up alive in lead, with their arms spread abroad, and set upon the higher pinnacle in every city and port town in England, and let them there starve to death.' And though the conspirators were to suffer slow and very public deaths, he also recommended that 'near every church should be built a pair of gallows or gibbet, and all Papists and wilful recusants hanged there.'<sup>69</sup> Though this petition was certainly an extreme version of the feelings that circulated in the aftermath of the Plot, many were resolute about putting an end to the popish

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<sup>69</sup> *Calendar of the Manuscripts of the Most Honourable the Marquess of Salisbury: Preserved at Hatfield House, Hertfordshire*, ed., M.S. Guiseppi (London, 1940), xvii, p. 592.

threat.<sup>70</sup> Looking at the drafting of the Oath from this vantage point, we might interpret its clauses, regardless of the boundaries it may have crossed, as a taming of the visceral hatred for Catholics which engulfed parliament.

As with any other assertory oath or promissory oath, the Oath of Allegiance stated a present truth, 'namely that at the moment of swearing, a speaker's mind matched the words he or she uses, and that those words compose a true statement.'<sup>71</sup> The controversy over the Oath lay in the Catholic ability to affirm, as true, the claims that the Oath made on a political and religious level. Though much historical attention had been placed on distinguishing the political from the spiritual claims of the Oath, the bottom line is it made both. Thus, in taking the Oath or rejecting it, those who did and those who did not swear by its clauses had to reconcile or reject both the political and religious claims it made. This was a critical aspect in the negotiations of oath taking not just for the 1606 oath, but of oaths prior to that as well.

In July 1604, a number of Catholic priests had written to James about their submission of authority in which they 'disavowed the Pope's authority over the king'. Along with this, they included a copy of an oath of allegiance penned in Latin which they offered to subscribe to in hopes of some liberty.<sup>72</sup> Though it seems that some were ready to sign an oath of allegiance to the king even before the Gunpowder Plot, there are notes in the Tresham papers documented in July 1604 which raise concerns about oath taking and particularly swearing to the entirety of its clauses. In this record the author passed along an oath that 'was presently to be ministered by virtue of the act of parliament.'<sup>73</sup> But before doing so, he recommended that 'men should be well

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<sup>70</sup> Robert Cecil publish a pamphlet in 1606, entitled *An answeere to certaine scandalous papers, scattered abroad under colour of a Catholicke admonition*, in which he expressed the dangers of the doctrine of papal supremacy and confronted the claims made against him by Catholics with his own counter attack on those who, knowing the plot to exist did not choose their obedience to their king over their loyalty to their coreligious.

<sup>71</sup> Todd Butler, 'Oath of Allegiance, Hannah Arendt, and Jacobean Political Theology', *The Journal for Early Modern Cultural Studies*, 18, 2 (2018), p. 63.

<sup>72</sup> *CSPD, James I*, p. 139; This may be the Oath discussed in John Bossy, 'Henri IV, the Appellants and the Jesuits', *Recusant History*, 8, 2 (1965), pp. 80-122, found on pp. 99-100. Stefania Tutino follows Bossy's view that the Oath of Allegiance of 1606 was in its infancy drafted in 1604 in which the French ambassador, with the help of Cecil, began drafting an oath of allegiance for Catholics first to be endorsed by Henry IV of France and then passed on to James I. See, Stefania Tutino, *Law and Conscience: Catholicism in Early Modern England, 1570-1625* (Burlington, 2007), pp. 130-131.

<sup>73</sup> The oath discussed by Tresham could have very well been that which was presented in July of 1604, though this is not for certain and there is no evidence in the Tresham papers which detail the nature of the oath discussed.

instructed before they swear.’ This was because the Oath contained statements that had both political and spiritual implications. Thus, the author posed several clarifying questions and statements. He notes that as far as ‘civil obedience and the undoubted title of the king and his issue, every man was bound to satisfy.’ But for the statement that dealt with spiritual matters he wanted to make sure that those who swore to it were clear about what they thought on the issues of ‘whether ever Pope held that Princes, &c., may be deprived and murdered by their subjects.’<sup>74</sup> The issue of negotiating an oath which dealt with such matters was not new to the 1606 Oath of Allegiance. Alexandra Walsham reminds us in her seminal work on toleration that ‘the notorious ex officio oath employed by the Elizabethan and early Stuart High Commission’ was an intrusive procedure of ‘self-incrimination that compelled individuals under interrogation to confess to having committed ecclesiastical infractions’, which contemporaries equated to the harshest of methods used in the Spanish Inquisition.<sup>75</sup> The essence of the debates which followed the 1606 Oath of Allegiance had always been to some extent at the core of Catholic attempts to navigate the spiritual and civil boundaries, and in turn negotiate a toleration for their religious practices.

We cannot then, as some have done, remove the discussion of Catholic responses to the Oath from an entanglement with the toleration talk being formulated throughout this period.<sup>76</sup> Perhaps one of the difficulties is that toleration is too often thought of and presented within a conceptual framework of absolutes. Attaching such conceptions to toleration in this moment limits our understanding of the various forms and methods Catholics employed as they attempted to alter their circumstances and find reprieve from their religious restrictions. Rather, we must understand that the Oath controversy resuscitated the debates over the pope’s and prince’s spiritual and political authority with a strikingly new vigour. This time it was not just between Protestants and Catholics, but largely pitted Catholic against Catholic. The significance of this was that it meant there was not an absolute consensus as to the theoretical or practical implication that such debates were to have for toleration. Thus, we find in the Oath controversy a mixed approach to securing toleration, particularly in its de facto form, in what might otherwise seem to be a very intolerant moment.<sup>77</sup>

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<sup>74</sup> ‘Copy of an oath’, in HMC, *Misc*, iii, p. 135.

<sup>75</sup> Alexandra Walsham, *Charitable Hatred: Tolerance and Intolerance in England, 1500-1700* (Manchester, 2006), p. 62.

<sup>76</sup> See below p. 154, fn. 107.

<sup>77</sup> Milton, *Catholic and Reformed*, pp. 55-56.

The controversy that revolved around the Oath largely centred on the same point that had bedevilled the relationship between Elizabeth and her Catholic subjects. That was, defining the boundaries of the spiritual and civil spheres and identifying the king's and the pope's authority therein. As Stefania Tutino asserts, 'the Oath offered a new formulation of the separation between inner belief and outer conduct', an attempt by James to 'reinforce and set new boundaries to the sovereign's temporal authority, by laying a heavy mortgage on the jurisdiction of conscience.'<sup>78</sup> Thus the Oath created two intertwined problems. The first was the long-standing debate over the papal supremacy, and particularly the pope's ability to depose kings. This problem manifested itself in the Oath where Catholic recusants had to swear that they, 'from my heart, abhor, detest, and abjure, as impious and heretical, this damnable doctrine and position, that princes, which be excommunicated by the pope, may be deposed or murdered by their subjects, or any other whatsoever.'<sup>79</sup> The next problem followed from this and was expounded in the clause that the individual was obliged to 'profess, testify, and declare in my conscience before God' and to swear 'according to these express words by me spoken, and according to the plain and common sense and understanding of the same words, without any equivocation or mental reservation or secret reservation whatsoever.'<sup>80</sup> Catholics defending the Oath, such as William Warmington or John Colleton, had to confront both the spiritual and political statements the Oath made. These statements were a sore spot between Catholic factions, especially between them and their European counterparts, but they also allotted them room to manoeuvre, within the requirements of the regime, to see a degree of mitigation.

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<sup>78</sup> Tutino, *Law and Conscience*, p. 134.

<sup>79</sup> Included in, 'An Acts for the better discovering and repressing of Popish Recusants', in *SR James I, iv*, pp. 1071-1077. Quote in, Tierney, *Dodd's Church History*, p. cxviii. My attention leaves out a large discussion of the 'impious clause' as this is largely at the centre of the debate between Questier and Sommerville. Questier convincingly argues that the 'impious and heretical' clause of the oath was a large stumbling block for many Catholics facing the oath. It can be seen throughout this section that many individuals confronting the oath did confront the 'impious and heretical' clause, and those that drafted their own oath often avoided the clause by giving in to some degree to limiting the deposing power of the pope. However, J.P. Sommerville contends that the majority of the problem did not rest with the application of the impious clause. He argues that most Catholics writing against the Oath did not mention the clause and those who did according to John Dodd had a bigger problem with the king making the claim of something being heretical, when that should be left to the pope alone to determine what doctrine was heretical. See, Sommerville, 'Papalist political thought', p. 175, fn. 61.

<sup>80</sup> 'An Act for the better discovery and repressing of Popish Recusants', in *Constitutional Documents of the Reign of James I*, ed., J.R. Tanner, pp. 90-91.

We see in the Oath's clauses a significant rehearsal of the concepts that made up the political theology of the day. Where James and his supporters adhered to the idea that the king's authority comes from God alone, nearly all of the Catholics who were to write against the Oath would argue that his authority was derived from a form of consent of the people.<sup>81</sup> This was the Catholic political theory of how a commonwealth and the king were to some degree in a mutual reliance on one another. As we will see, Robert Persons, who had written fervently against the Oath, elaborates on this idea in his 1607 *Treatise Tending to Mitigation*. Here he proposed that all Catholics held to the principle that when a king was 'made by the people, [he] can not be deposed by them againe at their pleasure...so long as he conteineth himself within the nature of a King.'<sup>82</sup> This final addition was tremendously important in Persons' view of the relationship between the king and his subjects.<sup>83</sup> The political theology being debated in the Oath controversy, and the toleration talk being generated by it, had the power then to 'bind communities together or break them into new possibilities.'<sup>84</sup> Everyone from James I to Persons, William Warmington to John Colleton, was negotiating the complex conceptions which underlined contemporary understandings of authority and the spheres in which it was located.

Several Catholics saw the debate between the authority of the king and the pope as a means to unlock a degree of mitigation and reprieve from the penal laws against them. George Blackwell and Richard Sheldon supplied defences of the Oath and wrestled with the question of

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<sup>81</sup> Sommerville, 'Papalist Political Thought', p. 169.

<sup>82</sup> Robert Persons, *A treatise tending to mitigation towardes Catholike-subiectes in England* (Saint-Omer, 1607), p. 233.

<sup>83</sup> This was not Persons' first engagement with advancing the notion of the monarchy resting on consent. In the final years of Elizabeth's reign, Persons published, *A conference about the next succession to the crowne in England* (Antwerp, 1594). Within its more well-known sections, Persons claimed that 'no man is king or prince by institution of nature, as before hath bin declared, but every king and kings sonne, hath his dignity and preheminece above other men, by authority only of the common wealth', see part 1, chapter 9, pp. 198-199. The implications of Persons' message in undermining the authority of kings to solely appoint their successor was a radical step in proposing an idea of a commonwealth that was both 'a concrete constitutional entity and a product of nature', and more importantly a commonwealth which was not so much an abstract entity but a very real and active body that played a role in current politics, see M.J.M. Innes, 'Robert Persons, Popular Sovereignty, and the Late Elizabethan Succession Debate', *The Historical Journal*, 62, 1 (2019), p. 63.

<sup>84</sup> Butler, 'Oath of Allegiance', p. 62.

the temporal power of the pope and the degree to which James wielded authority over the spiritual.<sup>85</sup> Others went further still.

A priest trained at the English College at Rheims, and a chaplain to Cardinal William Allen, William Warmington found himself arrested in England for a second time in 1608. Rather than being exiled again or suffering the ultimate penalty for denying the Oath, Warmington submitted and produced a defence of the Oath in 1612, which included a denial of the pope's deposing power.<sup>86</sup> Warmington defended the Oath, not only with scripture and apostolic tradition, but utilised the humanist rationale of Thomas More in presenting the Oath as a just law, 'made by full authoritie in Parliament, for the conservation of his Majestie and whole commonwealth in tranquillitie and peace, which is both private and common good.'<sup>87</sup> At the root of Warmington's defence was whether Catholics in England could be good Catholics, adhering to the Pope in spiritual matters, while remaining loyal and obedient subjects to their Protestant king. Emphatically, Warmington would answer, yes they could and Peter Holmes has noted that Warmington himself remained a Catholic throughout his years in royal favour and was eventually imprisoned in the Clink once again in 1626-7.<sup>88</sup>

Warmington's answer boiled down to the idea that because the pope did not have power over temporal and civil matters, Catholics could take the Oath and still fulfil their duty of spiritual obedience to the pope. His defence intended not just to prove that Catholics could take the Oath without offending their conscience, but to convince his Catholic brethren that toleration, or some degree of clemency and mitigation of their temporal afflictions, was possible through taking the Oath. Warmington claimed that it was the king's intention that through the Oath his subjects would 'performe their loyalty & naturall obedience onely in temporals, which is due by the law of God & nature; therby to draw all to his love and their owne safety.'<sup>89</sup> Thus

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<sup>85</sup> In Sheldon's book, *Certain General Reasons Proving the Lawfulness of the Oath of Allegiance* (London, 1611). Sheldon ended up renouncing his communion with Rome and fully conforming to Protestantism shortly after in 1612. George Blackwell, under pressure from the regime, reversed his stance on the Oath several times, but ultimately rejected the power of the pope at his defence, see *A Large Examination Taken at Lambeth of M. G. Blackwell* (London, 1607); Tierney, *Dodd's Church History*, clii; Sommerville, 'Papalist political thought', pp. 166-167.

<sup>86</sup> Peter Holmes, 'Warmington, William, Roman Catholic priest', ODNB.

<sup>87</sup> William Warmington, *A moderate defence of the Oath of Allegiance: where in the Author proveth the said Oath to be most lawful* (1612), p. 65; Michael Questier, 'Catholicism, Kinship and the Public Memory of Sir Thomas More', *Journal of Ecclesiastical History*, 53, 2 (2002), p. 488.

<sup>88</sup> Holmes, 'Warmington, William', ODNB.

<sup>89</sup> Warmington, *A Moderate Defence*, p. vii.

Warmington insisted that the king ‘hath not gone beyond his bounds: will any yet be so wilfully blind as not to see, that by the immaculate law of God he is bound in conscience to render to *Caesar* that is *Caesars*? To be obedient to higher powers, as well the civill in temporals, as the Ecclesiasticall power in spirituals.’<sup>90</sup>

Attempting to separate the spiritual from the civil he protested that the writings of Bellarmine and Persons mislead Catholics to believe the Oath attacked the conscience of Catholics by making them swear to something that removed the spiritual authority of the pope. Rather, Warmington proposed, James intended to ‘take away all scruples that might arise in Catholicke subjects consciences.’ He noted that James removed the clause inserted by the ‘lower House into the Oath, which detracted from the Popes spirituall authority of excommunicating his Maiestie.’<sup>91</sup> In his own apology for the Oath James gave over a degree of spiritual authority to the pope as the ‘Signitory of Rome’. Discussing the hierarchy of the bishops and the church, the primitive church which James claimed had yet to be defiled, he explained he ‘would with all my heart give my consent that the Bishop of Rome should have the first Seate...And for his temporall Principalitie over the Signory of Rome, I doe not quarrell it neither.’ But James was still resolute on his stance that ‘earthly Kingdomes must have earthly Monarches’, and that being so, ‘it doeth not follow, that the Church must have a visible Monarch too.’<sup>92</sup> James’s quarrel with Rome, then, was over the lumping of all churches together under one individual spiritual authority, and a singular spiritual authority who not only superseded civil boundaries, but who had no territorial boundaries either. Warmington was not only contending for the Catholics in England to recognise James’s civil authority in England, but for the limitations of the pope’s authority over James’s territorial jurisdiction.

Warmington insisted that the power to depose kings was not granted to the pope through scripture or apostolic teachings, but was a matter temporal in nature and not spiritual. This being so, the Oath’s rejection of the deposing power of the pope was a legitimate move for James to unshackle those who he saw as moderate Catholics and loyal subjects. Obedience to the king under the Oath equated for Warmington with Saint Augustine’s discussion of Christian obedience under the rule of Julian the Apostate. In Warmington’s view, if Julian, not being a

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<sup>90</sup> Ibid., p. 67.

<sup>91</sup> Ibid., p. 65; See James I, *An apologie for the Oath of allegiance first set foorth without a name, and now acknowledged by the authour, the Right High and Mightie Prince, James* (London, 1609), p. 9.

<sup>92</sup> James I, *An Apologie*, pp. 46-47.

Christian, could command Christian soldiers, how much more reasonable was it that the Catholics of England should follow their king.<sup>93</sup> And just as James claimed the Oath's purpose was to differentiate between groups of Catholics, Warmington too proposed the Oath was simply a means whereby 'The King and State might distinguish between true and faithfull, and hollow-hearted Catholicke subjects: and his Majestie might be more fully assured of their constancie and fidelitie in time of need.'<sup>94</sup>

There were many ways in which Catholics took or negotiated the requirements of the Oath. Whether it was through equivocating, or simply subscribing in fear of the harsh penalties which came with rejecting it, Warmington proposed that through it, Catholics could find themselves in favour with the king. Because he insisted that the Oath was a matter of temporal and civil obedience, remaining Catholic by faith was possible even while submitting in obedience and authority to a Protestant king. Obviously, not all Catholics agreed with Warmington, and although he cited Robert Persons several times in his *Defence*, Warmington's willingness to accept the Oath, regardless of its claims against the pope, did not fit well with Persons' hard-line approach to papal primacy.<sup>95</sup>

Warmington was not simply a lone renegade who looked to use the Oath as a means to obtain long-awaited relief from legal penalties. His position on the deposing power of the pope allowed him a chance to subscribe to what he determined was a just action taken by the Stuart regime in distinguishing between those who proposed the king could be deposed by the pope and those who asserted that the king's civil authority in England should not be overstepped by the pope's spiritual powers.

Another individual who supported taking the Oath on the basis of limiting the pope's reach into the civil sphere was John Colleton. Found in Thomas Preston's *New Year's Gift* is a petition Colleton sent to the Archbishop of Canterbury in 1610.<sup>96</sup> Preston, as we will see in the next chapter, had a reputation for engaging in debates over the Oath with those on the continent

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<sup>93</sup> Warmington, *A Moderate Defence*, pp. 69-70.

<sup>94</sup> *Ibid.*, p. 7.

<sup>95</sup> Perez Zagorin, *Ways of Lying: Dissimulation, Persecution, and Conformity in Early Modern Europe* (London, 1990), pp. 205-213.

<sup>96</sup> Thomas Preston, *A Nevw-Yeaes gift for English Catholikes, or A briefe and cleare explication of the new Oath of Allegiance* (London, 1620), pp. 13-15. Colleton's petition to the Archbishop is also noted in, Edmund Gibson, *A Preservative Against Popery, in Several Select Discourses Upon the Principal Heads of Controversy Between Protestants and Papists*, ed., John Cumming, 18 vols (London, 1846), xvii, p. 24; volume iii of this same title has extended information on the petition, see p. 155.



who opposed it, often under the pseudonym of Roger Widdrington. Writing extensively about the Oath from 1611 till 1621, Preston received a great deal of favour from James and resided for the majority of his years after the initiation of the Oath in the Clink, where he was a prisoner with John Colleton. Here Preston could freely engage with the debates over the Oath in relative comfort.<sup>97</sup>

Preston presented Colleton's petition as a mean of building a case that not all Catholics aligned themselves with the doctrine of the pope's deposing power and many of them had for some time defended taking the Oath. As it is presented by Preston, Colleton's petition proclaimed that he was just as loyal to James in taking the present oath as he had been to Elizabeth. Though he did not ask for an all-out toleration for Catholics as he had in his 1604 supplication, Colleton contended for favour on account that his 'carriages past, neyther trouble some, or unrespective', showed that he had 'volunteered and freely recognised' the 'late Queenes Reigne.' This was a reference to his petition, submitted in January 1603, which was formulated as a protestation of loyalty and allegiance to Elizabeth. In it, he and twelve other priests had 'professed Allegiance in all Secular and Civill affaires.'<sup>98</sup> The intent of this document was to elicit a remittance of their present persecution.<sup>99</sup> In his petition to the Archbishop he likened his devotion to Elizabeth with his current proclamation to James:

Neither have I bin, am now, or by Gods grace ever shall be otherwise affected, then in like sort to acknowledge his Majestie that now governeth, for my lawfull Dread Sovereigne, obey in all Politicall administration, and defend his sacred Person, Crowne, and Dominions to the uttermost of my power against all enemies of what place and calling soeuer.<sup>100</sup>

Colleton was expressing his commitment to denying that the pope had any authority to order Catholic subjects to take up arms against a king, even if he were excommunicated. Colleton did not deny the spiritual authority of the pope, but he insisted that 'upon any Excommunication' of the queen if it called for them to conspire or invade the majesties realm, that they and 'all the

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<sup>97</sup> The real Roger Widdrington 'was a keenly recusant minor landlord in Northumberland, a useful front who, because of his remoteness, would not be likely to come to much harm.' A., Cramner, 'Thomas Preston', ODNB. For Colleton and Prestons' relationship, see Michael Questier, ed., *Newsletters from the Archpresbyterate of George Birkhead* (Cambridge, 1998), pp. 236-237, p. 237, fn. 1208.

<sup>98</sup> Preston, *A Nevw-Yeares Gift*, pp. 13-15.

<sup>99</sup> Printed in Tierney, *Dodd's Church History*, 5 vols (London, 1838-43), iii, pp. clxxxviii-cxcix; Preston also supplies a publication of the protestation by the thirteen priests titled, 'A Copie of the Protestation, which thirteene Reverend Priests made of their Allegiance to Queene Elizabeth, by a publike Instrument the last day of January 1602. in the last yeere of her Maljesties Reigne', pp. 4-10.

<sup>100</sup> Preston, *A Nevw-Yeares Gift*, p. 14.

Lay-Catholikes borne within Her Maiesties Dominions' were not 'bound in conscience to obey'.<sup>101</sup> Colleton, reemphasising the professions he made in his 1603 protestation, was defending the position that the 1606 oath's claims against papal supremacy were warranted on account of the fact that he believed it to 'bee so grounded upon the Word of GOD, as that no Authoritie, No Cause, or pretence of Cause can or ought (upon any occasion) be a sufficient Warrant more unto us then to any Protestant to disobey' in civil and temporal matters. The current oath facing Catholics fell under these civil matters and it was therefore legitimate in his eyes, just as it was clear to Warmington that 'recognizing and yeilding Caesars due' was a means to reaching a settlement for mitigation.<sup>102</sup> Colleton's approval of the Oath had come long before he had written to the Archbishop in hope of clemency. In a letter to Archpriest Birkhead in May 1608, Robert Persons alleged that both Colleton and the secular priest William Bishop had approved of Catholics taking the Oath.<sup>103</sup>

Though the Jesuits and Appellant priests had patched up their disagreements over the Archpriest Controversy by 1603, the hostility and gulf that separated them still largely hung on the deposing power of the pope. It was noted by Preston that if one simply examined the *Protestation* and the 1606 oath together, one could see that they were framed around a similar doctrine that was 'agreeable to any Catholic, according to true Catholic religion, who was willing to make a true distinction not betweene Protestants, and Catholikes, but betweene civilly obedient Catholikes, and in all other things good Subiects, and such other Catholikes as in their hearts maintained the like violent bloodie maximes that the Powder-Traitours did.'<sup>104</sup> However, it must be noted that Colleton, along with the other secular priests who signed the *Protestation*, did not outright reject the deposing power of the pope. Yet throughout the *Protestation* it is implied by the fervent rejection of the pope's ability to command English Catholics to disobey their magistrate in temporal and civil matters that we can understand how Colleton allowed the current oath to be taken. Colleton's petition, in which he recalled his previous pledge of allegiance to Elizabeth as still binding in respect of the new Stuart king, provided a defence for him and other Catholics to navigate the demands of taking the 1606 oath, while maintaining their spiritual devotion to their faith, all the while engaging in a form of negotiation over toleration.

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<sup>101</sup> 'A Copie of the Protestation', in Preston's, *A Nevw-Yeares Gift*, p. 8.

<sup>102</sup> *Ibid.*, p. 9.

<sup>103</sup> Questier, ed., *Newsletters from the Archpresbyterate*, p. 52, fn. 81.

<sup>104</sup> Preston, *A Nevw-Yeares Gift*, p. 11.

Colleton was not alone in this effort to supplement the present oath with alternative vows of allegiance to James. One way of attempting to do this was to formulate one's own oath or a loose version of the official oath that would please the official who tended it to the swearer.

George Birkhead reported:

most gentlemen and such as have any thinge to loose do make a number of sheiftes to take the oath. the sheift which is now most common on carieth most men awaie, is to fynd out some Justices there frendes, before whome they sweare onely there temporal alledgiance, excepting that in the oath which concerneth the popes autoritie, and the justices admitt this manner of swearinge underhand, but yett openly make a certificate to the Superior magistrate that such parties have taken the oath of alledgiance, meaning this parlament oath.<sup>105</sup>

It is evident that many lay Catholics took the Oath as it was, as well as utilising variations of the Oath and means of swearing to satisfy the magistrates' demands.<sup>106</sup> Another Catholic priest who signed the *Protestation* of 1603 along with Colleton, Robert Drury, said that he would sign the Oath if it was given to him privately, as he was not ready to make a public declaration that might divide the Catholic community.<sup>107</sup> There is a significance then to understanding the different methods Catholics utilised in their attempt to take the Oath and appease the Stuart regime.

Although it may be agreed with both Questier and Sommerville that the Oath was not a policy intended to be a de jure toleration of Catholicism, how Catholics responded to the Oath by defending it or finding alternative means of taking it reveals a great deal about the extent to which the Oath was for many Catholics a way of obtaining some measure of toleration.<sup>108</sup>

Where individuals like Drury paid the highest penalty for denying the Oath, others took it upon themselves to draft their own oath in hopes for toleration. Various forms of oaths were offered to the government by convicted recusants. One such oath proposed, in a similar fashion as Colleton had, that the swearer acknowledge and profess in his conscience that James was the

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<sup>105</sup> Questier, ed., *Newsletters from the Archpresbyterate*, p. 159.

<sup>106</sup> Questier, ed., *Newsletters from the Archpresbyterate*; Questier, 'Catholic Loyalty in Early Stuart England', pp. 1147-1151; Tutino, *Empire of Souls*, p. 138; Todd Butler, *Literature and Political Intellection in Early Stuart England* (Oxford, 2019), pp. 54 -56.

<sup>107</sup> Questier, 'Catholic Loyalty in Early Stuart England', pp. 1146-1147. Though Questier's use of Drury case was to suggest that oath taking in and of itself did not cause a divide amongst the Catholic community, Todd Butler has made a detailed account and analysis of Robert Drury's examination before the magistrates in which he finds Drury's case to expose the significance of the performance in oath taking, not just the controversy over its content. See Butler, 'Oath of Allegiance', pp. 60-82.

<sup>108</sup> Michael Questier, 'Loyalty, Religion and the State Power in Early Modern England', pp. 318-320; Questier, 'Catholic Loyalty in Early Stuart England', pp. 1138-1141; Sommerville, 'Papalist Political Thought', pp. 175-177.

lawful king, and that he would defend him ‘to the utmost of my power, against all unlawful conspiracies and attempts...made against him.’ He then includes within his oath the clause that he did ‘think and verily believe that princes, which be excommunicate, out not to be murdered by their subjects nor any other.’<sup>109</sup> Another oath offered by ‘the Catholic Clergy and Laity’ in 1606 swore that at the time of their ordination they did not make an ‘oath of obedience or submission to any foreign jurisdiction whatsoever.’ This oath also included a section in which they swore that they too would defend the king against any ‘prince, prelate, potentate, or person...foreign invasions or domestic rebellion and conspiracy.’ And potentially more importantly, they also swore to do so notwithstanding any ‘excommunication or other ecclesiastical censure, pronounced or to be pronounced to the contrary.’<sup>110</sup> In each of these examples the authors do not reject the pope’s authority to excommunicate. This may be because they were aware that James had made room for the pope to maintain his authority in the spiritual sphere. As Stefania Tutino points out, by allotting a degree of spiritual authority to the pope in Rome, James was able to direct the major debate at the claims against papal primacy, a doctrine that not all Catholic saw as essentially *de fide*.<sup>111</sup>

However, other Catholics did not find it so easy to remove themselves from the sticky interjection they claimed the Oath’s clauses had made into the spiritual sphere. For this line of argument the means for settling a peaceful coexistence in England had to come about from a different angle. This was the case with the prominent Catholic apologist, Robert Persons. As we have seen throughout this thesis, Persons’ involvement in the defence of the Church in Rome and his participation in the toleration efforts for English Catholics through his polemics were extensive. With his firm knowledge of the English situation Persons was the perfect choice to engage with the most diligent and clever of both Protestant and Catholic defenders of the Oath. Supplying a thorough defence of the pope’s spiritual authority to interject into the civil sphere, Persons did not tread lightly in his *Treatise Tending to Mitigation*.<sup>112</sup> But Persons’ attempt to undermine the lawfulness of the Oath did not rest solely on defending the pope’s deposing power, nor in contrasting a lengthy list of examples in which Protestant doctrine allowed for subjects to overthrow, even murder, their kings if they became tyrannical, with Catholics who

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<sup>109</sup> Tierney, *Dodd’s Church History*, iv, p. cxci.

<sup>110</sup> *Ibid.*, pp. cxc-cxci.

<sup>111</sup> Tutino, *Law and Conscience*, p. 137.

<sup>112</sup> Persons, *A Treatise Tending to Mitigation*, pp. 141-158, 175-176, 180-181.

argued in defence of the magistrate.<sup>113</sup> Following his stance on the pope's authority in the civil and spiritual spheres, Persons' contribution to the toleration talk woven within the Oath controversy came from his defence of the Catholic conscience and the use of equivocation in circumstances of persecution.

*A Treatise tending to mitigation* provides a thorough answer to the accusations against Catholics in the controversies over swearing the Oath. In response to claims made by Edward Cooke and the bishop of London against Catholics, and more prominently Thomas Morton's *An exact discovery of Romish Doctrine in the case of Consiracie and Rebellion*, Persons hoped to overturn what he said was a combined effort to afflict, disgrace, and deprive Catholics 'of all hope of any tolerance.'<sup>114</sup> Persons' treatise was a defence of the Catholic practice of equivocation, and at the same time supplied a means for Catholics in England to navigate the claims of the Oath and gain a degree of liberty of conscience.<sup>115</sup>

In the extended title of this work, Persons spells out what he presented as a declaration that 'it is not impossible for subjects of different religions, (especially Catholickes and Protestants) to live together.' In this treatise, Persons intended to support the idea that the interaction of most Catholics with the regime was peaceful and founded on a 'hope of his Maiesties clemency and mercy towards them by way of toleration or connivency for their Religion, or mitigation of their continuall pressures for the same.' Persons' ploy was to present a case for toleration that was based on the idea that the king needed to do something about 'so great a multitude of people, as in all his Maiesties Kingdomes doe love and favour the Religion, which this masked Minister impugne, and would put them in despaire of any sufferance or tolerable condition.'<sup>116</sup> The danger of such environments would only lead to more despair, and despair he warned 'is the mother of precipitation, & extreme exasperation is the next dore to

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<sup>113</sup> Persons, *A Treatise Tending to Mitigation*, pp. 38-51. In this section Persons utilises the example from around Europe in which he claims the rebellion by Protestant subjects was supported by the teaching of Zwingli, Luther and Calvin. He also presents the chronical of Knox and Buchanan – the well known Scottish theorists - who supported deposing a tyrannical king. See also, pp. 118-119 as well as p. 164.

<sup>114</sup> Persons, *A Treatise Tending to Mitigation*, pp. 7-8.

<sup>115</sup> *Ibid.*, p. 305.

<sup>116</sup> This allusion is pointed at Thomas Morton, who was a significant voice for the Stuart regime and described by Sommerville as a main defender of James's royal authority against Catholics. Person and Morton had a heated polemical exchange from 1606 to 1610, predominately over the legitimacy and implications of the Oath. See Michael L. Carrafiello, 'St. Paul and the Polemicists: The Robert Parsons-Thomas Morton Exchanges, 1606-10', *The Catholic Historical Review*, 95, 3 (2009), pp. 474-490; J.P. Sommerville, *Politics and Ideology in England 1603-1640* (London, 1986), pp. 224.

fury.<sup>117</sup> But first he had to overcome the attacks against, and James's distaste for, the practice of equivocation.

As Michael Questier has suggested, the use of equivocation was 'an essential method' utilised by Catholics during the Oath controversy and was in fact 'happening on a large scale'.<sup>118</sup> Thus, Persons' defence of equivocation and his attachment of the conscience to it was a critical part of how Catholics negotiated the terms of the Oath. Those who utilised equivocation to defend their conscience were able to 'maintain their own ideological coherence, and their claims to be the true leaders and representatives of English Catholicism.'<sup>119</sup> Though Questier, in his detailed analysis of the Oath of Allegiance and its implications for loyal Catholics, admits the important role of equivocation and the conscience in the debates, he does not consider the impact they had on the prospects for toleration. The use of equivocation to protect one's conscience was a practice well known and utilised throughout Christian history in times of persecution.<sup>120</sup> Thomas McCoog S.J. reminds us in his work on *The Society* that 'through equivocation individuals found a way to pronounce and show public support to their sovereign and remain relatively undisturbed.'<sup>121</sup> This practice and particularly Persons' defence of the Catholic conscience had been a part of Catholic toleration talk for some time; now he was applying it to the context of the Oath of Allegiance and the controversy that engulfed it.

Persons supported his concept of toleration through the debates on the Oath by defending the conscience through appropriate use of equivocation. In his long defence of equivocation, besides arguing that it was meant throughout all of Christianity to be used in certain times and cases, he assured his audience that when swearing an oath one needed a way of protecting one's conscience against unlawful acts. For 'them that force others to swear against their consciences, knowing or presuming probably that the swearers consciences are opposite to that which they are forced to swear: and consequently, according to this rule of S. Augustine doe murder eternally

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<sup>117</sup> Ibid., pp. 33, 34.

<sup>118</sup> Questier, 'Catholic Loyalism in Early Stuart England', pp. 1144, 1143.

<sup>119</sup> Ibid., p. 1144.

<sup>120</sup> Peter Marshall, 'Papist as Heretic: The Burning of John Forest, 1538', *The Historical Journal*, 41, 2 (1998), pp. 351-374, esp. pp. 363-364. Though Johnathan Gray contends that the use of equivocation was rarely practiced in oath taking, see Johnathan Gray, *Oaths and the English Reformation* (Cambridge, 2012), p. 185.

<sup>121</sup> Thomas McCoog S.J., *The Society of Jesus in Ireland, Scotland, and England, 1589-1597: Building the Faith of Saint Peter upon the King of Spain's Monarchy* (Farnham, 2012), p. 188.

both their owne soules, and those of them that doe urge them therunto.’<sup>122</sup> Although Persons would rather see Catholics deny the Oath in its entirety, and he encouraged Catholics not to resort to equivocation, he did put forth an argument for legitimate equivocation which allows individuals to avoid what he claimed was persecution.<sup>123</sup> As Victor Houlston points out, the reality for Jesuits throughout Elizabeth’s and James’s reigns, was that their whole existence was a kind of equivocation. The only way to endure such difficulty was to create a defence of the ‘legitimacy of a contradiction between the testimony of conscience (to God) and speech or signal (to man).’<sup>124</sup>

In Persons’ thoughts, equivocation was acceptable when an individual was asked to do something unlawful. He validated his support for equivocation with authorities from over four centuries of teaching, including Augustine, Aristotle, Aquinas and others.<sup>125</sup> This was not the first time Persons took up the cause of defending his fellow Catholics’ consciences. Just as he did in his *Reasons for Refusal* in Elizabeth’s reign, Persons was once again arguing for a degree of liberty of conscience. Only now instead of arguing that Catholic attendance at Protestant church services violated their consciences, he was asserting that any acts which forced one to take an oath contrary to what was in one’s conscience was ‘a grievous sin and that a civil authority which sought to compel him to do so was itself guilty of a diabolical crime.’<sup>126</sup> The use of equivocation in this time of the Oath was much needed to protect the innocent and maintain a clean and Godly conscience. This was particularly true

concerning matters of Religion not tending to confession (in tyme of persecution) wherin a man may or perhaps also must by obligation, if otherwise he cannot avoyd the wrong & violence that is offred to himself or others, use Equivocal speeches, for concealing of that which in conscience he cannot utter.<sup>127</sup>

Persons believed the Oath and the impending persecution of Catholics created an ‘extreeme diffidence, and distrust betweene his Majesty, and so many thousande of his subjects, that admitted him with all joy & comfort at his first entrance to the Crowne.’ By defending the idea

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<sup>122</sup> Persons, *A Treatise Tending to Mitigation*, p. 305.

<sup>123</sup> Ibid., p. 546. For an analysis of Persons’ seemingly contradictory stance on equivocation, see Tutino, *Empire of Souls*.

<sup>124</sup> Victor Houlston, *Catholic Resistance in Elizabethan England: Robert Persons’s Jesuit Polemic, 1580-1610* (Routledge, 2016), pp. 169-170.

<sup>125</sup> Persons, *A Treatise Tending to Mitigation*, for examples, see pp. 296, 443, 444.

<sup>126</sup> Walsham, *Charitable Hatred*, p. 242.

<sup>127</sup> Persons, *A Treatise Tending to Mitigation*, p. 548.

of lawful equivocation, Persons upheld the character of Catholics as both loyal and obedient subjects, while striking at the heart of the Oath's attempt to exert authority over the conscience in matter of religion. He continually compared the conscience of men like Thomas Morton, who he claimed had a 'wicked lost conscience' or 'no conscience at all', with those of Catholics who used equivocation as a means of defence.<sup>128</sup> And while Morton and even James looked at equivocation as an art of lying, Persons continually emphasised that 'the doctrine of Equivocation, as Catholickes hold it, and we before expounded it, is no art, but a sound position in Devinity, belonging to the direction of a good Conscience, against lying.'<sup>129</sup>

Thus, Persons continually presented the Catholic conscience as being subject to God and divine law and the use of equivocation was supported as a lawful position in which the individual had no obligation to submit to authority that was unlawfully administering an oath. Persons' defence was predicated on a very different conception of Catholic orthodoxy than that of individuals like Warrington and Colleton. Yet each of them sought to some degree, whether through submitting to the terms of the Oath, reproducing an argument for resistance, or somewhere in between, to mitigate the pressure and persecution of the English Catholic community. And while it is easy to look at Persons on the other side of the channel as simply presenting a firm stance against the Oaths and imploring Catholics, if they could, to avoid using equivocal speech, he had nonetheless presented arguments for the Catholic conscience and the practice of equivocation that could be utilized by a range of individuals looking for reprieve and a form of toleration.

## **Conclusion**

Throughout this moment in early Jacobean history, we see the malleable nature of toleration talk as it was formulated around different political contexts and contingencies. There are elements of clear resolve in the Catholic community to formulate toleration ideas to match their present needs. But there are also instances where clinging to more traditional defences of Catholicism are evident. In the second viscount's case, he attempted to forge a unified Catholic front which was otherwise being polarized. And though it was not transformative in terms of its substance, his open profession for toleration in a public, and just as important, governmental space was

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<sup>128</sup> Ibid., pp. 15, 82.

<sup>129</sup> Ibid., p. 552.



quite significant. While no sort of mitigation materialised from his interjection, his act was still memorialized by the Catholic community and his speech transcribed and preserved along with his grandfather's.<sup>130</sup> But more than that, the viscount's speech took toleration talk out of the pages of petitions and treatises and into the hallowed chambers of parliament. The results of which show that toleration talk and Catholic attempts to obtain toleration were not reserved for one particular Catholic faction or ideological vein of thought. Nor were they exclusively bound to pen and paper or theological debates. Toleration talk was very much and very quickly becoming malleable enough that it could be employed in any space, through varying media, and via several different conceptual approaches.

We see this transformation of toleration talk taking place in the wake of the Powder Plot. Legitimising toleration for Catholics based on the argument of lawful and unlawful magistrates and laws was not significantly novel. But the petitioners in the case of the four petitions published by Broughton reveal a degree of innovation in how they applied their knowledge of English law and the processes of the judicial system. It is even more revealing of the significant ways in which Catholics adapted their calls for toleration to the context of the moment that these petitioners did not simply disconnect themselves from the conspirators and conspiracy which surrounded them, but utilised the regime's own handling of the conspiracy to articulate and define their justification for toleration.

Conceptualising toleration as simply the absence of persecutions would render the moment surrounding the Gun Powder Plot and the Oath of Allegiance as relatively insignificant to the history of toleration. Yet, it must be observed that in times of such undeniable intolerance, one of the most significant undertakings by those being persecuted was to construct theoretical and practical approaches for eliciting toleration. In reality, persecution and recusancy crackdowns by the regime were actually conducive to innovative, sophisticated discussions of toleration. Such an approach to understanding toleration can be applied clearly to the English context at the Oath of Allegiance and the controversy which was to follow. Admittedly, the Catholics who engaged in the debates over the Oath controversy were often just as much at odds with one another as they were with the Stuart regime. The connection between these individuals was not in their shared ideas of Catholic orthodoxy on the deposing power of the pope. Consequently, we do not find it in the position they took for or against taking the Oath. Yet we

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<sup>130</sup> See above, p. 77, fn. 139, p. 129, fn. 15.

see through each of these authors' application of toleration talk that even though they held opposing views, there continued to be a common concern with toleration which shared a matrix of ideas that could be drawn from and contributed to by all. In this web of ideas, Catholics attempted to develop sophisticated solutions to dealing with the problem of persecution. Though at times they approached matters of the spiritual and civil spheres from opposing viewpoints, these differences were bound together for the common cause of gaining toleration. For the historians of toleration this spectrum of intellectual thought is a rich source for understanding the extent to which contemporaries modified their approaches to eliciting toleration, even if it did not mean intolerance and persecution were eliminated.

As Catholics attempted to negotiate and navigate the context and contingencies of this moment, their toleration talk took shape around the broader questions of papal supremacy, the king's authority, liberty of conscience and equivocation. Such questions shaped the political culture of this period and it meant that Catholics and Protestants, and often time Catholics and Catholics, were often fiercely opposed to each other. Yet, ironically, this in itself meant that coexistence, whether taking place peacefully or under persecution, was the reality of the new reformation landscape. It also meant that toleration talk had become a fundamental part of the vernacular language of politics.

## Chapter 4

### A Moment of Crisis: Toleration Talk in the Negotiations of the Anglo-Spanish Match

Catholic attempts to navigate the political and religious climate of the English Reformation were marked by moments in which intolerance pressed Catholic subjects to formulate positions about an assortment of hotly debated topics. The previous chapters examined how debates over civil and spiritual spheres, loyalty and resistance, and conformity and recusancy in these moments were embedded with Catholic toleration talk. The significance of these moments in the history of toleration can be seen in the malleability of such toleration talk and in understanding that toleration was not entirely restrained by a rigid conceptualisation or application in any one particular period. Rather, we see that those proponents of toleration manipulated and modified their toleration talk to fit their rhetorical strategies within the complex contingencies of these often hostile and dangerous moments.<sup>1</sup> This chapter continues this investigation by providing a critical analysis of the extent to which the Anglo-Spanish match provided an opportunity to formulate new notions of toleration within the political contingencies of the moment.

To reveal the nuanced approaches to toleration talk which this moment offers, this chapter will examine how negotiations for Catholic toleration shaped the construction, execution, the apparent successes and ultimate failure of the Stuart marriage discussions with Spain. With James facing mounting debts, Europe on the brink of religious war, and his dynastic interest at stake in the Palatinate, James was in many ways forced to the bargaining table with Spain. Driven by the circumstances at home and abroad from 1618 to 1624, the question at hand, and the subject which consumed James, parliament, and Catholics alike, was whether the regime could or should negotiate a settlement with a foreign Catholic power which was largely dependent on enacting extensive toleration for Catholics in England. Though toleration was never attained in a *de jure* form during this moment, that does not remove the fact that the individuals saw the circumstances surrounding discussions of toleration in the Match as a critical factor in settling the developing crisis. For many Protestants in England, making an about-face

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<sup>1</sup> As Peter Lake and Michael Questier have explored, even moments of volatility within the Catholic community - such as the Appellant Controversy – allowed Catholics, and the regime for that matter, to exploit the circumstances in order to gain an opportunity to discuss the proposition of toleration. See Michael Questier and Peter Lake, *All Hail to the Archpriest: Confessional Conflict, Toleration, and the Politics of Publicity in Post-Reformation England* (Oxford, 2019).

turn from the negotiations and the idea of toleration was the surest course for England to appease God and align itself with Protestants in Europe. On the other side, while it was vehemently opposed by many Protestants of England, especially those in parliament, James and Catholics at home and abroad found themselves in a situation in which Catholic toleration was not just a possibility, but a matter of pragmatic reality for peace abroad and security at home. Toleration, then, was given serious attention by all parties involved in the Match, even if they were not always welcomed or invited to the negotiation table. Ultimately, this chapter will demonstrate how the contingencies surrounding the Spanish Match reveal the significant impact the political context had in shaping toleration talk, and, conversely, how much the toleration talk surrounding the Match influenced the politics of the moment.

The previous chapters have allowed us to understand the extent to which moments of political and religious instability afforded Catholics room to manoeuvre within the confines of acceptable conformity, loyalty and obedience in their presentation of toleration talk. In the Match moment we find a complex political situation engulfing the Stuart regime and the political culture of the period, which altered the way toleration was discussed and implemented on a different scale. Though the Match crisis only lasted for a brief period, roughly between 1621 and 1623, the formulation of its toleration talk for the greater part of a decade between 1614-1624 was generated around a combination of individuals' hopes and perceived certainties that the Match would result in toleration for Catholics in England. Whether this likely toleration was evidenced by the appointment of Catholic diplomats to Rome for negotiating a dispensation for the marriage, the reported number of Catholics openly hearing mass at the Spanish ambassador's house in London, or James's initiation of *de facto* toleration by setting Catholics free from prisons, toleration and toleration talk were most certainly intertwined into every aspect of the political culture of the moment. Thus, an examination of the Spanish Match offers the historian a significant opportunity to examine the extent to which these negotiations opened new possibilities for contemporaries to reshape the conceptual boundaries of toleration.

Though experiencing toleration in its *de facto* form was only short lived in this moment, the political culture of this period resounded with toleration talk. With the Match's placement within the broader European conflict, and James's domestic conflict with parliament, toleration talk entangled every attempt to construct domestic, foreign and dynastic policy through marriage negotiations. Whether in the debates in parliament of 1621, the retraction of recusancy laws in

1622 and 1623, Charles' masked trip to Spain and the marriage treaty drafted in 1623, or the parliament of 1624, toleration bound itself to the politics of the moment. Through an examination of these events we will see that toleration talk was the wedge and the glue which would fracture and mend the political landscape of England. Working with political prudence, there was a growing awareness among Catholics of the need to lend themselves to James's efforts in Europe, as James's son-in-law Frederick IV found himself in serious difficulty when he took the title of King of Bohemia at the expense of the Catholic Emperor Ferdinand II in 1618. The hope for Catholics, then, was that as the Match was proposed to be a necessary step in settling the conflict in Europe, it would also offer Catholics a chance to exact royal favour at the expense of Protestants who were hostile to James's foreign and domestic policies. Thus, toleration talk helped to mend the shaky relationship between the king and his Catholic subjects, while simultaneously becoming the ideological glue of anti-Catholic sentiments and a wedge which divided the king and parliament even further.<sup>2</sup>

Toleration, in various degrees, had been used before to settle confessional conflict in Europe. It was a critical component in settling the religious wars in France in the 1590s and to some extent toleration was an integral part of keeping peace in the Netherlands as well as calming internal fighting in Germany.<sup>3</sup> At the crux of the matter in England was the problem that any sort of negotiation for a settlement had to contend with the long-standing division that loomed over toleration for Catholics.<sup>4</sup> Overcoming the anti-Catholic and anti-Spanish sentiments resonating in Protestant England was a contributing cause for the negotiations being at a stalemate between 1614 and 1618. The idea of toleration for Catholics became a significant source of conflict between James and his parliament, and one of the most significant issues facing the Stuart regime's troubles over settling the Palatinate problem and securing a dynastic marriage treaty with Spain. Michael Questier has described the 'toleration issue' as a 'three-cornered debate' between James I, Protestant critics, and over-zealous Catholics. This *ménage à*

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<sup>2</sup> Michael Questier, *Stuart Dynastic Policy and Religious Politics, 1621–1625, Camden Fifth Series vol. 34* (Cambridge, 2010), pp. 27–28 (henceforth to be abbreviated as *SDP*).

<sup>3</sup> Though it is understood that in both Holland and especially France – the peace that was brought about by varying forms of toleration agreements and political settlements were coming to a closure. For the growing tension in France, see M. P. Holt, *The French Wars of Religion, 1562–1629* (Cambridge, 1995), esp. chapter 7. See also Michael Questier, *Dynastic Politics and the British Reformations, 1558–1630* (Oxford, 2019), p. 464.

<sup>4</sup> Questier, *SDP*, p. 6.

trois of unlikely participants was scarcely a good recipe for reaching a settlement for toleration and who would be in the prince's marriage bed. The first section of this chapter will unravel the 'increasingly schizophrenic regime's' attempts at formulating and enacting religious and political policies that were predicated on creating some degree of toleration for Catholics in England. It will be suggested that the significance of such attempts was not just in the potential reversal of the anti-Catholic legislation left over from Elizabeth's reign.<sup>5</sup> Rather, James's attempts to satisfy the Spanish demand for toleration, and the Catholic toleration talk that came with it, can be understood as challenging the political culture of the time, threatening to create a political culture of toleration against the wishes of the vast majority of England's parliament and people.

The growth of animosity between James and his parliament was an advantage for Catholics who hoped to gain toleration from the Match. Just as the parliament of 1614 called in hopes of expediting James's need for supply ended in dissolution, so too did James's attempt at a parliament in 1620/21. Though parliament was ready to grant James a supply at its opening in January, the festering question of the Match and Catholic toleration once again damaged the chances of James gaining his supply and exacerbated the potential conflict of authority between parliament and the king. James of course would not have anyone questioning his ideas of absolutism which included his approach to the Match and quickly ended the parliament early in its second sitting in December 1621. As Thomas Cogswell has suggested, acceptance of the Match became 'the litmus test of loyalty', a test which many of the Protestant members of parliament failed and the once fringe or exiled Catholics hoped to pass with flying colours. The second section of this chapter takes a forensic look into how Catholics capitalised on the division the Match created between James and parliament. Here Catholics produced a toleration talk that promoted James's authority over parliament and accentuated the threat of Puritanism and reformers at home and abroad to that authority. Such analysis allows us to understand more about the malleability of toleration concepts to fit the context in which they were employed. Where Protestant anti-Catholic rhetoric often emphasised Catholics as the enemy to both society and the state by developing a pejorative notion of toleration, Catholics utilised this moment to subvert such notions. In the context of parliament and the king's increasingly dysfunctional

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<sup>5</sup> Thomas Cogswell, 'England and the Spanish Match', in *Conflict in Early Stuart England: Studies in Religion and Politics 1603-1642* (eds), Ann Hughes and Richard Cust (London, 1989), p. 118. Questier describes James's efforts as the 'reversal of a whole generation's expectations and assumptions.' Questier, *SDP*, p. 32.

relationship over the Spanish Match, Catholics would turn their sights towards subverting the rhetoric of the ‘common enemy’ by drawing out the distinction between loyal Catholics and disloyal Protestants, particularly those trouble-making Puritans who infected parliament.<sup>6</sup> In a return to Richard Broughton’s text, along with others, this section will highlight that an argument for toleration did not have to revolve around protestations of loyalty; rather, it simply had to show that Puritans were the epitome of disloyal subjects.

In Samuel Gardner’s account of the Spanish Match, James’s inability to navigate a peaceful settlement in Europe and amongst his parliament from 1618 to 1624 was a symptom of his inability to sniff out the deceptive nature of the Spanish diplomats.<sup>7</sup> More recent scholarship has attempted to shed clearer light on James’s approach to negotiating peace in Europe through a marriage treaty with Spain. William Patterson and Brennan Pursell proposed that James’s understanding of European dynamics, and inclination to overlook possible Spanish intentions, was less of an obstacle to obtaining peace in Europe than his inability to derive support amongst his parliament, control the actions of his son-in-law Frederik V of the Palatinate, or the problem of Buckingham’s lack of diplomacy in Spain.<sup>8</sup> Building on the work of previous historians, the final section of this chapter will look at conceptions of toleration through the concessions demanded by the articles of religion in Rome’s dispensation, and incorporated into the marriage treaty along with the oaths taken by James and Charles. Examining these final stages of the Match, this section will suggest that it was in the conceptual limitations of toleration that the Match finally broke down. With Prince Charles’ failed attempt to win over both his bride and the Spanish crown through a secret voyage to Spain in 1623, the pope’s dispensation adding its own demand for English Catholics, and James’s attempts to keep peace in the Palatinate continually undermined by European powers, toleration talk in the marriage negotiations was not a matter of

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<sup>6</sup> Peter Lake, ‘Anti-Popery: the Structure of a Prejudice’, in *Conflict in Early Stuart England: Studies in Religion and Politics 1603-1642* (eds), Richard Cust and Anne Hughes (London, 1989), pp. 72-106.

<sup>7</sup> S.R. Gardiner, *Narrative of the Spanish Marriage Treaty, Camden Society 101* (London, 1869).

<sup>8</sup> Though there is a significant amount of recent historiography which approached the ‘Spanish Match’ in new and insightful ways, both Patterson and Pursell directly confront Gardner’s interpretation of the Match crisis. See W.B. Patterson, ‘King James I and the Protestant Cause in the Crisis of 1618–22’, *Studies in Church History*, 18 (1982), pp. 319-334; B.C. Pursell, ‘The End of the Spanish Match’, *The Historical Journal*, 45, 4 (2002), pp. 699–726; See also, Robert Zaller, ‘“Interest of State”: James I and the Palatinate’, *Albion*, 6, 2 (1974), pp. 144-175; Patterson, ‘Outbreak of the Thirty Years’ War’, in *King James VI and I and the Reunion of Christendom*, W.B. Patterson (Cambridge, 1997), chapter 9, pp. 293-338.

calling James to imitate the merciful heart of God or grant leniency and clemency towards those with a misguided conscience. Toleration in this context was transactional. Toleration was a negotiating tool in which the necessity for James to make concessions subverted the notion that toleration was an expression of power, and a voluntary restraint of authoritative action against those who were of an inferior social position, or morally or religiously deficient.<sup>9</sup> Toleration of Catholicism, which was often represented in Protestant polemics as the teachings of the antichrist, was seen by many in parliament to be detrimental to maintaining Protestant-centred domestic policy. In this way, James's dynastic and foreign policies aimed at securing peace in Europe looked as if they were being undertaken at the expense of England's domestic policies built around protecting the realm from Catholic subversion.<sup>10</sup> James did of course attempt to put a spin on his toleration talk. But a toleration that was being squeezed out of a sickly and somewhat desperate king was hard to pass off as a power move. Those around the discussions of the Match knew this, and Protestants were quick to call a spade a spade. Thus, we cannot overlook the significance which an attachment of religious concessions had for the concept of toleration, in the eyes of individuals who were either for or against the Match. The extent to which James and Charles were willing to concede such drastic degrees of toleration reveals the gravity of the circumstances the Stuart regime found itself in, and the conceptual malleability of toleration in the context of imminent crisis. And though James faced insurmountable financial trouble, inescapable war in Europe, and irreversible conflict with parliament, the irrefusable crisis he faced in negotiating a Spanish Match was, as much as anything else, a crisis of toleration.

### **The Context for Negotiating Toleration**

The dynastic networks forming around confessional allegiances made navigating the European political climate and a dynastic marriage with Catholic Spain complicated. With the assassination of Henry IV in 1610, the Bohemian Revolt in 1618, and the Treaty of Antwerp

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<sup>9</sup> Ben Kaplan has described Huguenot toleration in France as a permission 'by concession' to worship outside of the city walls, in Ben Kaplan, *Divided by Faith: Religious Conflict and the Practice of Toleration in Early Modern Europe* (Harvard, 2007), p. 153.

<sup>10</sup> Thomas Cogswell, *The Blessed Revolution: English Politics and the Coming of War, 1621-1624* (Cambridge, 1989), p. 2.



ending in 1621, a looming cloud of religious conflict hung over affairs in Europe. Not feeling handcuffed to the idea of playing ‘denominational politics’, James was confident in his ability to negotiate peace in the bellicose political and religious landscape of Europe.<sup>11</sup> His answer to this perplexing situation was to balance power in Europe by solidifying the marriage negotiations with his son Charles and the Spanish infanta before all-out war erupted and England was drawn into confessional conflict on the continent.<sup>12</sup> Of course, matters became complicated and the early arrangements for the match between Charles and the Infanta came to an impasse in 1618 when Frederik V, against the wishes of James, accepted the Bohemian crown at the request of the Protestant Bohemian rebels.

In James’s mind, the war that was coming was ‘not one of religion but, caused by the Prince Palatine's rash acceptance of the crown of Bohemia, which has given the Emperor a handle against him.’<sup>13</sup> Regardless of its cause, James could not ‘with the saftie of his honor or conscience’ simply leave his daughter, the potential heirs to his dynastic efforts, or those of the Protestant faith to ‘be consumed by the sword.’<sup>14</sup> With Protestantism and family in need of assistance, James would need to play both the role of peace maker and match-maker. Unfortunately for James, just as his need for supply in 1614 forced him to call a parliament, the parliament of 1621 would prove just as difficult to settling his financial trouble and even more difficult in settling his need for toleration to conclude the dynastic match he so desperately wanted. And though the toleration talk of this period was confronted with the obstacle of overcoming anti-Spanish and anti-Catholic sentiments in both parliament and the pulpit, we can

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<sup>11</sup> Cogswell, *Blessed Revolution*, pp. 14-15. For a discussion of James’s attempts to navigate the European political and religious climate, see Patterson, ‘Outbreak of the Thirty Years’ War’, pp. 293-338. A more European centric examination of these early stages of conflict and a discussion of the Jülich-Cleves dispute and the competing interests of Spain and France in settling affairs in Germany can be found in, N.M. Sutherland, ‘The Origins of the Thirty Years War and the Structure of European Politics’, *The English Historical Review*, 107, 424 (1992), pp. 587-625.

<sup>12</sup> For a discussion of the early contingencies of the treaty, see Gardiner, *Narratives of the Spanish Marriage Treaty*, pp. 111-124. Gardiner notes that the original treaty was given to Sir John Digby in 1615 with only small changes being made to the more official version of 1620. *Ibid.*, p. 324. See also Questier, *SDP*, esp. chapter 6, pp. 408-415.

<sup>13</sup> ‘December 11, 1621’, *Calendar of State Papers Domestic, James I, 1619-1623*, ed., Mary Anne Everett Green 4 vols (London, 1858), BHO, iii, No. 27 (henceforth to be abbreviated as *CSPD, James I*, unless otherwise specified volume is III). James’s reply to the House of Commons’ petition can be found in *SP, James I*, 14/124, fol. 55.

<sup>14</sup> S.R. Gardiner, ed., *Letters and Other Documents: Illustrating the Relations Between England and Germany, at the Commencement of the Thirty Years War* (London, 1865), p. 10; W. B. Patterson, *James VI and I and the Reunion of Christendom*, pp. 296-298.

see the amalgamation of toleration talk and the negotiations shaping its own form of political language which attempted to balance the calls for war and peace.

The public call for war with Spain did not come till late in the parliament of 1621 and yet the feeling of being reviled in England was not unfamiliar to those Spanish diplomats who ventured to make the negotiations happen. The existence of Hispanophobia in parliament did not make things easy for James. His task, then, was to settle the anxieties of Spain over his ability to live up to the expectations of the Match. James's ability, or desire, to tolerate Catholics in his realm was a sticking point of early negotiations in 1618. John Digby was tasked with negotiating between Spain and the king, and in a long report made by the Junta it was explicitly noted that Digby refused to make any concession about liberty of conscience, 'because he says that he has no commission for it, and that for the present he cannot agree...because it is contrary to the laws of the realm, which cannot be repealed excepting by parliament.'<sup>15</sup> As the 1614 parliament was not too far from memory, calling for parliament in 1618 was seen as bringing with it potential inconveniences. These inconveniences were part of what worried the Spanish about obtaining a degree of toleration for English Catholics. First, they knew that it would take some time to persuade members of parliament to accept such terms, if they ever would. Second, Digby was attempting to negotiate the terms of toleration out of the public's eye and settle the matter in 'secret between their Majesties', based on the notion that 'the king of Great Britain would give his loyal word', rather than making the 'conditions of the liberty of conscience a matter of public capitulation.'<sup>16</sup>

The problem for James in these early stages of the negotiations was that enacting *de jure* forms of toleration was relatively impractical. Generally, any formal recognition of a religious group or ratification of the division between it and the state was undertaken by a negotiated treaty, edict, or laws. Often these political negotiations were intended to 'divide rights, power, territories properties and/or revenues along religious lines and to regulate between religious groups.'<sup>17</sup> A formal, *de jure* toleration was the case with the Edict of Nantes and most certainly, as far as Spain was concerned, it was the intended purpose and hopeful case of the Spanish

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<sup>15</sup> Gardner, *Narrative of the Spanish Marriage Treaty*, p. 141.

<sup>16</sup> *Ibid.*, pp. 143-144.

<sup>17</sup> Ben Kaplan, 'Negotiating Religious Difference in Early Modern Europe: Ecclesiastical, Political, and Social Processes', in *Negotiating Religion: Cross-disciplinary Perspectives* (eds), François Guesnet, Cécile Laborde, Lois Lee (Routledge, 2020), p. 44.

marriage treaty. James, however, felt that making Catholic toleration *de jure* might seem as though he was not in control of the affairs in his kingdom. In this sense, the Spanish desire for broad toleration for Catholics in England was a seemingly impossible task which James was not entirely willing to undertake and potentially unable to accomplish without parliament's consent.<sup>18</sup> As reported by the Spanish Grand Inquisitor Luis de Aliaga, Digby urged Spain not to be in such a rush because in the 'present state of affairs it was certain that his master would find himself in such embarrassment that he would be unable to find any way to free himself, and would break the treaty.'<sup>19</sup> Thus, Digby proposed a more certain course of action be taken, going 'little and little, gaining ground, and engaging him [James] in such a way that at last he would be obliged to concede it all.'<sup>20</sup> At the same time, Spain was not entirely satisfied with the idea that *de facto* toleration was likely the farthest James was able to go. Luis de Aliaga reasoned that James's desire to keep the particulars of the marriage a secret had more to do with him being a Protestant and less to do with his inability to take such public measures to give Catholics toleration.<sup>21</sup>

Alternatively, James would attempt to prove his loyalty through *de facto* forms of toleration. *De facto* toleration was not a novelty at the time of the Spanish Match crisis. Ben Kaplan has noted that due to the Reformation, 'tens of thousands of towns and villages were split internally, while still more had to reckon with "heretics" living just down the road or across the field' as *de facto* forms of toleration became a part of reformation life in many parts of Europe.<sup>22</sup> Though not always the case, some states which had only one official church engaged in *de facto* toleration by practicing 'toleration by connivances' or 'turning a blind eye while dissenters

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<sup>18</sup> S.R. Gardiner, *History of England from the Accession of James I. to the Outbreak of the Civil War, 1603-1642*, 10 vols (1887-1891), ii, pp. 249-258. Thomas Cogswell proposes that it was the matter of the Bohemian crisis that pushed the negotiations passed the vexing point of discussion about toleration, see Cogswell, *Blessed Revolution*, pp. 15-16.

<sup>19</sup> Gardiner, *Narrative of the Spanish Marriage Treaty*, p. 144. Gardiner notes that at the return of Digby to England in 1617, Luis de Aliaga was intended to be the only one to listen to Digby. This was presumable because Aliaga was more apprehensive about the Match and would not be so easily persuaded. Acting as a diplomatic filter, it was instructed that 'everything relating to this negotiation should pass through his hands.' Though conveying his account through a degree of his own predisposed understandings of England, Digby and James, Aliaga was privy to much of the negotiations and his memoirs and dispatches are a great source of understanding the Spanish interpretations of the negotiations.

<sup>20</sup> *Ibid.*, p. 310.

<sup>21</sup> *Ibid.*, p. 309.

<sup>22</sup> Kaplan, *Divided by Faith*, p. XIX.

worshipped either privately or across a border.’<sup>23</sup> Not only was this often the case in the Dutch Republic, but it was reported to be the case in England seemingly before parliament had been called and had a chance to intervene. In a letter to Sir Dudley Carleton, John Chamberlain reported that at the beginning of the parliament the House had ‘granted a subsidy to be paid in February’ to James. This was followed quickly by a request ‘that all recusants pay double’, on account that, ‘through recent connivance’, there was a great ‘increase of Popery.’<sup>24</sup> As reported by Girolamo Lando, the Venetian Ambassador in England, these growing tales of ‘connivances’ immediately stirred up ‘a great uproar’ and eventually stalled the payment of the proposed subsidies.<sup>25</sup> Further reported cases of *de facto* toleration in England on account of the Match were an early source of contention in the parliament of 1621 and would continue to be so as James struggled to move his approach to the English Catholics from *de facto* to *de jure* toleration.

Spanish uncertainty whether James’s intentions were true, and about accepting *de facto* form of toleration as evidence of his commitment to enacting toleration more generally, would be a persistent thorn in the side of the marriage negotiations. But James continually assured the Spanish that any toleration was only able to come by informal means, as ‘his power only extends to a connivance.’<sup>26</sup> And though Aliaga claimed Gondomar had been able to convince the king to give ‘liberty to more than a hundred Catholic, most of them being priests’, the goal of formal toleration would still have to be a matter of the king’s word for the time being.<sup>27</sup> As the negotiations continued, however, it was becoming evident that the Spanish were set on *de jure* toleration. In fact, Philip III reiterated to Gondomar in preparation for his return to England in 1619, that ‘the principal point which is to be achieved, and without which this marriage cannot be concluded, is that of liberty of conscience, which the King of England has to grant generally in all his kingdoms, both to natives and to foreigners.’<sup>28</sup> Bringing this to reality was not a small

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<sup>23</sup> Kaplan, ‘Negotiating Religious Difference’, pp. 43-44.

<sup>24</sup> ‘Dec 1 1621’, *CSPD, James I*, No. 2; *The Letter of John Chamberlain*, ed., N.E. McClure, 2 vols (Philadelphia, 1939), ii, p. 412.

<sup>25</sup> ‘Venice: February 1621, 16-28’, in *Calendar of State Papers Relating To English Affairs in the Archives of Venice, vol. 16, 1619-1621*, ed., Allen B Hinds (London, 1910), BHO, No. 748 (henceforth to be abbreviated as *CSP, Venice*).

<sup>26</sup> Gardner, *Narrative of the Spanish Marriage Treaty*, pp. 308-309.

<sup>27</sup> *Ibid.*, p. 308.

<sup>28</sup> *Ibid.*, pp. 150.

thing; then again, as both Philip and James recognised, the dowry which came with the Spanish Infanta was not either.

In hope of proving that James's 'intentions were very good in all matters relating to Spain', Gondomar was treated exceptionally on his return to England. To the dismay of John Chamberlain, Gondomar was offered a place to stay at Ely House and was treated with the utmost care and prestige by individuals like the Earl of Arundel, who on the occasion escorted the ambassador to his house with 'forty-four coaches and a great concourse of people and the nobility.'<sup>29</sup> Such a grand reception did not win over those Protestants who James needed in order to meet the demand for toleration and move the negotiations along. It was reported by the Venetian ambassador in England that on Gondomar's arrival 'one already hears bitter speeches and very improper remarks, vigorously expressed, about the peace of these kingdoms if the marriage takes place.' The most pressing questions related to 'the particulars of his negotiations' and what end would they achieve.<sup>30</sup> While Gondomar was 'awaited by all the Catholics of this country with the utmost expectation', Protestants and 'the more prudent and the wise fear mischief and bode no good from his coming'.<sup>31</sup> Even in his aging years and deteriorating financial circumstances, James could still put together a grand celebration, but what he could not do was to settle the anti-Spanish and Catholic sentiments that were growing with Gondomar's arrival and the prospects of Catholic toleration on the horizon. The time had come, then, for James to step into his role as negotiator and diplomat not only with Spain and Gondomar, but with his parliament as well.

Much like the parliament of 1614, James's call for parliament in 1621 was generally intended to request supply for what Conrad Russell has designated a war which James hoped he would never have to fight.<sup>32</sup> James was not averse to giving the impression that he was more than willing to engage in war if it meant defending Protestantism, and it was parliament's job to make sure he was capable of doing so. As if fate were working on the side of the anti-Spanish faction, before parliament was called it looked as if that might come to pass. In September 1620, Spanish

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<sup>29</sup> Ibid., 'Extract from a Despatch of the Count of Gondomar to Philip III', p. 315. For Gondomar's reception and Chamberlain's distaste, see Questier, *SDP*, pp. 427-428.

<sup>30</sup> *CSP, Venice*, 'Girolamo Lando, Venetian Ambassador in England, to the DOGE and SENATE', vol. 16, No. 295.

<sup>31</sup> Ibid., No. 295.

<sup>32</sup> Conrad Russell, *Parliament and English politics, 1621-1629* (Oxford, 1979), p. 87 (henceforth to be abbreviated as *PEP*).

forces had invaded the Palatinate and in October James issued a declaration pledging to defend the Palatinate if Spain's army had not withdrawn by spring.<sup>33</sup> The Venetian Ambassador in England, Girolamo Lando, reported in October that at an 'exceptional banquet given by a Cavalier of his Majesty's chamber' James had 'remarked several times to those about him that he would never again trust any Spanish ambassador or minister, as his patience had simply increased their arrogance.' Making certain those around him knew of his commitment to protecting his family, he professed 'he himself would go to the defence of his kindred' and though 'he would not unsheathe his sword except in a case of extreme necessity', 'once he had unsheathed it, to put it back would not prove so easy a matter.' Shortly after, in a conference with James, the Spanish ambassador Gondomar quickly turned his attention to settle what he insisted was a matter of confusion over the orders given to Spinola in the Palatinate, but James continued to assert that 'he knows no king who can prevent him from doing what he ought for the defence of his children.'<sup>34</sup> James's military intervention in the Palatinate, and most likely a war with Spain, seemed to be all but certain. But James's attitude towards conflict was not as it seemed.

After several meetings with James, Gondomar informed the Collegio and Senate that James had sent out ambassadors to deal with the matters in Europe. Gondomar claimed that all of them swore to him 'that they were taking word to the Palatine urging Frederick to accept what was just, as it was not just for any one to help him to defend himself without reason.' The orders to the ambassadors were clear about what they were to convey: James wished 'to remain neutral, without compromising himself, to procure peace.'<sup>35</sup> As for the marriage alliance, James assured Gondomar that he was still intent on continuing the negotiations, as long as Spain was ready to give up on any plans for conquest in Bohemia. With his diplomatic agents set for their tasks, many in parliament were still holding on to the prospects of James's intervention. Lando reported on 16 October that, on hearing word that James was to summon parliament, the 'Lords of the Council have voluntarily promised £50,000 to the king as a gift', with the prince giving

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<sup>33</sup> Zaller, 'Interest of State', p. 148.

<sup>34</sup> *CSP, Venice*, 'Girolamo Lando, Venetian Ambassador in England, to the DOGE and SENATE', No. 575.

<sup>35</sup> *Ibid.*, 'Translation of Letter of the Count of Gondomar, October 15', No. 583. For a detailed account of the diplomatic mission to Brussels of Sir Richard Reston and Sir Edward Conway, see Patterson, 'Outbreak of the Thirty Years' War', pp. 310-314.

£10,000 to the Ambassador of Bohemia, a sum which reminded the ambassador that Charles ‘may be described as more in funds than his father owing to the prudent frugality and order with which he is accustomed to live.’ All were willing to contribute to what was seen as the Protestant cause in Europe. The earl of Southampton, who would be a public voice in the efforts to make war with Spain, led the way giving ‘as much as £3,000 with a promise of £300 a year for the war.’<sup>36</sup> So eager was this parliament for war that shortly after its calling they quickly voted in favour of two subsidies for James before passing any other bills.<sup>37</sup>

From the start of parliament things seemed to be looking up for the hopeful war hawks, and not so good for James’s negotiations with Spain or Catholics in England. But by the time parliament was underway much was changing in Europe. The truce between Spain and the Netherlands was coming to a close, England’s relationship with the Dutch was gradually deteriorating over conflict in the North Sea fishery and Anglo-Dutch competition in the East Indies, the Huguenots had rebelled and formed a revolutionary assembly in La Rochelle, Phillip III had died, and, last but not least, Frederik and Elizabeth were in exile at The Hague.<sup>38</sup> This disastrous period for settling a peace agreement in Europe led James deeper into his commitment for a Spanish match for Charles, but a speedy conclusion to marriage and peace was not likely as parliament was equally ready to dig in its heels.

The danger of the Catholic threat at home and abroad was all too real for many in parliament. It was reported that the Spanish ambassador’s mass service was frequented regularly by English Catholics and that Spain was assembling forces capable of taking ground in both the Netherlands and Germany.<sup>39</sup> War-minded individuals like Secretary Conway or the Earl of Southampton were in no short supply as many feared that England would be put into danger by the ‘ambition of the king of Spain, who aspires to universal monarchy, pushes his arms abroad,

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<sup>36</sup> Ibid., No. 585; Russell, *PEP*, p. 148; Cogswell, *Blessed Revolution*, p. 100.

<sup>37</sup> Cogswell, *Blessed Revolution*, p. 19.

<sup>38</sup> Sutherland, ‘Origins of the Thirty Years War’, pp. 616-617; Helmer Helmers, ‘The Spanish Match and Anglo-Dutch Publicity’, in *Marriage Diplomacy, Dynastic Politics in their European Context, 1604-1630* (eds), Valentina Caldari and Sara J. Wolfson Stuart (Cambridge, 2018), pp. 207-208; Patterson, ‘Outbreak of the Thirty Years’ War’, pp. 305-307.

<sup>39</sup> *CSPD, James I*, ‘February 10, 1621’, No. 90; *CSP, Venice*, ‘February 5, 1621’. In a letter to the ambassador Lando in England, he was instructed to present to James the necessity of his intervention and inform him of ‘the great military preparations of the Spaniards, and that in addition to their progress in the Palatinate and elsewhere they can attack the republic simultaneously in several places both on sea and shore.’

and has the connivance of Papists at home.’<sup>40</sup> Similar sentiments were being echoed in the Netherlands. The Venetian secretary at The Hague feared that it was too late to count on either France or England to stop Spain. The secretary reported in February that ‘the King of England will not move, and loves peace. We get nothing from the ministers of both crowns but fine words, so I do not see what we can hope for.’<sup>41</sup> As much as James attempted to play the part of war-monger to push his needed supply through legislation, his distaste for taking such drastic action eventually came to the forefront. In the king’s reply to a petition to go to war against Spain in 1621 from the House of Commons, James scolded his parliament, stating that ‘a number of our Subjects are so pamper’d with Peace, as they are desirous of change, though they knew not what’, and should rather be giving him ‘thanks for the so long maintaining a settled Peace in all our Dominions, when as all our Neighbours about are in miserable combustion of War.’<sup>42</sup> At the same time, though he disliked the idea of war, James knew that negotiating with Spain was a double-edged sword. On the one side, it could potentially place him in a battle of confessional allegiances, pitting himself against Protestants in the Netherlands. On the other side, as it was already proving, negotiations with Spain created deep division in his own parliament and continued to hinder his ability to balance domestic and foreign policy with his dynastic interests. The complication with the need to pacify Spain was that it brought too close for comfort with a Catholic power an England in which many still held tight to the vehement anti-Spanish and anti-Catholic sentiments which remained from the wars under Elizabeth.<sup>43</sup> The prospect, not only of peace with Spain, but of aligning the English crown with such an arch-rival was vexing to many. As Sir Thomas Edmondson declared in his speech to the House of Commons, ‘no time was ever

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<sup>40</sup> *CSPD, James I*, ‘February 2, 1621, Speech by Colonel Cecil in the House of Commons’, No. 71. The aspect of war during the parliaments of the 1620s is a critical component in Conrad Russell’s work, *Parliament and English politics, 1621-1629*. Russell’s seminal work identified the call to war with Spain as a central factor in the breakdown between central and local government. The wonderful post-revisionist account of this decade of war efforts comes from Thomas Cogswell’s, *The Blessed Revolution*. Evidenced by the sentiments of those outside the walls of parliament, Cogswell’s work examines the parliaments of 1621-1624 with immense detail paid to the political culture which was being produced by a combination of actors through both court politics and popular opinion.

<sup>41</sup> *CSP, Venice*, ‘Christofforo Surian, Venetian Secretary in the Netherlands, to the DOGE and SENATE’, No. 718.

<sup>42</sup> ‘The King’s Answer to the Latter Petition’, in *Historical Collections of Private Passages of State: Volume 1, 1618-29*, ed., John Rushworth (London, 1721), BHO, pp. 24-62 (henceforth to be noted as Rushworth, *Historical Collections*).

<sup>43</sup> Cogswell, *Blessed Revolution*, pp. 12-14.



more urgent for speedy steps to preserve religion.’<sup>44</sup> Thus, for some, the choice of confrontation was inevitable, as a match with Spain put their Protestant brothers in Europe at risk, and provided an open door for Catholics in England to increase in number and strength.

The growing grievances between parliament and the king did not yet afford either room to make a public declaration for war against Spain, especially while the king was in the middle of negotiating a marriage for Charles. Without the ability to call for war and keep the Catholic monarch at bay, those set on an anti-Spanish foreign policy and anti-Catholic domestic policy turned their attention to what they could control. The surest line of defence against toleration, and in turn of keeping the Catholics of England from increasing, was to ensure that the penalties against them were in full force. This was obviously not advantageous for James’s need to prove to the Spanish that he endeavoured to move toward greater measures of toleration. It was already in July 1621 being reported to Rome, where the dispensation for the marriage was still being debated and drafted, that ‘the persecution of Catholics in England was again raging.’ This only confirmed Spain and the pope’s fears that parliament would pass ‘fresh laws against the Catholics more rigorous than the old ones’ and that James would be ineffective or unwilling in stopping them.<sup>45</sup>

To some extent, these reports were true. In a quick response to the heightened sense of Catholic activity, a subcommittee was formed on 5 February 1621 to propose the best way to petition the king for the ‘execution of the lawes against Jesuits, seminary priests, and recusants, and for avoyding danger by them and suppressing their insolencis.’<sup>46</sup> With the presence of the Spanish Ambassador in London, and discussion of a marriage beginning to look more plausible, the presence of recusants in London moved the Houses to petition the king. They urged James ‘for a proclamation to banish recusants from London during their sittings’, as well as ‘to restrain them to within five miles of their residences, to take away their arms, to prevent their hearing mass at the ambassador’s houses, and allow no Jesuit or priest in prison to go abroad, or to say masses.’<sup>47</sup> Though James was willing to work through the list of grievances forming in the House, and hear their petition for ‘enforcing strict laws against Jesuits and Papists’, he assured

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<sup>44</sup> SP *James I*, 14/119 fol. 127. See also *CSPD, James I*, ‘Speech by Sir Thos. Edmondess, Treasurer of the Household in the House of Commons’, No. 73.

<sup>45</sup> Gardiner, *Narrative of the Spanish Marriage Treaty*, p. 164.

<sup>46</sup> SP *James I*, 14/119, fol. 117; *CSPD, James I*, Feb 5, No. 70.

<sup>47</sup> *CSPD, James I*, ‘Thomas Murry to Carleton, February 16’, No. 101; SP, *James I*, 14/119 fol. 212.

his parliament that all they had asked for against Catholics was already ‘provided for by law, and therefore the proclamation is not needful.’ James was more than willing to take their offered subsidies, but he continued to refuse to make ‘fresh laws against recusants, because the present are rigorous enough, if enforced, and he is always urging other princes to moderation.’<sup>48</sup> Of course, in appeasing parliament James could have allowed these laws to be drafted, then simply ignore any new laws just as he could the old ones. But as Robert Zaller persuasively argued, the prospect of new recusancy laws being passed in such a critical moment of foreign diplomacy ‘might have a more significant effect on Catholicism in England than a dozen laws implemented with the utmost vigour, in an ordinary time.’<sup>49</sup> The fate of the English Catholics rested on the wavering ability of James to negotiate a settlement with either his parliament or the Spanish government, and he was finding it difficult to navigate a *via media* between them. .

### **Subverting Anti-Catholic and Anti-Spanish Sentiments: Turning the Tables in Favour of Toleration**

Catholics took the brunt of the attacks from Protestants who opposed the Spanish Match and the prospects of toleration. And although James had issued a proclamation ‘Against excessive of lavish and licentious speech of matters of state’ in December of 1620, Catholics, and toleration of Catholics, were still a target of criticism from Protestant assaults. The anti-Catholic front being propagated in this moment harked back to those sentiments resounding in Elizabeth’s time. Just as before, toleration of Catholicism was equated with allowing heresy and the work of the antichrist. Thus, the toleration talk, which Catholics such as Richard Broughton began to formulate, had to contend with parliament’s pressing for an increase in the recusancy laws. It also had to subvert eschatological polemics publicly expressed from the pulpit, and example of which was the sermon of James Ussher in the early weeks of the parliament in 1621.

On 18 February, Ussher preached to parliament on ‘the Communion of Saints.’ Sir James Perrot and several other members of the Commons had already made a motion in early February to have all members of parliament take communion. They intended that ‘Out of many Parts of the Kingdom’ communion be taken as ‘A Means of Reconciliation, and so of Concord in

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<sup>48</sup> Ibid., ‘Chamberlain to Carleton’ No. 103.

<sup>49</sup> Robert Zaller, *The Parliament of 1621: A Study in Constitutional Conflict* (Berkeley, 1971), p. 131.

Counsel, of those, who dwell near; and, of those more remote, to know their Religion.’<sup>50</sup> Similar sentiments were expressed in Ussher’s sermon.. As he put it, the significance of the ritual was ‘that you who professe the same truth, may joyne in one body, and partake together of the same blessed Communion: and then, that such as adhere unto false worship, may bee discovered and avoided.’<sup>51</sup> This matter of discovering those who ‘in respect not of spirituall infection onely, but of outward danger also to our State’, was of critical importance if James and parliament were to avoid the perils that were before them. And though Ussher insisted that he did ‘not speake, to exasperate you against their persons, or to stirre you up to make new Lawes for shedding of their blood’, he could not ‘preach peace unto them.’<sup>52</sup> In thus dividing Protestants from Catholics, Ussher intended to remind parliament, and the king, that the two religions were both spiritually and physically opposed to one another. It was thus imperative that parliament and the king take whatever means necessary to keep it that way.

Ussher’s assault on Catholicism exemplifies the anti-Catholic front against toleration in this moment of crisis. And it was in direct response to this sermon that Richard Broughton was prompted to produce his defence of Catholic toleration. As Ussher pointed out, the two confessional camps were indeed diametrically opposed. The key to stopping or gaining toleration was convincing James to take action against the other. For Ussher, the toleration which was being seen in the realm on account of the Match was more dangerous than any other threat England faced. He lamented the thought that if England ‘be partakers of Babylons sinnes, wee must looke to receive of her plagues.’ And as God ‘would not have a common harlot tolerated in Israel’, so too should England purge itself from the dangers of such toleration.<sup>53</sup> Permitting the practice of Catholicism in England would induce ‘bodily danger that followeth upon the

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<sup>50</sup> ‘05 February 1621’, in *Journal of the House of Commons*, vol. I, 1547-1629 (London, 1802), pp. 507-510. The venetian ambassador in England explained the atmosphere surrounding Perrot’s motion and Ussher’s sermon this way: ‘It has been decided that all those who belong to the same body shall celebrate the communion together in the church, for the purpose of discovering the Catholics in this way and expelling them, so that they may not take part, as they have already expelled some for not taking the customary oath, and others upon the pretext of some irregularity in their election, but really because they were or were suspected of being Catholics.’ *CSP, Venice*, Girolamo Lando, Venetian Ambassador in England, No. 748.

<sup>51</sup> James Ussher, *A sermon preached before the Commons House of Parliament in St. Margarets Church at Westminster, the 18 of February, 1620* (London, 1620), p. 3. A discussion of the preparation for this sermon are given in ‘Rev. Joseph Mead to Sir Martine Stuteville’, p. 227.

<sup>52</sup> Ussher, *A Sermon Preached*, p. 48.

<sup>53</sup> *Ibid.*, p. 4.

toleration of Idolaters’, which is ‘a toleration farre more perillous than of any other.’ England was on a slippery slope toward destruction and if not careful to weed out those who destroy both the soul and body they would be undone from the inside out.

Ussher’s polemical attack was wrapped in binary ascriptions that marked Catholicism and the toleration of it as a common enemy to both spiritual and civil spheres. As others had done before, he attributed the danger posed by Catholics to their religious duplicity. It was not that Catholics were openly defiant so that one could easily identify them as a common enemy. Rather, Ussher suggested, their defiance was ‘a mystery of iniquity, a wickednesse covered with the vaile of piety.’ Catholics were just as ‘the harlot, which maketh the inhabitants of the earth drunke with the wine of this fornication, is both gilded her selfe, and presenteth also her abominations unto her followers in a cup of gold.’<sup>54</sup> This allusion to Revelation chapter 17 was common in anti-Catholic polemics equating Catholicism to the work of the antichrist.<sup>55</sup> Ussher’s attack was not just religious in its rhetorical assault. Rather, his sermon was constructed to illuminate for his audience the religio-political dangers which came with toleration. Here, Ussher’s polemical attack on the spiritual and physical immorality connected the spiritual decay which comes with tolerating idolatry with the current domestic policy that favoured tolerating English Catholics, who the Protestants claimed were the true enemies of the state.<sup>56</sup> Ussher’s use of anti-popery rhetoric echoed the sentiments felt by many in parliament about the threat which the Spanish Match was to bring to England. He converged the ‘spirituall danger, wherewith simple soules are more like to bee insnared’, with the outward peril of finding ‘daggers in our hearts to destroy us.’ The connection between Ussher’s opening remarks about unity and his anti-popish rhetoric was intended to drive his audience (Protestants and Puritans) to discover and remove their common enemy beginning with the very basis of what was allowing it to progress, toleration.

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<sup>54</sup> Ibid., p. 43.

<sup>55</sup> Ussher had long established his position on the distinction between the Protestant and Roman Catholic church, see Anthony Milton, *Catholic and Reformed: The Roman and Protestant Churches in English Protestant Thought, 1600–1640* (Cambridge, 1995). And though he would support the idea that through the common people the medieval church still held the pivotal doctrine of ‘salvation through Christ’s merits alone’, the ‘chief promoters of papal jurisdiction’ and the errors which came with it fell on the friars. See Milton, *Catholic and Reformed*, pp. 290-291; Lake, ‘Anti-Popery’, pp. 72-106.

<sup>56</sup> Arthur F. Marotti, ‘John Donne’s Conflicted Anti-Catholicism’, *The Journal of English and Germanic Philology* I, 101, 3 (2002), p. 359.

Turning his attention away from matters of spiritual corruption, Ussher sought to advance his argument about the temporal danger of toleration by exposing the teaching of the papist who armed ‘both Pope, and Bishops, and People, and private persons, with power to cast downe even Kings themselves from their Thrones, if they stand in their way, and give any impediment to their designes.’<sup>57</sup> He intended to show that any form of toleration of Catholics was dangerous, even of those who removed themselves from the teaching of the pope’s deposing power by signing the Oath of Allegiance. The only assurance England had in setting up a defence against this enemy of the spiritual and civil alike was the actions of those ‘who sit at the Helme, and have the charge of our Church and Common-wealth committed to them.’ Ussher urged parliament to take up the cause against Papists as they ‘must provide by all good meanes, that God bee not dishonoured by their open Idolatries, nor our King and State indangered by their secret trecheries.’<sup>58</sup> He assured his audience of the moral corruption of Catholics in that ‘there are never wanting among them some turbulent humours, so inflamed with the spirit of fornication, that they runne mad with it’, that no ‘tolerable termes can content them, untill they have attained to the utmost pitch of their unbridled desires. For compassing whereof, there is no trechery, nor rebellion, nor murther, nor desperate course whatsoever, that (without all remorse of conscience) they dare not adventure upon.’<sup>59</sup> To tolerate such iniquity and idolatry was unthinkable.

The remedy of this problem was not too far out of hand; in fact, it was right there in front of them: ‘Good Lawes there are already enacted to this purpose: which if they were duly put in execution, wee should have lesse need to thinke of making new.’<sup>60</sup> Such sentiments seemed to have fallen in line with James’s thought on recusancy laws, yet Ussher was pushing for a stricted adherence to the enforcement of such laws. Ussher attempted to spur on parliament and the king to use the law to its fullest extent as Catholics were not just spiritually subversive, but a civil threat as well. Ussher reminded ‘so grave and judicious an Auditory’ that in the wisdom of their office they must be judges of what is right. Ussher’s call to unite their efforts against Catholics through a more rigorous enforcement of the law is not too far from what Peter Lake long ago informed us about the use of anti-Papist polemics which sought to ‘play down the significance of

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<sup>57</sup> Ussher, *A Sermon Preached*, p. 44.

<sup>58</sup> Ussher, *A Sermon Preached*, pp. 49-50.

<sup>59</sup> *Ibid.*, pp. 43-44.

<sup>60</sup> *Ibid.*, p. 50.

the internal divisions amongst English Protestants in the face of a common adversary.’<sup>61</sup> In this sense, Ussher advocated unity which upheld the king and his prerogative while simultaneously emphasising the significant role parliament played in managing domestic affairs, all the while underscoring the significant threat which the toleration of Catholics posed to England.

The use of anti-Catholic or anti-popery rhetoric was not new to the Spanish Match moment. As we have seen before, the collocation of words such as idolatry or heresy with toleration was utilised on both sides of the confessional divide as a means of slandering one’s opponent and, in this case, uniting against a common enemy.<sup>62</sup> Though the Spanish Match and the proposal of toleration for Catholics in England were utilised by individuals like Ussher to mount a polemical assault against the idea, the context of this moment also afforded Catholics the ability to utilise the Match to their advantage. The circumstances of the Match and James’s increasing displeasure with a growing anti-Spanish faction in parliament meant that Catholics had an opportunity to turn the rhetoric Ussher presented of Catholics being the common enemy of the state and religion on its head. Their own toleration talk increasingly contained warnings about the true common enemy of the state and religion: Puritans.

Richard Broughton’s *English Protestants Plea* was a treatise intended to rebut the condemning words which Ussher had preached before parliament.<sup>63</sup> Broughton was a prolific defender of the Catholic faith and engaged in the religious debates of both the Elizabethan and early Stuart periods. Trained as a missionary priest at both the English College in Rome and the seminary in Rheims, he was said to be in England by 1593 where he remained for the rest of his career. Broughton was no stranger to the Catholic debates around toleration and his position as assistant to the archpriest made him a prominent figure in the English mission. Of the more than twenty titles he is credited with, the preface to his 1604 manuscript ‘A playne and manifest Confutation of the Englishe Protestant religion in particular as yt was sett forthe and continued by the late Queene Elizabeth’ was dedicated to an extensive argument for toleration.<sup>64</sup> Broughton

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<sup>61</sup> Lake, ‘Anti-Popery’, p. 79.

<sup>62</sup> Glenn Burgess notes that the call to unity by individuals like Ussher was almost entirely predicated on an attack of anti-Catholicism. But he also notes that the 1620s saw a transition in this polemical trend with the sermons preached by William Laud in mid to late 1620s. Here the focus for Laud’s unity ‘pulled back on the anti-Catholicism and heightened the anti-Puritanism.’ In Burgess, *Absolute Monarchy and the Stuart Constitution* (Yale, 1997), pp. 115-116.

<sup>63</sup> Questier, *SDP*, p. 139.

<sup>64</sup> Peter Holmes, ‘Richard Broughton’, ODNB; Michael Questier, *Catholicism and Community in Early Modern England: Politics, Aristocratic Patronage and Religion, c.1550-1640* (Cambridge, 2006), p. 273.

was not only familiar with the toleration talk of Elizabeth and James's time, but he was all too familiar with the relationship between the regime and Catholics in times of crisis. His *English Protestants Plea* reveals his first-hand knowledge of the debates that engulfed the Catholic community in England in the most recent contemporary crisis after the Gunpowder Plot. The overall intention of his treatise was not just asserting Catholic loyalties by recalling the pleas and petitions of past Catholics, but was to illustrate explicitly that Catholic responses to crisis and regime change were significantly different from those of the people whom he labelled as 'pretended reformers'.

Identifying Puritans as another sect within the English religious scene was a strategy often employed by Catholic polemicists to point out that James was already allotting a degree of toleration to a distinguishably different religion from Protestantism. The logic of this argument was that if James was willing to give toleration to the 'Puritane at home' then Catholics should receive the same treatment, since Puritans and Catholics were both different sects than that of the official Protestant religion upheld by the Church of England. Broughton's historical approach to asking for toleration was an attempt to revise and reinterpret the rhetoric of the seditious and treasonous Catholicism which Ussher presented before parliament. His argument drew from Protestant historians beginning in the time of Henry VIII's break from the Roman Church. He attempted to present a history in which Catholics had not wavered in their faith; regardless of the regime change and the religion that was being promoted in England, Catholics remained both loyal to their faith and to every extent possible, loyal to the royal authority.

To demonstrate the scope of this loyalty in civil and religious matters Broughton put into print several examples of petitions from Catholics in both Elizabeth's and James's reign.<sup>65</sup> Even more pertinent to his argument, each example is given from a moment in which the regime was at a point of crisis, and Catholics were being persecuted as the causers of sedition and treason. Utilising these petitions to reframe the Catholics' position concerning the magistrate's authority was not Broughton's only ploy. Broughton also wanted to set up his argument for toleration by contrasting the Catholic petitions and petitioners with attitudes and acts of Puritans and reformers of the past and present. He reminds his readers that from the time of the child king Edward VI it was not those who preferred the king's 'protestant religion', but reformers such as Edward Seymour, 1st Duke of Somerset and the influence of 'Puritanes in forraine countries'

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<sup>65</sup> We explored these petitions in chapter 1 and 3.

that were making drastic changes based on their faulty ‘motive to reforme abuses.’<sup>66</sup> These same reformers who ‘professed the religion, and discipline also of the puritan churches’ also denied ‘both the supreamacy of temporall princes, and other matters of english protestant Religion’ in the time of Mary, only to once again be at the helm in Elizabeth’s days to persecute Catholics.<sup>67</sup> And now in James’s reign, it was clear that ‘the present protestant rather puritane parliament, stormeth now more against us, then the wisest of us can see reasons to warrant them.’<sup>68</sup>

Broughton, as other Catholics would also do, seized the opportunity which the politics of the Match offered them by directing his polemical assault towards Puritans. In this, Catholics were able to emphasise the criticism and seditious opposition of Puritans which was becoming more prevalent and public as the Match negotiations went on. Contrasting this in their toleration talk with their own obedience and support of the king’s prerogative in the Match gave them an advantage which few moments outside this period afforded them. Challenging the anti-Catholic talk of men like Ussher was the best tactic for conforming Catholic toleration talk to the transforming political climate that was shaping up in parliament. The ploy to play Protestant rhetorical strategies against the puritan faction in parliament was a calculated step in calming the tensions which existed between James and his Catholic subjects by accentuating those that he had with puritanism. Luckily for Catholics, as the Match negotiations went on, and as parliament and the king continued to differ in their understanding of what was fitting for domestic and foreign policy, they did not have to look hard for ammunition against their puritan adversaries in hope of securing toleration.

With the Spanish Match entangled in European affairs, Catholics utilised James’s known fear and hatred of the idea of republicanism and democracy to target Puritans. One way of substantiating their cause for toleration at home was to make sure that James’s sights were not just focused on the danger of Puritans at home, but the growing danger abroad, especially through the Dutch Republic and the connection between Netherlandish and English Puritans. The Jesuit and controversialist John Floyd ventured to present this case in his Latin parody *Deus et rex* (1619), translated the next year into English as *God and the King*. Though this treatise explicitly confronted the idea of liberty with an indirect shot at the king for his absolutist theories

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<sup>66</sup> Richard Broughton, *English Protestants plea, and petition, for English preists [sic] and papists to the present court of Parliament, and all persecutors of them: divided into two parts* (St. Omer, 1621), p. 84.

<sup>67</sup> *Ibid.*, p. 106.

<sup>68</sup> *Ibid.*, p. 4.



of authority, Floyd also framed his discussion of liberty with an attack against the ‘Puritanes of the last Parliament in their discontented meetings.’<sup>69</sup> He insisted that these Puritans were set on turning the ‘government of the Realm from Monarchy into Democracy.’<sup>70</sup> Like Broughton, Floyd warned against the course taken by ‘Reformers’ who first went after Bishops, but then turned to ‘end with kings casting them from their Thrones.’<sup>71</sup> James had long held a similar view of such reformers, and made it quite clear in his remarks at the Hampton Court Conference where he exclaimed, ‘No Bishop, no King.’<sup>72</sup> Aligning his conclusions with James, Floyd protested that such an endeavour was the strategy of those who looked to overthrow the monarchy in France and in Holland where they held ‘Democracy above Monarchy’, and were the ‘fittest instruments to bring the same into the rest of reformed Countries.’<sup>73</sup> Richard Verstegan, another pro-Habsburg writer, and earlier supporter of Mary Queen of Scots, published several tracts and satirical news reports concerning the Spanish Match. Like other Catholics in England and abroad, Verstegan’s pamphlets were filled with anti-Calvinist sentiments; being a supporter of the Habsburgs in the Netherlands he was often overtly anti-Dutch as well.<sup>74</sup>

In a 1621 tract Verstegan provided a depiction of England being reformed in the same way that the Dutch reform took place. Here, it was the cruel nature of the Calvinists that had seeped into Holland and corrupted the very ideal of toleration. Verstegan commented that though on the outside the reformers’ words gave lip service to unity, never had he seen a people ‘in a more disunited unity’ than those in Holland.<sup>75</sup> He explained that apart from the quarrels amongst the Protestants about the doctrine of predestination, that is between the Arminians and the Calvinists, ‘the religion of England they also like not’, as the Hollander have been informed by ‘their freindes the Puritanes...how ilfavourably the Religion of England is now reformed; and what great want they have of a Holland-discipline, and such a worshipfull Consistory of Church-

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<sup>69</sup> John Floyd, *God and the King*, p. 23; Peter Milward, ‘Floyd, John (1572–1649), Jesuit and Religious Controversialist’, ODNB.

<sup>70</sup> Floyd, *God and the King*, p. 23.

<sup>71</sup> *Ibid.*, p. 13.

<sup>72</sup> William Barlow, *The summe and substance of the conference, at Hampton Court* (London, 1604), p. 82.

<sup>73</sup> Floyd, *God and the King*, pp. 23-24.

<sup>74</sup> Paul Arblaster, ‘Verstegan [formerly Rowlands], Richard (1548/50–1640), Writer and Intelligence Informant’, ODNB.

<sup>75</sup> Richard Verstegan, *Observations concerning the Present Affaires of Holland and the United Provinces* (St-Omer, 1621), p. 17.

counsellours as they have there in every of their Townes.’<sup>76</sup> As Floyd proposed, the real danger of the duplicitous Puritans was that they ‘might in quiet possession attayne to their wished great Republike.’<sup>77</sup> Paul Arblaster has found a similar, consistent approach in Verstegan’s news reports in the *Nieuwe Tijdinghen*. Here, Arblaster suggests that the representation of an anti-Spanish faction growing in England during the Match was synchronised with the growing tension in the Netherlands and the renewal of conflict at the end of the peace treaty. Thus, Verstegan attempted to pin together the two adversaries of both Spain and James in a polemical assault that ‘accused the Calvinists of wanting to overthrow all princely governments and make new republics, on the basis of Holland’.<sup>78</sup> It was not Catholics who were deceitful but the Puritans, who threatened both the settlement of the Match as well as James’s authority.

Verstegan’s 1621 pamphlet *Londons Looking-Glasse* provided a similar argument in support of both the Anglo-Spanish alliance and the toleration of Catholics in England. As a way of denouncing the work of puritan preacher Thomas Scott, Verstegan sought to show that it was not simply a matter of differences in religion that were driving the anti-Spanish and anti-Catholic sentiments in England, but the subversive nature of the puritan preachers and their inclination toward following the reformers of Holland.<sup>79</sup> In this pamphlet, Verstegan reconstructs an imagined conversation between the author and different French, Italian, German and Spanish guests. The conversation is framed around one Spanish guest pulling from his pocket a letter which contained news from England about the mistreatment of the Spanish ambassador by the ‘Apprentices of London.’ As the author was the visiting Englishman amongst the group his only reaction to such an inexcusable act was to ‘blush thereat, and with an Italian Shrugge, silently sit ashamed.’<sup>80</sup> This very real incident had occurred just shortly after Gondomar’s arrival and included several apprentices who threw stones at the ambassador. One ‘fellowe’, who used insulting speech to the ambassador, was ordered to be whipped through London from Aldgate to

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<sup>76</sup> Verstegan, *Observations*, p. 97.

<sup>77</sup> Verstegan, *Observations*, p. 98.

<sup>78</sup> Paul Arblaster, *Antwerp and the World Richard Verstegan and the International Culture of Catholic Reformation* (Belguim, 2004), p. 141.

<sup>79</sup> Verstegan, *Londons looking-glasse. Or The copy of a letter, written by an English traundayler, to the apprentices of London* (Saint-Omer, 1621), pp. 20-22. For an examination of Puritan opposition to the Spanish-Match in Thomas Scott’s, *Vox Populi or Newesfrom Spayne*, see Peter Lake, ‘Constitutional Consensus and Puritan Opposition in the 1620s: Thomas Scott and the Spanish Match’, *The Historical Journal*, 25, 4 (1982), pp. 805-825.

<sup>80</sup> Verstegan, *Londons Looking-Glasse*, p. 5.

Temple Bar.<sup>81</sup> The incident spurred James to follow up with a ‘stern speech in Guildhall, reproving the Lord Mayor and Aldermen for lack of order in the City.’<sup>82</sup> To show his official stance, and further his attempt to save face with the ambassador, he issued a proclamation ‘for suppressing insolent abuses committed by base people against persons of quality, as well Strangers as others, in the Streets of the City and Suburbs of London.’<sup>83</sup> Verstegan organised his text around this event and presented an argument for toleration based on what he saw as an unfit and unreasonable hatred of the Catholics in England by virtue of a hatred for Spain and ‘their intending to have invaded England in the yeare 1588.’<sup>84</sup> This animosity toward Catholics was a corollary of what have described by historians as an ‘Elizabethan tradition of enmity towards Spain’.<sup>85</sup> Verstegan however, was prepared to confront this lineage of hatred by pinning the divisiveness of Holland to the insatiable appetite for power of the Puritans in England.

Though the lingering hispanophobia was evidently a remnant of the conflicts of the Elizabethan era, there was still more that puzzled the guests about the anti-Spanish sentiments in England. They speculated that if privileged guests of England were not exempt from harsh treatment, one had to ask why such a ‘hatred be continued in England among the common people against Spaine and Spanyards’, especially considering there was ‘peace and amity between England and Spayne.’<sup>86</sup> The answer, Verstegan assured them, could only be found in ‘their more violently affected Preachers, who out of love unto the reformed discipline of Holland, on which the eye of all their hope is fixed, would fayne make the poore weak understanding youths, and the ruder sort of simple people, the subjects of their sedition.’<sup>87</sup> Once again, we see Verstegan advance the notion that Puritans were not only attempting to make England into a new Holland, but were willing to undermine James’s ability to negotiate peace by sowing the seeds of sedition

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<sup>81</sup> *CSPD, James I*, ‘Chamberlain to Carleton, April 7’, No. 244.

<sup>82</sup> *SP James I*, 14/111 fol. 3.

<sup>83</sup> ‘A Proclamation for suppressing insolent abuses committed by base people against persons of quality, as well Strangers as others, in the Streets of the City and Suburbs of London, with the parts adjacent’ (1621), in *Stuart Royal Proclamations: Royal Proclamations of King James I 1603–1625* (eds), James F. Larkin, c.s.v. and Paul L. Hughes (Oxford, 1973), i, pp. 509-511.

<sup>84</sup> Verstegan, *Londons Looking Glasse*, p. 36.

<sup>85</sup> For example, see Questier, *SDP*, p. 4; Cogswell, ‘England and the Spanish Match’, pp. 121-129.

<sup>86</sup> Verstegan, *Londons Looking Glasse*, p. 18.

<sup>87</sup> *Ibid.*, p. 19.

in stirring up what Michael Questier describes as the ‘base instincts and rudeness of lawless elements in the metropolis.’<sup>88</sup>

The author of the pamphlet concluded that with such division there would be no peace until Englishmen were persuaded that debating matters of religion would only lead to a stalemate in convictions. Neither the Protestant nor the Catholic could be convinced that their reasons of faith were wrong. There was no ground for justifying a hatred of the other if all ‘alleged for themselves, how he was assured of the true sense and meaning of Gods word, set downe in Scripture, in such wise as he could not be mistaken or deceived.’ Verstegan insisted that this matter of difference in approaches to dealing with the conflict in Europe and with Catholics at home, if it truly had to do with religion, could be settled. Taking the position of a moderate, the author asserted that he saw ‘no reason of not tolerating their [Catholics’] conversation, when they can be content in human and Civil manner to converse with me.’<sup>89</sup> This of course was the opposite characteristic from that with which Verstegan was framing Puritans. The reason then why Puritans, and the Dutch, were so against the Match, was that they desired more than simply church reform. They disliked Spain and the Spanish Match on account of a desire for subverting James’s authority. The real difficulty James faced was not Catholic subversion, or Spain’s supposed desire for a universal monarchy, but those ‘brainsicke Puritans-Preachers’, who pretend they know ‘what belongeth unto matters of State.’<sup>90</sup> Thus, the author rhetorically asked, ‘Must the King acquaint Puritan-Preachers & Apprentices with his designes, or aske them leave what Princes Ambassadors he shall admit into his Country, & about what busines he shall treat with them?’ Puritans intended to ‘stirre up sedition to disturbe the state’, as the incident with the ambassador demonstrated. When they were done causing trouble for James over the Match, they would scarcely stick around to share in the burden that would follow a failed alliance with Spain and war in Europe. The author continued to ridicule Puritans saying, ‘These Puritanicall suggesters seeke to save their owne shoulders from the whip, and their owne neckes from the halter.’ For Verstegan, a Spanish match was the most prudent move James could make in a time of such political instability in Europe. Avoiding being driven into the arms of the Puritans, and then the reformers in Holland, was pivotal if James was to maintain his authority and continue to

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<sup>88</sup> Questier, *Dynastic Politics and the British Reformations*, p. 461.

<sup>89</sup> Verstegan, *Londons Looking Glasse*, p. 37.

<sup>90</sup> *Ibid.*, p. 38.

direct England and Europe toward a peaceful settlement. Verstegan's argument for toleration implied that reason of state, or 'matters of state' as James would call them, were the grounds for granting a toleration that would produce the most likely option for reaching peace at home and abroad. In order to substantiate this, he first had to subvert the anti-Catholic and anti-Spanish rhetoric abounding in England as a necessary step in the hope of securing a marriage agreement and Catholic Toleration. The only thing that stood between such lofty, but imperative goals of Verstegan, Floyd, Broughton, and James for that matter, seemed to be the growing puritan faction in the pulpit and England's parliament.

This idea of a puritan faction in England seeking to impose on James's prerogative, as well as talk of foreign influence, was not just a construct of Verstegan's imagination. After all, James had issued two proclamations against speaking on matters of state in an attempt to head off such endeavours by his parliament. In the 1620 proclamation James had urged them 'to take heede, how they intermeddle by Penne, or Speech, with causes of State, and secrets of Empire, either at home, or abroad'.<sup>91</sup> In a later proclamation he warned them to 'containe themselves within that modest and reverent regard of matters above their reach, and calling' or be punished 'under paine of imprisonment, and Our High displeasure.'<sup>92</sup> Yet, as Chamberlain recalled to Carleton, though the king had issued the proclamation 'against discussing matters of state', it was largely disregarded 'and Corantos [are] printed every week, with all manner of news.'<sup>93</sup> The contemporary historian Arthur Wilson had this to say about the atmosphere of the moment:

Every man's tongue is let loose to run riot ... mouthing out that Great Britain was become less than little England; that they had lost strength by changing sexes; and that he was not a king but a fiddler's son; otherwise he would not suffer such dishonour abroad ... why should he assume to himself the Title of Defender of the Faith, that suffers the Protestants of Germany and France, to be extirpated. That he might almost have purchased such a country as the Palatinate, with the money spent on ambassages.<sup>94</sup>

By the time James had dissolved parliament's second sitting, several preachers and members of parliament were censored or confined to the tower for speaking out against the Match and on

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<sup>91</sup> James F. Larkin, c.s.v. and Paul L. Hughes (eds), *Stuart Royal Proclamations*, i, p. 496.

<sup>92</sup> *Ibid.*, p. 520.

<sup>93</sup> *CSPD, James I*, 'Chamberlain to Carleton Aug 4, 1621', No. 60.

<sup>94</sup> Arthur Wilson, *The History of Great Britian being the Life and Reign of King James the First, Relating To what passed from his first Access to the Crown, till his Death* (London, 1653), p. 190.

matters of state, particularly concerning the Palatinate.<sup>95</sup> One of them, Thomas Murry, was placed under house arrest when he failed to inform the king of the intentions of the Prince's chaplain to 'present a book to the Prince against the Spanish match'.<sup>96</sup> This same chaplain, Dr. Thomas Winiffe, was committed to the tower for a short time for a sermon in which he compared 'Spinola to the Devill, that as he warreth and fighteth against the soule, so the other like a greedie wolfe seeketh to devoure the innocent lambe the Palatinat.'<sup>97</sup> The circumstances of the Match with Spain, their effects on the problems in the Palatinate, and particularly the proposed toleration of Catholics were questions of great consideration by all, even if they were not supposed to meddle in such matters of state.

Public opinion against the Match and James's approach to the conflict in Germany was becoming increasingly common by the summer of 1621. In a letter to Sir Martin Stuteville, the biblical scholar Joseph Mead remarked how confused he was to hear a report about a play in which the audience applauded what seemed to be a direct attack against the king. Mead remarked:

I am told that there was not long since (I suppose about Newyearstide) a recent play before his Majestie where there was a Puritan brought up having long Asses eares, who should speak after this manner: Is it now a time to give gifts and to make merry? etc. This should be a time of fasting and prayer, when the Church of God is in so great affliction in Bohemia and Germanie, and other places and not of masking and musick etc.<sup>98</sup>

According to Mead, the affair surrounding the parliament had led to conflict outside of Whitehall with 'some full of hope and some as big with feare even concerning the same matters.'<sup>99</sup> Mead also reports that a 'Lutenanant of Middle Temple' received the king's great displeasure at a dinner party with 'some 30 of the civilest and best fashioned gentlemen of the house.' Mead notes that the lieutenant 'took a cup of wine in one hand, and held his sword drawn in the other, and so began a health to the distressed Lady Elizabeth and having drunk, kissed his sword, and laying

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<sup>95</sup> This was the general consensus of the condition that led to Southampton being confined and Edward Sandy and John Selden being arrested and placed in the tower, see Gardner, *History of England*, (1893), iv, pp. 132-134. See also Russell, *PEP*, pp. 122-123.

<sup>96</sup> *CSPD, James I*, 'Aug 25, 1621, Locke to Carleton', No. 88.

<sup>97</sup> McClure, *Letters*, ii, p. 432; Mead, p. 224. Thomas Winiffe later became the Bishop of London.

<sup>98</sup> This is a transcription from the manuscript, London, British Library, MS Harl. 389. The transcription is found in Daphne M Wedgbury, 'An Edition of the Letters (1621-1625) of the Reverend Joseph Mead to Sir Martin Stuteville of Suffolk in BL MS Harleian 389' (unpublished Doctoral thesis, University of Leicester, 1991), p. 22.

<sup>99</sup> *Ibid.*, p. 22.

his hand upon it, took an oth to live and die in hir service, then delivered the cup and sword to the next, and so the health and cerimonie went round.’<sup>100</sup> While James’s approach was to play a neutral hand in attempting to cater to the Spanish, this gentleman made an overt stance on matters of foreign policy, a privilege James was less than willing to allot his parliament let alone the general public. But, as Thomas Cogswell has demonstrated, outside of the walls of Whitehall the political culture of England was being informed and transformed by those individuals who saw the events surrounding the Spanish Match as a time when England’s future was at a crossroads. This kind of public engagement with the foreign and dynastic policies was becoming increasingly more prevalent and increasingly frustrating to the regime.<sup>101</sup>

The divide over the Match was not just a matter which sparked controversy in England. With the rising tension over trade between England and the East Indies, Holland, as Verstegan complained, was becoming an increasing threat to James’s foreign interests. The spill-over effect from the Match meant that James was becoming highly interested in the affairs of the Dutch and Spanish. France was also becoming increasingly interested in the Match, especially the idea of James allowing a degree of toleration. Matters in France between Louis XIII and the Huguenots had been heating up for some time and Louis had not been able to put down the rebellion. It was Viscount Doncaster who advised the French king to make a turn for toleration before he lost both the fight and his reputation. Thus, any news of Catholic toleration in England seemed a small victory for the Catholic cause.<sup>102</sup> Mead reported in July 1621 that there was a public cry of jubilation at the printing of a pamphlet in Paris, which the king of France himself was delighted to hear of. He reported that the book, entitled *A Declaration of the Catholicks of England to their king*, was printed and disbursed on the streets. It reported that the king of England ‘hath granted them [Catholics] a toleration of Religion.’ And though there seemed to be much joy on the occasion of such news, Mead also noted that at the request of the English ambassador in Paris, ‘the setter and printer’ were quickly rounded up and ‘imprisoned untill the author can be

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<sup>100</sup> Wedgbury, p. 345.

<sup>101</sup> ‘The German war and the Spanish Match focused the attention of a generation on diplomacy and politics, and this intense interest led to the development of a fairly sophisticated system for circulating information outside of Whitehall’s control’, Cogswell, ‘England and the Spanish Match’, p. 128; Cogswell, *Blessed Revolution*, pp. 1-3.

<sup>102</sup> *Ibid.*, 464.

found.’<sup>103</sup> Concerns about the Spanish Match and Catholic toleration in England fostered a mix of emotions for those at home and abroad.

### **Meeting the Demands of the Match: The Extent and Limitations of Toleration**

James was acutely aware of the polarising environment the Match had created. Ambassador Gondomar informed the Spanish king in March 1620, that James’s situation at home was worse than he was letting on. According to Gondomar, though James was still relatively well-disposed to Philip, Ferdinand and ‘to justice’, he discovered that ‘his kingdom, his neighbours, his kindred, and his friends found great fault with [James] for not doing more than he had done.’ To make matters worse, the number of Puritans against him seemed to increase each day. Recalling a story about a puritan named Winwood who was ‘an enemy to Spain, and a Dutchman’, James mourned that ‘the malice of these people so increased that he had now three hundred Winwoods in his Court and Palace.’<sup>104</sup>

Moves against the Match, as well as James’s domestic policy towards Catholics, came to a head in parliament. Where the sharp pen of Catholics may have failed to convince James of his adversaries at home, parliament’s actions over the course of the short second sitting would not. In a basic sense, James was presented with an ultimatum that either he must move to a position of neutrality with Spain or he must declare war; there was to be no more negotiating. With the matter of taxation and subsidies still on the table, parliament was hopeful in pushing James to make a decisive act that would end the marriage negotiations and with them any prospect of Catholic toleration. Thus, in conjunction with the ultimatum, the Commons also drew up a petition similar to the one they had produced earlier in 1621, this time with a full list of all the reasons why James should not tolerate Catholics and instead produce new laws against them.<sup>105</sup> Though in some ways the petition was not too far from the previous one which James had agreed with in principle, its implications went much further. According to Glyn Redworth, parliament ‘outlined a complete programme of government which, if carried out, would have left James with

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<sup>103</sup> Wedgbury, ‘Mead to Stuteville, July 7’, p. 124. Michael Questier has noted that this pamphlet was entitled *Declaration présentée au Roy d’Angleterre; par les Catholiques Anglois, sur les Presentes Affaires de son Royaume. Ensemble Tout ce qui a esté Ordonné par sa Maiesté, sur icelle Declaration* (Paris, 1621). See Questier, *Dynastic Politics and the British Reformations*, p. 504, fn. 44.

<sup>104</sup> Gardiner, *Narrative of the Spanish Marriage Treaty*, p. 318.

<sup>105</sup> Zaller, *The Parliament of 1621*, pp. 150-152; Cogswell, *Blessed Revolution*, p. 58.



nothing to do except execute the wishes of the commons.’<sup>106</sup> Such action shook James, Charles and the Spanish ambassador to their core. In a letter to Sir Thomas Richardson, speaker of the commons, James instructed that ‘none therein should from thenceforth presume to meddle with any Mysteries of State; and namely not to speak of his dearest Sonnes Match with the Daughter of Spaine, nor to touch the honour of that King.’<sup>107</sup> John Chamberlain reported to Carleton that after the petition and speeches were given Charles had written to James expressing his frustrations that parliament ‘should busie themselves and entermeddle so much in his marriage.’<sup>108</sup> Gondomar’s reaction was even more unsettling as he threatened to leave if the king was not willing to take action against such reviling speech.<sup>109</sup> Ultimately dissolving parliament with a heavy rebuke, and now feeling the pressure to secure a settlement for both the Palatinate and his financial troubles, James quickly realised his ‘trickle of concessions’ for Catholic toleration would not be enough to satisfy his or Spain’s needs.<sup>110</sup> He thus moved quickly to rationalise his move toward toleration. In a letter to Lord Keeper Williams in August 1622], he explained that on account of ‘the said Princess being a Roman Chatholike We holde it fitte that such of our subjects as be the same Religion conteining themselves otherwise with those bounds of loyaltie and dutie...should be treated and used with all clemencie and mildnes.’<sup>111</sup> Thus, for James, giving a little in terms of toleration to the Catholics helped his chances with Spain and was intended to move English Catholics to loyalty, in turn providing him with a little much-needed support. Taking such action to prove that he was committed to securing a marriage treaty with Spain was not a simple task, but it would seem in the present situation he had little choice but to double down in pursuing the Match and the toleration for Catholics that went with it.

Confronting the growing public criticism which was springing up on account of the negotiations and the toleration of Catholics, in August 1622 James issued a directive to Archbishop Abbot to correct the ‘abuses and extravagances of preachers in the Pulpitte.’<sup>112</sup> It was ordered that ‘all sermons, except those on festivals by the church dignitaries, are to be based

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<sup>106</sup> Glyn Redworth, *The Prince and the Infanta* (Yale, 2003), p. 34.

<sup>107</sup> William Prynne, *Hidden workes of darkenes brought to publike light* (London, 1645), p. 12.

<sup>108</sup> McClure, *Letters*, ii, pp. 414-415.

<sup>109</sup> Redworth, *The Prince and the Infanta*, pp. 35-36.

<sup>110</sup> Cogswell, *Blessed Revolution*, p. 20.

<sup>111</sup> British Library, *Additional MS 28640*, fol. 127r.

<sup>112</sup> SP *James I*, 14/132 fol. 218.

upon the Articles of Religion set forth in 1562, and on the homilies of the Church.’<sup>113</sup> Preachers were also to refrain from preaching sermons touching on predestination, as that should be ‘handled by learned men, and that moderately and modestly by way of use and application.’ Showing his annoyance with the criticism of the Match, James pulled back on the reins for preachers meddling in the affairs of the state. The order forbade preachers to ‘declare limit or bound out by way of positive doctrine...the power, perogative, Jurisdiction, authoritie, or dutie of souveraign princes, or otherwise meddle with those matters of state and the Differences between princes and the people.’ Loyal Catholics were finding James’s favour easier to come by than in years past, as the royal order added insult to injury for godly Protestants by banning all ‘bitter invectives and undecent rayling speeches against’ Papists.<sup>114</sup>

To the utter dismay of the anti-Spanish and pro-war factions of the Commons and Lords, James also initiated several critical steps toward *de facto* toleration of Catholics by limiting the penalties for recusancy. In a letter to John Bennet, William Bishop, the preferred episcopal candidate of the secular priests to be appointed to England, explained that ‘the lay Catholikes in prison were sett at liberties on their own bands.’<sup>115</sup> The process of attaining this measure of toleration was described in a letter from John Hazell to Diego De Lafuente. Hazell explained how he had worked diligently through Gondomar to ‘sollicytt the busyness for the Catholics.’ He reported that the original grant seemed to be ‘by way of banishment’, but after much negotiation they obtained ‘a promise of their libertyes upon bond.’ Many Catholics were hopeful that progress was being made towards more liberty on account of the negotiations. William Bishop expressed his interpretation of the events surrounding James’s move towards toleration in another letter to John Bennet. Bishop explained that James had ‘promised the Spanish ambassador that he will take away all penal lawes against recusants, and de facto hath commanded the judges of assise not to meddle with any recusants in this summers circuit.’<sup>116</sup> Eventually, through much deliberation, the king’s stance was communicated by the Lord Keeper in a letter to the judges of the circuit. The order explained that the King had resolved, ‘for State

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<sup>113</sup> *CSPD, James I*, ‘Aug 4, 1622’, No. 85.

<sup>114</sup> *SP James I*, 14/132 fol. 219. Kenneth Fincham provides a transcription of this document in ‘Royal Directions to Preachers, 1622’ in K. Fincham, *Visitation Articles and Injunctions of the Early Stuart Church: I. 1603-25* (Cambridge, 1994), pp. 211-213. Cogswell, *Blessed Revolution*, pp. 32-33.

<sup>115</sup> Transcription of the letter is found in Questier, *SDP*, pp. 132-133.

<sup>116</sup> Questier, *SDP*, ‘William Bishop to John Bennett’, 15, 25 (August 1622), pp. 154-155.

reasons, and from hope of favour by foreign Princes to Protestants, to grant some grace to English Papists.’ Making reason of state a primary point of his decision to engage in toleration of Catholics was a critical part of James’s approach to meeting the demand of the Match. We see in this justification for enacting *de facto* forms of toleration that James was confronting the practical reality that the religious landscape of England and Europe was increasingly pluralised. This, of course, is not to contend that James or any other Protestant or Catholic at this time intended to approve of a pluralistic religious society, but the acceptance of such a reality had to come with practical measures to keep the peace in such hostile times. For some time the issue of Protestant toleration in France had been a source of discussion in parliament, as James continued to call for the ‘Most Christian’ king to stop his use of force in order to obtain peace. The question was being asked by those in parliament of what the regime was willing to sacrifice in terms of toleration for Catholics while Protestants were being punished in France. The discussions in parliament sparked James to remark that ‘if the Most Christian persists, he will do everything in his power to help and encourage the Huguenots of La Rochelle.’ This was on account that James ‘knew full well that they were not dealing with them after this fashion for reasons of state but simply because of religion.’<sup>117</sup> Of course, not too far out of James mind was his dynastic interest at stake in Germany and the prospects that if a settlement could not be made the likelihood that his Protestant daughter, and grandchildren, would potentially be at the mercy of a Catholic power. Presenting toleration as reason of state, in hope of gaining toleration for Protestants abroad, reveals the extent to which Toleration was becoming transactional. James was not just enacting toleration as a gracious and merciful king, but as a diplomat in negotiating matters of state and utilising toleration as a bargaining tool.

In this way, James could present toleration as a necessity for keeping peace in a Catholic-dominated Europe, and as something which would effectively keep the peace at home in England as well. To show the extent of his willingness to tolerate Catholics the grant allowed ‘writs for their enlargement, and wishes’ in which James insisted on ‘no nicenes or difficulty to be made in showing favour to all accused of refusing the Oath of Supremacy, disposing of Popish books, hearing or saying mass, or any point of recusancy which concerns religion only, and not matter

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<sup>117</sup> *CSP, Venice*, ‘February 1622, 5-14’, xvii, No. 64.

of State.’<sup>118</sup> This distinction between matters of religion and matters of state had always been a part of James’s toleration talk. Yet, as we see in the list of tolerated acts above, these were not just matters of someone holding a difference of conscience. These were in fact the Catholic practices outlawed in Elizabeth’s era, which the recusancy legislation of 1604 intended to uphold and the legislation passed along with the enactment of the Oath of Allegiance intended to enforce. Word of this toleration spread quickly. In another letter to Mr Stuteville, Joseph Mead noted in [June, 1622] that ‘All the Jesuites and Preists which were in prison at London and else where were this week set at libertie.’ It was reported to Mead that ‘their number was 400’, though ‘they went under baile to be forthcoming when they should be called for.’<sup>119</sup> Yet, as discussed earlier, the Spanish intended that Catholics in England be granted a degree for toleration ‘in some sufficient legal manner.’<sup>120</sup> The extent of toleration for Catholics in England which Spain, and Rome for that matter, was demanding often seemed out of reach for James, though not for the want of trying. As it was conveyed by Hazell, the situation of making such a matter legal was ‘difficult, troublesome and tedious.’ This was partially due to the fact that paying such a bond to be released would ‘prove impossible to the poorer sort, and very chargeable’. However, the real difficulty for seeing this act of toleration as more than another *de facto* measure, only a temporary grant of favour and not a long term approach to Catholicism in England, came down to what this reprieve in the execution of the recusancy laws actually meant. The question of whether such a writ would apply only to those who were already in prison, or could be extended to those who might be charged in the future, was a significant issue for Protestants and Catholics alike.<sup>121</sup>

To some degree, unofficial forms of toleration were exhibited, often for particular individuals and or groups, at different times in James’s reign.<sup>122</sup> These *de facto* forms of tolerating Catholics could involve a removal of penalties for an individual charged with

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<sup>118</sup> SP *James I*, 14/132 fol. 230; *CSPD, James I*, ‘The Lord Keeper to the Judges’, No. 84. *CSP, Venice*, ‘August 31, 1622’, xvii, No. 580, highlights the declaration by the Bishop of London to his diocese with similar remarks concerning reasons of state and James’s desire to show clemency and mercy to imprisoned papists.

<sup>119</sup> Wedgburg, pp. 254-255.

<sup>120</sup> Questier, *SPD*, ‘John Hazell to Diego de Lafuente’, pp. 148-154.

<sup>121</sup> *CSPD, James I*, ‘July 25, 1622, The King to the Lord Keeper’, No. 57. This order to the lord keeper contained a clause ‘empowering the Justices of Assize to enlarge them from the several gaols, on the sureties and conditions before ordered.’

<sup>122</sup> Questier, *SDP*, pp. 2-10.

recusancy. Sir Thomas Tresham experienced this act of clemency when he was relieved of his recusancy fines at the accession of James; but this was not an official licence for him to practice Catholicism.<sup>123</sup> James was more often than not intent on proving his determination to achieve uniformity by cracking down on nonconformists. However, individuals such as Thomas Preston had long experienced the favour of the regime in some form, though he was still actively engaging in his faith.<sup>124</sup> The secular priest John Colleton, who had earlier petitioned James for toleration, received unofficial liberty in March 1622, being granted a release from prison ‘at the instance of the Earl of Gondomar, in whose house he is to live.’<sup>125</sup> It was also reported by Gondomar early in March of 1621 that with James’s move towards toleration ‘countless persons are being converted and declaring themselves Catholics during the lull in the persecution.’ He added that James continued to do ‘many other generous acts on behalf of the Catholics without permitting any harassment or annoyance to any one.’<sup>126</sup> But As John Hazell explained, the writ only pertained to those who were committed before its enactment, and ‘all such as were committed afterwards were decreed incapable thereof’ in receiving its benefits.<sup>127</sup> The Lord Keeper John Williams explained in a letter to Lord Annan that ‘they shall find that these papists are not otherwise out of prison, than their shackles about their heels, sufficient sureties, and good recognizances, to present themselves again, the next assises.’ Assuring his friend that the present royal favour was nothing to be worried about, Williams explained that the idea that ‘this favour should mount to a toleration, is a most dull, and yet most devilish, misconstruction.’ He was sure that ‘if the lay papist do wax insolent with this mercy, insulting upon the Protestants, and translating this favour from the person to the cause, I am verily of opinion that his majesty will remand them to their former state and condition.’ This act by James then, according to Williams,

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<sup>123</sup> See above, chapter 2.

<sup>124</sup> It was claimed that Thomas Preston was the individual who led the former Bishop of London, John King in his recanting of Protestantism; Broughton claims Bishop King renounced his protestant faith in his *English Protestants plea*, p. 19. See also, *A sermon preached at Pauls Crosse, the 25 of November. 162: Upon occasion of that false and scandalous report (lately printed) touching the supposed apostasie of the right Reverend Father in God, Iohn King, late Lord Bishop of London.* (London, 1621). Preston’s answer to the claim can be found on pp. 81-85.

<sup>125</sup> *CSPD, James I*, ‘March 31, 1622’, No. 100. Colleton’s release from his penalties for recusancy are also noted in *Calendar of State Papers Domestic, Charles I, 1625-1626*, vol xii, ed., John Bruce (London, 1858), BHO, p. 191.

<sup>126</sup> Translation of Gondomar’s letter is found in A. J. Loomie, ed., *Spain and the Jacobean Catholics 1613-1624* (CRS 68, 1978), ii, No. 51, pp. 144-147.

<sup>127</sup> Questier, *SDP*, ‘Hazell to Bennet’, p. 152.

was not an act of toleration, for toleration ‘looks forward to the time to come; this favour backward to the offences past.’<sup>128</sup> Williams’ discussion of toleration in this case is revealing about the predicament that James was in. The need to enact formal policies of toleration was becoming increasingly obvious, as progress in negotiating a papal dispensation for the marriage included such conditions as having James nominate bishops to be appointed in England and even appointing Catholic lords to his privy council. As difficult as this may have been to stomach and pull off, James still needed to find a way to push for toleration to assure Spain of his commitment to the Match, all the while dealing with a parliament which seemed to be bent on eroding the king’s trust and patience.

In combination with his domestic approach to Catholics, James also turned to revise his approach to dealing with Rome and the Netherlands. As Michael Questier has suggested, in appointing John Bennet as the leading agent to Rome to help with the dispensation in March 1621, James had effectively ‘created a kind of shadow Catholic diplomatic service in order to reassure the Spaniards of the sincerity of the promises that he was prepared to make in order to secure the treaty.’<sup>129</sup> Thus, we see James’s attempt to satisfy the demands for toleration on both the domestic and foreign fronts. Doubling as a means of securing England’s economic interest abroad, James moved to send troops to assist Spain in Flanders at the request of Gondomar. The significance of these troops was that they were led by known Catholics, Lord Vaux and the Earl of Argyll.<sup>130</sup> It was also reported by Lando, the Venetian ambassador in England, that English recusants were being allowed to pass through the ‘ports of the realm’ without the ‘customary examination and oath.’<sup>131</sup> This explicit move to show favour to known Catholics was seen by Protestants to be the beginning stages of amassing a Catholic army. Speculation like this may not have been too far removed from perceivable truth, since, as Michael Questier has pointed out, many of those recruited by Vaux and Argyll were prominent Catholics themselves.<sup>132</sup> Though James was in some ways moving towards Catholic toleration in steady increments, to Protestants

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<sup>128</sup> ‘John Williams to the Lord Annan’, Sep. 17, 1622, in M.A. Tierney, *Dodd’s Church history of England from the Commencement of the Sixteenth Century to the Revolution in 1688*, 5 vols (London, 1839-1843), v, pp. CCXCVI-CCXCIX. A version of this letter can be found in Rushworth, *Historical Collections*, BHO, p. 63.

<sup>129</sup> Questier, *Dynastic Politics and the British Reformation* p. 463; see also Questier, *SDP*, p. 25.

<sup>130</sup> Questier, *SDP*, p. 27.

<sup>131</sup> *CSP, Venice*, ‘February 1621’, xvi, No. 317.

<sup>132</sup> Questier, *SDP*, p. 28, fn. 106.

at home and abroad such changes in domestic policies seemed to be turning England upside-down. In short time, word of a conspiracy to assault the king and the prince, and an outright call to kill Gondomar, was reported to come from the United Provinces.<sup>133</sup> In the context of the dissolving relationship between James and parliament over the proposal to increase the laws against recusants, and a public call for war with Spain, James's moves toward a greater degree of toleration significantly heightened the unsettled environment surrounding the Match.

The ability of anti-Catholic rhetoric, such as Ussher's, to 'express, contain and, to an extent, control the anxieties and tensions at the very centre of the experience and outlook of English Protestants' was a critical aspect of the Protestant attempt to subvert the positive notions of toleration being proposed by James, the Spanish and the English Catholics.<sup>134</sup> While Ussher did not directly attack the king's role in tolerating Catholics, he implicitly suggested that all involved were to be held accountable. The thought of a Spanish and Catholic plot to use the Match as a means of enslaving England to the Catholic powers both at home and abroad was terrifying to most Protestants. As Thomas Cogswell aptly put it, 'as the Spanish match matured, with the silencing of godly ministers, the toleration of Catholics, and persistent rumours of James's conversion, the idea of a threat from above became much harder to dismiss.'<sup>135</sup> Yet we see from the contributions of men like Broughton, Floyd and Verstegan that the criticism that James was receiving in parliament over the Spanish Match and his foreign policy in Germany opened the opportunity for Catholics to turn anti-Catholic rhetoric on its head. Fashioning an identity for Puritans as duplicitous and politically subversive, and utilising the deteriorating and problematic relationship between James and the reformers in Holland, were effective ways to rebut the longstanding charges of treason and subversion which Protestants attributed to Catholics. This moment of conflict in parliament between James and the anti-Spanish faction allowed Catholics to 'speak out not simply with impunity but also with a certainty of royal favour.'<sup>136</sup> Though the king's favour drew many further into suspicion about Catholic and Spanish intentions, and led to increased agitation over the Match, the political atmosphere it

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<sup>133</sup> The report of this conspiracy came from Richard Verstegan, who as we will see had a great deal to say about Holland and Puritans being the greater enemy to the England state than Catholics. 'Secretaries of State: State Papers Foreign, Flanders, 1585-1780', in SP 77/15 fol. 52.

<sup>134</sup> Lake, 'Anti-Popery', p. 80.

<sup>135</sup> Cogswell, 'England and the Spanish Match', p. 129; Cogswell, *Blessed Revolution*, p. 36.

<sup>136</sup> Cogswell, 'England and the Spanish Match', p. 129.

created became more advantageous for Catholics. Seizing the moment, then, Catholics could turn both the criticism that James received and the reverberating anti-Catholic sentiments to their advantage by pandering to James's distaste for puritanism and his understanding of his royal authority.

### **The Cost of Toleration: From the Papal Dispensation to the Marriage Treaty**

This section will turn to look at the toleration talk circulating around the papal dispensation and the drafting and conclusion of the marriage treaty. Beginning with a look at the dispensation's place in the context of the negotiations, it will be made clear that papal expectations, which largely revolved around Catholic toleration, and potentially Charles's conversion to Catholicism, greatly influenced the drafting of the final marriage treaty and oaths in the summer of 1623.

At the outset of the diplomatic venture to obtain a papal dispensation there were high hopes that the Pope would make a speedy decision to grant the dispensation in favour of the marriage and in turn help keep the peace in Europe. It was, after all, Spain's demand that the marriage not be official until such a dispensation was obtained, and any settlement over the Palatine depended to a great extent on England and Spain reaching an agreement. However, with a quick succession of popes between 1621 and 1623, each having their own opinion of the value of the Match, there was little continuity in the process and the demands of the dispensation rapidly changed over the course of the negotiations. No less complicating the matter was the fact that the parties involved in negotiating the dispensation, the English secular clergy, Jesuits and the representatives from the Spanish court in Madrid, each had their own hopes and intentions of what the dispensation would require of the treaty.<sup>137</sup> Another critical and technical point of delay in the dispensation was nailing down the idea that the curia demanded evidence of Catholic

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<sup>137</sup> The prominent diplomates from Spain were the Spanish ambassador, the duke of Albuquerque and Diego de la Fuente, Gondomar's Confessor. On the side for England there was the English Catholic, George Gage and later the Roman Catholic priest, John Bennet. The debates which occurred between the Jesuit factions and secular clergy largely loomed over the prospects of the dispensation including an episcopal appointment for Catholics in England. The secular priests lobbying for the curia to invest one of their own in the position, with the Jesuit faction arguing the dangers of the Match in general and proposing a slow and thorough process of review before signing off on the marriage. Michael Questier has spent a great deal of attention on this debate and its significance for the Catholic factions involved. See, Questier, *Catholicism and Community*, esp. chapter 12. See also Patterson, *James VI and I*, pp. 316-319.



toleration in England. It was thought early in the discussions that the religious articles in the first drafts of the marriage treaty were ‘altogether insufficient’ as they covered ‘the religion of the Infanta and her household, but nothing was said about the general body of English Catholics.’<sup>138</sup> There was the further complication that it was evident that the pope – along with some in the Spanish court – hoped that Charles himself would convert to Catholicism. Though this seemed to only be wishful thinking on the part of Spain and the pope, there is little doubt that Charles’s conversion, alongside a wider toleration of Catholics, raised hopes that England would finally see the errors of its ways.<sup>139</sup> Meeting the demands of the dispensation was a lofty and somewhat impractical venture for James to take, though it seemed as if he was intent on doing so right up till the end of the negotiations. Philip IV and James seemed to believe the marriage was a possibility, but it is unlikely that everyone in Rome and in the Spanish court was interested in seeing the Match through – though, as Redworth has argued, the same could be said for the intentions of the Prince of Wales as well.<sup>140</sup> One thing was certain: if the marriage negotiations were to move forward, and James was to salvage peace out of the disastrous predicament his family found themselves in, a dispensation was critical.

The English negotiator, George Gage, arrived in London from Rome in mid-September of 1622, but not with the long-awaited dispensation. Rather, Gage returned to James with what was described as ‘new demands to engage him in a Dispute of Treaty with the Pope.’<sup>141</sup> The focus of these demands was the enlargement and free practice of the Catholic religion in England. The scope of the demand of the dispensation can be seen in the resolutions which were sent to Digby, now the earl of Bristol, in Spain. In general, the articles of the dispensation did not stray far from the early drafts of the treaty, at which James wondered why some of the items had not already been settled between the king of Spain and Rome, when they were already ‘agreed

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<sup>138</sup> Gardiner, *History of the English Church*, iv, p. 351.

<sup>139</sup> One of the conceptual premises of Glyn Redworth’s *The Prince and the Infanta*, hinges on the idea that Charles’s conversion, or lack thereof, was a prerequisite for the marriage. Thus, the fact that Charles would most likely never convert to Catholicism, Redworth concludes that the Match was destined to fail before it started. See pp. 16-17. A stark criticism of Redworth’s idea can be found in Robert Cross, Review: *The Prince and the Infanta: The Cultural Politics of the Spanish Match*, in ‘Pretense and Perception in the Spanish Match, or History in a Fake Beard’, *The Journal of Interdisciplinary History*, 37, 4 (2007), pp. 563-583. For rumours of James’s illness and Charles’s conversion in Europe and a short assessment of the question of his conversion, see Questier, *SDP*, p. 42, fn. 173.

<sup>140</sup> See Redworth’s epilogue, in *The Prince and the Infanta*, pp. 134-140.

<sup>141</sup> Rushworth, *Historical Collections*, BHO, pp. 62-78.

on, and so essentiall to the businesse.’<sup>142</sup> The difficulty for James was that the articles expanded on the degree of toleration that James was supposed to concede. For instance, the fifth article called for the Infanta to have a ‘public Church, besides the Chappell’, which James assumed meant that the pope desired that the ‘world may take notice of the Religion shee professith.’ This was easy enough to overcome and eventually James agreed to a public entrance for the Catholic bride to be at a Chapel adjacent to the palace. As much as these concessions allowed for a public showing of the Catholic faith, James was not content on opening the flood gates to everyone. Thus, James insisted there must be a church for ‘burying and marrying and Christening. Yt being altogether unfit that all meane people belonging to his service should be married or christened in his chappell within the Pallace.’ Of course, it could not ‘be any church in London, but one to be builte adjoining to the Pallace.’<sup>143</sup> With other matters James was content on leaving the decision up to Philip: for example, whether the ‘superior minister’ having ecclesiastical authority over the Infanta’s family should be ‘in ordine Episcopali.’ There were other degrees of toleration being demanded which far exceeded anything James had conceded thus far. In his response to these articles James noted that they went far beyond anything that was being done in Catholic Europe. This was the case with the sixteenth article, which insisted that ‘no laws shall apply to the ecclesiastics and they will be under the authority of the superior.’<sup>144</sup> Such a request seemed odd to James, as he believed such a matter was not ‘allowed them in all states and Countries that are Roman Catholiques.’<sup>145</sup> James insisted that the expectation for him to make a ‘general good of the Roman Church’ was already being done by him and the manner in which he agreed to do so was acceptable to the king of Spain and satisfactory in the ‘opinions of the learndest and greatest Clergy of Spain.’ James thus proposed that the degrees of toleration already granted were all that could be done, and continued to protest that his ‘own authority cannot give a generall and free liberty of exercising the Roman Religion.’<sup>146</sup>

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<sup>142</sup> Oxford, Bodleian Library, MS Tanner 73, fol. 186.

<sup>143</sup> Ibid., fol. 190.

<sup>144</sup> From Glyn Redworth’s summary of the articles from the Spanish copy, in Redworth, *The prince and the Infanta*, appendix 2, p. 181. The manuscript of James’s revisions or answers to the articles uses the phrase, ‘quod Ecclesiastici nullis legibus subiaceant nisi suoru[m] Superiorum Ecclesiasticorum’, found in MS Bodl Tanner 73, fol. 186r.

<sup>145</sup> MS Bodl Tanner 73, fol. 186r.

<sup>146</sup> MS Bodl Tanner 73, fol. 187r.

Though James did his best to make the matter of toleration revolve around the impracticalities of enacting pro-Catholic laws, with a majority of parliament being vehemently anti-Catholic, there were also theoretical and conceptual problems with what was being asked of him. The conceptual challenge with the demand for toleration in the dispensation was that it pushed the notion outside of accustomed conceptual boundaries between subject and authority. In so far as toleration fitted the traditional conception of being a merciful forbearance granted by a powerful monarch, James was eager to concede and show that he had ‘in a manner already done that which is desired, as all the Roman Catholikes have found.’ The language he used to describe this toleration spoke of its being the usual act of ‘gracious clemency towards them’ who were inferior spiritually and in status. Where the conceptual challenge came was in the articles that discussed the raising of James’s grandchildren. Though James was concerned about the number of years in which the children would be raised under the tutelage of their Catholic mother, he was far more concerned about what this clause asked him to concede and its wider implications for his kingly authority.

There is no doubt that James knew the value of being reared from an early age in the true faith. He himself had a Catholic mother, yet his tutoring was thoroughly Protestant and he often affirmed that it was because of his Protestant upbringing that he landed on the right side of faith. The article in question was headed, ‘touching the education of the Children’, and the point of contention was the age at which the children would no longer be ‘under the tuition and care of the Mother’. Secretary Calvert informed Bristol that it was the request of the pope that ‘the children of this marriage should be brought up Catholicks under the mother until they be twelve or fourteen years of age.’<sup>147</sup> Though James insisted in his *Resolutions upon the other five Articles* that the children only be under their mother’s care till they were seven, he was not in a strong bartering position. After all, with his daughter in exile in The Hague the upper hand in the negotiations seemed to be in Madrid. Thus, Calvert continued in the letter to inform Bristol that James was content to ‘oblige himself privately by a letter to the King of Spain, that they shall be brought up *sub regimine matris* for two years longer.’<sup>148</sup> The critical point here was not so much the years, but the publicness of such a concession. It was James’s fear that when the article was

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<sup>147</sup> *State Papers Collected by Edward, Earl of Clarendon, Commencing from the Year 1621* (eds), Richard Scrope and Thomas Munkhouse, 3 vols (Oxford, 1767-1786), i, p. 3. For a note of use on Clarendon’s papers, see Robert Cross, ‘Pretense and Perception’, pp. 570-571, fn. 15.

<sup>148</sup> *Ibid.*, p. 3.

agreed on, it would ‘become publique’, and the world would know that he and Charles were allowing James’s grandchildren to be brought up ‘in a Religion which we professe not, nor is publicly professed in our Kingdom.’ To keep the matter of his grandchildren a private arrangement allowed James the ability to imply that it was necessary ‘according to their constitutions and healths.’<sup>149</sup> This, of course, was more palatable for his Protestant subjects and parliament than the probability that such toleration might lead to the heirs to the English throne being fully convinced Catholics.

The potential for a future conversion of his realm to Catholicism was not the only thing at stake for James in this act of toleration. Giving a license to long-term education in Catholicism for his grandchildren meant that James was not just tolerating the Catholicism of misguided subjects, but tolerating Catholicism at the court itself. These future, potentially Catholic, grandchildren would someday wield the same God-given authority and power that he had. If ever an act of toleration had the potential to apply the notion of ‘rightness’ to Catholicism this concession was it. In all of James’s other *de facto* acts he was able to attach to his toleration talk connotations of being a merciful and gracious king. In this case, he was not granting a merciful favour, but a license to be Catholic.

James was generally willing to accept what the pope and Spain were asking for in the article concerning religion. And though at times he insisted on the quiet and non-public implementation of toleration, he nonetheless professed that he ‘condescended unto, approved, and ratified, all and every the articles concerning religion without changing or altering any one word.’<sup>150</sup> In a letter of January 1623, Calvert informed Gage that both the king and the prince had written letters to the king of Spain assuring him ‘in the words of a King and of a Prince’ that they would adhere to and anticipated giving full performance concerning the ‘bonum publicum.’ As had long been maintained in the terms of the treaty, and was seen in the demands of the dispensation, the general toleration of Catholics in England was both the ultimate goal and principal hindrance in settling the matter of marriage. The significance then of developing articles in the marriage treaty which would meet these expectations, and in turn settle the disputation, is seen in Gage’s interpretation of the curia’s actions. Gage maintained that raising such difficulty over the articles of religion was not ‘either to frustrate or prolong this treaty’, but

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<sup>149</sup> MS Bodl Tanner 73, fol. 187.

<sup>150</sup> ‘His Majesty to Mr. G. Gage: 7 January, 1623’, *State Papers Clarendon*, i, p. 5.

necessary for the Cardinals to ‘secure their conscience’, if they were to give ‘passage of this great business.’<sup>151</sup> Though not everything was running smoothly in Rome, Gage informed James in a letter of April 1623 that by the end of March the troubling matters concerning the dispensation were ‘finally resolved’ and orders were given to ‘draw the article in form.’ At this point, in a haste to push the marriage forward, Charles, along with Buckingham, set off in the Spring of 1623 to Spain in hope of bringing a conclusion to the long and difficult business.

Through the negotiations of James, Gage and Spain, twenty-three articles for the treaty were drawn up. The bulk of the articles revolved around the demands concerning the manner in which Catholicism was to be practiced in England, particularly concerning the Infanta, her entourage and future heirs. Charles’s secret venture to Spain was intended to speed along the signing of the agreed articles and bring home his Catholic bride. However, rather than leaving Spain with the twenty-three articles agreed upon and his new bride, the negotiations were extended and Charles and James found themselves assenting to an additional four secret articles as well as Charles taking an Oath concerning the raising of future heirs. Thus, Charles trip to Spain was a significant manoeuvre in the Spanish Match, but not entirely for reasons one might think.<sup>152</sup> For one, the talk of Charles’s conversion to Catholicism was now a significant matter of concern for Protestants in England. One can see in the jubilation throughout England on the prince’s return that it was not because he arrived home with a Catholic bride, but rather that he arrived with no bride. It may also be thought that Charles’s return home was more of a celebration that the prince had returned at all, regardless of the trip’s effects on the outcome of the match.<sup>153</sup> After all, Charles was James’s only remaining son and taking such a trip into the heart of enemy territory was dangerous and risky. With the matter of succession having been such a significant ordeal under Elizabeth, having the next heir to the English and Scottish thrones take such a perilous approach to winning his bride’s hand was not only treacherous for Charles, but threatened the Stuart dynasty and a smooth transition of Protestant power at the king’s inevitable passing. But the most significant part of the venture was not just in the circumstances

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<sup>151</sup> Ibid., ‘Mr. Gage to his Majesty, April 24, 1623’, pp. 11-12.

<sup>152</sup> Though the Match has been looked on as a failure, Cogswell remarks that if anything the trip did ‘have one spectacular success which historians have often overlooked – it cut through years of diplomatic nicety and brought the negotiations to a swift conclusion.’ Cogswell, *Blessed Revolution*, p. 60.

<sup>153</sup> Cogswell, ‘England and the Spanish Match’, pp. 109-111; Cogswell, *Blessed Revolution*, pp. 9-12 and pp. 60-62.

in which it was taken, but its outcome. Though Charles, and Buckingham for that matter, hoped to woo the Spanish and Charles's bride into a settlement and his marriage bed, the trip ended with Buckingham being utterly despised by the Spanish and Charles looking for every opportunity to get out of Madrid.

With few alterations from those proposed in 1617, and those which James replied to in his *Resolution*, several of the religious articles in the treaty dealt with the modes in which the Infanta, her household, including servants, were to be granted 'free use and publick Exercise of the Roman Catholick Religion.' One article allowed for the Infanta to not only have her private chapel, but 'in like manner she shall have in London, or wheresoever she shall make her abode, a Publick and Capacious Church near her Palace, wherein all Duties may be solemnly celebrated, and all other things necessary for the Publick Preaching of God's Word, the Celebration and Administration of all the Sacraments of the Catholick Roman Church.' Two articles allowed for the appointment of a 'Superior Minister or Bishop, with necessary Authority upon all occasions which shall happen belonging to Religion', along with the authority to 'Correct and Chastise all Roman Catholicks who shall offend, and shall exercise upon them all Jurisdiction Ecclesiastical.' These, however, were not the full extent of the concessions for toleration that James would assent to in order to secure the Match.<sup>154</sup>

Along with the twenty-three articles of religion, there were four secret articles that both James and Charles conceded to along with an oath Charles took in Spain.<sup>155</sup> Earlier a distressed Conway had sent a letter to Charles discussing the king's concerns over the additional, secret terms. The king's first concern was that these new concessions asked that 'henceforth no Catholics, whether laymen or ecclesiastics, either secular or regular, shall suffer persecution or any molestation in the kingdom.'<sup>156</sup> Furthermore, they required that there be 'a perpetual Toleration of the Roman Catholick Religion, within private houses throughout all our Realms and Dominions which we will have to be understood as well of our Kingdoms of Scotland and Ireland as in England.'<sup>157</sup> In a letter to Buckingham, Conway conveyed the king's concern about

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<sup>154</sup> The copy of the article in which this chapter utilises is found in Rushworth, *Historical Collections*, BHO, pp. 78-140.

<sup>155</sup> Rushworth provided a transcription of the four 'private articles' as well as the additional oath that was signed by Charles and Philip IV, in *Ibid.*, pp. 78-140.

<sup>156</sup> Gardiner, *Narrative of the Spanish Match Treaty*, pp. 341-342.

<sup>157</sup> Rushworth, *Historical Collection*, BHO; also see Gardiner's account, *Narrative of the Spanish Match Treaty*, p. 341; Patterson, *King James VI and I*, p. 330.

‘the perpetuity of time for the abrogation of all laws’, to never be renewed or taken up against them for any occasion. He also stressed that James found it severely impractical that ‘the articles in favour of the Roman catholics must be confirmed by parliament, within three years infallibly.’ After the rough ending of the last parliament James had every reason to be nervous about his ability to comply with the added concessions, particularly since they would once again have the potential to pit him against his parliament. But perhaps more than his desire to not convene parliament on the matter, James, according to Conway, was concerned that the situation he and Charles now faced was not ‘a free and entire cause’ as Charles was left to stand in for his authority to make negotiations happen perhaps at the ‘safety of his person.’ James was initially hesitant to give such ‘an infinite liberty’ on account that he thought it had the potential for Catholics to come to a ‘dangerous encrease’ and limit his ability to ‘exercise his power.’<sup>158</sup> James had come this far, and Charles had gone to Spain ‘thinking that by his presence the marriage would be brought about sooner than by the negotiation of his Ambassadors.’<sup>159</sup> There was, in other words, no turning back. Agreeing to the additional concessions, Charles signed the articles and oath with Philip in Spain and on 20 July James agreed to the additional articles, and in private with a few of his trusted counsellors also gave an oath to provide even more assurance of his commitment to see the marriage through.

All of these concessions illustrate the subversion of the notion that toleration was by and large intended to be seen as coming from the ‘natural benignity and clemency of their King.’<sup>160</sup> Grants of toleration were intended to be made to those who were morally and spiritually outside the acceptable boundaries of the state. In this context, however, with the Palatinate being overrun by the Emperor and the Spanish, as well as Charles’s reckless trip to Spain, James’s attempt to propose that his toleration came strictly on account of the ‘marriage intended’ was somewhat disingenuous. In a draft of his pardon and dispensation to Catholics, James proposed that this toleration was intended to ‘enlarge our grace and bounty to them, so they will be stirred up and incited to shew the fruits of effect of their duty and sincere affection towards us.’<sup>161</sup> The import of such measures, however, went beyond a matter of kindness. James’s need for securing the

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<sup>158</sup> ‘Secretary Conway to the Duke of Buckingham, July 17, 1623’, in Tierney, *Dodd’s Church history*, v, p. CCCXX.

<sup>159</sup> *State Papers Clarendon*, i, p. XXIV.

<sup>160</sup> Gardiner, *Narrative of the Spanish Marriage Treaty*, p. 341.

<sup>161</sup> *SP James I*, 14/152 fol. 38; Tierney, *Dodd’s Church History*, v, p. CCCXXXVIII.

marriage and the extent to which toleration was being exacted by way of concessions not only took from him the ability to demand conformity in his realm, but threatened his royal purse as well.

After receiving a letter from Spain that was ‘leaner and dryer’ than James expected or thought he deserved, the king informed the prince and Buckingham that they should remind the Spanish that he had already ‘put in present execution all that I have promised’, and even much more than he promised, as he had ‘granted unto them...a discharge of all debt already owing to me by recusants.’ This debt to the already financially strapped king amounted to ‘six and thirty thousand pounds’, a value he contended would ‘strike down the third part at least of their dowry.’<sup>162</sup> James was not the only one who understood what the negotiations were costing him. The extent to which the articles conceded spiritual autonomy to Catholics was so daunting that Chamberlain, though he was not present when they were delivered to James’s court on account of a ‘reason of a sore fit of a stone’, was hesitant to believe their extent.<sup>163</sup> There was also a letter, later attributed to Archbishop Abbot, in which the author pleaded with the king to ‘take into your Consideration what the consequence may be’ of such a toleration.<sup>164</sup> ‘This Toleration you endeavour to set vp by yo[u]r Proclamation which cannot be done without a Parliament, unles yo[u]r Maj[es]tie will let yo[u]r subjects see that you will take unto yo[u]r selfe a libertie to throwe downe the lawes of the Land at your pleasure.’<sup>165</sup> The main thrust of this letter brought up the sticky point that the proposed toleration called for an abrogation of the penal laws by parliament. As Redworth notes, ‘it was one thing to ignore the wishes expressed in the petitions of the House of Commons. To ignore its fundamental right to repeal legislation was quite another.’<sup>166</sup>

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<sup>162</sup> G.P.V. Akrigg, ed., *Letters of King James VI and I* (Berkeley, 1984), p. 421.

<sup>163</sup> McClure, *Letters*, ii, p. 510.

<sup>164</sup> BL, Additional MS 28640, fol. 112r. See also BL, Additional MS 52585, fol. 19; BL, Hargrave MS 311, fol. 205r-205v. For Abbot’s early sentiments on James’s relationship with his Catholic subjects see, Thomas Fuller, *The Church History of Britain from the Birth of Jesus Christ until 1648*, ed. J. S. Brewer, 6 vols (Oxford, , 1845)

<sup>165</sup> BL, Additional MS 28640, fol. 112v. These remarks are not too far off from those that Abbot said to James in 1613 concerning toleration. See also Kimberley Hackett, ‘Opposition in a Pre-Republican Age? The Spanish Match and Jacobean Political Thought, 1618-1624’ (unpublished Doctoral thesis, University of York, 2009), p. 45.

<sup>166</sup> Redworth, *The Prince and the Infanta*, p. 50.



Just when everything seemed to be settled the conclusion of the Match stalled over questions of whether James was to issue a pardon and dispensation to Catholics or a royal proclamation.<sup>167</sup> To make matters more difficult, with the death of Pope Gregory XV there was once again a need for a new dispensation to be approved and the novelty of Charles as well as Buckingham's presence at the Spanish court had seemed to run its course just after a deal had been struck. Though Catholics had an early celebration of their long-awaited attainment of toleration, as with all things in the marriage negotiation, it quickly changed course. Charles never married the Spanish Princess and Catholics in England went from being on the cusp of the largest expansion of the free exercise of Catholicism since Queen Mary's reign to once again having the laws against them enforced with a renewed vigour. With the marriage negotiations all but over, and a likely match in France finding more ground by spring of 1624, parliament once again petitioned for the laws against recusants to be strictly enforced.<sup>168</sup> With James's death in March of 1625, and renewed calls for war with Spain, Catholics in England would once again find themselves in an uncomfortable and yet familiar place.

## Conclusion

Several aspects of the Spanish Match help us to understand the significance of this moment for the history of toleration. Anti-Catholicism in England was accompanied by waves of extreme persecution and times of relatively low confrontation with the Protestant regime, but it never entirely went away. In the moment of the Spanish Match, the wave of anti-Catholic sentiments that were being propagated introduced a sort of 'dangerous brand of polarized politics.'<sup>169</sup> This polarisation within the Protestant ranks provided the catalyst for generating a gap in the political culture that afforded Catholics at home and abroad the opportunity to infuse toleration talk into every aspect of domestic and foreign policy.

In some ways, the Catholic approach to subverting the Protestant polemical approach of making Catholics the common enemy of the state and church was not far from the ad hominem and binary approaches to polemical assaults in Elizabeth's era. We have seen this sort of spin on toleration before, in the narrative of the evil counsellors presented in *Leicester's Commonwealth*.

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<sup>167</sup> Questier, *SDP*, pp. 58-62.

<sup>168</sup> Tierney, *Dodd's Church History*, v, p. CCCLXI.

<sup>169</sup> Cogswell, 'England and the Spanish Match', p. 130.

Yet with new circumstances came new opportunity to extend the impact and influence these rhetorical strategies could have in formulating approaches to toleration., The assaults on Puritans and reformers in the work of men like Richard Broughton and Richard Verstegan were a pragmatic attempt to mould toleration talk to meet the political context and contingencies surrounding the Match. These individuals did not propose a toleration that was derived from the generosity of their king, but rather a prudent step to counter the influence and attempts by reformers to undermine the king's prerogative and authority.

As we have seen, English Catholics themselves were not the only ones to utilise this moment of crisis to their advantage. Catholic powers abroad in both Spain and Rome were capable in this moment of interjecting their own formulation of toleration talk into the moment. Negotiating a marriage with a Catholic foreign power which would involve a degree of tolerating Catholicism was not new for the English monarchy. The prospective match between Elizabeth and the Duke of Anjou in the mid-1580s led to Catholic calls for toleration. Here, discussions over the degree to which the Duke was allowed to practice his Catholicism was a sticky point of the marriage talks as well.<sup>170</sup> But the toleration demanded in the circumstances of the Anglo-Spanish Match exceeded anything that had been proposed before.

In the early 1620s, toleration went from being an act of forbearance and mercy towards Catholics to one of licensing a significant degree of spiritual autonomy. This spiritual autonomy is seen in the extent to which the long-established approach to outlawing Catholic practices was now being subverted to allow Catholic subjects to practice Catholicism, as well as permitting them to have spiritual oversight appointed directly from Rome. Thus, the proposed degree to which Catholics were free to act as independent religious subject far exceed anything previously envisioned in England. The quality and character of the toleration very much rested in the detail. Where toleration was proposed in its unofficial *de facto* form, the main worry of Spain and Rome was that it would only pertain to forgiveness of past offences. That being so, the *de facto* toleration which priests received when pardoned from their prison sentences was not a clear licencing to continue practicing Catholicism. There was a push by the Catholic powers to formally instigate toleration in its *de jure* form, which commanded more attention from officials

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<sup>170</sup> For a recent treatment of the Anjou Match and its failure see, 'The Anjou Match and its Consequences' in Peter Lake, *Bad Queen Bess?: Libels, Secret Histories, and the Politics of Publicity in the Reign of Queen Elizabeth* (Oxford, 2016), pp. 97-115.

to follow the king's command and set a precedent for allowing future acts of Catholicism to go unpunished. The fact that this becomes a critical issue for the Match negotiations reveals the extent of the conceptual limitations which toleration had at this time. Simultaneously, the toleration talk surrounding the Match negotiations also shows just how far both the king and the Catholics involved were willing to manipulate these same limitations if it meant arriving at a settlement. Making the very basis of toleration negotiable, rather than conceptually limited to an expression of mercy, allowed James to propose that toleration was the best hope for obtaining security and safety for Protestants in Europe. Such a transactional approach to toleration was displayed in the idea of toleration being given to Catholic prisoners in exchange for their loyalty. But with the extent of the concessions being demanded in the treaty articles, it was clear to many Protestants in parliament and the pulpit that though political loyalty might be being offered by those Catholics receiving toleration, toleration would be more than an occasional and gracious permission for Catholic to practice their religion.

## Conclusion

In 1623 the English Catholic priest Matthew Pattenson crafted his witty and perceptive tract *The image of bothe churches. Hierusalem and Babel unitie and confusion: Obedienc and sedition*. The tract was dedicated to Prince Charles and celebrated the hoped-for marriage between him and the Spanish Infanta. From its title, one can speculate that Pattenson was working towards more than simply toasting the future bride and groom. Taking its title from John Bale's influential book, *The Image of Both Churches* (1545), Pattenson intended to reframe such apocalyptic narratives, which pitted the struggle for Protestantism as the struggle between the Church of Christ and the Church of the Antichrist.<sup>1</sup> Capitalising on the polemical advantage that the Match gave him, Pattenson used his tract to retell the history of Protestantism, and, just as other Catholics had done before him, to paint the tradition of Protestantism as seditious and dangerous while casting Catholics in the light of loyal and obedient subjects. The tract's ultimate purpose was to insist that Catholics were worthy recipients of toleration, on account of their persistent loyalty to the English monarchy and, in the current context, of James's ambitions for a Spanish Match. With what seemed to be an inevitable marriage and promising future for Catholics in England, it is no surprise that Pattenson was quite forward in his insistence that toleration was a very prudent and virtuous measure to be taken if Charles was to take a Spanish, Catholic bride. Opening with a rejoicing epithalamium to the future couple, the tract quickly turns its attention to the pressing issue for Catholics, toleration. Pattenson implores the soon-to-be king that 'your H.[ighness] can not doe a more heroicall act, then to be a Mecaenas to religion, yf not to geve it privilege, yet to get it libertie.'<sup>2</sup>

Pattenson's call for toleration encapsulates the essential character of toleration talk employed in Elizabethan and Early Stuart England. Throughout the work, Pattenson attempted to present a moderate Catholic stance on some of the more difficult political questions of the day, such as whether a king can be deposed, and he structured his argument for toleration around an issue of immense importance to James, the king's royal prerogative. The centrality of the

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<sup>1</sup> John Bale, *The image of both Churches after the most wonderfull and heavenly Revelation of saint Iohn the Evangelist* (London, 1545).

<sup>2</sup> Matthew Pattenson, *The image of bothe churches. Hierusalem and Babel unitie and confusion: Obedienc and sedition* (Tournai, 1623), dedication.

political context to the toleration talk in these moments is a primary theme throughout this thesis. Just as it was at James's accession, and in the aftermath of the Gunpowder Plot, implicitly or explicitly taking a moderate stance in such volatile political circumstances often allowed groups of Catholics to produce a toleration talk that was relatively innovative. While such an approach was often accompanied by attempts to exacerbate the political friction which existed between rival groups and the regime, it none the less offered the possibility of exploiting the opportunities which particular circumstances afforded them. While *de facto* toleration never took deep root in any of these moments, and religious division remained a prominent feature of the Elizabethan and early Stuart periods, it was, paradoxically, this extensive religious discord which incubated and fostered opportunities for Catholics to engage in political and religious conversations around ideas of toleration. At such moments, political instability and religious reform created uncertainties, and it was in these windows of political and religious uncertainty that Catholics saw their opportunity to advance their position for toleration.

Assessing the toleration talk within the different contexts and contingencies discussed in this thesis reveals the malleability of toleration, both conceptually and practically. In Pattenson's case, with the hopeful return of Charles and his Catholic bride, he ventured to speculate that if the current laws against Catholics were to be 'altered or revoked', it would be the 'occasion tyme, circumstance and reason of state', that would produce this outcome. Changing contexts and circumstances throughout this period saw not only a monarchical transition from Tudor to Stuart, but a different approach on the part of the regime to matters of state, of religion, and even the idea of toleration. Catholics such as Pattenson attempted in their toleration talk to turn these differences to their advantage. Pattenson was explicit in pointing out that

the [l]aws of Quene Elizabeth, and his maiestie [James] ar farr different (for the king haith no Competitor; no reason for such Jealousies and fears as Q. Eliz. was subject to: he [James] holdeth amitie and good correspondenc, with these forren princes the Q. dowbted; the roses grow not up now emong thornes, as heartofore. and Therfor his Maiestie may be pleased, to grant that owt of grace to his subiects, which other Princes have permitted to ther subjects, for occasions of state.'<sup>3</sup>

Different circumstances forced James, as they did Elizabeth, to navigate the changing religious and political times. It has been contended through this thesis that much the same was true for

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<sup>3</sup> Pattenson, *The Image of Bothe Churches*, p. 405.

those Catholics who discussed toleration within these changing political contexts. The language in which Catholics arranged their calls for toleration had to be moulded and manipulated to suit their particular needs in specific circumstances. Thus, conceptually, toleration was something largely contingent and malleable, rather than coherently fixed, or simply an alternative in the face of an inability to coerce religious belief. In hopes of gaining toleration, many Catholics ventured to engage with some of the most challenging political questions of the day. As they did so, a rigid adherence to the more orthodox conception of toleration being the second best option to a fully restored Catholic England was more of the exception to the rule than the rule itself.

Placing context at the centre of historical approaches to toleration provides us with a means of understanding how Catholics approached the concept and application of toleration in what were rather intolerant times. In the early Stuart moments, we see how the political context impacted the way Catholics conceptualised and presented their cases for toleration. We have also seen how the Spanish Match, and the political culture and language that surrounded it, was deeply shaped by a relentless attachment of toleration to the marriage negotiations. Though discussions of toleration were not new to the religious discourse of the Elizabethan period, the entanglement of religious and political events in the early 1580s revolved around questions of how the regime would approach dealing with its Catholic subjects and in turn how Catholics were to engage with the regime. This meant that discussions of toleration, and its significance for an understanding of the civil and spiritual spheres, became inescapable. This thesis has argued throughout that Catholics adapted their toleration talk to the religious and political contingencies which they encountered. The extent of such adaptations is exemplified in the way in which toleration talk was both utilised within, and influenced by, discussions revolving around the boundaries of the civil and spiritual spheres, loyalty and disobedience, resistance and compromise. Often, formulating toleration talk within these politically and religiously charged topics meant Catholics had to subvert the pejorative notions of toleration resonating from the anti-Catholic rhetoric of the period. These expressions of toleration talk intended to marginalise such negative conceptions of toleration in favour of a language which accentuated the more virtuous notions of Godly character and judgement. Attention to the fluid and flexible character of toleration has not been the hallmark of toleration history, nor has its application within various textual genres been much attributed to Catholics in the late Tudor and early Stuart periods.

Such contributions to the history of toleration by Catholics have been stifled by the historical view that toleration was understood by early modern people as being largely a ‘diabolical device to destroy mankind’. It must be acknowledged that in both Catholic and Protestant writings such a pejorative sense could dominate the polemical exchanges about toleration. Yet this thesis has argued that an exclusive understanding of toleration as being explicitly a pejorative term in Elizabethan and Early Stuart England must be modified. As Alexandra Walsham has suggested in her evaluation of the prevailing histories of toleration, we must provide more in-depth studies into the influence which genre as well as content played in transforming toleration from a largely pejorative concept into a normative value of society.<sup>4</sup> Though attention to the progressive development of toleration ideas has been stigmatised by its association with early Whiggish histories, one does not have to throw the baby out with the bath water. Catholic expression of toleration as a virtuous attribute of the king’s person, and in some cases an advantageous and praiseworthy aspect of society, is shown in several sections of this thesis. However, it is important to distinguish the various contexts in which the term ‘toleration’ was applied within these moments, as these contexts play a significant role in helping us analyse the toleration talk being produced. Quentin Skinner’s essay, ‘Studying Rhetoric and Conceptual Change’, provides several key ideas on language used to evaluate society. Firstly, there must be an emphasis on understanding conceptual change in ‘direction’. What this means is that, rather than a normative concept’s ability to evaluate society slipping into atrophy, there is an increase in the normative application of that concept and its ability to positively appraise behaviour within society. A ‘Change of this kind will usually reflect an underlying attempt to modify existing social perceptions.’<sup>5</sup> In some cases this will be of the concept alone, in other cases, of both the concept and that which it is attached to. Catholics, at each of the moments discussed in this thesis, needed to alter the social perception that they were, by virtue of their religion, treasonous and subversive. Therefore, Catholics often attempted to present themselves as loyal and obedient subjects, making toleration of Catholicism much more palatable. As

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<sup>4</sup> Alexandra Walsham, ‘Cultures of Coexistence in Early Modern England: History, Literature and Religious Toleration’, *The Seventeenth Century*, 28, 2 (2013), pp. 118-119.

<sup>5</sup> Quentin Skinner, *Vision of Politics* (Cambridge, 2002), pp. 180-181.

Pattenson would suggest, 'tho they differ in religion, they agree in obedienc...who would not then burie a quaestion or 2. in silenc, to save the lives of subjects, and to be assured of loyaltie? for the greatest offenc is verbal, but the hart is reallie loyal.<sup>6</sup> Catholics often attempted to appease not only the magistrate, but the broader reading audiences which their treatises and printed petitions would reach. It is crucial to understanding Catholic contributions to toleration that we recognise how Catholics attempted to use a pejorative term, toleration, to suggest that 'contrary to received assumptions, what is being described is deserving of praise.'<sup>7</sup>

Catholic attempts to manipulate notions of toleration to single out or valorise toleration policy and behaviour can be seen operating in two ways. The first way was through an increase in the normative application of 'toleration'. The normative application of toleration in these moments is revealed by the collocation of the term toleration with positive characteristics used to express the ways in which society should function. Collocation of toleration is the intentional placement or use of the term with other terms to draw specific meaning or senses from that word. For instance, toleration is often collocated with the words 'sin' or 'wickedness', thus associating toleration with the merciful and patient nature of God in dealing with errors of humanity. Conversely, toleration can be collocated with terms such as 'heresy' or 'idolatry' to associate a negative connotation of man's perversion of spiritual authority.<sup>8</sup> The second means of subverting the pejorative notion of toleration was through a conceptual shift to ascribe to the term toleration attributes which were virtuous. For example, positive behaviours commonly associated with the attributes of Christ or God are often held to be the measure of a person's virtuousness, particularly when applied to the magistrate. These virtuous acts or behaviours are often expressed in contrast to inappropriate behaviour or the vices of others. This is apparent in the instances where James's mercy and grace were compared to Elizabeth's cruelty and unjustified punishment of Catholics. Suggesting that some Catholics used these subversions of the negative associations of toleration is not intended to say that such individuals explicitly advocated for greater degrees of religious pluralism. Rather, it is presented in order to

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<sup>6</sup> Pattenson, *The Image of Bothe Churches*, pp. 405-406.

<sup>7</sup> Skinner, *Vision of Politics*, p. 181.

<sup>8</sup> For an examination of liberty of conscience, Cromwellian toleration and the limitation to spiritual licence, see J.C., Davis, 'Religion and the Struggle for Freedom in the English Revolution', *The Historical Journal*, 35, 3 (1992), p. 510.



demonstrate the extent to which Catholics took innovative approaches to conceptualising toleration. Furthermore, in discussing such cases throughout this thesis we have been able to see the nuanced forms in which Catholic toleration talk was developing, as well as the extent to which particular genres of texts often defined and, in some ways, limited Catholics' ability to construct arguments for toleration.

To illustrate this, we can return to Pattenson's *The image of bothe churches*. Unknown to Pattenson at the time he composed his epithalamium, the context in which he found himself, along with other Catholic hopefuls, was drastically different from that when Charles had set sail for Spain. As things would transpire, Charles would not return with the Infanta, the toleration Catholics hoped for would never come, within a short time James I would die, and Charles would begin his reign siding with the anti-Spanish and anti-Catholic faction in parliament. But this would all be a new context for a new spree of toleration talk to engage with, and Pattenson framed his concluding remarks to meet the present needs. Like many of those Catholics calling for toleration before him, he certainly believed that to 'tollerate Catholick religion' was the most reasonable action to take, on account that it was 'the moother of the new religion: and the law maker and iudg heartofore of all religions.' But writing in the euphoria of hope, and capitalising on his knowledge of the past, he presented a language of toleration which encapsulated the sentiments of many Catholic tolerationists before him.

If the rules of civil societie, and moral conversation, may beare anie swaye: then I dowbt not, but mercie, and grace will ever sit in the highest place of the throne, and becom it best. For his majestie owt of his wisdome haith long observed, that too sevear persecution, maketh men desperate, *non coeracet, sed provocat violentia*. and too heavie a hand upon those, that the law casteth down: showet a will rather to oppresse the offender, then cure the offence. It is the greatest honor to a king that his mercie is more then his justice; and that his benches and courts can witnes compassion. For he that settis open the prison doors, (in so wise, and gracious manner:) meaneth not to conquer the harts and consciences of his subjects by torments, but winn them, by mercie and vertue...<sup>9</sup>

Pattenson's concluding thoughts acknowledged the realities of the persecuting past while framing a way forward in the current context. If the virtues of mercy, grace, prudence, and justice were the mark of a good king, and necessary for a peaceful society, then an act of toleration for Catholics would epitomise them all.

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<sup>9</sup> Pattenson, *The Image of Bothe Churches*, pp. 406-407.

This study has shown that Catholic toleration talk in the Elizabethan and early Stuart period was not fixed to one particular conceptual understanding of the term. In analysing a variety of Catholic sources it is evident that, even within the Catholic community, the notions and senses of toleration being employed were often applied to meet the needs and interests of particular groups and individuals, not always equating to a cohesive Catholic effort to eliciting toleration. Nonetheless, it has been possible to identify a Catholic-centred language of toleration which expresses the nexus of connected words and ideas Catholics could draw on in the political and religious contexts of these moments. Such an approach provides the history of toleration with a different understanding of the extent to which Catholics engaged with and contributed to discussions of toleration within these periods. Histories of toleration have devoted a significant amount of attention to Protestant and enlightenment figures. This study has attempted to provide an alternative Catholic-centred examination. Though the Elizabethan and early Stuart periods have of course been included in histories of toleration, the major premise has been to understand the thoughts and practices of a persecuting society. Less focus has been given to examining how moments of persecution and intolerance provided an opportunity for toleration to be discussed and in various degrees practiced. The English Catholics examined throughout this thesis crafted their treatises, pleas and petitions in just such circumstances of persecution and intolerance. As circumstances changed, Catholic approaches to calling for toleration varied as well. Though these theorists did not escape all of the conceptual limitations of an inherited notion of toleration, nor manage to defuse the anti-Catholic rhetoric which opposed them, they did shape their application of toleration to the political and religious circumstances confronting them. They produced a toleration talk which resonated in these volatile and challenging moments, and which should encourage us to think afresh about the history of toleration more broadly.

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