



IDEAS IN CONTEXT

# Jesuit Political Thought

The Society of Jesus  
and the State, c.1540–1640



Harro Höpfl

CAMBRIDGE

This page intentionally left blank

## JESUIT POLITICAL THOUGHT

The Jesuits were the single most influential body of teachers, academics, preachers and priests in early modern Europe. Höpfl presents here the first full-length study of their participation as scholars and pamphleteers in the religio-political controversies of their heroic age (1540–c. 1630). He explores the paradox that the Jesuits' political activities were the subject of conspiratorial fantasies and their teachings were often portrayed as subversive and menacing in their practical implications, and yet even their most vehement enemies acknowledged the Jesuits as being among the foremost intellects of their time, and freely cited and appropriated their thought. Höpfl pays particular attention to what Jesuits actually taught concerning doctrines for which they were vilified: tyrannicide; the papal power to depose rulers; the legitimacy of 'Machiavellian' policies; the justifiability of persecuting and breaking faith with heretics. The book sets these teachings in the context of the Jesuit contribution to academic discourse about the state, authority and law, the relationship between the state and Church and politics and religion, and the practice of statecraft. This is an important work of scholarship.

HARRO HÖPFL is one of the leading historians of ideas writing in Britain today.



Jesuit Political Thought

## IDEAS IN CONTEXT

*Edited by* Quentin Skinner (*General Editor*), Lorraine Daston,  
Dorothy Ross, and James Tully

The books in this series will discuss the emergence of intellectual traditions and of related new disciplines. The procedures, aims and vocabularies that were generated will be set in the context of the alternatives available within the contemporary frameworks of ideas and institutions. Through detailed studies of the evolution of such traditions, and their modification by different audiences, it is hoped that a new picture will form of the development of ideas in their concrete contexts. By this means, artificial distinctions between the history of philosophy, of the various sciences, of society and politics, and of literature may be seen to dissolve.

The series is published with the support of the Exxon Foundation.

*A list of books in the series will be found at the end of the volume.*

# JESUIT POLITICAL THOUGHT

*The Society of Jesus and the State, c. 1540–1630*

HARRO HÖPFL



**CAMBRIDGE**  
UNIVERSITY PRESS

CAMBRIDGE UNIVERSITY PRESS

Cambridge, New York, Melbourne, Madrid, Cape Town, Singapore, São Paulo

Cambridge University Press

The Edinburgh Building, Cambridge CB2 2RU, UK

Published in the United States of America by Cambridge University Press, New York

[www.cambridge.org](http://www.cambridge.org)

Information on this title: [www.cambridge.org/9780521837798](http://www.cambridge.org/9780521837798)

© Harro Hopfl 2004

This publication is in copyright. Subject to statutory exception and to the provision of relevant collective licensing agreements, no reproduction of any part may take place without the written permission of Cambridge University Press.

First published in print format 2004

ISBN-13 978-0-521-21043-3 eBook (EBL)

ISBN-10 0-521-21220-8 eBook (EBL)

ISBN-13 978-0-521-83779-8 hardback

ISBN-10 0-521-83779-0 hardback

Cambridge University Press has no responsibility for the persistence or accuracy of URLs for external or third-party internet websites referred to in this publication, and does not guarantee that any content on such websites is, or will remain, accurate or appropriate.



# *Contents*

<i>Acknowledgements</i>	<i>page</i> viii
<i>List of abbreviations</i>	x
<i>Translations, references, and orthography</i>	xi
Introduction	I
1 The character of the Society of Jesus	8
2 The Society's organisational ideas	23
3 The Society and political matters	53
4 The Church, the Society, and heresy	64
5 The confrontation with reason of state	84
6 Reason of state and religious uniformity	112
7 Jesuit reason of state and <i>fides</i>	140
8 Reason of state, prudence, and the academic curriculum	164
9 The theory of political authority	186
10 Limited government, compacts, and states of nature	224
11 The theory of law	263
12 The common good and individual rights	283
13 Tyrannicide, the Oath of Allegiance controversy, and the assassination of Henri IV	314
14 The papal <i>potestas indirecta</i>	339
Conclusion	366
<i>Bibliography</i>	377
<i>Index</i>	399

## *Acknowledgements*

The author of a work so prolonged in gestation has necessarily accumulated more debts that can ever be repaid, or even remembered and enumerated. For some of the most generous creditors this book, alas, arrives too late for anything except as a *Nachruf*. The late Librarian of Stonyhurst College, dear Father Freddie Turner SJ, for many years put the resources of his knowledge and of that wonderful Library at my disposal; my thanks are also due to the Headmasters, Community and teachers of Stonyhurst. I have received much appreciated assistance from Cambridge University Library and, for an all too brief visit, the Libraries of the University of Tübingen and of its Katholisches Seminar. Valuable financial help at critical times came from the British Academy, and from the Krupp Foundation; the late Professor Roman Schnur, that paragon of the historiography of political thought in Germany in those unpropitious times, and Professor Alois Laufs were both instrumental in securing the latter for me. I must also record my gratitude to Gordon Hands, Chris Clapham, and Ian Bellany, who as my heads of department at Lancaster bore with me in very trying times, despite my unproductiveness in 'Research Assessment' terms, and to my colleagues for indulging me. Pre-eminent among these colleagues has been Russell Price, whom I cannot thank enough for going through an earlier version of the work line by line. But it might all have been in vain but for the support of Richard Fisher of Cambridge University Press and Quentin Skinner, as well as various anonymous reviewers, all of whom continued to see some point to my project. If any merit attaches to it, it is in part theirs; its flaws they already warned me about. The Press has now placed me even further in its debt by subjecting my text to the much needed attention of their copy-editor, the excellent Jean Field.

In a less academic but no less substantial way, I have received comfort and encouragement from my friends Martyn and Penny Thompson, John and Rośin Bergin, George and Margaret Clark, and (at a lamentable distance) Conal and Averil Condren. They will not however mind receiving second

billing, as all others must, below the person who has been closest to me through thick and (all too often for her) thin, my wife Heather Höpfl. Her dispassionate attitude to this book and to my dithering, and her anything but dispassionate attitude to me in all other respects, have been decisive in every way. The book is dedicated to her: *dilectissima coniunx*.

## *Abbreviations*

<i>AHSJ</i> (or <i>AHSI</i> )	<i>Archivum Historicum Societatis Jesu</i>
CHP	Corpus Hispanorum de Pace
ERL	English Recusant Library, Menston, Yorkshire: Scolar Press, 1970ff
<i>MHSJ</i>	<i>Monumenta Historica Societatis Jesu</i>
<i>EpIg</i>	<i>Epistolae Ignatianae</i> ; i.e. <i>Monumenta Ignatiana</i> [ <i>MonIg</i> ]. <i>Sancti Ignatii de Loyola Societatis Jesu</i> <i>fundatoris epistolae et instructiones</i> , in <i>MHSJ</i>

## *Translations, references, and orthography*

Except where indicated, all translations are my own, but where there are modern translations, I have acknowledged my debts. Where a work cited was translated more or less contemporaneously into some vernacular, I have usually used the English translation where one existed, or compared the Latin to the other vernacular renditions. The latter were not invariably punctilious in point of accuracy, but then bilingual authors at the time (e.g. Calvin or Hobbes) took considerable liberties with their own texts, and in any event such versions are more of a pleasure to read than modern translations. I have left orthography as I found it, interpolating clarifications in square brackets where it seemed unavoidable. The riotous German and English (and *a fortiori* Scottish) spellings of the sixteenth century have therefore been reproduced unaltered, although I cannot guarantee letter by letter fidelity. My italicisation is scrupulously faithful to the sources except where indicated. As for punctuation, its rules were not settled either in Latin or in the vernaculars, but from the standpoint of modern taste and practice people tended to over-punctuate, especially in the sometimes sense-obscuring use of the comma. My punctuation is not always faithful to the originals, since I see no point in putting gratuitous obstacles in the reader's way.

The spelling of surnames is of some importance, because of the difficulty of tracing references. In some cases there is a choice of three or more forms of the same surname: e.g. Verbeeck, Van der Beck, Becanus, Bekan; or Pereirius, Perero, Pereyra, and Pereira. Pedro de Ribadeneira also appears as Rivadeneyra, Rivadaneyra, etc. The invaluable Carlos Sommervogel is of limited help here, since he uses the French form of Christian names, and does not always give the original surname: Perpinianus for example appears as 'Perpinien', but neither form would enable us to find 'Perpinya', the original form of the man's name. And it would be preposterous to give the original form of some names, e.g. 'Hondt' for 'Canisius', 'Leys' for 'Lessius', or 'Spannmüller' for 'Pontanus'. My policy, as arbitrary as any

other but consistent, is to use the familiar English form where there is one (e.g. Bellarmine, Becanus, Canisius). I drop latinisations except where the Latin is more familiar (e.g. Hieronimo Piatti not Hieronimus Platus but Joannes Busaeus, not Johan Buys); in the bibliography both Latin and vernacular forms are given. Sometimes this makes me unfashionable, as when I still refer to Aquaviva and not Acquaviva. I have avoided the 'y' for 'i' which was freely used (e.g. I write 'Laínez' not 'Layneze') and have inserted some accents, although these were rarely used, where current orthography in the language concerned favours it (e.g. Suárez). Double-barrelled Spanish names are catalogued under the first surname (e.g. Antonio Ruiz de Montoya is under 'Ruiz'), according to modern Spanish convention.

My form of referencing is standard, and full information about every work cited appears in the bibliography. Wherever documentation is available in the incomparable *Monumenta Historica Societatis Jesu* I have availed myself; the products of the Institute of Jesuit Sources in St Louis, Missouri, have also proved extremely valuable for their consistently high standard. Readers should be warned that separate editions of the works of the more celebrated Jesuit authors were often published in several places simultaneously or within a couple of years of each other, and therefore page references to one edition are often useless for tracing citations. I have therefore referred to specific editions, and have cited according to the exceptionally useful practice of the time of dividing works into volume, book or *tractatus*, chapter, and paragraph; these seem to have been standardised irrespective of edition and place of publication. I have no idea why Hobbes abandoned this practice for the English *Leviathan*, whereas it is retained in his own Latin translation of Sorbière's translation of *De Cive*, and in, say, Locke's *Two Treatises*. Since book and pamphlet titles of the time often included the equivalent of a list of contents and advertising copy, I normally only cite the short form. Where revised versions of a work appeared, I have referred to all of them. To reserve footnotes for main citations and amplification, I have followed the precedent of Quentin Skinner's *Foundations* and have included page references in the text where a work is referred to repeatedly over several paragraphs. Biblical references and translations are normally taken from King James's Bible (cited as AV, Authorised Version), except where the Vulgate (cited Vulg.) needed to be used; here I made free use of the Douai-Rheims translation. The Ten Commandments are referred to according to the Roman Catholic numbering.

## Introduction

The Society of Jesus recognised from its inception that an engagement with the world of secular rulers was inescapable. Most Jesuits in most places and at most times of course had nothing to do with ‘matters of state’. They neither sought nor welcomed political prominence. But the Society’s more hysterical opponents accused it of liking nothing better than interfering in politics. The Society’s apologists for their part just as routinely proclaimed that the Society’s own articles of association sternly prohibited any political meddling. But to no avail. Even the *Oxford English Dictionary* (entry *Jesuit* 1. – composed c. 1900) perpetuates the apparently inseparable association between Jesuits and politics: ‘The stringent organization of the Order soon rendered it very powerful, and brought it into collision with the civil authority even in Roman Catholic countries . . . The secret power of the organization and the casuistical principles maintained by many of its representatives, and generally ascribed to the body as a whole, have rendered its name odious not only in English, but in French and other languages.’

It all obviously depended on what was to count as ‘meddling’. The founders never doubted that the Society’s mission, to say nothing of the restoration of the Church, would require the patronage of well-disposed secular authorities or that, when called upon, members of the Society would render such services to rulers as were appropriate to men of the cloth. But they envisaged no speculative preoccupation with *respublica* and could never have anticipated that the Society would be ascribed distinctive political doctrines, least of all subversive ones. And of course Jesuits never had a collective political doctrine in the same sense that there was a distinctively Jesuit spirituality, Jesuit missions, or (eventually) a Jesuit academic curriculum. It was certainly the Society’s ideal that all Jesuits should think, feel, and speak as one. The Jesuits’ enemies from Protestants and *parlementaires* via *philosophes* to Communists, *Kulturkämpfer*, and (latterly) enemies of liberation theology always envied them the degree of solidarity they actually achieved. But the monolithic character of the Society has

been grossly exaggerated. Successive Jesuit superiors general on the contrary regularly complained about the *lack* of unity of purpose, and the prevalence of *insubordination*, particularly intellectual insubordination (*libertas opinandi*) among the Society's more speculatively inclined members. This is to say nothing of the recurrent propensity of Jesuits to 'national' and other particularisms. If the Society's leadership was unable to secure homogeneity of belief and doctrine in what it regarded as matters of faith or discipline, it stood even less chance of enforcing uniformity about political doctrines which were neither matters of faith themselves nor had any straightforward inferential relationship with them. And when prominent Jesuits wrote in the service of secular or ecclesiastical potentates, the 'by permission of superiors' (*permissu superiorum*) that normally graced the title-pages of Jesuit books could mean even less than it ordinarily did; the 'superiors' in question might not even be Jesuit superiors. The Society's authors, moreover, naturally had to attend to the sensibilities of the audiences they envisaged, and to the conventions and vocabularies of the genres in which they were writing.

The lack of transparency of the relationship between the Jesuits and matters of state makes it less surprising that there appears to be no extant survey of Jesuit political doctrine in the round, such as is attempted here, although there are innumerable scholarly and polemical monographs on particular episodes, thinkers, and issues in the political and intellectual history of the Society of Jesus. What follows is not the definitive textbook of Jesuit political theory that Jesuits themselves unaccountably failed to write. Nor are we searching for a doctrinal homogeneity that consists of saying the same thing about everything. The political doctrines that are explored here hang together, and were distinctively Jesuit. But their homogeneity is of a different kind and, for reasons which will become obvious, there could be no such thing as an exclusively and peculiarly Jesuit doctrine on any matter whatever, least of all matters of state. Their still centre is a set of beliefs concerning the nature of good order in any collectivity as demanding hierarchy and monarchy. These beliefs are today deeply unfashionable, but are none the worse or less interesting for that. They were as constitutive of the Society's spirituality and its mission as of its theology and its ecclesiology (chapters 1–2). They were regulative of what other beliefs and doctrines were espoused by Jesuits in other contexts. They did not, however, dictate all that Jesuits might say or think, nor did they eliminate all possibility of disagreement.

The Society's founders always recognised that the provenance of many of these core beliefs was the practice of politics and the reflections of *auctores* on



matters civil or political. But the founders' most urgent task was to employ these ideas to articulate a clear and distinct idea of the true Church, the role of the Society of Jesus within it, and the optimal order (or as we should say, organisation) of the Society for fulfilling that role. That organisation was remarkable and has continued to be a source of fascination, even for those not addicted to conspiracy theories (chapter 2).

As the Society increased rapidly in size, fame, and the scope of its activities, so did the range and volume of its publications. So too did the number and vociferousness of its enemies. Publishing defences of the Society against their attacks became a veritable Jesuit industry. Such defences had to deal among other things with the charge of 'meddling in politics' (or in 'secular matters'). Some Jesuit theorists advanced a considerable distance beyond the utterly question-begging distinction between secular (or political or state) matters and spiritual (or religious, ecclesiastical, or church) matters that most Jesuits and their contemporaries treated as self-explanatory. The secondary literature has not hitherto displayed much interest in explorations of this distinction, despite its endemic relevance. It is considered in chapter 3.

The point at which the spiritual and the temporal, religion and statecraft, most obviously coincided and as often as not collided, was the issue of heresy. It was the Society's practical and speculative engagement with heresy that brought it the greatest public prominence and also obloquy. It also proved to be both a focus and a springboard for more sustained Jesuit thinking about *respublica*. In the collective view of the Society from the beginning, true religion and political expediency alike demanded that secular authority should take a hand in the elimination of organised heresy (chapter 4). However, there were much broader issues involved. In fact Jesuits saw dealing with heresy as requiring a confrontation with a diffuse and indeterminate range of enemies of Catholic orthodoxy, variously called Machiavellians, *politiques*, atheists, proponents of 'reason of state', 'policy' and 'statism' (chapter 5). 'Reason of state' posed grave difficulties for Jesuit theorists. The heart of the matter for the Society was that proponents of reason of state advocated religious toleration, and when in power practised it; so did the 'heretics' when it suited their book politically. Received Catholic doctrine, which Jesuit theologians and office-holders therefore endorsed, was that religious toleration or (worse still) freedom of worship were equally disastrous for spiritual welfare and political order. But the issue was anything but straightforward. Some Jesuits of the highest authority in the Society had argued as early as the 1550s that toleration was the lesser evil in the conditions prevailing in the Holy Roman Empire, and many more were

to say the same of England, Holland, and France from the 1570s onwards. While toleration was not seen as a positive good by any Jesuit theorist, virtually all of them came to acknowledge that it was a morally acceptable policy for Catholic princes when 'necessity' dictated it (chapter 6). The flexibility of Jesuit teaching on religious toleration has long been acknowledged in the specialist literature, but has made little impression at the level of more general accounts of the history of political thought.

If reason of state is interpreted more broadly as a doctrine regarding what was and what was not morally defensible in political conduct, Jesuit political theory and casuistry at many points approximated even more closely to it. The most obvious rhetorical strategy for Jesuits was to distinguish between 'true' and 'false' reason of state. This distinction made it possible to legitimise many departures from impossibly strict norms of piety, morality, and legality, especially on the part of orthodox rulers (chapters 6–7). But Jesuit theology, casuistry, and mirrors of princes could not entirely sanitise and domesticate princely lying and breach of faith, which Jesuits singled out as the most execrable of the tenets of false reason of state. They insisted that princes are just as duty-bound as subjects to practise good faith. Yet their enemies succeeded in making 'Jesuit' forever (it seems) synonymous with duplicity, double-dealing, and the doctrine that promises made to heretics are not binding (chapter 7).

The distinction between 'true' and 'false' reason of state was, however, something of a polemical makeshift. A better purchase on the genuine moral difficulties which reason of state pointed up was afforded by the concept of prudence, highly prized in practice by the Society *ab initio* as a virtue requisite in any kind of superior. It was also a well-established *topos* in theology and in casuistry. Even formal theological works, which ordinarily did not even recognise the existence of reason of state, could here contribute substantially to political casuistry (chapter 8). Prudence, however, demanded the exercise of an informed and cultivated judgement. But one of the main objectives of the Society was the final elimination from faith and morals of any place for individual opinion (and therefore 'judgement') and the curse of dissension and disorder to which in the Jesuit view it inevitably led. What was to replace it was the certitude that came from having an infallible arbiter of controversies, and a science of moral principles and their application to specific cases (casuistry). Prudence had therefore to be firmly subordinated to casuistry. Nevertheless, the practice of casuistry itself was understood to demand prudence (chapter 8). The tension between casuistry and prudence therefore could not be eliminated.

Casuistry applied the general principles of natural and divine law to specific cases, and merged seamlessly with theology and ‘controversies’. Ruling, statecraft, governance, like any other practice or activity, therefore fell within their province. The Catholic theologian, Jesuit or not, was, however, bound by the demands of a curriculum which had *no* place for ‘politics’ *eo nomine*, let alone for the new-fangled ‘reason of state’. The only location for ‘political matters’ the theological curriculum afforded was under the headings *on justice and right*, and *on laws*. But the paradigmatic Jesuit principle was that what is essential to the survival of the commonwealth is not laws as such, but governance, *principatus*, and super- and sub-ordination: relations of command and obedience. For the most part, Jesuit theologians followed the standard topics of the Thomist curriculum, but accommodated them to their specific preoccupations and principles (chapter 8). Other formats, such as the mirror for princes, the polemical monograph, the scriptural commentary, and the (initially) much less strictly routinised thematics of ‘controversial’ theology, allowed Jesuits more freedom to pursue ‘political’ questions.

As the Thomist curriculum construed *respublica*, the heart of the matter was the question of the source and end of secular authority as such, and the derivation of the right of specific rulers and regimes to exercise such authority (chapter 9). On its premises, it was necessary to reconcile reason and Revelation; indeed the same topics and the same approach also featured in commentaries on certain scriptural *loci*, notably Romans 13, the political text of the time; scriptural commentaries (as ‘positive’ theology) were also part of the theology curriculum. It was not in doubt that civil authority ultimately ‘descended’ from God. The question was *how* it descended. And on this matter theological discussions were largely ‘secular’ and ‘natural’ in character. Jesuit theologians and polemicists on this basis were able to take issue with Divine Right theorists, and particularly patriarchalist accounts of the genesis of authority and regimes. But the entire Thomist tradition was here caught in a tension which Jesuit orienting ideas accentuated; indeed it pervaded much of early modern political thought. On the one hand, the Society’s core beliefs demanded an account of political authority in terms of the rights of rulers and the duties of subjects, and a ‘presumption’ in favour of princes in every doubtful case (chapter 9). On the other hand, legitimate secular authority was unquestionably limited and derivative authority. But the Society’s political thinkers were by no means agreed about whether the limits on rightful authority could or should take institutionalised form; they also disagreed about whether the derivation of the authority of specific princes and regimes presupposed some historic contract, compact, or

agreement. That too was both a philosophical and a polemical issue which agitated their contemporaries. What is clear, however, is that their accounts (unlike those of Hobbes and Locke which otherwise resemble them closely) did not involve the postulate of a 'state of nature', even though a concept with that name was articulated and deployed in other contexts (chapter 10).

The same preoccupations and the same tensions also characterised the theory of law that was developed *pari passu*. Law was reconciled with political authority by construing it as a species of command and an 'act of will' of the ruler, precisely analogous to Bodinian conceptions (chapter 11). However, the ultimate justification of secular government and law alike was the common good. That concept received no sustained exploration, nor did its relationship with the natural rights of individuals that Jesuits unhesitatingly conceded, notably the right of self-defence. It was not clear either to what extent the right of property was protected against the authority of the commonwealth (particular its authority to levy taxes) by its status as part of the law of nations, and in certain cases as a natural right. The concept of natural liberty did not much figure in these discussions, even though it was regarded as axiomatic that all human beings are naturally free and equal, and that no one is naturally endowed with the right to command, coerce, and punish (chapter 12).

Here then was a restatement of a tradition of speculative thought, with resources and a momentum of its own, whose criteria of relevance and cogency were certainly not those of ecclesiastico-political controversy, and whose content was difficult for the Society's High Command to police. And yet it was precisely this thoroughly academic and speculative tradition which provided Jesuit *polemicists* with both an arsenal and an ultimate fall-back position: notably the conception of the people, commonwealth, or political community as the immediate source of the authority of rulers (chapters 9–12).

Although the derivation and ends of secular and ecclesiastical authority were quite different, one of the cruxes of these discussions was the appropriate relationship between what was just coming to be called Church and State. The issue was peculiarly intractable for Jesuits because of their unshakable conviction that the Church was just as much and as literally a *respublica perfecta* as any secular commonwealth. How both secular and ecclesiastical rulers could exercise authority over the same bodies of subjects, and where the loyalty of subjects was to lie when they came into conflict, was a defining issue in early modern political thought. Jesuit ecclesiology, despite the conspicuous political sagacity of so many Jesuits, was in the end unable to resist a resolution that subordinated political to 'spiritual' authority. The

Society's enemies, both Catholics and Protestants, accordingly accused it of fostering political disobedience, legitimating tyrannicide, and ultimately rendering all political authority among Christians precarious by upholding the papal power to depose rulers, with tyrannicide as the *ultima ratio*. The Society found itself in extremely difficult circumstances over the accession of Henri IV and later his assassination, the Oath of Allegiance demanded by James I/VI, and the Venetian Interdict. The Society, via its most prominent theologians and controversialists, had now to issue circumspect and authoritative statements of its position. On tyrannicide, a standard topic in rhetoric and scholastic theology, various Jesuits had previously adopted one or other of the various positions regarded as defensible since classical times (chapter 13). On the papal authority to depose excommunicated secular rulers, there had been very little discussion, since Jesuits had regarded the matter as uncontroversial (chapter 14). The position of its spokesmen once these became burning issues was not entirely unambiguous.

The Society in the first decades of the seventeenth century had thus come to be identified with a number of political doctrines. Some of these it had always rejected outright. Others, elaborated and endorsed by the Society's leading theologians and polemicists, subsequently became an embarrassment to the Society's High Command or the papacy, or to both. At any rate, there were now famous and influential texts, many of them proclaiming their provenance *e Societate Jesu* on their title-page, which constituted a participation in virtually every genre of political discourse and every controverted political issue of the time. The content and inner logic of these writings and the contribution of lesser lights is now to be exhibited. Their legacy will be considered subsequently.

## *The character of the Society of Jesus*

The Society of Jesus was not the first religious order to find itself involved in political controversy or in articulating a political theology. The same had been true of its great medieval predecessors, the Franciscans and Dominicans. But as it was originally conceived, there was nothing about the Society to suggest to it that it should follow their precedent. On the contrary, it had every reason to be exceedingly careful about being seen to 'meddle in politics'. Its concern with *respublica* grew out of the avocations it accumulated, each of which left its mark on the form and content of Jesuit political thinking. It is therefore necessary to begin with some account of how the Society understood itself and what kinds of work it came to undertake.

The Society's original 'charters' anticipated neither its later public prominence, nor its mushroom growth,<sup>1</sup> nor many of the employments in which it came to specialise. The *Formula of the Institute*, a brief summary of the purposes and organisation of the Society submitted by Ignatius of Loyola and his companions to Paul III in 1539,<sup>2</sup> described the primary purpose of the new 'community' as simply 'the advancement of souls in Christian life and doctrine and . . . the propagation of the Faith by the ministry of the Word, spiritual exercises and works of charity, specifically (*nominatim*) by way of the instruction of boys and unlettered persons in Christianity'. Paul III's bull *Regimini Militantis Ecclesiae* of 27 September 1540, which officially recognised the Society, added 'public teaching' and 'hearing

<sup>1</sup> *Regimini* imposed an upper limit of sixty on future membership without any dissent from the Society. The limit was already removed in 1544 at the request of the Society.

<sup>2</sup> After substantial reworking by several cardinals, the *Formula* became the bull *Regimini Militantis Ecclesiae*. Its text as subsequently modified became known as the *Institute*. See MHSJ, vol. 63 (*Monumenta Ignatiana*, Series III) vol. 1, *Constitutiones* 1, pp. 15ff and the excellent English translation in A. M. de Aldama, *The Constitutions of the Society of Jesus: The Formula of the Institute* (cited as Aldama, *Formula*), pp. 3–23; for the expanded version, Julius III's Bull *Exposcit Debitum* of 21 July 1550, see Ganss, *Constitutions*, document 1, pp. 63–73.

confessions'.<sup>3</sup> No more specific formulation of the Society's purposes was thought compatible with its fundamental commitment to go wherever the Pope or their Superior General sent its members, 'whether to Turks, the New World, Lutherans [omitted from *Regimini*, presumably for diplomatic reasons], or to any other infidels or faithful whatever' (*Formula*, pp. 17, 27).

It is apparent from this that the Society originally envisaged that its main work would be to raise the level of piety, knowledge of doctrine, and morality of nominally Catholic cities and provinces, to reconvert heretics, and to convert heathens in foreign parts.<sup>4</sup> The founders' predilection was for missionary activity among the poor and lowly and pagans. But between the 1530s and the 1560s the allegiance of many parts of Christendom to the See of Rome hung by a thread. 'Heresy', as Rome defined it, had penetrated or become officially established in much of northern and eastern Europe and was infiltrating parts of Italy itself. Even cardinals in Rome disagreed about what was a just and necessary 'reformation' of the Church and what was heretical 'deformation'. The Society was a company of educated priests<sup>5</sup> wholly confident in its interpretation of true Christian doctrine and life. It was committed by special vows to be at the Pope's disposal, and it was enjoying a spectacular growth in membership at a time when monasteries were emptying and candidates to the priesthood were scarce. Rome had more urgent tasks for such men than teaching children their Ten Commandments and dying of fevers among the pagans. Before long, popes and bishops began to employ Jesuits for reforming entire dioceses, acting as advisers to papal emissaries abroad, and as theologians at Trent.<sup>6</sup> Soon it was all Ignatius could do to prevent his sons being made bishops or even cardinals.<sup>7</sup> Foreign missions continued to be something to which the Society was devoted, but missionary work had to take its place alongside other activities.

<sup>3</sup> *MHSJ*, vol. 63, pp. 15, 16, and 26; cf. *Constitutions*, pp. 64, 66.

<sup>4</sup> *Constitutions*, s. 308 (*Declaration A* to the Preamble of pt IV).

<sup>5</sup> The eleven founders of the Society all had degrees from Paris or elsewhere. Ignatius was sometimes wrongly credited with a doctorate; Dalmases, *Ignatius*, pp. 122–3. Contrary to its original conception, it became the Society's norm for its members to be priests, unlike the older orders. Jesuits were soon called 'the Fathers of the Society of Jesus'.

<sup>6</sup> Laínez, Salmerón, and Favre (who died *en route*) were papal theologians at Trent; Canisius and Le Jay went as advisers to the prince-bishop of Augsburg, Cardinal Otto von Truchsess. Favre had long been employed in preaching and as a consultant at colloquies in Germany.

<sup>7</sup> Young, *Letters*, p. 112 and fn. 12 (= *EpIg* I, Letter 149, p. 456, also pp. 460–7). In 1554 Canisius refused the title (but not the work) of bishop of Vienna; Brodrick, *St Peter Canisius*, p. 187. For Ignatius successfully dissuading Pope Julius III from elevating Francisco Borja to the cardinalate in 1552 see Young, *Letters*, pp. 257–8.

## TEACHING

Its founders did not intend the Society to be a learned or a teaching order.<sup>8</sup> Ignatius and his fellow-founders had originally simply assumed that the missionary activities they envisaged demanded a very considerable degree of learning and facility in speaking and writing, as well as a sound theological education. But they expected that recruits would acquire these accomplishments at orthodox universities, as they themselves had done, not that the Society would teach them itself. This proved not to be feasible, in part because Jesuits were dissatisfied with the orthodoxy, methods of instruction, and standards of discipline at many universities. The founders were devoted specifically to the *modus Parisiensis*, with its orderly gradation of courses to be followed by cohorts of students of the same age in sequence, its 'repetitions' and disputations, to encourage emulation among students and to check whether the material had been mastered, and its strict discipline.<sup>9</sup> As the Society inadvertently embarked upon the foundation of an educational empire, in response to demands made on it by rulers, municipalities, and bishops, it was natural to combine teaching 'externs' (pupils and students not intended for the Society) with training its 'scholastics' (novices). It was henceforth the Society's firm policy to insist on control of the administration, curriculum, and teaching methods of all colleges, seminaries, and university faculties which it was called on to staff. All appointments to positions in the colleges were ultimately in the hands of the Superior General, and more immediately under the direction of the Provincial.

Its reputation for piety, zeal, and learning gained the Society its first patrons in the academic field. Notable among these were the Duke of Gandía and Viceroy of Catalonia, Francisco Borja (or Borgia), who gave the Jesuits complete administration of his newly founded College at Gandía, and João III of Portugal, who in 1542 entrusted them with a college at his University of Coimbra. By the late 1540s the Society was sufficiently highly regarded for the Viceroy of Sicily and the municipality of its capital Messina to ask it to establish a college. Geronimo Nadal became its founding rector.<sup>10</sup> Messina, which taught both externs and scholastics, proved to be a model and precedent. The Roman College, founded in 1551 and intended by Ignatius as an example for all the rest, borrowed its curriculum

<sup>8</sup> 'Teaching' in the early documents meant teaching the rudiments of Christian doctrine and life to children and the unlettered; e.g. *MHSJ*, vol. 63, p. 18; Aldama, *Formula*, pp. 2 and 3; and Ganss, *Constitutions*, p. 66.

<sup>9</sup> See Codina Mir, *Aux sources de la pédagogie des Jésuites*.

<sup>10</sup> See Pate, *Nadal*, pp. 64–85.



(*ratio studiorum*), rules, and organisation from Messina.<sup>11</sup> There followed a veritable flood of new creations and a quite deliberate redeployment of the Society's resources in the direction of education, which had the Founder's full approval.<sup>12</sup> The last draft of the *Constitutions* of the Society to bear his hand already recognises the pre-eminence of this aspect of the Society's work.<sup>13</sup> In 1556 the Society had 33 colleges;<sup>14</sup> by the end of the century there were 245 in Europe, by 1615 372, although very few of these were of full university (*universitas studii generalis*) status, and not a few proved impermanent. Claudio Aquaviva, the Society's fifth Superior General, had to refuse 150 requests to establish colleges between 1582 and 1593 alone.<sup>15</sup>

Teaching rapidly became the work that occupied most of the Society's personnel in Europe most of the time. It was the colleges that became the centres for Jesuit residence and activity; the Professed Houses that Ignatius originally intended for that purpose were established only in a few capitals. One consequence was that Jesuits came to be more tied to particular localities than was envisaged in the heroic days of the Society's foundation. The bulk of teaching in all but a handful of the Society's colleges consisted of instilling Latin (and to a lesser extent Greek) language and literature into teenagers. Contrary to the express rules of the Society, Jesuits sometimes even found themselves having to teach reading and writing. Given the Society's endemic shortage of manpower, teachers usually doubled as preachers and confessors in the parishes and churches administered by the Society, and were moved frequently.<sup>16</sup> Even so, many Jesuits evidently saw only a tenuous connection between drumming Latin into schoolboys and advancing the Kingdom of Christ.<sup>17</sup> High-fliers in the Society treated such teaching as time to be served *en route* to more highly prized activities, such as lecturing in theology, foreign missions, or holding positions of authority in the Society. The educational engagement was nevertheless quite consistent with the Society's original aim of domestic and foreign mission. Gandía

<sup>11</sup> Lukacs, 'De origine' p. 231, fn. 182, citing Ignatius's secretary Polanco's *Chronicon*: 'Voluit etiam Ignatius . . . Romanum hoc Collegium velut formam quamdam aliis . . . , pro forma et exemplo quodam esse volebat.'

<sup>12</sup> See Lukacs, 'De origine', pp. 190, 192–7 and sources cited there; Bangert, *History*, p. 27.

<sup>13</sup> *Constitutions*, s. 440. The first drafts date from the 1540s; they were largely the work of Ignatius himself. They were approved by the First General Congregation of the Society in 1558, after Ignatius's death.

<sup>14</sup> Lukacs, 'De origine', p. 194. *Exposcit Debitum* of 1550 licensed the Society to have and build colleges wherever the means were available.

<sup>15</sup> Details from Bangert, *History*, p. 105.

<sup>16</sup> Paulssen, *Geschichte des gelehrten Unterrichts*, p. 433, cites the 'ständige Wechsel des Lehrpersonals' as one of the principal weaknesses of the Jesuit educational system.

<sup>17</sup> Lukacs, 'De origine', pp. 240ff, and part II of the same article in *AHSJ* 21, 1961, pp. 1–14.

was a territory full of 'New Christians' and Coimbra was intended as a seminary for missionaries to the New World. The Society's long-drawn-out negotiations with German bishops, beginning in the 1540s, in effect also concerned a missionary engagement: the bishops wanted the Jesuits to found or run seminaries. The colleges proved to be fertile recruitment-areas for future Jesuits. It also became the Society's established practice to introduce colleges in or near areas where heresy was most virulent, as the Church's Trojan horses, and it built up a network of schools and seminaries in the Low Countries and Spain for the Catholics of the British Isles. Its educational establishment at Rome, the Roman College (subsequently rebuilt and renamed the Gregorianum, in memory of the patronage of Gregory XIII), the English College, and the Germanicum which recruited large numbers of students from Poland and Hungary where the Church was beleaguered, had in part the same missionary purpose. When, much later, Piotr Skarga began the Society's work in Poland, he commented that there was no need to go to the exotic and remote Indies to find pagans and infidels to missionise: 'Lithuania is a veritable India.'<sup>18</sup>

#### THE SUBSTANCE OF EDUCATION AND THE ENDS OF THE SOCIETY

Ignatius's own attitude to education was philistine;<sup>19</sup> he regarded it as merely a 'means' to the 'end' of service of God and our neighbour.<sup>20</sup> Most Jesuits subsequently took a more 'liberal' view of learning generally, and rhetoric in particular, which as *eloquentia sacra* and in polemical writings became the Society's eximious speciality. The (unpublished) *Ratio Studiorum* of Diego Ledesma for the Roman College (1564–5) described *humanae* (or *humaniores*) *litterae* as necessary 'for the ornament, splendour and perfection of rational nature itself'.<sup>21</sup>

In terms of job-training, the usefulness of the Jesuit curriculum formulated definitively in the Society's *ratio studiorum* of 1599 is not immediately apparent. It was intended to comprise at least seven years on Latin (and ideally also Greek) pagan poets, historians, and rhetoricians, another three years or so on Aristotle on the soul, generation, physics, etc., as well as

<sup>18</sup> Berga, *Pierre Skarga*, p. 185; cf. Kamen, *The Phoenix and the Flame*, p. 85, for the same metaphor being used about the Asturias in 1568.

<sup>19</sup> Gabriel Codina Mir's term, *Aux sources de la pédagogie des Jésuites*, p. 285; for the contrast between Ignatius's attitude to Erasmus and that of other Jesuits, pp. 312–13; see also Fumaroli, *L'âge de l'éloquence*, p. 135 and below, p. 79, n. 77.

<sup>20</sup> Ganss, *Constitutions*, s. 447 (= pt IV, ch. 12.2), and s. 351 (= pt IV, ch. 5.1).

<sup>21</sup> *Monumenta paedagogica Societatis Jesu*, vol. II, p. 528.

dialectics, four more years on 'scholastic' theology and then 'positive theology' (i.e. Scripture and patristics), and two more years if a Jesuit wanted a doctorate.<sup>22</sup> Conversely, the curriculum entirely neglected skills which the Society's original 'ends' of mission at home and abroad required, such as vernacular languages, despite the desperate shortage of, say, speakers of German, or exotic languages for the foreign missions. Again, the education of the Society's own members until the 1580s neglected the study of 'controversies', that is, the doctrines and practices over which Catholics and Reformers were in apparently irreconcilable contention.<sup>23</sup>

Nevertheless, this education was in some sense 'functional'. A thorough grounding in rhetoric and dialectics was necessary as training for the persuasive speakers (and eventually writers) that the Society's mission needed, and because of the link assumed to pertain between learning and virtue. It was on these grounds that Ignatius rejected Laínez's complaint that the Society's highly promising new member Pedro Ribadeneira and its scholastics generally were spending far too much time on *humaniores litterae*, to the detriment of theology.<sup>24</sup> Rhetoric, moreover, was at this time one of the main locations in the academic curriculum for the study of motivation, of desires and aversions, essential knowledge for ministers of the Word.<sup>25</sup> A broadly humanist education was also what the Society's lay clientele wanted for its sons,<sup>26</sup> once the Society became a teaching order. The universities offered only law, medicine, philosophy, and theology in addition, and even these were far from impervious to humanist influence.<sup>27</sup> For the most part, an educated man (or woman, but Jesuit schools did not teach women) was understood at that time as one who had studied 'eloquence' and had learnt the arts of persuasion. What people find persuasive depends in good measure on fashion, and the fashion of the sixteenth and seventeenth century was for classical eloquence, even when that eloquence had increasingly to be reproduced in vernacular form. Amongst the very first Jesuit works for public consumption was Cypriano Soarez's *De arte rhetorica libri tres* (1560),

<sup>22</sup> Practice ordinarily fell well short of the ideal course of studies outlined by Ganss, *Constitutions*, p. 212.

<sup>23</sup> See below, pp. 18–20. <sup>24</sup> Young, *Letters*, pp. 132–7 (= *EpIg* 1, Letter 174, pp. 519–26).

<sup>25</sup> For Cicero's *De oratore* on this point, see Clarke, *Rhetoric at Rome*, esp. pp. 57–61. The other locus was moral philosophy.

<sup>26</sup> In the Holy Roman Empire in the seventeenth century, a legal qualification was, however, widely regarded as the key to attractive administrative posts. But the *Constitutions* debarred Jesuits from teaching law.

<sup>27</sup> Codina Mir, *Aux sources de la pédagogie des Jésuites*, pp. 75–87 for the establishment of chairs and doctorates in *humaniores litterae*; also the humanist study of Roman law (the *mos gallicus*), and the latitude for humanist concerns in 'positive' theology.

endlessly reprinted and no wonder: it not only taught persuasive speaking but exemplified it.

#### PREACHING

The successes of the Reformers' preaching obliged Rome to look to its own performance in this medium, and the Jesuits naturally made preaching a speciality. *Regimini* already gave it pride of place. There was an especially urgent need for Catholic vernacular preaching. By the 1590s, the Jesuits had plainly mastered this art, and also that of writing sermon-like devotional material.<sup>28</sup> Preaching was an obvious call upon Jesuits noted for learning and experience.<sup>29</sup> Great importance was also attached in those days to the funeral oration: the interment of a notable was unthinkable without one. Preachers capable of rising to such an occasion were much in demand.

The glittering prize here was the position of court preacher, enviable for its promise of influence over the mighty. Emond Auger was Henri III's court preacher, and evidently regarded his position of provincial of Aquitaine as of inferior importance, for he quit it in 1571. Despite his incurable politicking, his fame at court made him invulnerable to repeated commands and reproaches of successive generals.<sup>30</sup> Pierre Coton was both court preacher and confessor to Henri IV; a *bon mot* of the time was that the King had 'coton dans les oreilles'. But a capacity to move humbler audiences was by no means to be despised. And a man with an established reputation for eloquence at court was all the better placed to impress less exalted hearers. Georg Scherer, a gifted and witty (if vituperative) court preacher to two archdukes, did not disdain to address the recently 'reformed' (that is, forcibly reconverted) parishioners of Ober- and Nieder-Hausseck, or armies in the field against the Turk.<sup>31</sup> Jesuits also gave public 'lectures' on the Scriptures, which required a more expository style and a more educated

<sup>28</sup> Particularly Canisius, Ernhoffer, Vetter, Scherer, and Brillmacher in the Holy Roman Empire, Richeôme, Auger, and Coton in France, Persons and Campion in England, and Skarga in Poland.

<sup>29</sup> Pedro Perpinya's (Perpinianus's) Latin sermons before popes, noblemen, and academies were constantly reprinted, growing from the original *Five Orations* (1565) to *Eighteen Orations* in a 550-page octavo (1587). His death at the age of forty-three was a grievous blow to the Society. Karel Scribani's *Amphitheatrum honoris* placed him first among Jesuit Orators (p. 194).

<sup>30</sup> Martin, *Henry III and the Jesuit Politicians*, especially pp. 31–2, 35, 39, 49, 57, 123–5; Jesuits complaining about him to Borja, p. 33 fn. 33, p. 47 fn. 15, and to Mercurian, p. 57 fn. 67.

<sup>31</sup> Scherer, *Alle Schriften*, vol. 1 (1599): '*Ursachen der Bekehrung der Herrschaft Ober und Nider-Hausseck*', 1588, p. 223'; and e.g. '*Ein Christlich Heer Predig.* . . .', 1594, pp. 328'ff; he also published *Fifteen Sermons against Mohammed and the Koran* (pp. 247'ff), and other sermons against the Turks. His collected sermons in two folio volumes were published in 1599 and 1600; a second edition followed in 1611.

lecturer.<sup>32</sup> Work in either genre was excellent preparation for writing polemical pamphlets and books. Preaching was so much a Jesuit speciality that Karel Scribani's *Amphitheatrum honoris* of 1606, itself eloquent to the point of preciousness, had a special section on *oratores* in its lists of noted Jesuits (the eloquent word *oratio* being preferred to the more homely *sermo*).

#### JESUITS AS CONFESSORS

Re-affirmation of the value and sacramental status of confession became one of the hallmarks of Catholicism, and the office of confessor was a Jesuit speciality, as *Regimini* already testifies. Part of the reason for the popularity of Jesuits as confessors may have been a loophole in the alienating and plainly unenforceable requirement, originally imposed by the Fourth Lateran Council of 1215 and reasserted by Trent, that each Catholic was to confess (at least annually) to his or her parish priest or someone designated by their bishop. Jesuits, however, were licensed by the Pope to hear confessions everywhere, and had papal 'faculties' for absolving from sins normally reserved to the bishop. They of course heard confession *gratis*, contrary to a scandalous practice then commonplace. The relative anonymity of the Jesuit confessional was presumably also prized.<sup>33</sup> All the Society's confessors' manuals insist on the sensitivity and discretion that the work of the confessor requires; in this sense rhetoric, the confessional, and casuistry are first cousins.<sup>34</sup>

Jesuits rapidly became familiar as confessors for ordinary men and women in the parishes, as well as for secular clerics and members of religious orders. Soon some of the mighty, too, began to seek Jesuit confessors. How far the Society had come even in Ignatius's own lifetime from its initial preoccupation with the lowly may be gauged from the fact that on hearing that two of his sons had refused João III of Portugal's request to be his confessors, Ignatius applauded their motives but reversed their decision.<sup>35</sup> Pious requests from benevolent princes were not to be denied.<sup>36</sup> Daniel-Rops somewhat overstates the case when he says that 'it was not

<sup>32</sup> O'Malley, *The First Jesuits*, pp. 104–10, 119–20, 145–7.

<sup>33</sup> Valère Regnault insists upon it in his *De Prudentia et ceteris in confessariis requisitis*, 1610, p. 11: 'so that neither the penitent nor the Confessor sees the other's face' (citing Navarre); and p. 12, where the confessor is instructed to show 'no sign of amazement, disgust or alarm (*pavoris*)'.

<sup>34</sup> O'Malley, *The First Jesuits*, p. 145; but his further claim that casuistry 'ultimately derived from the classical discipline of rhetoric' seems to me groundless.

<sup>35</sup> Letter 3220, *Ep1g* IV, pp. 625–8 (Young, *Letters*, pp. 282–4): 'porque del bien de la cabeça, participan todos los miembros del cuerpo . . . '.

<sup>36</sup> Instances in Duhr, *Geschichte der Jesuiten*, pp. 687–92.

long before the Jesuits supplanted the seculars and Mendicants as confessors of princes'.<sup>37</sup> The popes never took Jesuits as confessors, nor did the Holy Roman Emperors until Matthias, nor did Philip II; Henri IV was the first French king to take a Jesuit.<sup>38</sup> That, however, still left a great many other princes, their consorts, progeny, and courts, as well as other civil and ecclesiastical dignitaries. The Imperial archdukes, as well as wives, sons, and daughters of emperors had Jesuit confessors from the 1560s.<sup>39</sup> So did the dukes of Bavaria and of Savoy, a great many Italian dukes, the Guise dukes, many French noblemen, and many bishops. The golden age of Jesuit confessors, however, comes in the 1620s and 1630s, when Wilhelm Lamormaini succeeded Martin Becanus (himself the successor of Bartholomé Villery) as confessor to the Emperor Ferdinand, while Adam Contzen succeeded Johannes Busleyden as confessor of Maximilian, Duke (later Elector) of Bavaria; after Contzen's death he was succeeded in his turn by Jean Vervaux. The elector-bishops of Mainz and Cologne also had Jesuits. All were active during the same period in the Thirty Years War, each serving his own master according to his lights, which were by no means always those of the Pope or the general of the day.<sup>40</sup>

The practice of furnishing confessors to the mighty was troublesome to the Society's generals and even the confessors' fellow-Jesuits. Confessors who had proved congenial to their political masters could not be withdrawn, however objectionable and detrimental to the Society's reputation their conduct might seem, without mortally offending good Catholic princes and patrons of the Society.<sup>41</sup> Generals and General Congregations responded with regulations – the Society's first response to any difficulty. At the Fifth General Congregation of 1592–3 which debated the matter in detail, some delegates thought the whole business brought the Society many more troubles than benefits. The Congregation issued restrictive decrees intended to leave confessors less latitude for swanning about in the courts of princes. Aquaviva eventually issued his definitive *Instructions for Confessors of Princes* in 1602.<sup>42</sup>

<sup>37</sup> Daniel-Rops, *The Catholic Reformation*, p. 54.

<sup>38</sup> Evans, *Rudolph II and his World*, pp. 84–6, and especially Duhr, *Geschichte der Jesuiten*, pp. 686–8, 697, and *Die Jesuiten an den deutschen Fürstenhöfen*, pp. 7–22. Henri III briefly had Claude Matthieu as confessor; Martin, *Jesuit Politicians*, pp. 79–82.

<sup>39</sup> Duhr, *Geschichte der Jesuiten*, ch. 19; *Jesuiten an den deutschen Fürstenhöfen*, pp. 15–17, 19 n. 1.

<sup>40</sup> Cf. Bireley, *Adam Contzen*, *passim*, esp. pp. 7, 16, 41, 48, 68, 81, 100.

<sup>41</sup> E.g. MHSJ, *Mon. Ign. Epist. Nadal*, Letter 165, and Cozzi, 'Gesuiti e politica', pp. 493–4, for the striking episode of Aquaviva failing to get Achille Gagliardi out of Milan, because of the protests of the Governor and his wife.

<sup>42</sup> *Instructio XXI pro confessariis principum* in *Ordinationes praepositorum generalium*, first published Roman College, 1606, pp. 175–83; several times reprinted, e.g. *Ordinationes praepositorum generalium*,

The practice of the confessional (even more than preaching) left its mark on Jesuit moral, and therefore political, thinking. More immediately, it spawned an entire genre of textbooks for confessors and their instructors.<sup>43</sup> The prize specimens of this genre are Francisco Toledo's *The Instruction of Priests* (*De instructione sacerdotum*) of 1599, endlessly republished subsequently as *Summa casuum conscientiae*, and Valère Regnault's (Reginaldus) formidable *Practice of the Court of Penitence* (*Praxis fori poenitentialis*) of 1611. For everyday use, cheaper and more portable versions were produced, ranging all the way from the simple itemising of sins in the Society's catechisms of various sizes to compendia of moral theology and casuistry. Pedro Guivvara provided a *Compendium manualis Navarri* (1592)<sup>44</sup> and even Toledo's relatively compact *Summa* found a Jesuit abridger. Cases of conscience, either under that label or as 'moral theology', were taught not only in universities and seminaries but even to the higher forms in colleges.<sup>45</sup>

The connection between the academies and this Jesuit speciality was not as close as some Jesuits might have wished, for disentangling ever more recondite and involved cases recurrently became an end in itself. But casuistry text-books did not pretend to be a substitute for a prudent and experienced confessor. They could merely help to develop prudence in those who had an innate aptitude and the requisite experience, and to resolve particularly difficult cases. It should also be noted that no clear line was drawn between moral theology and casuistry in our period, any more than had been the case in earlier scholastic theology.<sup>46</sup> Jesuit courses on theology sedimented any number of folio volumes, usually presenting themselves as commentaries on all or part of Aquinas's *Summa theologiae*. In their relevant sections, especially (for our purposes) those dealing with the *Ia-IIa*, ss. 90–105 and the *Ia-IIae*, ss. 57–120, casuistical problems were treated extensively. The topic of justice (in the narrow sense of *dominium*

1635, ch. xi. For Aquaviva's earlier instructions for the Duke of Mantua's confessor see Reusch, *Beiträge zur Geschichte des Jesuitenordens*, p. 228.

<sup>43</sup> Juan Polanco's *Breve directorium ad confessarii ac confitentis munus rite obeundum*, 1555 and frequently reprinted, was one of the Society's earliest publications. For an examination of the medieval predecessors of this literature see Brett, *Liberty, Right and Nature*, pp. 22ff; her reference to 'the enormous and juristically highly sophisticated final products of the genre in the early sixteenth century' (p. 23, fn. 44, my italics) and her claim that 'the Catholic Counter-reformation never revived the genre in its monumental, juristically elaborate form' (p. 47) are both highly misleading.

<sup>44</sup> Martin de Azpilcueta (Navarrus)'s *Manual* of 1549 continued to be freely used. Despite a persistent confusion, even in E. Rose's otherwise excellent *Cases of Conscience*, p. 88, Navarrus, although the uncle of St Francis Xavier, was not a Jesuit.

<sup>45</sup> See *Constitutions*, ss. 356, 394, 407; but these references greatly understate the significance of cases of conscience in the study and practice of Jesuits; O'Malley, *The First Jesuits*, p. 147.

<sup>46</sup> Brett, *Liberty, Right and Nature*, pp. 22–34, 126–9.

or rights of property) usually elicited by far the largest number of cases of conscience (theft, restitution, lending at interest, contracts, etc.). Large parts of Molina's multi-volume folio *On Justice and Right* (*De iustitia et iure*) and of all later specimens of this genre are devoted to them. Indeed, since the 'end' of moral theology was supposedly to teach Christians their duties, it would have been a dereliction of the moral theologian's vocation not to address them.

### 'CONTROVERSIES'

A chair of Controversies was established at the Roman College in the 1550s, but 'controversies' were only firmly placed on its curriculum by Bellarmine in 1576.<sup>47</sup> The significance of 'controversies' was much more unambiguously recognised in the German and French provinces of the Society,<sup>48</sup> but what little was produced along these lines before the 1580s largely eschewed political matters, apart from inculcating obedience to political and religious superiors. As for England, the entire brunt of the confrontation with heresy until 1580 was borne by William Allen and the Louvain émigrés, none of them Jesuits.<sup>49</sup> Apart from the writings of Robert Persons and a handful of others, and the Oath of Allegiance literature, Jesuit publications intended for the British Isles continued to be mainly devotional in character; translations of continental writings in this genre and edifying *Vitae* were particularly favoured.

The Society's first treatises on controversial theology with any pretensions to generality were Frans de Coster's *Enchiridion* and Gregorio de Valentia's *Methodus* (both 1585). These were then overtaken (but never entirely) by Bellarmine's *Controversies*, first published at Ingolstadt, appropriately enough since the Jesuits in Bavaria had from the start been engaged in controversy with the German heretics. But even for Germany it was not Jesuits but Cardinal Baronio<sup>50</sup> who attempted to spike the great historical war-machine of the evangelicals, the *Magdeburg Centuries*. When the *Ratio studiorum* at last came out in 1599, it still treated history in the traditional manner

<sup>47</sup> Brodrick, *Bellarmino*, vol. 1, pp. 96, 120–1. The *Constitutions* do not refer to 'controversies' at all.

<sup>48</sup> See especially Mancía, 'La Controversia con i protestanti', pp. 4–36, 209–56.

<sup>49</sup> Cardinal Allen and (for example) Thomas Stapleton, Professor of Theology at Louvain, were, however, long and intimately associated with Robert Persons. See O'Connell, *Thomas Stapleton and the Counter Reformation*, *passim*.

<sup>50</sup> Francisco Torres (Turrianus) made a start in 1572: *Adversus Magdeburgenses Centuriatores*; see Mancía, 'La Controversia con i protestanti', p. 8. And Baronius was of course the intimate friend and collaborator of Bellarmine.



as edifying illustration of 'moral philosophy'<sup>51</sup> and not as an indispensable part of the controversialist's equipment.

In the Rules for Thinking with the Orthodox Church which he had appended to the text of the *Spiritual Exercises*, Ignatius had given a strongly anti-heretical tint to Catholic spirituality. But that spirituality certainly did not *define* itself by antithesis to heretics; indeed nothing else in the *Spiritual Exercises* suggests that heretics had hitherto occupied much of Ignatius's attention. The *Institute*, the *Constitutions*, and the various programmes of study up to the definitive *Ratio* all envisage working against the heretics as *one* of the occupations of the Society, but certainly not as its principal vocation. But Trent gave a sharp turn to the screw of denominationalisation (that is, the tendency to define Catholic religion by antithesis to the various 'heresies'). An intensification of the Society's attention to the 'heretics of our time' eventually became inescapable; indeed it suited the inclination of many Jesuits.

#### PUBLICATION

Even in 'controversies', publishing was not the *unum necessarium*. But in view of the early dominance of Reformers in this field, Jesuits could not afford to neglect it.<sup>52</sup> What is puzzling is that they did not take it in hand sooner.<sup>53</sup> None of the Society's other engagements made publishing books a categorical imperative either. A Suárez, a Jakob Gretser, or an Athanasius Kircher<sup>54</sup> is unimaginable without quill in hand. But in the Society's frenetic and ambidextrous first half-century writing was never esteemed as highly as foreign missions, organising, governing, spiritual direction, negotiating, or preaching. It is not until Karel Scribani's *Amphitheatrum honoris* (1606) and Pedro de Ribadeneira's *Catalogus illustrium scriptorum religionis S.J.* (1608; second, greatly expanded edition 1613), that we find publications treated as an index of the prestige of the Society, or of prestige within the Society. Even so, many of those Ribadeneira listed never published anything. Publications in the 1540s such as Canisius's editions of St Leo and St Cyril were one-offs.

<sup>51</sup> Dainville, *L'éducation des Jésuites*, pp. 434–42.

<sup>52</sup> Ignatius himself, no friend either of controversies or of publications, urged publications (he was thinking of pamphlets) to counter heretical propaganda in Germany; Letter to Canisius, *Eplg* xii: 259–62 (Young, *Letters*, p. 347).

<sup>53</sup> See O'Malley, *The First Jesuits*, p. 114.

<sup>54</sup> Jakob Gretser, aptly described by Seils (*Die Staatslehre Contzens*, p. 10) as a 'Vielschreiber', wrote 229 published and another 39 unpublished works. For the incomparable Kircher, immortalised in Eco's *The Name of the Rose*, see the entry in Sommervogel, *Bibliothèque*.

But as the Society scaled the teaching-ladder of disciplines from grammar to the apex, theology, its members came to publish text-books for every rung, many endlessly reprinted, beginning with Emmanuel Alvarez's *De institutione grammatica libri tres* (1564), and Pedro Fonseca's *Institutionum dialecticarum libri octo* (1564; by 1625 it was in its thirty-fourth edition). Theological works came much later, and so did the Jesuit scriptural commentaries, beginning with Benedetto Pereira's four-volume *Commentarii et disputationes in Genesim* (1591) and Alonso Salmerón's *Commentarii in omnes Epistolas* (1598); the capstone of this edifice was the interminable Cornelius à Lapide.

Publications also resulted from the practice of the confessional (as we have seen) and from preaching. Borja's *Method of Preaching* (*De ratione concionandi*) was printed by Ribadeneira as an appendix to his popular *Life of Francisco Borja* (Spanish 1592; Latin translation 1598). Indeed the Jesuits were leaders among those who developed the 'sacred eloquence' demanded by Trent, which sought to reconcile Christian edification and classical eloquence. In early seventeenth-century France Jesuit preachers (following the precepts of Carlo Borromeo) taught an entire generation what to expect from a good sermon.<sup>55</sup> Both activities, as well as the related and more highly specialised spiritual counselling and direction, made Jesuits famous as devotional writers.

#### THE 'POLITICAL' DIMENSION

As we shall see shortly (ch. 3), one of the Jesuits' more tendentious claims was that they did not meddle in things political. But all the Society's activities brought it more or less directly into public prominence. And despite its original representation of itself as 'minima compañía, the Society was not self-effacing. Its more durable achievements were no doubt the products of its spiritual counselling and the long-term imprint left upon its pupils by the Society's teaching and teachers. But its colleges, churches, and residences were built to impress. A concern with persuasiveness and presentability is evident throughout the Society's organisation. It took extreme care that its personnel should be as intellectually and morally impressive and eloquent as circumstances permitted. The Constitutions demanded prepossessing qualities of appearance and even voice from candidates for admission to the Society, although these requirements could be waived for candidates

<sup>55</sup> Fumaroli, *L'âge de l'éloquence*.

with outstanding gifts.<sup>56</sup> Its routine work of public preaching, spiritual guidance, and the establishment and running of colleges of various sorts required the permission and patronage of secular authorities, and infuriated Protestants. Even the covert political activities of some of its members, whether sanctioned by the Jesuit High Command or not, could not for long escape publicity. If Jesuits acted as confessors to public persons, or as agents of episcopal, princely, or papal diplomacy or administration, there was no possibility of drawing a clear line between the Society's 'spiritual' and its 'political' activities. Even spiritual counselling could become politically controversial; Auger's close association with Henri III's increasingly extravagant displays of religious fervour incurred odium for Auger, and also the characteristic verdict of some senior Jesuits that the King should attend to his royal duties, instead of behaving like a monk.<sup>57</sup> Moreover, once Jesuits taught and wrote as moral theologians and casuists, they could not help becoming enmeshed in controversies, in every sense of the term. Indeed, the very successes of the Society in all these arenas brought on its head the hostility of enemies both within and outside the Church, which in turn encouraged Jesuits to write in defence of the Society, eliciting more rejoinders, *ad infinitum*.

By the time the Society came to address political matters explicitly, there were Jesuits competent to handle every type of political issue and every genre of political discourse. Even philosophical jurisprudence, the locus for much of political theory in the university curriculum, did not fall outside their range, despite the fact that the Constitutions specifically debarred Jesuits from teaching either canon or civil (in effect Roman) law. They did not prevent Jesuits from acquiring conversancy with either to the extent that their teaching of theology and casuistry required it. Even common and statute law were often relevant, since scholastic jurisprudence was very respectful of established laws. Comparative jurisprudence such as Bodin's

<sup>56</sup> The *Constitutions* specify: ss. 151: 'good appearance, health . . .'; 157: 'a pleasing manner of speech, so necessary for communication with one's fellowmen'; 159: 'good appearance which more usually edifies those with whom they deal' (= part I, ch. 2.3, 9, 10); 'Impediments to admission' included ss. 184: 'lack of . . . facility in speech'; 185: 'lack of bodily integrity, illness or [physical] frailty, or notable ugliness'; 186: 'notable disfigurements or defects . . . natural or accidental. . . For these defects . . . do not help toward the edification of the neighbours which whom our Institute demands that we deal. These persons are unsuitable except when, as was stated above [162, 178], outstanding virtues and gifts of God are present . . .' (= ch. 3.13, 15, and declaration I). See also ss. 624, d and e and 814: 'the art of dealing and conversing with men'; cf. Höpfl, '*Suaviter in modo*'. The Society's endemic manpower shortage, however, compelled the admission of substandard candidates; one such at his novitiate was Francisco Suárez. Ignatius himself walked with a marked limp, the consequence of injuries sustained at the siege of Pamplona and subsequent surgery.

<sup>57</sup> Martin, *Jesuit Politicians*, p. 119.

and arguments in terms of fundamental laws did not yet feature in the Jesuit curriculum, but then they did not feature in the curricula of the law schools either.

The only genre of political discourse which had no place whatever in the Jesuit curriculum was reason of state. As we shall see, dealing with it proved problematic, but this was not because Jesuits lacked either the practical experience or the specifically academic resources which this kind of political reflection employed. The study of rhetoric, which as we have seen was a Jesuit *forte*, not only dealt with techniques such as *inventio*, *dispositio*, and the enthymeme, but was also the site in the academic curriculum for the study of rhetorical exemplars (notably Cicero) and the classical historians, as well as poets. History, in turn, was the indispensable complement to practical experience in the cultivation of prudence, the political virtue *sans pareil* for reason of state, and the use of historical *loci* and model instances was its characteristic mode of argument. And casuistry, which Jesuits made their own province, was the only way to deal with reason of state where it presumed to pronounce on issues of political morality.

But perhaps the Society's best-stocked armoury of political concepts was its ecclesiology. From the founders onwards, Jesuits had a particularly clear and highly developed conception of the Church. Like their understanding of their own association, their ecclesiology incorporated organisational ideas which Jesuits regarded as describing the essence of any well-ordered collectivity. Deploying these ideas in reflection about the secular polity was therefore not a matter of applying ecclesiastical analogies, because the Church on the Jesuit view was itself a *respublica*, the *respublica Christiana*. An association like the Society of Jesus, which had a constitutive conception of the Church, necessarily therefore also had a political doctrine.

## *The Society's organisational ideas*

The Jesuit founders' conception of good order in the Church was already suffused with concepts which they recognised as having been derived from the practice of commonwealths, and the reflections of political thinkers and historians. But for the founders good order was good order, whether it was in the Church, the secular commonwealth, the family, a corporation, or in any other collectivity, and each of these could serve as a model of how any of the others should be ordered. We thus find inherent in the Jesuits' organisational thinking an intricate triple analogy or 'correspondence'<sup>1</sup> between good order in their own Society, in the Church and in the well-ordered commonwealth.

In the deliberations of the Society's dozen or so founding associates in 1539<sup>2</sup> the first point at issue was whether they should go individually where the Pope sent them, or whether they should 'be so joined and bonded together one to another in one body, that no physical distance, however great, can divide us' (p. 3). They concluded by concurring with Ignatius that the unity and companionship they already enjoyed should be rendered permanent by 'reducing ourselves to one body', in other words by formal incorporation.

Ignatius and his disciples designated their association a *compañía* or *congregación*. In Latin this became *societas*. This was a generic term for 'association', but in Roman law it usually meant a commercial association, established on terms and conditions (in the Society, these would be the *Institute* and the *Constitutions*). Since the Middle Ages *societas* had been one

<sup>1</sup> For 'order' thinking and arguments by 'correspondence' see generally Greenleaf, *Order, Empiricism and Politics*, ch. 2; favourite correspondences or 'similitudes' for the commonwealth had since antiquity included the human body, the anthill, the beehive, and the flight of cranes. Church and polity have often served as models for each other; see for example Calvin's ecclesiology and civil politics; Höpfl, *The Christian Polity of John Calvin*.

<sup>2</sup> Ignatius's own title for the record of these deliberations was 'The manner (*modo*) in which the *Compañía* is to order itself (*ordenarse*), so as to give obedience to one of its members'; *Constitutiones* I, p. 2: 'Deliberatio primorum patrum'; hereafter *Modo*.

of the collective terms for the associations which had proliferated.<sup>3</sup> *Societas*, *Gesellschaft*, or *Gemeinschaft*, the calques *Societät* (German) and *Societeyt* (Flemish) and their Romance equivalents connoted a common concern or enterprise, free association and fraternity, perhaps even informality. But these latter connotations were necessarily attenuated by the Society's formal incorporation, to say nothing of its subsequent subdivision into provinces, some eventually with thousands of 'subjects'. In any event, the metaphor of a 'body' was inescapable for this or any other permanent association,<sup>4</sup> and 'body' connoted neither informality nor free association. The Society of Jesus was unquestionably a *corpus*, a corporation, a 'body mystical'; these terms were as appropriate for it as for a guild, a company of merchants, a commonwealth, or the Church as a whole.<sup>5</sup>

'Body' in turn irresistibly implied headship: any 'body' must have a 'head' to which the 'members' are in some way subordinated. Such subordination, in other words a relation of command and obedience, is the 'bond' or 'sinews' which hold the body together. But just as a body corporate is not literally a body, so its head need not be a single individual.<sup>6</sup> Collective headship was a perfectly familiar concept. But the Jesuit founders never even considered any other form of headship for their association than that of a single individual. Their deliberations and Ignatius's title for the record that was kept of them equated the headship of one person, headship as such, and permanent incorporation, so intimate was the association of ideas.<sup>7</sup>

Ideas about corporate existence and headship current at the time therefore do not by themselves explain the most characteristic and distinctive feature of the Society's organisation: its consistent structure of super- and sub-ordination, command and obedience, strict hierarchy and concentration of authority in a single superior at every level of the order, culminating in the overriding authority of the Superior General, at the expense of the authority of any collective representative body or collective decision-making by Jesuit communities.

It has long been supposed that what informed this distinctive manner of organisation was either a military model or pragmatic considerations.

<sup>3</sup> Black, *Political Thought in Europe*, ch. 1.

<sup>4</sup> Dreitzel, *Monarchiebegriff in der Fürstengesellschaft*, vol. 1, p. 45: 'Von allen funktionalen Metapher war keines so allgemein verbreitet wie der Körpervergleich.'

<sup>5</sup> Kantorowicz, *The King's Two Bodies*, ch. V, esp. pp. 209–10.

<sup>6</sup> F. Torres (Turrianus), *De hierarchicis ordinationibus ecclesiae catholicae* . . . , 1569, p. 12<sup>v</sup>: 'Immo vero analogia corporis Apostolica [i.e. I Cor. 12:12ff] non cogit unum caput regni concedere', at least in 'gubernatio civilis'.

<sup>7</sup> E.g. *Constitutiones* 1, p. 7: Conclusion (*nem. con.*): 'nobis expedientius esse et magis necessarium, praestare obedientiam alicui ex nobis, ut melius et exactius prima nostra desideria implendi per omnia divinam voluntatem exequi possimus, et ut tutius conservetur Societas, et tandem ut negotiis occurrentibus particularibus, tam spiritualibus quam temporalibus, decenter provideri possit'.

The idea that the Society was organised on military principles is indeed endorsed in both ancient and modern interpretations of the Society.<sup>8</sup> Ignatius's own armigerous past also lends it credibility. But in fact military metaphors played no part<sup>9</sup> whatever in the founders' deliberations about how the Society was to be organised. The metaphors used in the founding documents about enrolling under the 'banner of Christ' (*sub crucis vexillo Dei militare*) were utterly conventional, and virtually inescapable as a description of an association intended as an active agency of the 'Church Militant'.<sup>10</sup> Moreover, they were not invoked to explain or justify the *structure* of the Society, but rather the strenuous and perilous commitment expected of its members. Again, the title 'general' for the head of the Society is a short form for *praepositus generalis*, as distinct from the host of lesser *praepositi* in the Society. Other orders, too, had their 'generals'. There was of course no reason to reject military analogies, although they are exceedingly rare in Ignatius's writings and hardly feature at all in his addresses on obedience: an army simply shares the characteristics which Jesuits ascribed to *any* orderly human collectivity.

The claim that its arrangements were adopted as optimal 'means' to the Society's 'ends' seems more promising. As incurable rationalists, the Jesuits interpreted everything human as either a means or an end, and since the Society itself was interpreted as a means to higher ends, so *a fortiori* was its organisation, or less anachronistically, its 'order'; the biological metaphor 'organisation' was not imported into political thought until the eighteenth century. But there are strong reasons for also discarding this interpretation. The end or purpose of incorporating was stated by the *Formula* in an extremely general way, as we have seen: salvation of their own souls and those of their neighbours; commitment to an active life, not sedentary or contemplative, missionary not parochial; 'unconditional' service to the papacy (which might also count as a 'means' to the Society's 'ends'). These ends singly or together were, however, not specific enough to allow pragmatic inferences about suitable 'means'. In any event, as has been shown in the previous chapter, the focus of the Society's activities changed dramatically

<sup>8</sup> See Dalmases, *Ignatius*, p. 149; Brucker, *La Compagnie de Jésus*, pp. 13, 18; Abellán, *Historia crítica del pensamiento español*, vol. II, p. 532. Polanco, Ignatius's secretary, seems to have stressed military associations; see *Constitutions*, p. 348 and n. 11; Ribadeneira, *De ratione Instituti S.J.* (c.1605), pp. 19–20, also offered an extended military analogy; also p. 47 for 'cohort'. Suárez was agnostic: 'Solet enim Societatis nomen et ad militiam, et ad negotiationem seu mercatura specialiter applicari . . . et utraque titulo videtur haec vox a B. Ignatio usurpatur', but subsequently ignored the military metaphor: 'quid enim est religiosa vita, nisi spiritualis negotiatio et mercatura' (*Tractatus de Religione Societatis Jesu*, 1857. Bk 1, ch. 1.x).

<sup>9</sup> The *Summa*, *MHSJ*, *MonIg* vol. 63, p. 18, once refers to the 'Societas Iesu' as 'Jesu Christi militia'.

<sup>10</sup> Aldama, *Formula*, pp. 37–9; and systematically Ganss, *Constitutions*, pp. 345–9; see also pertinent comments in Alden, *The Making of an Enterprise*, p. 10.

from what was at first envisaged; its organisational principles, however, remained the same. And whatever pragmatic advantages might be claimed for the way in which the Society was organised, it also had clear pragmatic *disadvantages*. Its unprecedented concentration of authority in the Superior General made the Society many enemies, particularly among princes,<sup>11</sup> and continued to provoke grave disagreements within the Society itself. A more decentralised organisation would arguably have allowed greater flexibility and better exploitation of local knowledge.

Nor do pragmatic considerations explain why the founders were prepared to abandon formal incorporation altogether, rather than risk assimilation to the most tried and tested model for the new association, namely that of the older religious orders, confederations of relatively independent houses, each with its elective head, and a time-limited Superior General and some general assembly.<sup>12</sup> Jesuits subsequently obdurately resisted papal attempts to assimilate the Society to Dominican, Franciscan, or Benedictine models. But technically the Society certainly was, like them, a religious order (*ordo* or *religio*), an association of clerics bound by vows of poverty, chastity, and obedience, and governed by a rule. The Dominicans and Franciscans had demonstrably found their Rule compatible with the missionary activity at home and abroad which the Jesuit founders envisaged as their principal avocation. But the early Society did not define itself as a *religio* and *obedientia*, not least because the founders were sensitive to the unpopularity of such terms.<sup>13</sup> Even the Jesuits' manner of dress was not distinctively priestly, let alone monastic.<sup>14</sup> Evidently, therefore, the issue of organisation was not for them a merely pragmatic issue, but one of principle.

#### THE VIRTUE OF OBEDIENCE

What is fundamental to the Jesuits' principles of organisation is their distinctive understanding of the virtue of obedience, not any military model or pragmatic considerations. The pre-eminent place Jesuits assigned to

<sup>11</sup> This partly accounted for Philip II's hostility to the Society in Europe, whereas he fully approved and supported its foreign missions; see Alden, *The Making of an Enterprise*, pp. 89–92.

<sup>12</sup> *Ibid.*, pp. 8–10; see *Modo* (*Constitutiones* 1, p. 6), for the founders' concern that incorporating might entail being 'compelled by the Holy Father to live under some rule that is ready-made and established'.

<sup>13</sup> *Constitutiones*, 1, p. 5: 'nomen religionis seu obedientiae non ita bene audit in populo'; *obedientia* is here merely a synonym for a religious order.

<sup>14</sup> The sombre dress and white collars of sixteenth- and early seventeenth-century Jesuits were the fashion of sober Catholics as well as Protestants, not a clerical uniform. The issue of adopting local dress was especially important in the Chinese and Japanese missions, where dress denoted not merely status, but level of scholarship. See Bangert, *History*, p. 35, Spence, *The Memory Palace of Matteo Ricci*, pp. 114–16.



obedience is evident in the abundance of authoritative texts emphasising and justifying it. The considerations adduced to commend it were invariably one or more (but usually all) of (a) the functionality of obedience in terms of the preservation and growth of the Society (its *felix progressus*, the title of one of Aquaviva's encyclicals); (b) the naturalness of super- and sub-ordination in the whole universe, and in any collectivity within it, as testified to by Scripture, tradition, reason (meaning cosmological or self-evident first principles and inferences), and universal practice alike; (c) the ascetic motif: obedience as the specific against the devil, the world, and the flesh, and as the virtue propaedeutic to all the other virtues. The informal version of the scholastic manner of argument which Jesuits employed as a matter of course did not require ranking these considerations in order of importance; nevertheless the ascetic consideration preponderated.

The *Modo*, as if invoking an axiom, said that 'since there is nothing that more conduces to the preservation of any *congregatio* whatsoever than obedience, we think that we [too] stand in need of it'. Furthermore 'obedience makes men ready for sustained heroic actions and virtues. For the man who truly lives under obedience is very prompt to carry out whatever he is enjoined to do, even if it presents great difficulties or gives rise to humiliation and derision.'<sup>15</sup> Ignatius's letter to the college in Coimbra made the same point: 'Such a union [as the Society desires] cannot be maintained without an order, nor order without the proper bond of obedience of inferiors to superiors; the whole of the natural universe teaches this, and so do the hierarchies of angels and well ruled [or: regulated] human polities' (*EpIg* I, Letter 243: 687–93/159–60\*). Ignatius regularly employed that most sturdy and longest-lived of political theory war-horses, the Order Philosophy (or cosmology),<sup>16</sup> in what became virtually standard formulations.<sup>17</sup> His letter to the newly established college at Gandía, urging subjection to a single 'head or superior', for instance referred to 'the universal example given to us by every people that lives in a community, with some kind of established order (*algún policia*), not only in kingdoms as well as cities, but even in particular [or private, *particulares*] communities (*congregationes*) and houses . . . It is usual to reduce the government to unity [i.e. monarchy],

<sup>15</sup> *Constitutiones*, I, pp. 6–7.

<sup>16</sup> The classic exposition is Greenleaf, *Order, Empiricism and Politics*, ch. 1

<sup>17</sup> Cited from Young, *Letters* (starred page-numbers; translations occasionally modified) and original texts in *MHSJ*, *EpIg*; the most important of these is the 'Letter on Obedience' of 1553 to the Society in Portugal (*EpIg* IV, Letter 3304: 669–81/287–95\*),<sup>17</sup> published separately (for the first time in 1567) and incorporated into collected editions of the canonical letters of Jesuit generals. Its contents, and sometimes its very words, reappeared in the *Constitutions* (parts III and IV, all versions).

in order avoid confusion and disorder.<sup>18</sup> And 'no multitude whatever can preserve itself as one body, unless it is united; nor can it be united without an order (*orden*); and it cannot have an order if there is no head to which the others are subordinated as members, by means of obedience' (p. 144\*).

But what explains the Society's distinctive order is not these generic arguments about order as such, but the fact that for Ignatius and the Society obedience always meant obedience to some determinate individual. What decisively exemplified and also justified this understanding of obedience and hierarchy was the concept of every Jesuit superior as standing in the place of Christ, rightly described by Thomas O'Gorman as 'the core of [Ignatius's] concept of obedience'.<sup>19</sup> Although this idea was not even mentioned in the *Modo*, it soon came to predominate in Ignatius's exhortations,<sup>20</sup> and in the Society's *Constitutions*: 'It is expedient for progress [sc. in virtue] and highly necessary, that all should devote themselves to perfect obedience, recognizing their superior, whoever he might be, as standing in the place of Christ our Lord, and giving to him interior reverence and love, true self-abnegation and resignation.'<sup>21</sup>

For Ignatius, merely 'carrying out what is commanded . . . does not deserve the name of obedience'.<sup>22</sup> The obedience required of Jesuits is vastly more exigent. The Jesuit must not merely wish (*querer*) as his superior does; he must also think and feel (*sentir mesmo*) as he does.<sup>23</sup> This is a perfect 'obedience of the understanding', where the judgement and the will are one; Ignatius once described it as a 'kind of passion for obeying'.<sup>24</sup>

Obviously any merely human superior may lack virtue, wisdom, or prudence. But Jesuits are to 'exercise themselves in recognising Christ our Lord in any superior' (pp. 288–9\*) as a crucial instrument of asceticism: 'Nothing crushes all pride and arrogance the way obedience does', as the *Modo* put it.<sup>25</sup> 'In offering one's own judgement and will and liberty, which is the principal [attribute] of man, one offers up as much as it is possible to offer.' A life of obedience to (often all-too-human) superiors is 'a kind of martyrdom which continually decapitates one's own judgement and will,

<sup>18</sup> *EpIg* I, letter 182: 551–62/140–6\*; 551–2/140–1\*, slightly more literal translation.

<sup>19</sup> *Jesuit Obedience*, p. 32.

<sup>20</sup> The 'canonical' letter to Portugal devoted only two short paragraphs to cosmology: the angels and planets, all well-ordered polities and the ecclesiastical hierarchy, indeed all *congregaciones* (pp. 295\*/1680–1). The idea of superiors as representatives of Christ of course has nothing to do with the Order philosophy.

<sup>21</sup> *Constitutions*, s. 284 (= pt III, ch. 1.23); all the relevant texts in O'Gorman, *Jesuit Obedience*, ch. 2.

<sup>22</sup> 'Letter on Obedience', *EpIg* IV, 673/289\*.

<sup>23</sup> P. 290\*; *sentir* has roughly the same range of meaning as the Latin *sentire*: it may mean merely to hold the view that . . . , but it has also a connotation of emotion: 'to feel (strongly) that . . .'

<sup>24</sup> Letter to Andrea Oviedo, 1548, p. 168\*. <sup>25</sup> *Constitutiones* I, pp. 6–7.

by setting Christ's will and judgement, manifested through his minister, in place of one's own' (p. 143\*; see also p. 290\*/673). An 'entire surrender (*resignacion*)' is the optimum to be aimed at (p. 290\*/674). Ignatius's startling expressions to drive home the scope and depth of 'holy obedience' are notorious: 'perfect obedience', 'blind obedience',<sup>26</sup> even obedience '*sicut cadaver*' (corpse-like) and like 'an old man's staff'.<sup>27</sup> He urged Jesuits to presuppose that what the superior enjoins is the command and will of God, and to 'obey blindly, without further enquiry'.<sup>28</sup> Of course he had then to qualify in this and all analogous contexts: 'where some species of sin cannot be judged to be present'.<sup>29</sup> Whether a superior's command is indeed morally unobjectionable must ultimately be determined by the 'subject'.

O'Gorman's otherwise meticulous argument asserts that whereas the superior as standing in the place of Christ is Ignatius's central concept, all the documents which emphasise the sacrifice of one's own will, liberty, and judgement are 'responses to crises of obedience' (p. 31). But neither the *Constitutions* nor the *Examen* (a digest of them intended for candidates for the Society) were responses to such crises, and yet both emphasised precisely the sacrifice of will,<sup>30</sup> with the same strident metaphors. And in fact Ignatius grounded *both* the centrality of obedience *and* the idea of Jesuit superiors as standing *in loco Christi* in self-discipline, asceticism. Crises of obedience merely called for a firm reminder about a duty that always applies, crisis or no crisis.

For the Society's founders, then, the decisive argument in favour of a hierarchical ordering of the Society was its inherent connection with obedience, which is a high religious virtue in everyone, but is uniquely proper to the religious life. Obedience is certainly a means to the Society's ends, but equally the cultivation of this virtue is itself a principal 'end' of the Society. This reading of the cultivation of obedience as decisive in shaping the design of the Society is confirmed by the Spiritual Exercises.<sup>31</sup> Any account of the Jesuits which ignores their spirituality would be absurd. A rigid separation between Jesuit organisational and political thought and Jesuit spirituality is untenable anyway, since Jesuit spiritual writings invariably

<sup>26</sup> P. 292\*/676. The term also occurs in all versions of the *Constitutions*; all the relevant texts in O'Gorman; cf. p. 44: line 180.

<sup>27</sup> O'Gorman, *Jesuit Obedience*, p. 44: pp. 201–2, 207–8; Ganss, *Constitutions*, s. 547.

<sup>28</sup> 'Letter on Obedience', p. 294\*; 'blind obedience' also occurs on p. 292\*/676.

<sup>29</sup> *Constitutions*, ss. 284, 547, 549.

<sup>30</sup> O'Gorman, *Jesuit Obedience*, p. 38: 60–4; *Constitutions*, s. 284.

<sup>31</sup> 'Spiritual Exercises' unitalicised (as here) refers to the devotional practices; italicised, it refers to the printed text. The Latin ('Vulgate') version of 1548 was one of the Society's earliest publications.

contain overtly 'political' references or analogies. And conversely many of the most obviously 'political' Jesuits were known to a vastly larger Catholic public as devotional writers: Pedro de Ribadeneira for his *Flowers of the Saints*, Robert Persons (the paradigmatic 'Jesuite politician' of Elizabethan and Jacobean political demonology) for his *Christian Directorie*, twice pirated by Puritans, Robert Bellarmine (*The Sigh of the Dove*), etc. And without question, the mainstay of Jesuit spirituality has always been the Spiritual Exercises.

The Spiritual Exercises are the distilled essence of Ignatius's understanding of the Christian life. They are the ordinary practices ('exercises'<sup>32</sup>) of that life in a heightened and concentrated form, freed from the distractions of daily life.<sup>33</sup> They do not presuppose or envisage the Society of Jesus,<sup>34</sup> though the Society of Jesus presupposes them. Their purpose is not to produce priests, still less Jesuits, but rather dedicated servants of God in whatever walk of life.<sup>35</sup> What they say about obedience, therefore, cannot be regarded as tailored to specifically Jesuit concerns. Yet their conception of obedience is identical.

#### ORDERED PASSIONS

Before the Society of Jesus was ever conceived, Ignatius understood the core of the Christian life as willed obedience to God. The end, the *principium et fundamentum*<sup>36</sup> of the Christian is a life dedicated to the 'glory of God'. Such a life presupposes a rightly ordered soul, a soul disposed to service.<sup>37</sup> Service in turn demands a disposition to obedience, or humility<sup>38</sup> as the Spiritual Exercises normally terms it. The 'humility' Ignatius had in mind was anything but spinelessness or lack of character. On the contrary, Christian humility is a heroic achievement. It springs from a self-conquest

<sup>32</sup> The celebrated 'Meditation on the Two Standards' (or Banners) explains the word 'exercises', which might be supposed to have military connotations, with no reference to anything but 'bodily exercise', such as walking or running; *Ignatius Loyola: Spiritual Exercises*, ed. Ganss *et al.*, p. 121.

<sup>33</sup> They were originally intended for persons facing some decisive choice in their lives, but Ignatius also used them as a more general means to 'exercise' people in the spiritual life (*Ignatius Loyola: Spiritual Exercises*, ed. Ganss, pp. 389–90, fn. 11).

<sup>34</sup> Ignatius had been administering them continuously from the early 1520s onwards.

<sup>35</sup> The spiritual director (for whom the text of the *Exercises* is intended) is explicitly forbidden to try to influence the exercitant to one mode of life rather than another; *Exercitia Spiritualia S. P. Ignatii de Loyola*, 1865, pp. 15–16.

<sup>36</sup> *Ibid.*, first week, p. 25.

<sup>37</sup> *Ibid.*, pp. 139–40.

<sup>38</sup> The *Formula (Constitutions, s. 4)* makes 'the constant practice of [the virtue of] humility, which has never been sufficiently praised' an independent reason for Jesuits to obey and to recognise Christ in the General.

or more precisely 'self-oblation', offering up one's self as a sacrifice, which presupposes that there is a self to be conquered and offered up. Ignatius distinguished the 'degrees' of Christian perfection by the criterion of humility, the extent to which personal will has been 'conquered' and replaced by 'indifference', complete submission to God's will.<sup>39</sup> So far from implying a lack of will, then, humility requires an iron will, and an inflexible commitment. Humility and submissiveness are only valuable if they are themselves the product of will.

What counteracts humility is 'disordered passions'.<sup>40</sup> Disorder (*desordinacion*) in the soul is the condition when our passions are not subordinated to the desire to serve God. Its source is pride or self-will.<sup>41</sup> Here it is important to clarify the place of 'self-love' in Ignatius's understanding of the human psyche, since his terminology in the *Exercises* is often colloquial and derivative, as when he counterposes reason and the passions, *amor sui*, or 'the flesh'.<sup>42</sup> However, what is to be evacuated is not passions or self-love as such, but *disordered* passions, undisciplined sensuality, and misdirected self-love. 'Ordered passions' is not Ignatius's term, but what the Spiritual Exercises aim at is passions harnessed and ordered to the overriding end of the service of God. They are a highly sophisticated marshalling of senses and passions as well as the reasoning faculties for a systematic assault upon the habits of insubmission to God generated by pride.<sup>43</sup> Thus the exercitant is enjoined to taste, feel, see, hear, and smell the torments of hell, but equally to feel the pleasures of service and devotion to Christ the Lord. Even a 'slavish' fear of punishment is not rejected as a motive, at least as a stepping-stone to a more valuable engagement.<sup>44</sup> And nowhere is there any attempt to separate the service of God from the 'self-love' involved in being concerned about where one will spend eternity. The latter is regarded as so obviously natural and legitimate that the entire *Exercises* consistently

<sup>39</sup> *Exercitia*, pp. 111–12.

<sup>40</sup> *Desordenadas, affectiones inordinatas, Exercitia*, pp. 5, 104, 111, 112; contrasted with what is *debite* and *ordinate*, pp. 113, 116, and p. 59: *deordinationem operationum mearum*; pp. 130, 132: *inordinatio*.

<sup>41</sup> *Exercitia*, pp. 32, 51–4.

<sup>42</sup> E.g. p. 117; p. 168: 'ad vincendum seipsum, scilicet ut sensualitas obediat rationi'; *sensualitas* is therefore not eliminated but harnessed.

<sup>43</sup> *Annotatio* 3 (*Ignatius Loyola: Spiritual Exercises*, ed. Ganss, p. 122): 'In all the following Spiritual Exercises, we use the acts of the intellect in reasoning and of the will in eliciting acts of the affections . . .' *Annotatio* 6 treats the absence of *commotiones* (*mociones*) as a bad sign.

<sup>44</sup> *Exercitia*, Rule 18: 'non solum timor filialis est res pia et sanctissima, sed etiam timor servilis, ubi [i.e. if] quid aliud melius et utilius homo non assequatur, juvat multum ad emergendum e peccato mortali; et postquam ex hoc emersit, facile pervenit ad timorem filialem'.

appeal to it.<sup>45</sup> So did the Society, in always coupling its objective of saving the souls of others with that of saving the souls of its own members.

It is striking that the Spiritual Exercises do not focus the exercitant's attention and meditations on the Church. Rather, they envisage a direct relationship between the individual and *Christus Dominus noster*, and the immediacy of the relationship is fundamental. Even the spiritual director's role is that of guide and adviser during a time devoted principally to private and individual meditation, reflection, prayer, and the sacraments. And there is no hint of any communal aspect to the prayer and worship of the exercitant: on the contrary, it is crucial that he or she be alone with Christ throughout, resorting only to the spiritual director for advice and to the Church for sacraments.<sup>46</sup> Outram Evennett is thus right to stress the 'very personal' quality of Jesuit spirituality and that of the Counter-Reformation in general.<sup>47</sup> It is exemplified in the emphasis of Ignatius and later of the Society as a whole on the individual's conscience, commitment, relationship with God. There is the same 'individualistic' quality in the Society's devotional practices, its rooted antipathy to communal offices, its zeal for auricular confession and frequent (private) examination of conscience. It even individuated collective acts of worship like the mass, where, although present with others, the individual's meditations are to be as if others were not there. The Christian life is lived in intimate intercourse with the institutional Church, but it is never suggested that individuals should lose themselves in the collective life of Christians. Even the member of the Society of Jesus remains an individual, who *makes* his will identical with that of his superiors, not with his brethren.

A further striking feature of the *Spiritual Exercises* is that, just as there is no separate meditation on the Church, heresy too is not even mentioned. Jesuit and Tridentine spirituality was in many respects denominational, defining itself by what it opposed. But the Spiritual Exercises draw on the resources of an unbroken tradition of Christian piety. This is not the piety of indulgences, votive masses, litanies, relics, and all the rest, nor yet the monastic piety of contemplation, austerities, and rituals, but rather a piety which has a considerable resemblance to that of the Brethren of the Common Life, and which owes nothing at all to the confrontation with reformed religion.

<sup>45</sup> E.g. Nadal's *Exhortations and Commentaries* (from 1554), *MHSJ* 90, 1962, p. 43: we Jesuits unlike Christ 'primum quidem nostram, deinde proximorum salutem et perfectionem procuramus'. In the *Exercises*, the customary formula (e.g. p. III) is: 'unice spectando finem, ad quem creatus sim, sc. ad laudem Dei Domini nostri, et salutem animae meae'.

<sup>46</sup> *Exercitia*, pp. 21–2, on the benefits of solitude.

<sup>47</sup> Evennett, *The Spirit of the Counter-Reformation*, pp. 75, 41.

However, in all their printed versions and in Ignatius's own manuscript, the *Spiritual Exercises* include *Some* [eighteen] *Rules to be kept, so that we may think with*<sup>48</sup> *the Orthodox Church*. These rules are an admirably compact, very aggressive epitome of Tridentine Catholicism decades before Trent.<sup>49</sup> They defend ecclesiastical and liturgical practices, theological authorities, and attitudes of obedience to the Church that had been impugned by humanists, especially Erasmus, whose criticisms Ignatius encountered while he was in Paris between 1528 and 1534. They insist on submission to an embattled Church beset by enemies and very vulnerable because of the inadequacies of its personnel; they are dated to 1538–41, at Rome.

The text of *Spiritual Exercises* does not refer to the *Rules* directly or indirectly, and the *Rules* were composed *after* the *Spiritual Exercises*.<sup>50</sup> They demand that Catholics should wholeheartedly uphold whatever heretics impugn, *because* they impugn it, and should maintain a discreet silence about doctrines such as predestination which, although true, are advocated by heretics. This is entirely alien to the character of the rest of the *Exercises*. Nevertheless the inclusion of the *Rules* in the *Spiritual Exercises* is not hard to understand. Fessard<sup>51</sup> convincingly relates them to *vergüenza* (or *confusio*, shame), which he regards as the crucial disposition required by the *Spiritual Exercises*. The link with the spirit of the *Exercises* is revealed in a subordinate clause in Rule 1: 'First, *surrendering every opinion of our own . . .*' (my italics). Ignatius was here endorsing the hard-line Romanist interpretation of humanists and Reformers as persons whose dominant passion was pride. The *Rules* specify that the submission of the mind and heart<sup>52</sup> is to be to the Church (Rule 1), 'so that we may be wholly at one and in conformity with this same Church' (Rule 13). Ignatius described the Church with standard terminology: *sancta Mater*, *Ecclesia catholica*, *orthodoxa*, but his critical term was *hierarchica Ecclesia*,<sup>53</sup> which entirely excludes 'heretical', spiritualising interpretations of the object of obedience. Human defects in its clergy, admitted or implied in Rules 9, 10, and 12, cannot be a decisive argument against the Church's authority, and public 'vilification of superiors serves rather to cause damage and scandal than to bring about any improvement' (Rule 10). The culmination is the notorious Rule 13: 'In sum, in order that we may be wholly of one mind and in conformity with this same

<sup>48</sup> *Sentire*; the Spanish original has 'sentir en l'iglesia militante', which has rather different connotations, although Ignatius approved both versions; cf. Fessard, *La Dialectique*, p. 161, n.1. Fessard offers a detailed and careful examination of the *Rules*.

<sup>49</sup> *Ibid.*, p. 162.      <sup>50</sup> *Ibid.*, p. 160.      <sup>51</sup> *Ibid.*, p. 161.

<sup>52</sup> *Exercitia*, p. 197: 'sublato proprio omni iudicio, tenendus semper paratus promptusque animus, ad obediendum'.

<sup>53</sup> The *Exercises* has only two direct references to it, whereas *Rules* 1–13 are about nothing else.

Catholic Church, if something which appears to our eyes to be white, and the Church has defined it to be black, we must declare (*pronuntiare*) the same to be black.’<sup>54</sup> The next sentence refined ‘Church’ into ‘hierarchical Church’.

Jesuit foundational documents thus unanimously affirm that obedience (or humility) is the distinguishing Christian virtue. But no Christian denied that God demands obedience. The *differentia specifica* of Jesuits is that they unhesitatingly made the manifestations of God’s will in ‘visible’ superiority, institutions, and office-holders the object of obedience, not only for Jesuits but *mutatis mutandis* for all Christians.

#### HIERARCHY

The Society was addicted to rules.<sup>55</sup> It had rules for every estate and function within the Society, and rules for every vocation and almost every circumstance of Christians in its casuistry. But rules require making, interpretation, and discriminating enforcement, and they need to be supplemented by direction, exhortation, reprimand, reward, and punishment. The more general the rule, or the more recalcitrant the subjects, the greater the need. In terms of Jesuit organisational thinking as well as spirituality, there is therefore ultimately no substitute for relations of command and obedience, for superiors who give orders and inferiors who obey them: obedience must be obedience to someone, and authority must be personalised, embodied. An obedience like that of the ‘heretics’, which is ostensibly to God and to rules, but where the ‘subject’ is the interpreter of what God’s will is and what the rules mean, was for Jesuits indistinguishable from pride.

But since superiors are still only human, they must themselves be obedient and subject to someone or something else, as the *Constitutions* acknowledge even in the case of the superior general.<sup>56</sup> Hence the need to *order* these

<sup>54</sup> This Rule does not require Fessard’s dialectical exegesis (*La Dialectique*, pp. 167–87). Ignatius habitually used extravagant expressions in connection with obedience, and could have cited a notable precedent: ‘If thine eye is a cause of offence to thee, pluck it out’. Fessard himself explains (pp. 170–1) that Erasmus, Ignatius’s *bête noire*, had declared in 1528 that he would never believe that what was black was white, even if the Church said so, not that it would; this for Ignatius was reason enough to say the opposite.

<sup>55</sup> *Constitutions*, Preamble to Declarations and Annotations, s. 136: ‘these Constitutions should be complete, to provide for all cases as far as possible’, but (optimistically) they should be brief and clear as well; they also envisage supplementation by more municipal ordinances.

<sup>56</sup> *Ibid.*, s. 820: ‘It is also highly important . . . that individual Superiors should have much authority (*multum potestatis*) over their subjects, and the General over the individual superiors, and on the other hand, that the Society should have much authority over the General . . . , so that all may have full power for good, and that if they perform poorly, they may be kept under complete control (*omnino subjecti sint*).’



superiors themselves, that is, to render all commanders subject to higher commanders in a hierarchy.<sup>57</sup> Ignatius's letters on obedience were addressed to a Society which was already a multiplicity of communities organised into colleges (or houses) and provinces. The *Modo* and the *Institute* had envisaged a Society with an upper limit of sixty persons on membership. But the changed circumstances were easy to accommodate, since the monarchical principle can cope with any number of communities and superiors, provided they are hierarchically arranged under one apex. In a private letter of 1548,<sup>58</sup> Ignatius already handled this point in terms sufficiently *en passant* to reflect its obviousness: 'It is necessary that there should be an order (*orden*) wherever there is any multitude, so that confusion may be avoided. And even among a multitude of superiors (*prepositos*) there must be an order of superiority (*prelacion*) and subjection; and so with sub-ordination the unity of all must be maintained' (p. 165\*).

But despite Ignatius's extravagances about 'blind' and 'corpse-like' obedience, the Society from the beginning emphasised deliberate choice and commitment,<sup>59</sup> and demanded the exercise of prudence and judgement from its members. Indecisiveness and unwillingness to exercise initiative were the very last things needed in what was originally conceived as a fire-fighting force. Ignatius's own practice was to choose his sons carefully, to assign them tasks and then to give them their heads. In more remote provinces (like Brazil or Japan) there was no other option, since instructions might take a year or more to arrive. Nevertheless some later generals, notably Aquaviva (it seems to me), would have preferred their subjects to do nothing, rather than something of which they disapproved. Whether the various provinces and units of the Society were able to operate decisively and responsively to local needs and conditions (a desideratum in the *Constitutions* themselves) therefore depended in large measure on the character of the general.

#### THE SUPERIOR GENERAL

The founding decisions and documents made the Superior General virtually irremovable and uncontrollable from within the Society. He might therefore perpetrate all the evils and errors which the hierarchy constrained

<sup>57</sup> *Ibid.*, ss. 206, 659, 662, 666, 820, 821, etc.

<sup>58</sup> *EpIg* II, pp. 54–65, Letter 295/164–72\*; p. 165\*, translation slightly modified; compare the 'Letter on Obedience', *EpIg* IV, p. 680/1295\*.

<sup>59</sup> *Rules* 13–17 specifically discourage teaching predestination and salvation by faith and grace, because of their deleterious effects on personal responsibility and commitment.

inferiors from committing, but with much more devastating effects for the whole body. This point did not escape Ignatius.<sup>60</sup> But all that the *Constitutions* could offer as a corrective or remedy was a kind of 'Mirror for Generals', a set of exhortations and desiderata (part ix, ch. 2). It seems incongruous that the Society invested its Superior General with a unique combination of powers, the most distinctive feature of the Society's organisation. He is elected for life,<sup>61</sup> by a general council which is called only when a general is to be elected, and which otherwise the general may summon or not as he sees fit (*Constitutions*, ss. 677, 689). The *Constitutions* deprecated frequent or regular general councils, and so did the later practice of the Society, even in the face of papal injunctions. There are provisions for general congregations to dismiss a general for heresy, turpitude, or incompetence, but they were little more practicable than the deposition of a pope or an 'absolute' monarch (ss. 774–7, 782–3, 787). The *Constitutions* in fact came close to describing him as an absolute monarch: 'It is judged altogether proper for the good government of the Society that the Superior General should have complete authority over it' (s. 736). He is the 'head [from which] flows all the authority of the Provincials' (s. 666); no one else can appoint or dismiss them (ss. 757, 759, 778). He has power to admit anyone to any rank in the Society, and equally to dismiss them (ss. 206, 736, 740, 759). He retains superintendence over all colleges (s. 419), and indeed over *any* matter (s. 765), and is entitled to regular and detailed reports.<sup>62</sup> He is obliged only to 'confer' with the *consultores* and *assistantes* appointed to advise him (ss. 779, 804, 809) and he may himself consult any member of the Society (ss. 206, 791). No Jesuit may appeal beyond him to the Pope without his permission (though of course some did); and there is no appeal outside the Society (though of course some did appeal).

As we have noted, a hierarchical structure might in principle have culminated in a collective executive (like the Presbyterian Church), with perhaps a head who is *primus inter pares*. The *Constitutions* themselves claim only that 'in all well-ordered communities and congregations there must be . . . *one or several* persons (*aliquem, vel etiam plures*) whose specific duty is to attend to

<sup>60</sup> *Constitutions*, s. 820: 'the good or evil bearing (*habitudo*) of the head has consequences (*redundet*) for the whole body' (my translation). S. 736 in the original text (fn. 1) had: 'the Superior General should have complete authority over the Society, to build it up *and not to destroy it*' (my italics), but the italicised words were omitted from the final version, rendering it anodyne.

<sup>61</sup> *Constitutions*, ss. 380, 719; one of various reasons in favour of this arrangement (ss. 719–22), was that fewer General Congregations would be needed (s. 722).

<sup>62</sup> The Society spawned regulations, some of them impossible to meet, such as ss. 675–6 which demanded four-monthly reports from each province to the General, in vernacular and Latin versions, plus a confidential one. They remained on the books, doubtless to give Provincials a bad conscience and thus to make them vulnerable.

the universal good'. But they then refer without explanation to 'one whose duty is the good government . . . of the whole body of the Society'.<sup>63</sup> The example of the older religious orders did not suggest such a generalate. Even the subjection of the general to the still higher authority of the papacy and his selection by the most prudent, experienced, and virtuous members of the Society merely made such a concentration of powers something that might be contemplated without fear of saddling the Society with some monster.

#### THE MONARCHICAL PRINCIPLE

The explanation of the autocratic Jesuit generalate is that it was itself modelled on the papacy.<sup>64</sup> But this merely creates a new problem of explanation. There was a whole spectrum of orthodox views about the papacy, ranging from papal autocracy to conciliarism. So why did the Jesuits take their particular view of it? All the explanations they themselves gave are inconclusive in terms of the Jesuits' own arguments: Scripture, Tradition, Reason, the nature of order itself.

By the time of the Society's foundation, much of religio-political controversy had come to focus on the question of the 'True Church', and central to this was the issue of the papal primacy. The term 'Church' at this time, and ever since the beginnings of Christianity, had two meanings. In one sense, it is a corporation with a structure of offices and laws. Thus 'the Church' in ordinary speech often denoted the ecclesiastical hierarchy, the clergy. In another sense, the Church is the collectivity of all the faithful, or the faithful in some region, its distinguishing character here being the shared faith of the members: etymologically, *ecclesia* meant an assembly or congregation.<sup>65</sup>

Humanists and evangelicals typically accentuated this latter sense, in order to rectify what they saw as a grotesque over-emphasis on the hierarchy in the Middle Ages. The one, holy, catholic, and apostolic Church of the Apostles' Creed for evangelicals was therefore the 'invisible' Church, identified by the sharing of one faith and the common headship of Christ. This served evangelicals well enough to deflate the pretensions of the papacy and

<sup>63</sup> *Constitutions*, part IX, ch. I, s. 791, my italics.

<sup>64</sup> The *Constitutions* themselves refer to the papacy (s. 720), as well as (s. 719) to 'omnibus Rebuspub. vel Congregationibus bene constitutis', and therefore especially the Church, as an exemplar for the generalate.

<sup>65</sup> Valentia, *Analysis*, p. 120: 'Ecclesia Graecè, Latinè est convocatio, ut omnes notant.'

the clergy.<sup>66</sup> Indeed, an enduring legacy of the evangelical revolt was a tendency to regard the organisation and administration (the 'external order') of 'visible' churches, in other words specific organised ecclesial communities united by a common faith and sharing in the sacraments, as being peripheral or *adiaphora*, things indifferent, since what was ultimately decisive was membership of the 'invisible' church. This had the implication, at first welcomed, that 'externals' might properly be subject to control and reform by the secular magistrate. Bouwsma has argued that this was also the position of Venice's official theologians during the Interdict.<sup>67</sup> It nevertheless proved a millstone even for the Reformers.

For Jesuits, such interpretations of the True Church were non-starters. The Society's theologians and publicists could of course easily accommodate the idea of the Church as the *universitas fidelium*, just as Agostino Trionfo or Alvaro Pelagio, the most extreme of the fourteenth-century hierocrats, had readily accommodated it.<sup>68</sup> But unless the Church was to be merely an 'invisible and speculative' entity,<sup>69</sup> it had to be embodied in concrete offices of authority and relations of command and obedience, and specifically the primacy of the successors of St Peter. Only a *visible* Church can define doctrine and resolve doctrinal disputes, punish, reward, teach, excommunicate, bind, loose, administer sacraments or do any of those things that are predicated of the Church in Scripture.

Again: what distinguishes the Church or any collectivity, association, *societas*, *communitas*, *respublica*, body, or corporation from a mere heap, assemblage, multitude, pile, is its *order* and unity.<sup>70</sup> As Jesuits saw it, experience, philosophy, and revelation all demonstrate that a spontaneous or *natural* order and unity in human collectivities is impossible.<sup>71</sup> Unity, and therefore order, are however unquestionably principal marks of the Church, which the Apostles' Creed itself describes as *one*, holy, catholic, and apostolic. And if unity and order cannot maintain themselves naturally, they

<sup>66</sup> The Church as the *universitas fidelium* (or at least its *valentior pars*) had functioned in just this way in the works of Marsiglio of Padua and others.

<sup>67</sup> Bouwsma, *Venice and the Defence of Republican Liberty*, e.g. pp. 459–60.

<sup>68</sup> Wilks, *The Problem of Sovereignty*, index entry *ecclesia* as *congregatio fidelium*. For Jesuit definitions of the Church which incorporate this idea see below.

<sup>69</sup> G. Torres (H. Torriensis), *Confessio Augustiniana*, 2nd edn, 1580, p. 45<sup>r</sup>, marg.: 'Non est igitur Ecclesia invisibilis et mathematica [i.e. like a geometrical figure], qualem recentes haeretici . . . imaginantur.'

<sup>70</sup> Suárez, *De legibus*, III.2.4, distinguishes two kinds of *multitudo*: an 'aggregatum quoddam sine ulla ordine vel unionem physica vel morali', and a 'corpus mysticum, quod moraliter dici potest per se unum; illud consequenter indiget uno capite'. The Church was self-evidently not the former.

<sup>71</sup> For example Perpinya (P. Perpinianus), *Orationes duodeviginti*, 1592, pp. 307–8 in a public address of 1563: 'Fieri nullo pacto potest, ut in tam multis corporibus, et tam diversis, insit prorsus unus animus natura.'

must be imposed, which can obviously only be done by concrete, 'visible' agents.

For the Society's founders, the papal primacy had not required argument or proof. On the contrary, unswerving fidelity to the papacy was the Society's defining commitment and the premise of its very existence: it was *nuestro Principio y Principal Fundamento*.<sup>72</sup> Its significance to the Society may be gauged from the institution of the 'fourth vow' of obedience to the Holy Father, taken only by its Professed (that is, the most senior) members, a vow peculiar to the Society and unprecedented. But the position the Society came to occupy in the Church made a justification of its conception of the papacy one of the main tasks of its 'controversial' theology and polemical writings. A few illustrations of their position will suffice.

In 1562 Laínez, as papal theologian addressing the Council Fathers at Trent, argued for the collective as well as individual sub-ordination of bishops to the papacy. Prominent considerations from 'reason' supporting this conclusion (apart from scriptural, patristic, and traditional ones) were that 'God governs everything *suaviter* (elegantly?)'. Therefore he rules all things spiritually just as they are ruled temporally. But among the forms of secular government, the best is the monarchical form, in which the king has the entire power of the commonwealth, and delegates it to other judges and princes. Therefore in the Church, which is the kingdom of Christ, his Vicar has plenitude of power from Christ, and from him also it is delegated to the other Apostles.<sup>73</sup> And again: 'The more a kingdom attains union and ordered conjunction between the head and the members, between those who are to be ruled and those who are to rule, the better instituted [sc.: organised] it is. But union is greater when the power of all inferiors is not only subordinate to that of the highest authority (*summa potestas*) . . . , but when it is also derived from that authority . . . Therefore this is how Christ instituted his kingdom.'<sup>74</sup> The 'therefores' here deserve notice.

The handful of Jesuits who went into print before the 1580s and all their successors offered exactly the same conception of the Church and the same set of grounds: Scripture, tradition, 'reasons'. Alonso Salmerón, Laínez's fellow-delegate at Trent and the longest-lived of the founders, found no

<sup>72</sup> *Monlg, Constitutiones* 1, p. 162; the expression did not reappear in the *Formula* or the *Constitutiones*. Cf. for this passage, Schneider, *Nuestro Principio*, pp. 488–513 and references.

<sup>73</sup> *Jacobi Lainez disputationes Tridentinae*, ed. Grisar, vol. 1, pp. 85–6.

<sup>74</sup> P. 146. See also pp. 150, 158 for the head–body analogy; p. 163 for the inconveniences of a democratic order; all this despite Laínez's previous insistence (p. 43) on the distinction between the ecclesiastical and the civil power, the former of which is said to 'descend from heaven', the latter to 'ascend from the community to the king or other supreme magistrate' (p. 61).

less than 'twenty-five reasons' why the true Church must be a monarchy.<sup>75</sup> The first was 'lest it be thought that the form of government which is far and away the best (that is to say monarchy) is missing from the Church; and [also] so that everything might be done in good order, as the Apostle teaches' (pp. 241–2). Salmerón did not forget 'the simile of the human or animal body (I Cor. 12, Acts 20:12, Eph. 4)', which 'is not democratic, but rather royal and monarchical [sc. in organisation]: in it . . . all are ruled by one mind and reason, which alone presides over all' (pp. 241–2).

Again, Gregorio de Valentia, the first and toughest-minded of the Society's controversies-theologians in Germany,<sup>76</sup> discussing the properties of the true Church, first argues that 'although the Church is a congregation made up of many people, it is for all that not in the least some sort of chaos or confusion, but rather as rightly ordered as it can possibly be'. The scriptural term that singles out orderliness as the Church's defining characteristic is 'body', for 'just as in one body there are many different members, which do not all have the same function, so in the Church the faithful are not all equal in authority, nor in the office they hold, nor in the degree of dignity'.<sup>77</sup> He then refined hierarchy into monarchy:

Everyone agrees that Christ meant to provide what was best and most appropriate for his Church . . . We know from experience that the plague and ruin of every community is discord; by contrast the best condition of every community is when there is stable concord and a firm peace in every part. But the best method for conserving such unity in the Church is if all depend on the authority of one person after Christ . . . This can be proved in two ways. In the first place from the nature of unity itself: for what can be more suited to be the principle and cause of unity than unity [itself]? . . . In the second place, we may learn it from all those things we see that have been constituted by the Creator of the world . . . in the best possible manner: . . . the human body, . . . flights of cranes, . . . bees [etc.].<sup>78</sup>

The echoes of Ignatius could hardly be more deafening. According to Valentia's star-pupil Jakob Gretser, 'the same arguments which will induce a man to distinguish positions in the Church (*dignitates*) into various levels . . . , will prompt him to accept the necessity of a single supreme

<sup>75</sup> *Commentarii*, vol. xiii, bk 1, pt iii, disputatio xiv. The first edition was 1597, but their original composition may even date back to 1548 (disputatio xi, p. 240). He had died in 1585 aged seventy-five.

<sup>76</sup> 1549–1565–1603: a Spaniard who after teaching at the Roman College was sent in 1573 to teach theology at Dillingen; subsequently (1575) Professor of Theology at Ingolstadt for twenty-two years, to the end unreconciled to the climate or the habits of the natives and apparently without having learned a word of German.

<sup>77</sup> Valentia, *Analysis*, cited from *De rebus fidei hoc tempore controversis libri* (1591, a collected edition of his tracts), pt vi, proprietates 5, pp. 83–4.

<sup>78</sup> *Analysis*, 1585 edn, pt vii, pp. 263–4.

hierarchy (*unum summum Hierarchiam*) . . .'.<sup>79</sup> But since Jesuits always cited Bellarmine once his *Controversies* had appeared,<sup>80</sup> so should we. He regarded order and hierarchy as conceptually entailing each other: 'What is order but a certain sequence of inferiors and superiors?'<sup>81</sup> The title of his *Third General Controversy* proclaimed its message: 'The ecclesiastical monarchy of the Roman Pontiff'. It is typical of the Society's mentality that Bellarmine began with the abstract question: 'Which is the best form of government?'<sup>82</sup> without asking government of or for *what*. He devoted a chapter (ch. 2) to the proposition that pure monarchy (*monarchia simplex*) is the best of the pure forms of government, citing, first, the agreement of all the ancient theologians, philosophers, historians, etc., on the point, and then order cosmology as proof that God implanted 'not only into human beings, but even into almost all things a natural propensity to a monarchical form of rule: in families, in most regions of the earth, which are ruled by kings', among bees. The form of government of God's Chosen People also, despite Calvin's claims to the contrary, was *not* aristocratic or in effect a mixed polity, but plainly monarchical. The intrinsic properties of the best regime, he said, are 'in the first place, order: and monarchy is better ordered than aristocracy or democracy', and for proof:

all order resides is this, that some are placed in positions of superiority and others made subject to them; for experience shows that order is not to be found among equals, but rather where there are superiors and inferiors. But where there is monarchy all have some order, for there is no one who has no superior, with the sole exception of the person who has care of the whole. It is for this reason that the Catholic Church has order in the highest degree. (p. 313)

The 'sole exception' indicated the critical weakness in this whole line of argument. Bellarmine conceded that in this life monarchy with some admixture of aristocracy and democracy was preferable to pure monarchy (ch. 3), but still insisted (chs. 4 and 5) that pure monarchy excels absolutely and simply, if circumstances are left out of account. He did not, however, explain why circumstances should be ignored, when the circumstances in question were endemic human frailty or corruption. He also compared republics invidiously to monarchies in terms of unity, power, stability, and longevity. He

<sup>79</sup> 'Basilikon doron' (1610), in *Opera omnia*, vol. vii, p. 63.

<sup>80</sup> *De controversiis*, vol. I appeared 1586, vol. II in 1588, vol. III in 1593; new editions appeared for the next decade at the rate of about one a year (cf. Milward, *Religious Controversies*, pp. 152–3) and frequently thereafter. The work is cited below by controversy, book and chapter; page numbers refer to the Naples edition.

<sup>81</sup> *De laicis*, ch. v, p. 317: 'ordo autem quid aliud est, quam series quaedam inferiorum et superiorum?'

<sup>82</sup> Vol. I: *Controversia tertia generalis, De Romani Pontificis ecclesiastica monarchia*, bk I, ch. I, title; the text goes back to Bellarmine's Roman College Lectures of 1576 onwards.

denied that Venice was a counter-example, since it had nothing of democracy but a great deal of monarchy, and also contrasted the Roman republic unfavourably with the durability of the principate (p. 314).

When Jesuits were not on their guard, they mostly simply equated hierarchy and monarchy. Particularly in France, after the conversion of Henri IV, and even more after his assassination, aggressive partisanship for absolute monarchy was the order of the day with French Jesuits as with Frenchmen generally. Pierre Coton affirmed in his *Letter Declaratory of the Common Doctrine of the Fathers of the Society of Jesus* (1610) that the doctrine, belief, and opinion of 'all the Jesuites generally and particularly', which is identical with the doctrine of the Catholic Church, is

2. That amongst all sorts of government and publicke administrations, the Monarchie is the best.
3. That such is the spiritual government of the Church, which is under the *Vicar* of Jesus Christ, successor of *S Peter*: such is the temporall government of the State and Realme of France, which dependeth of the Person of the King, our Sovereigne Lord and Maister.<sup>83</sup>

And there was nothing like the language of bodies and heads for reinforcing the assumption that anything except monarchy was monstrous.<sup>84</sup> There were few who regarded this sort of language as inconclusively metaphorical, though Bellarmine is an exception.<sup>85</sup>

Nevertheless, no Christian could doubt that the fundamental order of the Church was directly instituted by God, and was not part of the natural order of the universe. Conclusions derived from natural reason (i.e. self-evident first principles and deductions from them, philosophical 'authorities', and the evidence of experience) were therefore inherently inconclusive. Even supposing that they excluded any corporate headship, which they did not, God could have decreed an order for his Church which was above and beyond reason. How he had in fact ordered his Church was to be

<sup>83</sup> Thomas Owen's translation in his *Letter of a Catholike Man* (= ERL 138), p. 17.

<sup>84</sup> E.g. Gretser, *De modo agendi Jesuitarum cum Pontificibus, . . . principibus, etc.*, 1600, p. 23: the Society of Jesus is a family: 'Quia tamen qualibet familia unum corpus est, oportet ut caput habeat: ne sit corpus monstrosum.'

<sup>85</sup> The head-members analogy does not appear in his discussion of monarchy *simplex* (in chs. 2–3 cited earlier), and he rejected Barclay's use of it as in many ways inapplicable to the secular commonwealth, *Tractatus de potestate summi Pontificis . . . adversus Guilielmum Barclaium*, 1611, p. 289. It was a subordinate argument for the papal primacy in *De conciliorum auctoritate*, bk 11 ch. 15 (p. 65): 'Ecclesia universalis est unum corpus visibile, ergo habere debet unum caput visibile alioquin videbitur monstrum'; and in passing in *De Romano Pontifice*, bk 1, ch. viii (p. 322): 'nunc non possunt [Ecclesiae particulares] uno aliquo rectore carere quam possit unus grex, uno pastore, et unum corpus suo capite'. The decisive point for him was the conceptual identity of order and hierarchy.



discerned *only* from Revelation. Notoriously, what was bitterly contested was the means of access to revealed truth: whether by Scripture alone, as the Protestants maintained, or whether, as Catholics claimed, Tradition too was authoritative, supplementing and complementing Scripture.

In the ordinary run of polemical writings, Catholic authors including Jesuit controversialists treated Scripture as if it were self-explanatory, and the Petrine primacy as so unambiguously authorised by Scripture that only perversity could explain why anyone would deny it. Celebrated scriptural texts undoubtedly favoured it.<sup>86</sup> But on the arguments (to be considered shortly) against *scriptura sola* and the Protestant idea of Scripture as self-interpreting that Jesuits were honing against the 'heretics', Scripture could not count as a self-sufficient authority for or against the Petrine primacy. It required complementation by Tradition. But Tradition could not be an independent authority either. Tridentine Catholics acknowledged that it could not override the plain text of Scripture. And even supposing that the pronouncements of past popes, general councils, and theologians (between them composing the authentic voice of Tradition) were entirely unambiguous, what was at issue was precisely their authority to pronounce in this matter. A Pope asserting the papal primacy had no weight as an authority, any more than a general council asserting a conciliarist doctrine.<sup>87</sup>

What confronts us here is the familiar phenomenon of the hermeneutical circle. It sometimes became viciously circular. Thus, if a St Augustine or a St Thomas said the *right* thing, it counted as evidence of the consent of the whole Church. If perchance they did not, then the consent of the universal church was cited against *them*. By contrast, saying the right thing was itself enough to establish something as an authority. Much of Francisco Torres's (Turrianus) *De hierarchicis ordinationibus ministrorum ecclesiae* consisted of extensive quotations from the *Apostolic Canons*, the *Clementine Epistles*, the works of 'Dionysius the Areopagite' (also a great favourite of Bellarmine), etc. The authenticity of these works had long been questioned, but for Jesuits their soundness on hierarchy established both their authenticity and their authority.<sup>88</sup> Again, Laínez cited popes *in extenso* as authorities for the papal primacy over bishops, councils, and secular rulers. He then explained

<sup>86</sup> Laínez even 'found' the distinction between *potestas ordinis* and *potestas jurisdictionis* in Scripture; *Disputationes Tridentinae*, vol. 1, p. 76.

<sup>87</sup> A systematic discussion of who could and who could not count as authorities which made precisely this point was extant in William of Ockham's *Breviloquium de principatu tyrannico*, bk 1, ch. 1.

<sup>88</sup> Torres did not claim that the *Apostolic Canons* were *written* by the Apostles, only that they recorded their canons; e.g. bk 1, ch. 1. His *Adversus Magdeburgenses centuriatores* (1572) attempted to demonstrate the authenticity of these texts by their concurrence with Scripture.

why his argument was not absurdly circular.<sup>89</sup> The more usual style was mindless citation of the authorities always cited for everything, including popes.<sup>90</sup>

Obviously once the papal primacy was accepted, the right interpretation of Scripture, the identification of heresies and any number of other conclusions followed as a matter of course, and in turn confirmed the Roman primacy. For someone inside the hermeneutical circle, the failure of opponents to acknowledge what was from this perspective as clear as day could only be pride and perversity, or, on the most charitable reading, the result of ignorance or bad teaching. But why should anyone step inside this circle in the first place? Ultimately, as at least Valentia explicitly acknowledged, to do so is a matter of faith, in other words believing or trusting someone or something. What *could* be offered was not proofs (for then faith would have no place and would cease to be a gift of God and a virtue), but persuasives, considerations to dispose the mind to faith.<sup>91</sup> The complementarity of scriptural texts and Tradition was a powerful persuasive of this kind.

#### THE JUDGE OF CONTROVERSIES

But the focus of all Jesuit objections to the idea of the True Church as essentially invisible was the argument about the indispensable need for a 'rule of faith' or a 'judge of controversies'. Their doctrine here and on the related identification of continuity and tradition as marks of the true Church was the doctrine of Trent, and of Eck, Cano, Driedo, Phigius, and other early opponents of the Reformation before that. But refining and sharpening the argument became a speciality of Jesuit controversial theology from Valentia's *Analysis*, via Bellarmine, to its wholly routinised form in François Verron's *Methodus Verronianus*. It began with the attempt to demolish the independent authority of Scripture, offering some very sophisticated reflections about hermeneutics along the way. This (essentially sceptical) argument prepared the ground for the case for an ultimate, or

<sup>89</sup> *Disputationes Tridentinae*, vol. 1, p. 128: 'Et quamvis inter alios patres supra citatos maior pars fuerit pontificum Romanorum, non . . . licebit refellere eorum testimonium', because Church Fathers and councils confirm their teaching, and because these Popes were saints and martyrs, who despised this world. Bellarmine and Suárez did not fall into this trap either, nor did Valentia, *Analysis fidei* (Rocaberti edn), p. 165.

<sup>90</sup> Juan Azor's *Institutiones morales* persistently cited papal bulls, especially *Unam Sanctam*, *Per Venerabilem*, and *In Coena Domini*, as well as Pelagio and Trionfo in this connection; e.g. vol. II, bk IV, ch. 19; bk X, ch. 2.

<sup>91</sup> *Analysis fidei* (Rocaberti edn), p. 44: ' . . . non ut propter illa [sc. arguments] credant, sed ut animum inducant propter divinam revelationem credere . . . '

sovereign, authority to decide in cases of controversy, namely the papacy. In the last analysis, controversies must be resolved authoritatively, and not by exegesis or argument. Unsurprisingly, the same pattern of thought recurs in Jesuit thinking about the secular *respublica*, with the *princeps* as arbiter in 'secular' controversies.

Romanists found few sights more delectable than their opponents savaging each other. Their endemic divisions admitted of a ready explanation, namely the manifest falsity of their doctrine of *sola scriptura*. For no mere text can be the 'rule of faith' or arbiter of doctrinal controversy. It would inevitably become a 'nose of wax', or a 'Lesbian (or leaden) rule'.<sup>92</sup> The force of this argument was clear enough. The principal weapon in the Reformation's armoury had been to counterpose the authority of Scripture to the institutions and teaching of Rome. The 'rule of faith' or 'judge of controversies' argument, however, made the right interpretation of Scripture itself dependent on the Church. As Heinrich Blysssem put it (in capitals): 'NON ECCLESIA PER EVANGELIUM, SED EDIVERSO PER ECCLESIAM COGNOSCITUR VERUM EVANGELIUM.'<sup>93</sup> Valentia's statement of this argument was especially sharp and concise.<sup>94</sup> A refinement which was even more intractable for evangelicals was the argument that *sola scriptura* cannot even establish what should count as *part of* authoritative Scripture (the canon). Establishing that also depends on the verdict of the Church.

The true Church in turn however also needs to be conclusively identified. It was a *communis locus* for Catholics and orthodox evangelicals alike that what was decisive for its identification was the nature of the Church at the time of its foundation. The question at issue between Catholics and Protestants was about what could count as authoritative evidence for what had been established at the foundation. And if *scriptura sola* could not provide this evidence, it could only come from an unbroken authoritative transmission, namely by the apostolic succession and Tradition. This line of thought broadened rapidly into the identification of continuity as an essential mark or feature of the True Church. All that was required in

<sup>92</sup> A classical tag (Tuck, *Philosophy and Government*, p. 23, citing Vives); see e.g. G. Torres, *Confessio Augustiniana*, 1580, Preface: 'regulam plumbeam et Lesbiam'; Hay, *Certaines Demandes* (= ERL 63), pp. 86-7: 'is it nocht evident that ye would ze mak ane neis of walx [of the "wretin wound"]'; Baile, *Controversiarum catechismus seu epitome*, p. 38: Scripture as 'regula plumbea aut naso cero ad phantasiae suae [sc. the heretics'] libidinem'.

<sup>93</sup> *Defensio assertionum theologicarum*, p. 35<sup>r</sup>.

<sup>94</sup> *Analysis* (Rocaberti edn), p. 43: 'Si ullus articulus fidei est, qui auctoritate atque magisterio Ecclesiae (Ecclesiae, inquam Catholicae Romanae, quae sola Ecclesia vera est . . .) ut credatur indigeat, hic maxime est, de veritate Scripturae sacrae . . .'. The main argument is in part v.

addition was some relatively simple glossing of the uncontentious claim that the one True Church is 'apostolic'.

Continuity *per se* was admittedly not enough: sin and error were even older and more continuous than the True Church. To be authoritative, the continuity had to be without any deviation from the foundation. As Robert Persons said: 'Custom without truth is antiquity of error (Cyprian): which all men will grant, but maketh nothing to our case. For wee suppose true religion to have been planted first by Christ, and afterward heresie to have risen.'<sup>95</sup> The unbroken apostolic succession and the mutual authorisation of Scripture and Tradition authenticated which was the true religion. Therefore that continuity ('human traditions') which evangelicals rejoiced at having rejected in order to return *ad fontes*, to the unglossed, unvarnished, original truth, turned out to be the presupposition of *any* access to Revealed truth. They could not avoid identifying themselves precisely by a break with this flow of authorisation, and a recent one.<sup>96</sup>

However, the Jesuits' conception of Tradition again presupposed what it was meant to demonstrate. For them and for the Roman Church generally, there was only one authentic 'Apostolic Tradition', although not all the customs, practices, and beliefs of the Roman Church were traceable to the apostles.<sup>97</sup> This tradition was not tacit or unformulated; it was not an Oakeshottean continuity in change; nor was it Newman's 'development'. Rather, it was understood as a sort of library or arsenal of doctrines<sup>98</sup> handed down unchanged from the Apostles, but originally unwritten. But then, as Bellarmine pointed out, the true religion had been preserved unwritten for two thousand years between the time of Adam and Moses, and the Church of Christ had for many years been without any Scriptures. In the same way many secular republics have been governed by unwritten laws.<sup>99</sup> Traditions thus came first, and together with the written Scriptures they compose a

<sup>95</sup> Persons, *A Discussion of*. . . M. William Barlowe, p. 152.

<sup>96</sup> Bellarmine, *Conciones habitae Lovanii*, e.g. p. 542. 1: 'Nonne magnum argumentum veritatis est, quod nos possumus ita origines singularum haeresum ostendere . . . auctorem . . . , annum . . . , locum . . .'; p. 543.1: 'Dicite Lutherani, quo tempore Papismus pro Christianismo introductus est?'

<sup>97</sup> Becanus, *Manuale Controversiarum*, bk 1, ch. 1.21, p. 41, rejected as 'a lie that we teach that all our Traditions are Apostolic', attributing the lie to Calvin, *Institutio*, iv.xviii.19. Valentia, *Analysis* (Rocaberti edn), p. 152, said that the Pope could abolish or change some traditions and also establish new ones (!).

<sup>98</sup> Valentia, *Analysis* (Rocaberti edn), pp. 151–2, distinguished between traditional doctrines and traditions comprising supposedly apostolic *practices* like infant baptism, nowhere expressly prescribed by Scripture; but he regarded the distinction as of little importance, since 'there is scarcely a *traditio practica* which does not also contain some truth to be believed *ex fide*'.

<sup>99</sup> *Controversiae*, Vol. 1: De Verbo Dei scripto et non scripto, bk 4, ch. 4.

coherent doctrine which has been believed (in the words of the favoured Roman authority Vincent of Laurins) 'semper, . . . ubique [and] . . . ab omnibus'.<sup>100</sup> The papal primacy, strongly supported by Scripture, was both authenticated by these traditions, and also stood as guarantor for their right interpretation and that of Scripture.

Jesuits had not of course invented the tradition to which they were appealing: the papacy and its theologians had since the eleventh century marshalled, ordered, collated, and digested the Christian doctrinal inheritance into precisely this tradition. But there had been a continuous counter-tradition of resistance to papal claims. In espousing the papalist position, Jesuits were at the same time endorsing the Pope's authority to declare that counter-tradition heretical, and therefore *not* part of 'the' Tradition. To select the tradition of papal supremacy and hierocracy from amongst all the possible traditions in the Christian heritage was therefore not to stand in a single, monolithic<sup>101</sup> tradition. The Jesuits' position was certainly not novel, for it had been held at least since the Investiture Controversy. It was not singular, for it became the doctrine of Trent. And it was not paradoxical or incoherent, since it nowhere demanded a belief in contradictories, and Jesuits could exhibit its coherence in acres of print. All this, however, does not affect the tenability of *alternative* orthodoxies, in virtue of *their* coherence, antiquity, etc. It is therefore impossible to explain the Jesuit conception of the Petrine primacy as they explained it, namely as the unequivocal deliverance of Tradition and Scripture.

Nor did the case for a *iudex controversiarum* resolve the difficulty that the judge of controversies need not be one person. It could be a *persona ficta*, so long as that *persona* has some concrete, visible embodiment, such as a general council. Conciliar authority was unquestionably part of the authentic Tradition; indeed, despite the visceral antipathy of popes and papalists, it had been necessary to summon a general council to terminate the Great Schism, and Jesuits persistently appealed to the authority of the Council of Trent. Even their own Society afforded an analogy in its 'General Congregation', originally described simply as its 'Council'.<sup>102</sup> A general council of the Church, what is more, seemed a more plausible candidate

<sup>100</sup> Citing Laurins was *de rigueur*; e.g. Blysssem, *Defensio assertionum theologiarum*, pp. 1<sup>r</sup>, 96<sup>v</sup>; 84<sup>v</sup>; Vincent of Lerins for the *Antiquité of the Catholicke Fayth*, 1563, was one of the early publications abroad for the English Recusants.

<sup>101</sup> The need to account for apparent fissures in the monolith is one reason why Jesuit controversial writing was so paper-consuming.

<sup>102</sup> See Aldama, *Formula*, pp. 4 (1539) and 5 (1550).

for infallibility than any single person, however exalted his office.<sup>103</sup> At least in principle it could assemble all that was intellectually, morally, and politically authoritative in Christendom. In particular, it would be pre-eminently an assembly of *bishops*, and constituted an acknowledgement of their *independent* collective and individual authority, whereas that authority was gravely compromised by a view such as that of Lainez.<sup>104</sup> And general councils do not *per se* undermine papal authority: it is usually the pope who calls a general council, and who ordinarily acts as the representative of the whole Church, for general councils must be a rare occurrence.

The Jesuit (and Tridentine) verdict however was that general councils are only contingently and not absolutely necessary for the governance of the Church and the determination of faith and morals. Furthermore general councils cannot do anything without the papacy, whereas the converse is not true. They are thus not part of the definition, essence or identity of the Church, whereas the papacy is. And general councils can err, and have erred, unless their decrees are ratified by the Pope. Finally, general councils are not necessary for electing a pope.<sup>105</sup> There might be no other effective way to resolve disputes about who is the rightful incumbent of the papal office; and a council might be the optimal way to gain assent to general rules and doctrinal pronouncements. But, according to Bellarmine, whatever a general council does is confirmatory. And submission to papal authority is a duty, with or without a general council to confirm what the papacy does.

Admittedly, the submission to each occupant of the papal office that Jesuits required of themselves and of all true Christians was not an ultimate and unconditional duty. The only unconditional duty is one that derives from the principal 'end' of every Christian: the glory and service of God and saving one's own soul thereby. Until Bellarmine retracted his previous opinion in his *Reappraisal of All My Books* of 1608, he like other Jesuits even conceded that a pope could fall into heresy,<sup>106</sup> in which case he ceased to

<sup>103</sup> The Council of Trent did not declare papal infallibility *de fide* or anathematise those who denied it. It was, however, a matter of faith for the Society.

<sup>104</sup> Cited above, p. 39.

<sup>105</sup> The magisterial Jesuit discussion of general councils is Bellarmine, *Controversiae*, vol. II, *Controversia generalis I de ecclesia militante*, bk II.

<sup>106</sup> Bellarmine, *De Romano Pontifice*, bk IV, chs. 2 and 6; even there (p. 478) he only conceded that this view was not 'proprie haeretica' since the Church tolerates it, but 'omnino erronea et haeresi proxima'. His own view (ch. 6, p. 184) was that 'probabile est, pieque credi potest, summum pontificem, non solum ut pontificem errare non posse, sed etiam ut particularem personam haereticum esse non posse'. In any case, who is to judge: certainly not the flock; and councils are not infallible without the pope (ch. 3, p. 481). Azor, *Institutiones morales*, vol. II, bk IV, ch. VII, however allows that a pope can be heretical (e.g. pp. 432–4) or insane (ch. XIII, p. 455). But he may merely have

be pope *ipso facto*. But for Jesuits the Church without the papal primacy was inconceivable and impossible, and therefore the Christian life without the papal primacy was equally impossible. Thus once again the Jesuits' position presupposes their monarchical conception of order and hierarchy. Indeed the Jesuits wrote the papal primacy into their definitions of the Church.

#### JESUIT DEFINITION OF THE CHURCH

The earliest extant definitions of the Church by a Jesuit seem to be those in Peter Canisius's various catechisms. They display a marked heightening of the Romanist component as Trent moved to its conclusion. (The *Catechism of the Council of Trent* was not published until 1566, but Canisius had intimate knowledge of its contents and, more important, the deliberations that gave rise to it, well before then.<sup>107</sup>) In his 1555 Latin catechism, the Church is defined as 'the collectivity<sup>108</sup> of all those who profess the faith and doctrine of Christ, which that head [*princeps*: sc. of the Church] entrusted to Peter the Apostle and then to his successors, to feed and govern'.<sup>109</sup> The post-1566 Catechisms add hostile comment about 'heretics and schismatics who . . . refuse to be the flock of the Highest Pastor and Pontiff, whom Christ set as the head of his flock, the Church, in his place and ever after conserved in the Roman Church in a perpetual succession'. He added that the authority of the Church is necessary in order to discern the canonical Scriptures, to interpret them truly, to resolve controversies, and to correct, repress and punish persistent heretics.<sup>110</sup> And even the small, short, and most popular catechisms (1556 onwards) which originally did not include a specific reference to Rome, after Trent added the duty of 'true obedience to the bishop of Rome, as the successor of St Peter, the prince of the Apostles, and the *vicarius* [untranslated in the original] and representative of our Lord Jesus Christ on earth'.<sup>111</sup>

been transcribing from someone else as usual; bk v, chs. 4–5 much more resemble Bellarmine's and Valentia's position (*Analysis*, pt VII).

<sup>107</sup> The relevant sections are in part I, ch. 10: 'On the Ninth Article of the Creed: I believe in the Holy Catholic Church, the Communion of Saints'.

<sup>108</sup> *universitas*: in s. 16, Canisius had used *congregationem*.

<sup>109</sup> Canisius, *Catechismi latini*, ed. Streicher, vol. I.I, s. 65.

<sup>110</sup> S. 70 (pp. 108–9). See also the *Kurtzer Underricht vom Catholischen Glauben*, vol. I.2, ch. I s. xix, p. 33.

<sup>111</sup> Vol. I.ii, *Der Klein Catechismus . . . für die einfaltigen* (Dillingen, 1558), p. 214; the description of the position of the Pope is from 1568, p. 247, and translates the form of the Creed in Pius IV's bull *Injunctum nobis* of 1564.

Canisius, however, by no means neglected the obligations owed to other ecclesiastical superiors. The 1564 German *Catechismus* says that

they are to be no less honoured than the secular authorities; we must honour and be mindful of the divine order and Christ's institution in spiritual persons and prelates, even supposing them to be unworthy of their status . . . In short, we are to be submissive and subject to the principal heads and presidents of the holy Christian Church, and act according to their commands, not according to their works.

Other Jesuit catechisms run along the same lines. Emond Auger's various French and Latin catechisms from 1563 onwards (mostly published, it may be noted, without the permission or even against the express prohibition of his Jesuit superiors<sup>112</sup>) describe the Church as 'the congregation of those called to the Gospel and baptised under it'. He specified 'visibility' as the first of the 'marks and signs' which distinguish the true Church from other self-described 'churches', and then declared that the most decisive mark of all is 'the perpetual succession of pastors, prelates and other ministers established by God, by his Word, for the government of his Kingdom'.<sup>113</sup> He did not there refer to Rome specifically, but when he came to explain heretics and schismatics he was forthright enough:<sup>114</sup> they are those who cut themselves off from the Church and from the holder of the power of the keys and the remission of sins, 'the sole and visible head', 'the bishop of Rome who, as we believe, has succeeded St Peter, Prince of the Apostles . . . ; he [sc. St Peter] received the supreme government (*summam administrationem*) of the whole Church from Christ, both for himself and for all his successors'.<sup>115</sup>

Diego Ledesma's *The Christian Doctrine in Manner of a Dialogue* (1597)<sup>116</sup> and Jeronimo de Ripalda's *Doctrina Cristiana* (first published 1591) even more unequivocally made the papacy part of the Church's essence. As Ripalda put it: 'The Church is the congregation of the faithful, ruled by Christ, and the Pope his Vicar', that is, 'the Roman Pontiff, to whom we owe complete (*entera*) obedience'.<sup>117</sup> And indeed the tendency of Jesuits to equate the Church and Rome was one of many reasons why they were so

<sup>112</sup> See Brand, *Katechismen*, pp. 46–60, for their publishing history.

<sup>113</sup> French text, 1563 edn, cited Brand, *Katechismen*, pp. 86–7.

<sup>114</sup> Augerius, *Catechismus, id est Catholica Christianae iuventutis institutio*, 1569, pp. 57–8, 264–5.

<sup>115</sup> Pp. 43–6 (visibility of the Church and succession of pastors); pp. 57–8 (Roman pontiff).

<sup>116</sup> (= ERL 2, p. 21), English translation of Diego (Jacopo, or Giacomo) Ledesma's *Dottrina Christiana breve*, first published 1572. There was also a long version, and numerous translations, including Polish and Lithuanian ones.

<sup>117</sup> Ed. J. M. Sanchez, 1909; facsimile of the first (Burgos) edition; Sanchez found 472 editions of this work to 1900 (p. 23<sup>v</sup>).



cordially detested: this, however, was a cross they were more than happy to bear.

#### MONARCHY AS SUCH

In sum, various understandings of the Christian life and hence of the Church were possible in the sixteenth century, as before and since. Each appealed to particular dispositions, attitudes, and life-orienting beliefs and each tended towards a particular spirituality. And just as any practice, organisation, or way of life shapes those who sustain it, so conversely individuals may be expected to choose that manner of life congenial to their beliefs and attitudes, or (if adherence is compulsory) to modify it in that direction. Jesuits were not born Jesuits or born papalists: they chose to be both. Their distinctive spirituality of obedience and the active life both presupposed and reinforced irreducible beliefs about the irreplaceable centrality of order, hierarchy, monarchy, and obedience in any collectivity. The strikingly absolutist monarchical interpretation of hierarchy was not strictly entailed by any of the other beliefs, but was becoming the norm in early modern Europe. The Society's theorists could not be entirely comfortable with it, for reasons which are partly apparent already, and will become clearer later in our argument. Nevertheless, monarchy seemed to Jesuits a price well worth paying for order throughout the rest of the Society. Bodin, *politiques*, Divine Right of Kings theorists, patriarchalists, and Hobbesians thought the same about order in civil society.

Jesuit authorities from Laínez and Salmerón onwards treated secular and papal monarchy as having in most respects the same rationale. And although 'natural' arguments for monarchy were in the last analysis inconclusive as regards the Church, and required some qualification in respect of the secular commonwealth, they applied in their full vigour to the Society's generalate and order. They thus had pride of place in more formal expositions of the Society's order and virtues, such as those of Ribadeneira, Piatti, and Suárez.<sup>118</sup> Piatti can stand for them all. He devoted an entire chapter to demonstrating, by means of an elaborate comparison between what philosophers say about the best order in politics and the actual organisation of religious orders, that 'Religious Orders embody the form of the most perfect Commonwealth', namely monarchy.<sup>119</sup> He allowed that 'in human principates (*imperii*) there is a very great danger that if all government is

<sup>118</sup> Suárez, *Tractatus de religione Societatis Jesu*, esp. bk x, ch. 1: *Utrum Societas per modum monarchiae convenienter gubernatur*; Ribadeneira, *De ratione instituti Societatis Iesu*.

<sup>119</sup> Piatti (Platus), *De bono status religiosi*, bk II, ch. 35, (cited from the fifth, 1593 edn).

in the hands of one man, that person will turn that power to his own purposes, whether because of love of power, or of riches, or self-advancement (*ambitionis*). But he anticipated no such dangers in religious orders, least of all his own (pp. 461ff), which he singled out as excelling all the others in its devotion to obedience (p. 380). He had already (p. 79) described obedience as more excellent than poverty and chastity (the other religious vows) and as the keystone of the edifice of the religious life. The virtue of obedience and monarchy thus seemed to imply and sustain each other.

## CHAPTER 3

### *The Society and political matters*

#### SPIRITUAL AND TEMPORAL MATTERS

The Church is, however, obviously not the only collectivity to which Christians belong and owe duties. On the contrary, order is a prime moral good, and obedience is a virtue, irrespective of whether it is the civil polity, the ecclesiastical polity, the Society of Jesus, the family, the corporation, or the city that is the ordering institution and the object of obedience. The documents which have so far been cited for Jesuit insistence on obedience to the Church are no less insistent on obedience to secular rulers.<sup>1</sup> Jesuit catechisms and confessors' manuals treated obedience to spiritual and temporal superiors together, normally in the context of expositions of the Fourth Commandment,<sup>2</sup> as catechisms and manuals had done time out of mind. According to Gabriel Loarte, one of the Society's most celebrated spiritual writers, in his much-admired and reprinted *Exercise of a Christian Life*, by the Fourth Commandment 'we are likewise commaunded to carrye the like love, obedience, and reverence to our spiritual fathers, and to al our Superiors; as be Bishops, priests, religious men, and prelates of the Church; kings, princes and secular powers . . . Hereby are also al parentes and superiours warned, what love and special care they are bound to carry towards their children, and to al such as be their subjects'.<sup>3</sup> But while Jesuit moral theology, casuistry, and *a fortiori* moral exhortation inculcated dutifulness to secular and spiritual superiors alike, this was simply to skirt the possibility of a conflict of duties. Plainly the ecclesiastical and civil hierarchies do not dovetail except by accident, as when a pope or a bishop happens also to be the civil ruler.

<sup>1</sup> Ignatius's Rule 10 refers to *mayores*; *Ignatius Loyola: Spiritual Exercises*, ed. Ganss, p. 212 and fn. 158.

<sup>2</sup> This is the case from Juan Polanco's *Breve directorium*, 1560 (first published 1555), p. 64<sup>r</sup>, all the way to Regnault's *De prudentia*, p. 56.

<sup>3</sup> The English 1579 translation of *Essercitio della vita Christiana* of 1575 (= ERL 44), p. Zi<sup>v</sup>.

Both Tridentine Catholicism and the Jesuits were attracted to a simple way to avoid any possibility of a conflict of duties, namely that laypersons should be subject to clerics,<sup>4</sup> clerics to their ecclesiastical superiors, and all alike should be subject directly or indirectly, immediately or mediately to the papacy. But a straightforward subordination of secular to ecclesiastical authority in a single hierarchy was ruled out by considerations of political theology, not to mention political realities. It was a fundamental Thomist doctrine that civil and ecclesiastical authority are *independently* authorised. There would be secular authority and natural law duties to it even if there were no Church.<sup>5</sup> As has already been shown, Jesuit thinking about the structure of the Church, as well as the Society of Jesus, relied heavily on considerations acknowledged to be relevant to, and even derived from, secular polities. It therefore presupposed their independent legitimacy. Of course even the kingdom of Satan was used to illustrate the indispensability of super- and sub-ordination in human collectivities,<sup>6</sup> but the force of this illustration derived from the one respect in which it resembles a legitimate order.

The Christian, then, owes obedience to two sets of authorities which may legitimately operate independently of each other, and whose demands may conflict. And long before the Society was forced to explore the theoretical issues involved here, it was already utilising some form of the distinction between religious, spiritual, or ecclesiastical persons and matters, and secular, civil, or temporal persons and matters; from the later sixteenth century onwards the fashionable term for the latter was 'political'.

These distinctions were in universal use throughout Christendom. Oddly, they were persistently treated as *resolving* the demarcation problem which they merely *stated*. Catholics and evangelicals alike wrote as if spiritual or religious matters and secular or worldly matters somehow distinguished themselves. Even more perversely, 'ecclesiastical' and 'spiritual' were invariably treated as interchangeable terms, even by thinkers as sophisticated as Bellarmine or Becanus. This equation would imply that a pope conducting the foreign policy of the papal states or a cleric suing

<sup>4</sup> Scherer, *Alle Schriften*, p. 126<sup>f</sup>: 'Whoever wants to be one of Christ's sheep, be he farmer, burgher, nobleman, lord, count, king or emperor, he must allow himself to be governed and pastured in spiritual matters by this Shepherd [sc. the Pope].'

<sup>5</sup> Bellarmine, *De Romano Pontifice*, bk v, ch. 6 (p. 531): 'At potestas politica non est solum propter ecclesiasticam, nam etiamsi ecclesiastica non esset, adhuc politica esset, ut patet in infidelibus, ubi est vera potestas temporalis et politica. . .'

<sup>6</sup> Salmerón, *Commentarii*, bk 1, disp. xi, p. 274 (twenty-second reason for ecclesiastical monarchy): 'ut Christi Ecclesiae daemonum societate non sit inferior, si visibili unius principatu careat'. James I/VI's use of the former illustration was therefore not eccentric (*pace* Greenleaf, *Order, Empiricism and Politics*, p. 60).

a layman about some property was engaged in a 'spiritual' matter (but presumably not vice versa), or that an ecclesiastical bureaucrat's job was somehow more 'spiritual' than his lay counterpart's. This was despite the fact that Catholics and evangelicals alike also insisted that religion was an aspect of every human interaction and a consideration in every choice of conduct. Equally, both Catholics and evangelicals thought of every duty as ultimately owed to God, and of the Church and the civil commonwealth as interdependent. And both offered stiff resistance to the idea that *political* matters or *matters of state* were somehow above or beyond the scope of religious and moral norms, no one more so than the Society of Jesus.

Distinctions between ecclesiastical and civil or spiritual and temporal were therefore precarious at best, but they flourished unabated. By the end of the sixteenth century they were in part superseded in Western Europe by the newly fashionable distinction between 'Church' and 'State'. The new terminology, however, did nothing to clarify matters.

For the Jesuits specifically, some such distinction was a precondition of being allowed to operate. There were numerous princes and magistrates who welcomed their zeal for reinvigorating the piety and orthodoxy of both priests and laity, and their skill as educators. Nonetheless, the Jesuits also perforce made many enemies as competitors of those who already performed these functions.<sup>7</sup> And because the Society was committed by its very *Institute* to the papacy, it made as many enemies as friends on that score too. A banding together of their Catholic opponents (with or without evangelical assistance) could make the Jesuits' position untenable, as happened in France with the Society's hereditary enemies in the *Parlement* and the Sorbonne, in Venice in 1606, and elsewhere. This is to say nothing of the hostility which Jesuits aroused in 'heretical' countries, or *in partibus infidelium* outside Europe. Even after Trent, many Catholics continued to be unwilling to abandon long-standing accommodations that had been reached between the clergy and the temporal authorities. Something like a Gallican view of Church order was perfectly usual, and a reinvigorated papacy threatened such accommodations. The theological version of this controversy was the dispute over the authority of bishops, on which we have already seen Laínez taking the clearest possible stand. The political subtext to this theological debate was of course that bishops were highly amenable to princely influence. And since the Jesuit doctrine of the Church was

<sup>7</sup> For Germany, see the extraordinarily good account of Hengst, *Jesuiten an Universitäten und Jesuiten-universitäten*.

aggressively clericalist, and insisted on clerical immunities and the 'liberty' of the Church, they could be sure of making enemies on that count too.

Thus James I/VI did not by any means utterly misjudge the public for his *Apologie for the Oath of Allegiance* of 1607; the works of implacable Catholic opponents of the Society like the *parlementaires* Etienne Pasquier and Antoine Arnauld received officially sanctioned English translations; and Venetian theologians and English bishops saw eye to eye over the Venetian Interdict. Even French Jesuits were susceptible to Gallican views,<sup>8</sup> and the *démarche* of the Society's Roman headquarters over both papal excommunication of rulers and tyrannicide was only the obverse of the increasingly monarchist and absolutist propensities of the Society itself. Neither Philip II nor his son, nor Henri IV nor his, nor Ferdinand II nor Maximilian of Bavaria would submit to papal dictation on any point of their government, although their doctrine was utterly orthodox, their piety was fervent, and (in the case of the last four) their confessors were Jesuits.

The Society could cope with these situations only if it could represent its purposes and activities as purely 'spiritual' or 'religious', leaving the competence of secular authorities unimpaired. Even describing its concerns as 'ecclesiastical' was giving hostages to fortune.

#### 'MEDDLING' IN POLITICS

Given the ambivalence of contemporary usage and the terms of its papal authorisation, the Society could claim a purely spiritual and religious role for itself with a clear conscience. Nevertheless, the Society always included a disproportionate number of men of speculative aptitude, some of whom demonstrably recognised conceptual difficulties in the official formulations of its relationship with the secular polity.

The *Constitutions* forbade involvement in 'worldly business', *negotia secularia*.<sup>9</sup> This terminology derived ultimately from the Vulgate translation of 2 Timothy 2: 4: 'nemo militans [Deo] implicat se in negotiis saecularibus', which had in turn been echoed in canon law (*Decretals* of Gregory IX, bk III, tit. 50: 'Ne clerici vel monachi saecularibus negotiis se immisceant'). Given the habits of speech of the time, the *Constitutions* presumably had in mind

<sup>8</sup> Cf. Blet, 'Jésuits Gallicains au XVIIe Siècle?', pp. 55–84.

<sup>9</sup> *MHSI, Constituciones III*, p. 191 (= pt VI.c3.s7): 'Ut plenius possit Societas rebus spiritualibus iuxta suum Institutum vacare, quoad eius fieri poterit, a negotiis saecularibus absteineat (qualia sunt testamentariorum, vel executorum, vel procuratorum rerum civilium, aut id genus officia) nec ea ullis precibus adducto obeunda suscipiant, vel in illis se occupari sinant.' Ganss, *Constitutions*, s. 263, translates *negotiis saecularibus* as 'all secular employments'.

anything ordinarily or more properly done by laymen, especially the conduct of lawsuits and the management of finances. Like other Jesuits of his time, the Society's fifth General, Claudio Aquaviva (1581–1615) persistently talked as if the *Institute* or the *Constitutions* – the Jesuits were rather careless about the distinction – forbade entanglements in 'political matters' (*negotia politica*),<sup>10</sup> though in fact neither mentioned them; the terminology of *politica* was not current in Ignatius's day. But Superior General Mercurian (1573–1580), in his instructions for the first Jesuit missionaries to England,<sup>11</sup> had already told Robert Persons (of all people) and Edmund Campion that 'they are not to meddle in matters of state, nor write any news respecting state matters either to this place [sc. Rome] or to that [sc. England], nor are they [themselves] to insert into conversations, or allow others to insert, anything against the Queen'.<sup>12</sup> The archive text, however, then nullified the effect of the prohibitions: 'unless it be in conversation with those whom they know to be of outstanding faith, proved over a long period, and even then not without some particularly pressing reason'.<sup>13</sup> Cardinal Allen (not himself a Jesuit, of course) in his *Apologie of the English Seminaries* (1581) cited the prohibition, but not the qualification, 'in the instruction of their [i.e. Persons's and Campion's] mission into England, that they deale not in matters of state, which is to be shewed, signed with their late Generals hand of worthy memory'.<sup>14</sup> Edmund Campion's *Challenge* (published later as a kind of preface to *Rationes decem*), also invoked it: 'I never had mind, and am strictly forbidden by our Father that sent me [i.e. the Superior General], to deal in any respect with matter of state or Policy of this realm, as things which pertain not to my vocation'.<sup>15</sup>

The standard refrain of Jesuit apologetics from the 1580s was that 'religiosos Societatis non immiscere se negotiis ad Rempubicam pertinentibus',<sup>16</sup> and that 'secular matters', *negotia politica*, 'matters of state', *das Politisch wesen und weltliche Handel und Regiment*,<sup>17</sup> etc., were incompatible

<sup>10</sup> E.g. Aquaviva's letters, cited Martin, *Jesuit Politicians*, pp. 101, 139 fns. 15 and 16, 144 fn. 43, 160 fn. 22; Fouquieray, *Histoire de la Compagnie de Jésus en France*, vol. II, pp. 141–2.

<sup>11</sup> Latin text, with a not very reliable translation, in Hicks, *Letters and Memorials*, pp. 316ff; translation pp. 319f.

<sup>12</sup> *Ibid.*; these lines were apparently excluded from the 1581 Instructions for Heywood and Holt.

<sup>13</sup> *Ibid.*, fn. 19.

<sup>14</sup> (= ERL 67) pp. 70<sup>v</sup>, 71<sup>r</sup>. It was of course Mercurian who was of 'worthy memory', not his hand.

<sup>15</sup> Translation in *Campion's Challenge*, 1602, p. 31; the original Latin of 1580 (see *Campion, rationes decem*, ed. J. H. P. p. 6) was 'ut ne reipublicae huius regni administrationis negotiis me immisceam . . .'

<sup>16</sup> Richeôme, *Apologia Societatis Jesu in Gallia, ad . . . regem Henricum IV* (1599), translated by Gretser, *Opera omnia*, vol. XI (ch. xv), pp. 301–2.

<sup>17</sup> Scherer, *Alle Schriften*, vol. I, p. 105<sup>v</sup>; he was arguing that Savonarola had been rightly punished for political meddling.

with their vocation. A much-cited Decree of the Fifth Congregation of 1592–3 declared: ‘Let no one at all meddle in any way in the public and secular affairs of princes, [that is, those] which pertain to reason of state, as people call it; and let them not even dare or presume to deal with political matters of that sort, irrespective of who it is that requires or asks them to do so, and however hard they press.’<sup>18</sup> Aquaviva finally scaled new heights of wishful thinking, equivocality, or confusion. In 1602 he issued his *Instructions for the Confessors of Princes*, which were intended as much for princes as for confessors, as section 14 makes explicit; their frequent republication evidently envisaged an even wider public. They read in part: ‘Let him [sc. the confessor] beware of meddling in external and political matters and be mindful of those things which the Fifth Congregation in its canons 12 and 13 decreed with the utmost severity; he must only attend to what pertains to the prince’s conscience.’<sup>19</sup> Aquaviva enjoined the Jesuit confessor to minimise attendance at court, not to request favours for himself or others, not to give the impression that the ruler is at his beck and call (paragraph 7), and to neglect neither obedience to his religious superiors (paragraph 10) nor his religious observances (paragraph 13).

But even the conduct and precepts of the founders and the foundational documents were ambiguous. The *Constitutions* which prohibit *negotia saecularia* also stress that: ‘It is especially important to preserve the benevolence of the Apostolic See, and next that of secular princes, magnates and men of high position, for their favour or alienation [from us] is of great significance.’<sup>20</sup> Elsewhere, they declare that the ‘spiritual aid that is given to important and public persons ought to be regarded as more important, since it is a more universal good. This is true whether these persons are laymen such as princes . . . or prelates.’ Jesuits who are to deal with those ‘who hold posts of spiritual or temporal government’ are to be men who ‘excel in discretion and grace of conversation and (though not lacking interior qualities) have a pleasing appearance which increases their prestige. For their counsel can be highly important’ (ss. 622e, 624). Jesuits are never to speak ill of any nation nor to take sides in the quarrels between Christian

<sup>18</sup> Cited in Argenti, *Apologeticus pro Societate Iesu*, 1616, p. 33: ‘decretum ad verbum describo: “Ne quispiam publicis et saecularibus Principum negotiis, quae ad rationem status, ut vocant, pertinent, ulla ratione se immiscere, nec . . . eiusmodi politicas tractandi, curam suscipere audeat vel praesumat etc.”’

<sup>19</sup> *Instructio pro confessoribus principum*, para. 4. It appears as XXXI<sup>a</sup> *Instructio* in *Ordinationes praeceptorum generalium*, v, 1606, p. 177, and in later versions of these *Ordinationes*.

<sup>20</sup> *Constitutiones* (pt x, S. II, note B). The relevant sections are all from Ignatius himself; my translation differs from that of Ganss, *Constitutions*, s. 824.



(that is, Catholic) princes, both because of their duty of universal love and because of the Society's need for the benevolence of such princes.<sup>21</sup>

This conformed with Ignatius's own practice. In *The Manner in which Jesuits Conduct Themselves in Relation to Popes*, Gretser quoted a letter of Ignatius (from Ribadeneira's *Life of Ignatius*): '[Ignatius] used to say that the duty of a man in religious orders is to lead men to Christ and away from the life of the courts of princes (*ab aulica vita*), to which they cling like the rock of the Sirens, rather than to lead anyone to it.'<sup>22</sup> But, as we have seen, Ignatius also endorsed the provision of confessors to princes as 'a thing so appropriate to our vocation',<sup>23</sup> although the expediency and morality of providing confessors, and for that matter court-preachers, continued to be disputed.<sup>24</sup> His letters insist that, in keeping with the Society's *espíritu de humildad y simplicidad*, its members were to accept no place of honour (*dignidad alguna*) of any kind, were not to enter the palaces of popes, princes, cardinals, or lords, and were to avoid all 'secular matters'.<sup>25</sup> Equally, however, these letters also advise Jesuits that 'in dealing with men of position and influence: if you are to win their affection for the greater glory of our Lord God, look first to their disposition and accommodate yourselves to it', and then continued with the notorious simile: 'Whenever we wish to win someone over and engage him in the greater service of our Lord God, we should use the same stratagem for good which the Enemy [sc. the Devil] employs to draw a soul to evil: he enters through the other's door and leaves through his own.'<sup>26</sup> In another letter he instructed Jean Pelletier to 'try to preserve and increase the goodwill of the Prince, and try to please him whenever it is possible to do so in accordance with the will of God.'<sup>27</sup>

The Society could of course save itself from the charge of 'political meddling' by the simple expedient of classifying its activities as 'spiritual'. In many of its contacts with the secular polity, the Society was cast in the role of petitioner, and when was it ever considered improper for a churchman to

<sup>21</sup> *Constitutions*, s. 823: 'sit potius quidam universalis amor'.

<sup>22</sup> Gretser, *De modo agendi Jesuitarum cum Pontificibus*, bk II, ch.1, p. 202.

<sup>23</sup> *Eplg* IV, Letter 3220, p. 626; Young, *Letters*, p. 383: 'porque del bien de la cabeza participan todos los miembros del cuerpo, y del bien del príncipe todos los subditos'.

<sup>24</sup> See Duhr, *Geschichte der Jesuiten*, ch. 19, esp. pp. 687ff. The *Decreta Congregationum Generalium Societatis Iesu*, 1635, pp. 359–60, imply that the Society was simply bowing to *force majeure*: 'Cum facile non sit, Principibus aliquando quibusdam Confessarios a Societate postulantis denegare'; and again: 'quandocumque Societas huiusmodi officia defugere non poterit'.

<sup>25</sup> *Eplg* I, Letter 149, 1546, p. 463: *Todas cosas seglares*; the Spanish is just as imprecise as the Latin of the *Constitutions*.

<sup>26</sup> *Eplg* I, Letter 32, pp. 179–81; Young, *Letters*, p. 51; this letter was for Salmerón and Broët's mission to Ireland, 1541.

<sup>27</sup> *Eplg* III, Letter 1899, pp. 542–50; Young, *Letters*, p. 248.

solicit charitable donations or protection? But the spiritual/temporal distinction was usually required to bear rather more weight than this. What was being claimed was that the Society both does and should steer clear of the courts of princes and matters of policy and state. This is what Aquaviva, Scherer, Gretser, and even Ignatius himself *said*. But it does not at all correspond to what the Society's members *did*. Making every possible allowance, it is hard to see what *could* count as direct political involvement (to put it neutrally), if what Aquaviva, Auger, Henri Samier, Claude Matthieu, Persons, *et al.* were doing did not. Even other Jesuits frequently complained of it as meddling.<sup>28</sup> It was impossible for the Society altogether to avoid activities and engagements which were in some significant respects public, political, and secular. And with confessors of princes, the distinction became meaningless.

So Aquaviva's *Instructions for Confessors of Princes*, after conventionally demanding abstention from 'external and political matters', continue (paragraph 8): 'The Prince must hear patiently and dispassionately whatever the Confessor shall think it right to propound to him at the suggestion of [the Confessor's] conscience . . . ; it is right that he should have the liberty of a [spiritual] Father to declare what he judges to be his and the prince's duty to God.' A confessor often comes to know of: 'evils [which] arise against the Prince's will and intention through the fault of his servants; but the duty to remedy them falls on the Prince and his conscience'. And an instruction from General Mutius Vitelleschi to Wilhelm Lamormaini, Confessor to the Emperor Ferdinand II from 1624 to 1637, which lists the questions to be put to his Imperial penitent, is of such detail and comprehensiveness that no political matters could possibly escape this confessorial competence. It too was prefaced by a reference back to Aquaviva's *Instructions* and an admonition 'not to involve himself in any way in the conduct of business', but with the significant proviso: 'unless he is called upon to do so by the Emperor'.<sup>29</sup>

But talk about 'no meddling in politics' often incorporated qualifications which in effect acknowledged that the issue was not conceptually straightforward at all. Richeôme, in the *Apology for the Society of Jesus in France* already mentioned, was not as insouciant as he appeared. He admitted that

<sup>28</sup> E.g. letters cited in ch. 2 fn. 30. The titles of some of Persons's writings are eloquent: e.g. *Considerations which make it apparent that it is in no way advisable that the private interest of His Majesty* [sc. King Philip II] *in the succession to [the throne of] England should be made known to His Holiness* [sc. the Pope] *before the Empressa* [the Armada], 18 March 1587, in Hicks, *Letters and Memorials*, pp. 289–92, translation 292–4. See the admirable piece by Bossy, 'The Heart of Robert Persons', in McCoog, *The Reckoned Expense*, pp. 141–58.

<sup>29</sup> Cited Dudik, 'Correspondenz Kaisers Ferdinand II', pt II, p. 233.

'sometimes some of our Society take on work on behalf of the commonwealth and invest much effort in it'. He even claimed credit for the fact, giving the examples of Possevino in Poland and Russia, and Toledo's activities to have Henri IV's excommunication lifted. Here Jesuits were acting 'with a good and praiseworthy end in view, and at the behest of princes, who are entitled to command us to do such things'. Then indeed 'we do take up and carry out business that pertains to the civil state'. 'In these disturbed times', the zeal of some Jesuits had certainly outrun their prudence, but the blame did not lie with the Society's rules, their Superior, or the instruction of the Fifth General Congregation.<sup>30</sup> This put a decent and broadly accurate construction on the matter, but did not alter the fact that, by his own admission, Jesuits sometimes *did* concern themselves with matters pertaining to the secular state. No doubt Aquaviva and his predecessors meant to keep their men out of the courts and political entanglements of all kinds, and so did the provincial and general congregations that agonised on this subject. But Aquaviva had the Spanish *empresa*, the French religious wars, and the possible succession of a relapsed heretic to the throne of France to consider; the Guise (who were involved in all this) were noted patrons of the Society and harboured many of its colleges. And provincial and general congregations had to retain the benevolence of their secular patrons.

Others came close to denying the political/religious distinction (or any of its variants) outright. Usually it was the so-called 'indirect' power of the papacy in temporal matters or the related question of the political treatment of heresy that led to outspokenness and clarification. Andreas Eudaemon-Joannes in his *Confutation of the 'Anti-Coton'* (1611) argued that just as by royal permission the Paris *Parlement* took cognisance of the affairs of the French nobility, without diminishing the nobility's authority: 'so also the [fact that] priests, as ministers of Christ and dispensers of God's mysteries, when they attend to spiritual matters, are compelled by the very interconnection of things to intervene in secular matters as well, in no way diminishes [the secular rulers'] power and empire'.<sup>31</sup> Perpinya had made the same point somewhat more cautiously fifty years earlier. Responding to complaints that in a previous sermon he had meddled in the French polity (as a foreigner, what was more), he replied that he knew well enough what befitted a foreign visitor. But 'the cause<sup>32</sup> of religion is so closely joined with the condition of the commonwealth, that nothing in these days could

<sup>30</sup> *Apologia Societatis Iesu in Gallia*, in Gretser, *Opera omnia*, vol. xi, pp. 301–2.

<sup>31</sup> *Confutatio anti-Cotoni*, 1611, p. 58 (misnumbered as 56). His point was about priests generally and not merely Jesuits.

<sup>32</sup> *Causa* was just then making the transition in France from meaning 'a law-case' to 'a political objective'.

bring about greater changes either in this city or this Kingdom [than the decision whether to ban (*exterminare*) the Protestant religion, the topic he had referred to]'. As a preacher he could hardly be blamed for speaking about religion.

A later piece by Giovanni Argenti, then Provincial in Poland and Lithuania, was conceptually more subtle. Noting that the language of 'involving oneself (*se immiscere*) in political matters'<sup>33</sup> was ambiguous, he pointed out that it could not be said *universally* to be evil to do so, since this would be to condemn all princes, commonwealths, magistrates, and even God himself, the author of every well-instituted government. He distinguished between two senses of 'involving' oneself:

either in, so to say, laying the foundations of commonwealths, . . . which are justice, prudence and the worship of God; or in completing the edifice, as it were, [taking on] public responsibilities and the public administration of commonwealths. If the first sense is meant, I concede that the Society involves itself, and it does so with the best possible justification and in the best possible way, in that it ever preaches both the worship of God and the preservation of justice, and moulds untutored youth to the doctrine that leads to prudence. If however it is the second sense that is meant, I make bold to say that no one is more averse to political matters than we are.<sup>34</sup>

Argenti was of course on strong ground in vindicating the right of a learned order to concern itself with what had always fallen within the province of some university faculties.

Going on to consider why the Society was constantly subject to recriminations on this score, he suggested that

perhaps people mistakenly think all those with whom princes and heads of commonwealths have to deal, particularly confessors and preachers, are 'politicians' . . . But a man in holy orders (*religiosus*) is not a politician (*politicus*) when he stays within the limits of his own profession in dealing with princes or magistrates, and either on his own initiative suggests, or at their bidding expounds, those things which concern the foundations of the commonwealth. Who indeed will reproach a man in holy orders if he admonishes the prince to keep God, the King of Kings, before his eyes, to cultivate justice which is the bond of the commonwealth, to do nothing rashly but to act as reason persuades and prudence commands, to recognise himself as the avenger of the oppressed, the protector of orphans and the patron of widows? . . . Such things are not political matters, but sacred ones, entirely proper to a person in holy orders.<sup>35</sup>

<sup>33</sup> Argenti, *Apologeticus pro Societate Iesu*, ch. 5, pp. 31ff: *An Societas Politicis sese immisceat? 'Se immiscere'* could bear the neutral meaning 'to involve oneself in'.

<sup>34</sup> Pp. 32–3.

<sup>35</sup> Pp. 33–4. Argenti was greatly concerned (e.g. pp. 35, 40) with a famous forgery, *Monita secreta* (*The Secret Instructions*), published the same year in Argenti's own jurisdiction, which made out that attaining political power was one of the principal ends of the Society, the other being wealth.

An altogether more aggressive note was struck by Adam Contzen, Confessor to Maximilian of Bavaria for most of the Thirty Years War, intermittently Professor at Mainz, a noted controversialist, and author of the famous *Ten Books on Politics*. Anticipating the objection that those in religious orders have no business dealing with *doctrina civilis* or attempting to teach men much better versed in government their business, he immediately went on the offensive: 'It is not foreign to [the work of] our Society to deal with the mutual duties between Kings or Princes and their subjects, their [respective] obligations and the government of the whole commonwealth. On the contrary, it is so proper and integral to its work that the Society cannot escape this duty, or delegate it to anyone else.' The Society must be solicitous to instruct magistrates in the sacred texts.

Nor did Christian kings ever lack instruction from devout theologians . . . And I am not neglecting either my spiritual duties or my office when I discuss worldly government and secular matters, because the temporal republic must be ordered in such a way that terrestrial good and happiness conduce to the spiritual and celestial. The purview and end of my teaching is to show how all human matters both private and public are to be directed towards the highest good and the ultimate object.<sup>36</sup>

This was all the preamble he judged necessary for a work which left untouched virtually no topic which any previous or subsequent political writer, lay or clerical, thought pertinent to the 'science of ruling'.

The distinction between spiritual and temporal or secular matters which Jesuits customarily employed was thus predicated on labile and contestable notions of the proper competences of clerics and laymen. The fragility of these distinctions was fully exposed in the context of the topic of heresy, to which we now turn.

<sup>36</sup> *Politicorum libri decem*, 1621, 1.1.1-4; Contzen's casual alternating between 'theologians' and 'the Society' is revealing but by this time entirely characteristic.

## CHAPTER 4

### *The Church, the Society, and heresy*

The Society's characterisation of heresy and the responses that it advocated both fitted seamlessly with its convictions concerning good order. The Society was not founded for the sake of combating heresy, and had far more tasks than it could cope with even where there were no heretics. But the opinion that it had been established, and indeed providentially intended, precisely for this purpose rapidly became a commonplace in the Society itself;<sup>1</sup> on occasion even Ignatius said something of the sort.<sup>2</sup> An extremely hard-line Jesuit orthodoxy about heresy and heretics developed effortlessly. Of the founders, only Pierre Favre seems to have been at all generous in his attitude.<sup>3</sup> Dealing with the 'heretical' enemies of the Church became one of the Society's salient activities and it led inevitably to a preoccupation with *politica*. For heresy was the foremost among many matters which escaped the 'temporal/spiritual' and 'civil/ecclesiastical' dichotomisations.

#### THE NATURE OF HERESY

In their controversialist writings and treatises, Jesuits relied on traditional definitions such as that of the Dominican Alonso à Castro, whose *On the Just Punishment of Heretics* was as standard a reference work on heresy for Jesuits as Martin de Azpilcueta (Navarrus)'s *Manual*<sup>4</sup> was for casuistry. Castro's

<sup>1</sup> O'Malley, *The First Jesuits*, pp. 272–83. Julius III's new *Institute* of 1555 described the Society as 'fundada principalmente para emplearse toda en la defension y delatacion de la santa fe catolica'; Spanish translation from its citation in Ribadeneira, *Vida del Padre Ignacio de Loyola*, 1583 (BAE, p. 76); cf. his *Historia ecclesiastica del Scisma in Inglaterra* (1605 edn, BAE), p. 185: 'porque Dios nuestro Señor la [i.e. the Society of Jesus] instituyo y envio al mundo en estos miserables tiempos para defender la fe catolica y oponerse a los herejes'.

<sup>2</sup> See his letter to Canisius cited below, p. 67.

<sup>3</sup> *MHSJ*, Monumenta Fabri, Letter to Lafnéz, 1546, pp. 399–402; quoted in full in Possevino, *Bibliotheca selecta* (1593 edn), ch. vii (pp. 463–4); for a more benign interpretation of Ignatius's attitudes, see Dalmases, *Ignatius*, p. 196.

<sup>4</sup> Castro and the Augustinian Azpilcueta (1493–1586, uncle of Francis Xavier) were both theologians at Trent and were both well disposed to the Society, as was the even more celebrated Dominican, Pedro

definition reads: 'A heresy is an assertive, false declaration or proposition which is so contrary to the Catholic faith that it cannot be reconciled with it.'<sup>5</sup>

This definition focussed on the *doctrinal* aspect of heresy. So did the vast expanse of paper Jesuits devoted to controversies with the 'heretics'. Doctrines are after all the theologian's business. Nevertheless, Jesuits did not regard the doctrinal content of heresy as its most pernicious feature. The history-books recorded scores of 'exploded' heresies which were now totally innocuous. In fact, heresy could not even be defined in terms of its doctrinal content alone. A doctrine could be false, pernicious in its consequences for faith or morals, and absolutely incompatible with Catholic doctrine, but it was not a heresy if a Hindu, Muslim, or Jew propounded it, whereas it was heretical if it was propounded as true by some Christian. But the fact that some *sententia*<sup>6</sup> concerning faith or morals was false and propounded within Christianity did not suffice to make it heretical either; it must have been formally declared heretical by the Church or, if it was entirely new (an unlikely eventuality, given the interpretative ingenuity of Catholic heresy-finders), it must be sufficiently clearly false and on a sufficiently serious issue to merit such a declaration. 'Constructive' heresy or 'heresy by inference' (as Hobbes was to call it) might condemn a doctrine but juridically was never adequate to secure a conviction for heresy. Castro's five 'ways of demonstrating that some proposition is heretical' (by Scripture, general councils, the consensus of the whole Church, the verdict of the Holy See, and the unanimous verdict of the doctors of the Church) do not envisage anything being demonstrated to be heretical which had not already been expressly defined as heretical.<sup>7</sup> But again, not everyone who espoused an heretical doctrine was *ipso facto* a heretic. The distinguishing feature of the species heresy within the genus of false beliefs was that espousing a false belief of this kind was itself a sin and a crime. What was critical was the attitude or disposition of those who embraced a heresy. The formal definitions therefore elided the *content* of heretical belief and the *attitude of mind* that made holding the belief

de Soto ('Qui scit Sotum scit totum'), confessor to the Emperor Charles V and also a theologian at Trent; see *MHSJ, Epistolae Nadal*, vol. 1, pp. 287–8 (1555).

<sup>5</sup> *De iusta haereticorum punitione*, (first edn 1547), *Opera Omnia*, 1571, Columns 1041–2: 'assertiva enunciatio sive propositio falsa fidei Catholicae ita repugnans, ut cum illa simul esse non possit'; 'assertiva' seems to mean: as opposed to 'with due submission' or inadvertent.

<sup>6</sup> 'Heretics' did not of course operate with single contextless 'propositions' ('*sententiae*'); these terms simply echo the standard format used by the Church for anathematising heresies and heretics, and the propositional character of scholastic refutations.

<sup>7</sup> *De iusta haereticorum punitione*, bk 1, ch. IV, pp. 1055–65.

culpable. It was more economical and of greater practical importance to define *heretics*.

So Azor's definition is: 'Heresy is an error of the mind or understanding, (espoused) voluntarily, by choice and with obstinacy (*pertinacia*), against some doctrine (or proposition, *sententia*) of the faith.'<sup>8</sup> And according to Valentia: 'Everyone who obstinately and contumaciously (*obstinate et contumaciter*) gives wholehearted belief to a proposition (*sententiam*) contrary to the true faith, in accordance with his private judgement (*arbitratu*), is a heretic, infidel, unbeliever, sectarian.'<sup>9</sup> Canisius more circumspectly began with the distinctive consequence of heresy among possible sins and errors, namely exclusion from the Church, and carefully distinguished as 'outside the Church' various categories of persons which Valentia had lumped together: (a) those never in the Church, namely Jews, 'Turks' (i.e. Muslims), and pagans; (b) schismatics; (c) those excommunicated (excommunication was the penalty for many other offences apart from heresy, and only a handful of heretics were ever formally excommunicated); it was only then he came to (d) 'runagates [sc.: renegades] and heretykes, that is such that when [i.e. although] they are baptized, stubbornly (*halsstarrig, pertinaciter*) maintain erroneous opinions, contrary to the Catholike Church'.<sup>10</sup> In short, the defining attribute of the heretic and heresy is refusing to submit to the verdict of the Church once it had spoken authoritatively. The reason why Jesuits and hard-line Romanists generally attributed such profoundly damaging consequences to heresy was not its doctrinal falsity but the heretical disposition, the conscious, deliberate denial of the Church's authority to define doctrine concerning faith or morals, by someone subject to the Church. All the definitions explicitly<sup>11</sup> include stubbornness or obstinacy. It had of course to be *public* obstinacy. For practical purposes, orthodoxy of profession made a person one of the faithful. As for interior belief in the depth of the soul, *de occultis non iudicat Ecclesia*; and even a hypocritical, coerced orthodoxy was better than that people should drag others down with them into the pit by propagating heresies.<sup>12</sup>

What discloses the Jesuits' understanding of heresy far more clearly than these definitions is the metaphors which pervaded all their thinking about it.

<sup>8</sup> Azor, *Institutiones morales*, 1601, vol. 1, bk VIII, ch. 9, p. 1173.

<sup>9</sup> *Analysis fidei* (Rocaberti edn), p. 59; see also Becanus, *Manuale*, Proem 1, s. 2: 'Pertinaces . . . ex superbia et obduratione mentis: hi proprie dicuntur haeretici'; p. 697: no heretic *nisi pertinax*.

<sup>10</sup> *Catechismi Germanici*; vol. 1, pt. II: (1560 and 1564), pp. 33–4; cited from the 1589 English translation.

<sup>11</sup> *Pertinacia* (column 1092) is Castro's decisive mark of the heretic; *pertinaciter* (stubbornly, obdurately) was used by everyone, including the Trent Catechism, ch. x, qu. 1. Canisius's *halsstarrig*, stiff-necked, is an idiomatic rendering.

<sup>12</sup> G. Torres, *Confessio Augustiniana* (1580), bk 1, ch. XIII, s. 5, p. 125<sup>v</sup>: 'Utile fuisse haereticis, imperatorum legibus . . . ad Ecclesiam Catholicam poenarum terroribus revocari' (my italics).



Among these, cancer had already been a patristic commonplace. Catholics universally interpreted II Timothy 2:19, 'tamquam cancer serpit' ('it creepeth as a canker') in the Douay-Rheims rendition, as referring to heresy. But the whole vocabulary of disease, illness, infection, contagion, poison, and filth provided equally eligible metaphors. They were all already in use in medieval heresiology<sup>13</sup> and were popular with Catholics generally, who in any case were infinitely freer with accusations of heresy than Protestants. 'The heretics' was their normal term for evangelicals. Whenever Jesuits mentioned heresy, they used terms from a glossary which included contagion, toxin, contamination, destructive virus,<sup>14</sup> leprosy, carcinoma, and mixed metaphors like 'this pestiferous contagion . . . spreading like a cancer', 'pestilential poison'.<sup>15</sup> But perhaps the most favoured term was 'plague', a 'similitude to be weighed and considered' according to Robert Persons.<sup>16</sup> Bellarmine developed it at length in an inaugural address to the Roman College in 1576: 'Just as the plague is a more horrifying and fearful thing than ordinary illnesses, so the viciousness (*perversitas*) of heresies exceeds all other crimes and outrages.' The plague is 'more terrifying and rightly more abhorred' because of its lethal infectiousness: 'If today it has taken hold in one house, in a short space of time it will fill the whole city with corpses.'<sup>17</sup> So it is with heresy.

In two seminal letters to Canisius of 13 August 1554 setting out the Society's policy towards the German heretics, Ignatius himself had already deployed much of this vocabulary: 'Seeing the progress that the heretics have made in so short a time, spreading the poison (*veleno*) of their evil doctrine through so many peoples and regions, . . . and since *sermo eorum ut cancer serpit in dies*, it seems that our Society has been accepted by divine providence as one of the efficacious means to repair so immense an evil. It must therefore be solicitous in preparing good remedies . . . , to preserve those who remain healthy, and to cure those already sick with the heretical plague (*ammorbato della peste heretica*), especially in the septentrional nations.'<sup>18</sup> Ignatius also referred to the 'disease' (*morbus*) 'infecting' souls in Germany, 'raging through' (*grassante*) the country.

<sup>13</sup> See especially, Moore, 'Heresy as Disease', pp. 1–11.

<sup>14</sup> Blysssem, *Defensio . . . de vera et sacrosancta . . . Ecclesia militante* (1575), A2<sup>v</sup>, A3<sup>r</sup>, 8<sup>r</sup>; *exitiale virus*, p. 7<sup>v</sup>; *virus* can also mean 'poison'.

<sup>15</sup> Gibbons, *Concertatio ecclesiae catholicae in Anglia* (1588), Preface (unnumbered third page).

<sup>16</sup> *An Answer to the Fifth Part of Reportes* (1606) (= ERL 245), p. 383, marginalium. Martin, *The Jesuit Mind*, p. 95, finds this to be the most popular of all the metaphors for heresy amongst French Jesuits in their correspondence.

<sup>17</sup> Bellarmine, *Oratio in Gymnasio Romano habita* (1576), prefaced to *Controversies* (1608, 3rd edn), vol. 1, (unnumbered, second and third pages).

<sup>18</sup> *EpIlg* xii, p. 259/*Letters*, p. 345; 'Ut cancer etc.' was in Latin, the rest (also cited fn. 2) in Italian; *EpIlg* 7, pp. 399–401, Letter 4709.

Some of the terminology that Jesuits used about heresy and the heretics was of course merely abusive; Aquaviva even instructed some of his German sons to moderate their language. Valentia spoke of the *faex Lutheranae Calvinianaeque doctrinae*, and Possevino and Persons both had *colluvies* as well. Georg Scherer, never a man to mince words, accused heretics of 'filling the world with their *geschmeiss und gestanck*'. Ioannes Busaeus, not ordinarily a vituperative man, refers to heretics as ravening wolves, thieves, traitors, rabid dogs, basilisks, bugs, vipers, flies, and snakes.<sup>19</sup> And so on *ad infinitum*. But the elaboration and universal currency of the disease and infection metaphors rules out interpreting them as merely emphatic or abusive. Ignatius did not engage in vilification and did not need to emphasise to Canisius that heresy in Germany was a grave matter. Everyone knew well enough that Protestantism had spread like wildfire.<sup>20</sup> Nor were these metaphors re-formulations of what the definitions of heretics and heresy said without metaphor. Rather they were understood as explanatory and diagnostic, and they must be taken entirely seriously.

Most importantly, they all connote a powerful force. Their referent is not something inherently contemptible, let alone merely distasteful and malodorous, like 'filth' or *faex*. So far from being contemptible, disease, plague, etc., are things to be dreaded and hated for their malign power. Again, the disease, infection, and contagion metaphors betoken an *impersonal* agency at work. Interpreting heresy as a virulent disease also intimates that the source of its power is precisely its impersonal, initially imperceptible operation. This interpretation of the metaphors is borne out by the interesting linguistic innovation of the time of referring in religious (and later any) controversy to an impersonal entity constituted by a heretical doctrine and its followers as an -ism.<sup>21</sup> Finally, the 'victims' are helpless to save themselves once 'infected', although heresy is not *inherently* irresistible or beyond diagnosis, treatment, prophylaxis, or containment. The disease metaphors were automatically followed by medical/surgical ones,<sup>22</sup>

<sup>19</sup> Duhr, *Geschichte der Jesuiten*, vol. 1, pp. 680ff. Canisius complained about Valentia. Ernhoffer and Vetter were considered particularly extreme; Janssen, *Geschichte des Deutschen Volkes*, vol. v, pp. 400–6; Valentia, *Analysis fidei* (Rocaberti edn), p. 46; Possevino, *Moscovia et alia opera*, 1587, pp. 173, col. 11 and 304, col. 1; 'Andreas Philopater' (i.e. R. Persons), *Elizabethae Angliae Reginae . . . edictum*, 1593, p. 81; Scherer, *Alle Schriften*, vol. 1, Preface, unnumbered (sixth page); Busaeus, *De statibus hominum* (1613), p. 447.

<sup>20</sup> Ribadeneira, *Princeps Christianus*, Preface, p. 5<sup>t</sup>: 'Haeresis, calamitosum incendium (fuego infernal), quo Gallia, Flandria, Scotia, Anglia et plures aliae regiones iamdiu flagrant.'

<sup>21</sup> See my 'Isms and Ideology', pp. 3–26.

<sup>22</sup> Ignatius, cited earlier, *EpIlg* vii, p. 399; also Favre's letter to Ignatius, cited fn 3: 'Medicinae ordo aegritudinis ordinem sequi debet.'

sometimes to the extent of drawing recommendations from the medical authority Galen for the 'treatment' of heretics.<sup>23</sup>

The impersonal character implicitly assigned to heresy was not merely a banal translation of the identity of heresy as by definition *doctrine*. No doctrine, proposition, or opinion can of itself have power or force, or be malign or infectious. The prejudicial metaphors of plague, cancer, disease, and filth however merely singled out the malignity and contagiousness characteristic of heresy. But they did not explain them and even concealed the need for any explanation: heresies spread because that is what diseases, cancers, and filth do.

However, given what we have seen of the Jesuit understanding of the human psyche, the motive and attitude imputed to heretics in the very definitions of 'heretic' were adequate to explain why they espoused and persisted in heresy, namely pride. Just as humility and obedience are the font of faith, pride and disobedience are the cause of heresy. In Frans de Costere's ever-popular *Book of the Sodality of Mary* (1588) the first of 'the remedies which preserve the orthodox faith is to cultivate humility in the bottom of our souls. For just as it is impossible for a heretic not to be proud, since he is a person who ranks his own judgement higher than that of the Church, so it is impossible for a humble man to lapse into heresy.'<sup>24</sup> Pride was proverbially 'the parent and mother of all heresies'.<sup>25</sup> Heretics in the proper sense of the term are persons who deliberately cut themselves off from the communion of the true Church, because of pride. Even etymologically heresy is *haeresis*, a 'choice' or 'election'.<sup>26</sup>

But pride is ever-present, whereas the successes of heresy in this time were unprecedented. The entire phenomenon of the Reformation therefore remained unexplained. An explanation of sorts was, however, offered or implicit. Although heresy is satanic, satanic forces operate through human agents. According to Thomist doctrine, the will is moved to choose only what is apparently good. And if such choices are prompted by persuasion, as heresy is, the way to understand its operations is by the ordinary

<sup>23</sup> Bellarmine, *Controversia de laicis*, ch. XXI, p. 341.

<sup>24</sup> Costerus, *Libellus Sodalitatis*, bk II, ch. 1, pp. 170ff; *Sica tragica comiti Mauritio*, 1599, p. 94: 'Superbia et elatio animi . . . ipsae quoque mulieres audeant se omnibus priscis Doctoribus antepone, Superiores suos despiceret'; Persons, *Directorie*, pp. 56–7: '[Of] which wilfulness in error and heresy . . . the principal and original causes [are] pride overweening in its own conceite', etc.

<sup>25</sup> Costerus, *Enchiridion*, 1612, p. 19: 'Omnium haereseon parens ac procreatrix superbia'; Scherer, *Alle Schriften*, vol. II, p. 121: 'die Hoffart ist ein Mutter und Ursprung aller Ketzereyen'; G. Torres, *Confessio Augustiniana*, 1580, p. 109: 'Omnium haeresum eadem mater superbia'.

<sup>26</sup> The etymology is mentioned in Castro, *De iusta haereticorum punitione*, col. 1041; Azor, *Institutiones morales*, vol. 1, bk VIII, ch. 9, p. 174: 'quasi electio, optio, secta'; Fitzherbert, *Supplement*, p. 176: 'Haeresis signifieth properly election . . . own choyce and fantasy.'

means afforded by the science of rhetoric. Jesuits took it that with heresy, as with every other social and political phenomenon, leaders lead and the mass of the *rudi et imperiti* follow. Untutored people can be got to believe false doctrines when these are speciously presented, and emanate from persons enjoying reputations for learning (which might be deserved) and for virtue (which were mere imposture). Their teaching would be particularly effective when those charged with teaching true doctrine and countering falsehood were torpid, and their lives were unedifying. But unless heresies had some inherent plausibility, and heretics sugar-coated their poison with much that was orthodox and even edifying, they would never get a hearing.<sup>27</sup> More subtly perhaps, it was also argued that heretics propagate those doctrines which are most congenial to the flesh, and vilify those which are uncongenial, notably doctrines inculcating obedience, humility, submission, confession and repentance, patience under correction and in adversity, the necessity of works, and self-abnegation.<sup>28</sup> In that respect, the doctrinal content of heresy *did* matter, and the doctrines of the heretics of the present age were especially seductive and pernicious.

Interpreted in this way, as the progeny and progenitors of pride, heresies and heretics were the very antitype of good order and virtue. The only useful purpose they served (God allows nothing to occur without some good purpose) was to shake the godly out of the lethargy into which they had sunk.<sup>29</sup>

#### THE CONSEQUENCES OF HERESY

The consequences of heresy were thought eminently familiar and predictable. First, heresy begets the multiplication of mutually hostile sects, and the endless proliferation of further heresies. This was a traditional motif,

<sup>27</sup> E.g. Bellarmine, *Conciones habitae Lovanii*, p. 561, col. 11: 'Habet quidem omnis haeresis speciem boni et veri, . . . alioquin sectatores non haberent [haeretici]'; *De laicis*, ch. xx, p. 338: 'Scribit b. Gregorius lib. 5. moral. cap. 11, hoc esse proprium haeticorum, ut veris falsa permisceant, et bonis mala; nam si sola falsa et mala dicerent, ab omnibus repellerentur; si sola vera et bona, haeretici non essent. Itaque omnia miscent.' And Possevino, *Soldato Christiano*, p. 30: heretics like poisoners 'cuoprono con un poco di zucchero il tossico'.

<sup>28</sup> Bellarmine, *Conciones habitae Lovanii*, p. 539, col. 11: men by nature 'id facile ac libenter credant, quod cupiunt, quod placet et quod delectat . . . Itaque non mirum est si tam multi et tam facile Mahumeto primum, deinde Luthero nostris temporibus carnis libertatem praedicantibus et habenas libidinibus laxantibus se adiunxerunt.' The same account of 'Mahometisme' as indulgent to 'beastlie lust', sodomy, polygamy, divorce, etc., and extended comparison with Luther, in Fitzherbert, *The Second part of a Treatise*, 1615 (= ERL 180), chs. 14 and 30.

<sup>29</sup> E.g. Becanus, *Opuscula*, vol. III, 1612, Dedication, pp. 2-4: 'Prosunt *ad probationem doctrinae* Catholicae . . . Multi Catholici per Lutheranos et Calvinistas de somno excitati sunt'; his evidence for the 'awakening' was the multiplication of (mostly Jesuit) books.

already found in the Church Fathers.<sup>30</sup> Perhaps the Jesuits' chief polemical point was to contrast the divisions and disunities of the heretics with Catholic unity. Not even the interminable controversy within the Catholic Church over grace and free will, the so-called *De auxiliis* controversy, made any difference to the popularity of this polemical strategy.<sup>31</sup> Thus Perpinya, after the 'old saying' that with the heretics *quot capita tot sententiae*, claimed that eighty new sects had appeared since Luther.<sup>32</sup> Providing extensive lists of the disagreements amongst Protestants became a polemical art form. All polemicists noted with particular delight the extreme hostility between heretics themselves, and their incapacity to agree on anything.<sup>33</sup> But whereas some asserted that heretics hated each other more than they hated Catholics,<sup>34</sup> according to others (since polemicists did not concert tactics) heretics were united only in their common hostility to Catholics.<sup>35</sup> The famous South German Jesuit Peter Brilmacher rebutted the usual Protestant attenuation of these divisions: they were not about *adiaphora*, matters on which people could safely differ, but concerned the principal articles of faith.<sup>36</sup> Each of these heretical sects is as bad as the next, according to Gretser: 'diversity in names, but union in heretical depravity'.<sup>37</sup> But Gretser's most celebrated student Adam Contzen found Lutherans more trustworthy and tractable than Calvinists.<sup>38</sup>

The reason for the inherent divisiveness of heresy was obviously the absence of a judge of controversies.<sup>39</sup> Since heretics place their own

<sup>30</sup> G. Torres, *Confessio Augustiniana*, ch. XII.5.

<sup>31</sup> The controversy began in earnest with Luis Molina's *Concordia liberi arbitrii* of 1591 and the response of the Louvain Dominican Bañez; Costello, *The Political Philosophy of Luis de Molina S.J.*, pp. 9–12.

<sup>32</sup> *Orationes duodeviginti*, pp. 325, 387–8. Counting them was evidently not an exact science: Bellarmine made it 100 sects between Luther and the 1560s (*Conciones habitae Lovanii*, p. 602, col. 1); Possevino, *Iudicium*, p. 15, said 600; Fitzherbert's figure was 270: *Second part of a Treatise*, p. 449.

<sup>33</sup> E.g. Auger, *Pedagogue d'armes*, pp. 17<sup>r</sup>, 28<sup>v</sup>; Possevino, *Moscovia* (1587), pp. 311–12, marginalium: 'Numquam haeretici inter se convenire potuerunt'; Blyssen, *Defensio assertionum theologiarum*, p. 4<sup>v</sup>: 'apud eos quot homines, tot sententiae . . .'; G. Torres, *Confessio Augustiniana*, p. 74<sup>r</sup>, marg.: 'Apud haereticos etiam nostri temporis, quot sunt capita tot sunt regulae veritatis', etc.

<sup>34</sup> Perpinya, *Orationes duodeviginti*, p. 318.

<sup>35</sup> E.g. Gibbons, *Concertatio Ecclesiae Catholicae* (1588), p. 4: 'quamvis inter se capitali odio dissideant, . . . in eo tamen instar Herodis et Pilati conspirant, ut Catholicam Ecclesiam acerrime impugnent, eius propugnatores gravissimis tormentis discrucient, ac tandem morte crudellissima trucident'.

<sup>36</sup> Brilmacher, *Evidiotheka: Brillenkaestlein* (1609), pp. 168–70; similarly Dury, *Confutatio responsionis G. Whitakeri*, 1585, p. 189: 'At Calviniani vestri, Lutherani, Zwingliani nullam unam agnoscunt Ecclesiam, sed singulis sua est synagoga, quae ab aliis omnibus in gravissimis fidei mysteriis maxime dissidet'.

<sup>37</sup> *De modo agendi Jesuitarum*, p. 5.

<sup>38</sup> Bireley, *The Counter-Reformation Prince*, p. 144; Seils, *Die Staatslehre Contzens*, p. 9.

<sup>39</sup> Scherer, *Alle Schriften*, p. 124<sup>r</sup>: 'Die fürnehmste Ursach der Einigkeit in der Catholischen Kirchen/ und der Uneinigkeit in der falschen Kirchen [be]steht darinnen/ dass die Catholische Kirch ein sichtbares Geistliches Haupt und Obrigkeit hat/ die Sectische Kirch aber keines.'

judgement above anything else, they cannot agree: 'Ubi haeresis ibi superbia. Ubi superbia ibi dissensio.'<sup>40</sup> And they are naturally predisposed to those doctrines which flatter pride, and which will multiply disagreements, such as Christian Liberty, Scripture as the ultimate judge of controversies, and the primacy of the individual conscience. The divisions among the heretics were of course one more proof of the falsity of their doctrine, for the truth is one, but the varieties of error are infinite.<sup>41</sup>

A second consequence of heresy is religious indifference, and ultimately atheism. The slippery slope was understood to run *via* weariness with doctrinal disputes and cynicism about the motives of the heresiarchs, to the *politique* belief that one religion will do as well as another, and finally to the belief that no religion matters.

Third, heretics are naturally cruel: this is one of the forms their hostility to the truth takes.<sup>42</sup> The age relished atrocity narratives and images.<sup>43</sup> The particular objects of the heretics' cruelty were priests and religious, but no Catholic was safe. The cruelty of heretics was not to be confused with the just severity of the orthodox.<sup>44</sup> The task of Jesuits in making the distinction was facilitated by the stupidity of some anti-Jesuit polemics,<sup>45</sup> which made sadism out to be a kind of personal vice which Jesuits indulged.

The fourth consequence of heresy is that it conduces to general immorality. Genuine heretics are sufficiently strongly motivated by pride, ambition, and self-love to risk life and limb. There was therefore little reason to suppose that their pride would be confined to tenacious adherence to heretical doctrines. Sixteenth-century Jesuits (and some much later) regarded heretics as capable of virtually any depravity.<sup>46</sup> The repeated assertion by Jesuit authors (but not only by them) that heresy is worse than any other sin was meant seriously. As Mairhofer said in his *Catholic Defence*:<sup>47</sup> 'As the holy

<sup>40</sup> Becanus, *Manuale*, p. 724.

<sup>41</sup> E.g. Perpinya, *Orationes duodeviginti*, p. 387: 'feri nullo pacto potest, ut quorum diversae sunt, ac inter se pugnantēs opiniones et sententiae, ii omnes divini spiritus instinctu loquantur'.

<sup>42</sup> Early examples: Gibbons, *Concertatio*, pp. 4 and 216<sup>r-v</sup>; Perpinya, *Orationes*, p. 491; Bellarmine, *Conciones habitae Lovanii*, p. 600 ii.

<sup>43</sup> A classic of the genre was the graphically illustrated *Theatrum Crudelitatum Haereticorum Nostri Temporis* by Robert Persons's correspondent Richard Verstegan, first published 1583. See Gregory, *Salvation at Stake*, pp. 289–90 and fn. 196 on Verstegan, and chapter 7 for the genre; see also Dillon, *The Construction of Martyrdom in the English Catholic Community*, *passim*.

<sup>44</sup> Martin, *The Jesuit Mind*, pp. 84–8, for Luca Pinelli's interpretation of the difference between his courteous treatment at Geneva c. 1580, although he was a known Jesuit, and what would have happened to a Calvinist in Rome.

<sup>45</sup> Janssen, *Geschichte des Deutschen Volkes*, vol. v, pp. 507–20, esp. p. 512, for some particularly ludicrous examples.

<sup>46</sup> Valentia, *Analysis*, pt III, Roceberti edn, p. 48: 'it [heresy] readily perverts morals and makes men disposed to every sort of licentiousness'; Bellarmine, cited p. 67 above.

<sup>47</sup> *Catholische Schutzschrift*, unnumbered Preface, second page.

Apostle testifies, heresy . . . opens the door to every sort of godlessness . . . A man . . . becomes a veritable abyss of sinfulness, a pit of vices, in which all wicked works are nurtured and educated, like snakes in their nests.' And even Becanus said: 'As the theologians rightly teach, heresy is a graver sin than adultery, murder, theft', although his view of 'heretics' had by then become much more circumspect.<sup>48</sup> Bellarmine, and Lessius in his *Controversy*,<sup>49</sup> insisted that contemporary heretics were worse even than Jews,<sup>50</sup> Mahometans, and schismatics, all of whom acknowledged superiority and obedience.

#### THE RIGHT RESPONSE TO HERETICS

This interpretation of heresy and its consequences was widely shared in the Catholic Church. As an analysis of Christendom in the throes of denominational schism it seems unimpressive, in that it interpreted what was happening largely in categories devised for dissenting minorities in antiquity and the Middle Ages, as if Lutherans, Calvinists, and Zwinglians were Donatists, Albigensians, or Hussites. And although the Society's ideas about how to combat heresy were clear enough, this analysis of heresy did not support them. In fact the vocabulary itself served to sow confusion.

If heresy is a deliberate, sinful, and criminal choice or 'depravity', then the appropriate response is deterrence and *punishment*. But if it is a disease, cancer, or plague, punishment is entirely out of place; its victims deserve rather to be pitied, and the appropriate response is care, medicine, surgery, and containment or quarantine. Poison on the other hand requires an antidote. And filth requires cleansing. But if heretics are *enemies* of the Church, the *respublica Christiana*, then punishment, medicine, surgery or quarantine, antidotes, and cleansing are all equally inappropriate: the way to deal with enemies is diplomacy and if necessary war. And if heresy is the

<sup>48</sup> *Opuscula*, 1621, vol. v, p. 433; *Manuale*, bk v, ch. 13, p. 715; see Possevino, *Iudicium*, p. 6: 'Cum autem haeresis multo pestilentialior cunctis flagitiis sit . . .'

<sup>49</sup> Bellarmine, *De laicis*, ch. 20, pp. 338–9; Lessius, *A Controversy*, pp. 27–8.

<sup>50</sup> Laínez, Ribadeneira, and probably Polanco, Possevino, and Toledo, were of Jewish extraction, and the Society alone of the religious orders at first freely admitted New Christians (i.e. descendants of converted Jews and Muslims) in Spain, at Ignatius's insistence. Some Jesuits, especially the first Spanish Provincial Antonio Araoz, were aggressively of the *limpieza de la sangre* mentality, which eventually prevailed. The Fifth General Congregation of the Society in 1593 forbade the admission of 'New Christians', which now meant principally persons of Jewish extraction, without the general's express permission; the rule was finally repealed in 1946. Cf. Donnelly, 'Antonio Possevino' 1–11; O'Malley, *The First Jesuits*, pp. 188–92; and for the Society's attitude to non-Europeans (and even Europeans born outside Europe), Alden, *The Making of an Enterprise*, ch. 11.

consequence of persuasive presentation of false goods, then what is required is persuasive presentation of true goods.

These characterisations of heresy therefore had contradictory implications. Francisco Torres apparently did not notice: 'The choice between life and death lies with you [i.e. heretics]. You are not ill unwillingly, nor has something happened to you which prevents you from regaining your health against your will. On the contrary your sickness is freely chosen and voluntary. You hold the scalpel of your recovery in the hands of your own will.'<sup>51</sup> But catching a sickness is not a choice, an act of will, and neither is recovery. The first step out of this interpretative *aporia* was to distinguish various categories of heretic, a step made no easier by the fact that the Society's polemics regularly lumped all 'heretics' together as an undifferentiated *massa perditionis*.

The most obvious distinction was between heretical leaders and those they led.<sup>52</sup> Heresiarchs (which by then meant principally ministers) were inexcusable, especially after Trent. But to my knowledge, no Jesuit of the time admitted that there had *ever* been any excuse for Luther, Zwingli, or Calvin, though Favre at least included them in his prayers.<sup>53</sup> On the contrary, Bellarmine asked rhetorically: 'Have not all the heresiarchs been ambitious, all proud, all unchaste, all utterly immoral (*flagitiosi*)? Did not all of them die deaths that were as wretched as their lives had been dissolute?'<sup>54</sup> Punishment was the appropriate way to deal with them and their kind.

Heretics in name only, who lacked *mens rea*, should be dealt with more leniently. A graduated response<sup>55</sup> was needed, beginning with mild measures. The distinction between heresiarchs and the rest explains why Ignatius, Favre, and Canisius counselled (to no avail) against disputatious methods. Salvageable heretics would be much more likely to be swayed by

<sup>51</sup> F. Torres, *De hierarchicis ordinationibus* (1569), Peroratio (ch. 23), p. 146', just after *cancer serpentis*.

<sup>52</sup> E.g. Costerus, *Enchiridion*, 1585, p. 32: 'Magnum est discrimen inter haereticum et eum qui credit haeretico. Ille compendii sui, et praecipue gloriae principatusque gratia, novas et falsas opiniones vel gignit, vel sequitur: hic vero eiusmodi hominibus specie quadam veritatis et pietatis assimilatae deceptus fidem habet.'

<sup>53</sup> O'Malley, *The First Jesuits*, p. 279. Nadal in his first encounter with heretics in Germany (Pate, *Nadal*, pp. 194–5) was incapable of even basic civility; Ignatius was always more circumspect.

<sup>54</sup> *Conciones*, p. 585, col. 1; see also the whole chapter (Concio ix). For the anti-heresiarch genre of polemics, see Ernhofer's *Wahrhafft, Augentscheinliche und wohl begründte Schutzschrift*, 1587, citing the collected works of Luther chapter and verse. Conrad Vetter simply reinterpreted Luther's *Anfechtungen* as proofs of Luther's dealings with the devil: 'C. Andreas', *Zweyhundert Luther*, 1607. Bellarmine had already done so in passing; *Conciones habitae Louanii*, p. 587 col. 11: 'Lutherus satis ingenue in suo libro de Missa singulari confitetur inter se et diabolum magnam intercessisse familiaritatem.'

<sup>55</sup> See Possevino, *Bibliotheca Selecta*, ch. vii, p. 464 (1593 edn): 'Medicinae ordo aegritudinis ordinem sequi debet.'



modesty of bearing, congenial address, edifying conversation which dwell on points of agreement, and most important, good example. And hierarchs were beyond saving by argument anyhow.<sup>56</sup>

In time some Jesuits offered more discriminating typologies.<sup>57</sup> In his 'Praeludium: Concerning the varied disposition of our Adversaries', Becanus distinguished four categories of heretics: (1) those 'stubborn in their errors, who do indeed know that they are renouncing the common opinion of the Church and the Fathers, but because of pride and obduracy . . . obstinately persist in their opinion. These are properly called heretics, as Augustine holds'; (2) the 'zealous, who believe that their sect is in accord with the truth and the Gospel, because of ignorance rather than pride and obstinacy, and therefore defend their sect with such zeal and ardour that they appear to be ready to forsake their lives rather than their sect. They resemble Paul before his conversion . . . [B]ecause they do not sin out of malice but out of ignorance, they often receive God's mercy'; (3) the 'frigid', who are not moved by pride or ignorance, but some other causes; and (4) the hesitant and doubtful.<sup>58</sup> Given these differences, a different way of dealing with each category of adversary is appropriate, and two of the four categories, far and away the largest number of 'heretics', need to be dealt with gently.<sup>59</sup> Jesuits had always admitted that the simple people were to a considerable degree exonerated because of the deplorable example and negligence of the Catholic clergy.

Whether *prima facie* heretics would prove amenable to essentially pastoral methods was of course not predictable. The notion of heresy as something deliberately chosen grew progressively more implausible as 'heresy' became a matter of political, communal, and family tradition, precisely analogous to the 'choice' of orthodoxy, and some Jesuits revised their opinions about the culpability of heresy as a result.<sup>60</sup> But the very fact that these revisions needed to be communicated with circumspection shows that previous opinion had overwhelmingly regarded heretics as culpable, and many remained 'unreconstructed'. There were undoubtedly real heretics, and those the most

<sup>56</sup> *EpIg* vii, Letter 4709.

<sup>57</sup> Costerus, *Enchiridion*, 1585; 1612 edn, pp. 2–30, 'Praefatio de Moribus Hereticorum'. Possevino, *Bibliotheca Selecta* (1603 edn), p. 303, found more incriminating reasons why people remain heretics: fear of alienating their own people, obdurate habit, torpor, the belief that it does not matter which sect one belongs to, fear of loss of office or usurped goods, licentiousness of life, and fear of punishment. This seems to be lifted from Torres, *Confessio Augustiniana*, 1580, p. 126'.

<sup>58</sup> *Manuale*, Praeludium I, ss. 1–5. <sup>59</sup> Ss. 6–9, 10.

<sup>60</sup> Becanus, *Manuale*, bk v, ch. 13, p. 697: many Germans are not *pertinaces*: 'Non enim advertunt doctrinam Lutheranam, cui ab infantia addicti sunt, contrariam esse Ecclesiae Catholicae'; cf. Pierre Coton, *Institution Catholique*, 1610, e.g. vol. 1 (unpag. b-ii): 'Nous avons a faire a des esprits malades, et qu'en nos controverses, il n'est pas tant question de vaincre, que de gagner les ames.'

culpable and dangerous, whose heresy was a deliberate choice. As Robert Persons's celebrated *Christian Directorie* put it, the heretic is 'damned by the testimony of his own judgement and conscience [because he has knowingly] devised particular paths and turnings for himself . . . The path of belief is so manifest [that] no one can err but of inexcusable wilfulness.'<sup>61</sup> The true heretic, knowable as such because he or she rejects medicine and persuasion, is properly subject to *punishment*.

There was, however, a difficulty. Punishing presupposes jurisdiction. Naturally the 'heretics' emphatically denied that they belonged to the Roman Church. How could heretics be 'in' or 'of' the Church when they had by definition voluntarily separated themselves from it and become its 'enemies'? But if heretics were outside the Church, it had no more right to punish them than it had to punish Jews, Muslims, and pagans.<sup>62</sup> On this showing, the heretics' heresy itself placed them outside the Church's jurisdiction.

Some Jesuits plainly saw the difficulty. Thus heretics are more precisely not enemies simply, but 'renegades' (Canisius) or 'deserters' (Bellarmino),<sup>63</sup> and punishable as such. Valentia says that heretics do not belong to the Church *proprie*, but do belong to it in a certain sense; and consequently, when the Church 'punishes' them, it does so according to its right over its own subjects (*sui iuris*).<sup>64</sup> And Bellarmine, too, saw the point: heretics are 'indeed outside the Church, but with a duty and obligation to remain inside it'.<sup>65</sup> What made them the Church's subjects was their baptism, an interpretation that dates to patristic times, but whose force is unclear. Sometimes baptism was regarded as evidence of consent to membership of the Church, and thus an acknowledgement of its authority, as when Bellarmine compared the freedom of faith to matrimony or religious vows: one is free to undertake such obligations or not to do so, but not (morally) free to neglect them once they have been undertaken.<sup>66</sup> This argument presupposed that baptism was a voluntary act, and what is more an act of

<sup>61</sup> *The Christian Directorie*, 1607 (second edn= ERL 41), ch. III, ss. 5, 13, pp. 48–9.

<sup>62</sup> E.g. Toledo, *Enarratio*, vol. II, qu. x, art. VIII, pp. 104–5: 'Qui numquam fidem susceperunt, non sunt compellendi ut suscipiant', especially not by 'coactio directa, de qua non est controversia ulla; conveniunt enim omnes non licere, ne posse sic cogi'. He cited authorities like Castro, Soto, and Cajetan.

<sup>63</sup> Bellarmine, *Controversia de Ecclesia Militante*, bk III, p. 77.

<sup>64</sup> *Analysis* (Rocaberti edn), p. 79: 'Quia enim et characterem habent Baptismi, et aliquando membra Ecclesiae fuerant'; the same point had been made earlier by Toledo, *Enarratio*, p. III.

<sup>65</sup> *De laicis*, p. 344; *Controversia de ecclesia militante*, bk III, ch. IV, pp. 76–7: Castro's doctrine that heretics are 'membra et partes Ecclesiae' is 'plainly false', but 'Haereticos, licet non sint de Ecclesia, tamen debere esse, et proinde ad eam pertinere ut oves ad ovile unde fugerunt.'

<sup>66</sup> *De laicis*, ch. 22, p. 344.

embracing the Catholic Church. But heretics increasingly had been baptised as Protestants, and moreover as infants incapable of consenting to anything, or incurring any obligation consequent on such consent. Robert Persons partly side-stepped the problem by asserting that baptism gives the Church a prescriptive right, a *ius acquisitum*,<sup>67</sup> and therefore by implication its authority is as little dependent on consent as that of secular commonwealths or parents.

But given their activist, voluntaristic conception of faith and virtue, Jesuits could scarcely be content with a merely passive faith, accepted like a family tradition or an unproblematic custom. Choice is an integral element in true faith, as well as in heresy. Each individual must choose his or her own faith, and choose freely. But freedom here was understood in a distinctive, though at the time perfectly conventional way: it does not include the freedom to sin, and fear does not compromise the freedom of choices made under its influence. As we have already seen Ignatius insisting, there is such a thing as salutary fear, however slavish.<sup>68</sup> The orthodox doctrine of the Schools was that fear and liberty are consistent.<sup>69</sup>

'Conscience' in this context was in fact an uncomfortable concept. In its most obvious use (as in 'cases of conscience'), it referred to judgements about which actions are permissible and which not.<sup>70</sup> But it was not the individual's *private* conscience as such that had any authority, and Jesuits along with most Protestants as well as Catholics rejected outright any right to 'freedom of belief' (*libertas credendi*) or choice of religion. There is no right or liberty of conscience to refuse to submit to the teaching authority of the Church; on the contrary there is a duty to submit. If heretics deliberately chose what was evil and false, they must do so out of pride, self-will. No other explanation could be offered for the revolt of Lucifer and his angels, and no other explanation in the Jesuits' view fitted heresiarchs.

<sup>67</sup> Persons, *The Judgment of a Catholike English-man*, p. 23.

<sup>68</sup> Cf. p. 31 above. Trent affirmed the same doctrine; cf. Denzinger and Rahner, *Enchiridion Symbolorum*, ss. 898 and 915.

<sup>69</sup> For the orthodox doctrine see Garnet, *An Apology against the Defence of Schisme*, 1593 (= ERL 167), pp. 42–3: 'When you goe to the [Anglican] Church, doe you goe against your will? doth any man carry you?'; p. 43: 'In a reasonable creature . . . nothing taketh away the nature of voluntary [*sic*], but constraint. Now coaction or constraint always proceedeth out of an extrinsicall cause using our members contrary unto our owne will and desire . . .' (The marginalium reads: 'Only violence taketh away voluntary [*sic*]'); 'In a reasonable creature . . . whensoever the will itselfe agreeth unto a thing for whatsoever respect, than [= then] is the action voluntary, because it proceedeth from the will'; p. 45: 'For this cause doe both Philosophers and Divines conclude, that what is donne of feare is alwaies simply and absolutely voluntary.' They didn't, but Hobbes here as elsewhere could have cited Jesuits in support of his own position.

<sup>70</sup> See the (for once) extremely careful discussion of 'conscience' in Azor, *Institutiones morales*, vol. II, bk II, chs. VIII–IX.

Indeed, despite the Jesuits' conspicuously voluntaristic conception of true religion, what seems to have carried most weight here was the argument (to be explained later) that as a *respublica perfecta*, the Church *must* have the power to protect itself against its enemies, since otherwise Christ would have left it deficient in an essential power. And the most dangerous enemies are those who are in some sense within the gates.

#### HERESY AS A RESPONSIBILITY OF SECULAR RULERS

No Catholic doubted that heresy and heretics were properly and in the first instance the business of the Church. It is the Church's God-given task to care for Christ's flock and to protect it against the depredation of wolves, to seek out and save the lost sheep, and to go and teach all nations. In the first instance this plainly meant pastoral measures. A preferential option for *mansuetudo* (gentleness) is demanded of the Church because it is a Mother, God is a God of mercy rather than of strict justice,<sup>71</sup> and the Church must not itself shed blood. For Jesuits an additional tactical consideration was the precept of Ignatius that nothing is gained by discourtesy, abuse, and confrontation. As an agency of the Church with heresy as a principal charge, the Society was obviously more than ready to contribute its portion to the pastoral and polemical-controversial defence of the Church, and indeed to go on the offensive where circumstances allowed or demanded. No Jesuit ever imagined that mere repression and persecution were enough, without an inner reform of the Church in head and members.<sup>72</sup> Equally, however, no Catholic denied that the Church was also entitled to administer a range of ecclesiastical *punishments*: admonitions, censures, the imposition of penances of varying degrees of humiliation and severity, and in extreme cases excommunication. Orthodox Protestants asserted no less for their clergy.

But heresy operates in many different ways and by means of a variety of agencies, and the Catholic response must be commensurate. There are various 'arenas' for the contest between orthodoxy and heresy.<sup>73</sup> This gladiatorial metaphor, like the habitual vocabulary drawn from war,

<sup>71</sup> Dalmases, *Ignatius*, pp. 195–6.

<sup>72</sup> Jesuits stressed the need for exemplary standards; hence Bellarmine's support for the canonisation of Borromeo, and his recommendations for the reform of the cardinalate; Turchini, 'Roberto Bellarmino e il processo di canonizzazione di S. Carlo Barromeo', in de Maio, *Bellarmino e la controriforma*, pp. 387–401.

<sup>73</sup> Ribadeneira, *Catalogus illustrium scriptorum Societatis Iesu*, 2nd edn, 1613, Preface, p. 3<sup>vy</sup>: 'Alii [i.e. members of the Society] in arenam descendere, et cum haereticis nostri temporis manum conserrere non dubitarunt, et quidem ea doctrinae magnitudine et argumentorum vi atque copia, ut de importunis atque infestissimis Ecclesiae Catholicae hostibus non dubiam semper victoriam reportarint.'

scholastic disputations, and law-courts (battle, enemies, antagonists, adversaries, controversies, judge, *sententia*, etc.) imprinted an agonistic character on the encounters; they too no doubt contributed to 'poisoning' the atmosphere. It was therefore not enough for the Church merely to deal with heretical doctrines. Jesuits in any case thought purely ecclesiastical punishments laughably inadequate. Even the Church's *ultima ratio* of excommunication was scorned by heretics as 'thunderbolts without lightning';<sup>74</sup> it had as little effect on them as the excommunications handed down by their own churches. As Christoph Rosenbusch sarcastically remarked, no good Württemberger ever found that his beer tasted one whit the worse for a censure from his Protestant Church, and as for being banned from (otherwise compulsory) attendance at services, they positively welcomed it: 'I therefore say that heresies are not to be punished by excommunication alone; one must reach for other punishments as well, so that people will feel them'.<sup>75</sup>

Jesuits attached particular importance to the suppression of heretical books;<sup>76</sup> Ignatius had an especially inclusive conception of what fell within this category.<sup>77</sup> His instincts and those of his successor Laínez<sup>78</sup> differed not one iota from those of the ferocious Paul IV (Carafa), at whose instance the Roman Inquisition drew up the first Index of Prohibited Books of 1559.<sup>79</sup> The Council of Trent (session 24, ch. 21) in fact began to modify the Index, but typically left the matter for the papacy to sort out. A new Index, only marginally less unworkable, was issued in 1564 and another in 1571; they were apparently widely disregarded in Germany, even by good Catholics. But although the Church could independently issue an Index, forbid Catholics to read banned books on pain of mortal sin, and burn

<sup>74</sup> Bellarmine, *De laicis*, ch. 21, p. 341: 'fulmina frigida'.

<sup>75</sup> C. Rosenbusch, *Replica*, p. 125: 'Also sag ich/ muess man die Ketzereyen nit allein . . . mit dem Bann straffen/ sondern zu andern Peinen auch greiffen/ damit mans empfind.'

<sup>76</sup> Bellarmine, *De laicis*, ch. 20, p. 338: 'Oratio in libris scripta est magis composita, et artificii plena, quam quae in colloquiis usurpantur. Deinde . . . verba ore prolata mox transeunt; at verba in libris manent perpetuo . . . Praeterea libri magis sparguntur; potest enim aliquis per libros toti fere orbi terrarum simul loqui.' See also Gretser, *De iure et more prohibendi . . . libros haereticos*, 1603 (*Opera omnia*, vol. XIII, p. 82); p. 14 summarises the rules followed by the Society for almost sixty years.

<sup>77</sup> No use of books even suspected of heresy, or doctrinally unsatisfactory, or by suspect authors like Erasmus ('in odio authoris'), even on utterly neutral topics; such books included texts used in many Jesuit schools; see Scaduto, 'Laínez e l'Indice del 1559', pp. 2–31; on Erasmus, see especially Mansfield, *Phoenix of his Age*, chs. 2 and 6.

<sup>78</sup> Hilgers, *Der Index der Verbotenen Bücher*.

<sup>79</sup> Compare letters in *EpIlg* VII, pp. 398–404 and pp. 395–7 with *Fabri monumenta*, pp. 399–402. Carafa had been instrumental in the establishment of the Roman Inquisition in 1542, Ignatius urging him on (O'Malley, *The First Jesuits*, p. 311). The admirable Dalmases, *Ignatius*, pp. 195–6, 198–200, finds extenuating circumstances for Ignatius's 'severity', pp. 198–200; O'Malley is more convincing.

heretical books where prelates doubled as secular rulers, this could not prevent the literary diffusion of heresy. An effective censorship demanded the co-operation of the secular authorities. Books were private property, the livelihood of publishers and booksellers, and in some places a valuable export commodity. In these respects, they inevitably fell within the province of secular authorities, even on the narrowest interpretation of their jurisdiction.

But more generally, and more menacingly for the Church, rulers and magistrates might be heretics themselves, favouring heretics and persecuting their Catholic subjects. Heretical princes might combine in order to resist their sovereign, notably the Holy Roman Emperor; they might also support heretics in their rivals' territories, as Queen Elizabeth supported Philip II's rebellious subjects in the Low Countries, and as Gustavus Adolphus did with the German Protestants and Calvinists. Even without being the political masters, heretics might still be sufficiently powerful to secure toleration for themselves, for example in France.

A policy to cope with heretics, even if it was primarily spiritual or pastoral in intent, had therefore to invoke the assistance of secular rulers. Dealing with politically organised heretics demanded the deployment of a graduated range of punitive and repressive measures directed against the property, status, influence, preaching, publication, offices, persons, and even lives of heretics. As preachers, confessors, theologians, teachers, casuists, and agents of Catholic diplomacy, the Jesuits' own role in this regard was to recall to their religious and moral duty those rulers who were amenable to the siren-voices of the 'prudent of this world', because their faith was lukewarm, or because of their sense of the difficulties and dangers of a firm policy towards heretics. It is, however, an elementary principle of rhetoric that a message must be adapted to its intended audience, especially in this instance, when that audience was not *rudes et imperiti*, but political superiors, who were entitled to hold out for persuasives which took account of their special circumstances. And entitled or not, they *would* hold out for them.

It was, moreover, not even obvious that secular rulers needed to interest themselves in the matter. Some of what Jesuits taught could allow the inference that *Roma aeterna* was itself more than adequately equipped to deal with heresy. Heresy, they argued, cannot deliver what it promises. The doctrine of salvation by faith alone was supposed to lead to a certitude or assurance of salvation which (according to both Luther and Calvin) popish works and sacraments could never provide. But if heresy instead

only resulted in 'the curse of variety and uncertainty of doctrine',<sup>80</sup> it would eventually alienate even the most gullible. The two hundred heresies before Luther's time were almost all now extinct, so why should those of Luther and his brood not go the same way? Here once again the Jesuits' polemics were not orchestrated: 'innovators' was a popular synonym for 'heretics', but contradictorily, they were also accused of merely resuscitating old heresies already condemned by the Church fathers.<sup>81</sup> Either way, the ultimate triumph of the Catholic Church is providentially guaranteed by precisely the proof-text which is the principal support of the Petrine primacy: the gates of hell shall not prevail against it (Matt. 16: 18). The Church, it might seem, was well able to look after itself.

On this showing, and even leaving aside the implication of the disease metaphors that the 'victims' of heresy were to be pitied rather than punished, rulers did not need to intervene. Least of all rulers whose territories were 'ravaged' by 'heresy', where energetic measures against heretics involved grave risks and costs; in other words, precisely those rulers whose assistance Jesuits regarded as critical. Moreover, it was arguably very bad policy to make martyrs out of heretics. Ignatius himself had been sensitive to the point,<sup>82</sup> and the argument that it is not the suffering but the cause that makes a martyr<sup>83</sup> did not devalue the impression created by the fortitude of evangelical martyrs.

But to treat heresy as a purely ecclesiastical, spiritual, and pastoral issue would be to assume that secular rulers were entitled to ignore the beliefs, worship, piety, and spiritual welfare of their subjects, and that they *could* ignore heresy, as if heresy had no bearing on the well-being of the polity and their own safety. For Jesuits there was nothing to be said for either view. Heretics are not harmless private individuals with unorthodox views on some point of religious doctrine or worship. And the Church is not a group of traders touting for customers, or a confraternity looking for new members. Rather it is itself a *respublica* dealing with more or less disobedient

<sup>80</sup> Persons, *Ward-word*, p. 75<sup>v</sup>; also chs. 4, 5, 14, 16.

<sup>81</sup> E.g. Hay, *Certaines Demandes* (=ERL 33), demandes 32, 84–96; G. Torres, *Confessio Augustiniana*, Epist. Dedic.: 'Cum isti [the new heretics] ea fere doceant et scribant, quae iam olim Patrum Veterum . . . vel legitimorum Conciliorum auctoritate damnata et explosa sunt.' The fact that one of the Serenissima's spokesmen during the Venetian Interdict was called Marsiglio also proved irresistible.

<sup>82</sup> Letter to Canisius, cited n. 3: 'I do not speak of the ultimate (sc. death) penalty: since Germany it seems is not ready for such things.'

<sup>83</sup> E.g. Perpinya, *Orationes duodeviginti*, pp. 376–7: see the comments of Gregory, *Salvation at Stake*, ch. 4.

and recalcitrant subjects, a *respublica* of which rulers are also members and subjects.

Ultimately, what was required was an account of the proper relationship between the Church and secular commonwealths. More immediately what was needed was a convincing argument to interest rulers. There was no need to prove that they were responsible for the religion of their subjects. Catholics and most 'heretics' were equally convinced of it, and religion was as intertwined with the secular *civitas* as ever it had been in pagan and Jewish antiquity and throughout the history of Christendom, and for that matter Islam, the Empires of the East, and the New World. Nor did the rulers Jesuits addressed disclaim their *entitlement* to punish heretics and extirpate heresy, or deny the *desirability* of religious uniformity among their subjects. The question was what might be done or left undone when religious uniformity no longer existed.

Jesuits commonly asserted that princes had a *duty* to repress heresy and punish heretics. But there was no peremptory or incontrovertible scriptural imperative to this effect, not least because 'heresy' is not a scriptural category.<sup>84</sup> Any scriptural precept which was held to connote such a duty could therefore do so only inferentially, and therefore contestably. Even the seemingly promising Old Testament passages about false prophets did not yield an unambiguous conclusion, because it was highly contentious whether precisely this type of Deuteronomiac prescription still applied under the new dispensation. Furthermore, the judicial process for heresy, decisions about fiscal or corporal punishments, and the right to commute penalties and to pardon were all rights inseparable from the *imperium* or *summa potestas* of princes. There was nothing here that resembled an unconditional duty of princes to extirpate heresy and punish heretics. There was no natural law duty to repress heresy either. There could not be any such duty for rulers *per se*, since this would presuppose either (absurdly) that pagan, Muslim, or Jewish rulers must enforce Catholicism, or (heretically) that only Catholic rulers are truly rulers, which would be to found dominion on grace.

Again, traditional Catholic doctrine and practice and especially the position of Augustine, seemed to be unambiguous. Geronimo Torres in his (very early) Jesuit masterpiece, the *Augustinian Confession*, utilised an elaborate array of citations from Augustine, the heretics' chief patristic authority,

<sup>84</sup> The New Testament in the AV uses the term only twice: I Cor. 11: 19 (with 'sects' as a [correct] alternative; the Greek word referred to philosophical sects), and Titus 3: 10, where it seems rather obviously synonymous with schism, used in the previous line. I Tim. 6: 3–5 and the *tamquam cancer serpit* passage in II Tim. 2: 17 are only constructively and not expressly about 'heresy'.



to demonstrate the Church's 'right to compel heretics to return to the faith, with the aid of the secular arm'.<sup>85</sup> The conduct of admired ancestors, some of them canonised saints, of princes now reigning tended in the same direction.<sup>86</sup> But this could not resolve the question of whether and when departures from a punitive policy were justifiable.

Any justification for the duty to repress heresy could therefore be at best an *inference* from some moral first principle. The prospects for making out that it was an *unconditional* duty were correspondingly bleak. Any relevant moral principle would necessarily be exceedingly general, and no single moral principle however general could possibly cover a complex *policy* such as the repression of heresy, which necessarily involved all manner of different actions and decisions, and therefore a range of moral principles and *desiderata*, as well as circumstantial considerations. The axiomatic principle that evils might be tolerated *ad maiora mala vitanda* might leave rulers a very free hand indeed. And the distinction between the duties of rulers and those of the Church opened up a range of thorny jurisdictional issues on which there was controversy among orthodox Catholics, and even between Jesuits themselves, most conspicuously the *potestas indirecta* of the papacy to intervene in temporal matters. Thus, far from conducing to certitude about the justifiability of intolerance, this line of argument instead led into a political and theoretical minefield.

Jesuits (and others) sought to escape from these impasses by adopting the alternative course of arguing in terms of the *secular* benefits of religion, and the this-worldly, civil harm done to the commonwealth by heresy. Heresy in other words was not merely a sin, but a crime with profound political implications, and therefore there was as good (or better) reason for punishing heretics as for punishing murderers, brigands, or forgers. Such reasoning appealed to the objectives and goods that *rulers* took for granted, and was therefore the same kind of reasoning as that of 'reason of state', which by the 1580s had become *the* political vogue-word, and to which we now turn.

<sup>85</sup> *Confessio Augustiniana* (the title parodies the Lutheran Augsburg Confession), esp. pp. 59<sup>f</sup>ff, and ch. xiii, pp. 120<sup>f</sup>–130<sup>f</sup>.

<sup>86</sup> E.g. Scribani, *Politicus christianus*, 1626, ch. xx: 'Maiorum suorum [i.e. the current ruler of Belgium's] vitam moresque sibi proponat.'

*The confrontation with reason of state*

Reason of state seems to have become established as a term of art in the councils of princes at about the time of the Society's foundation. It had originally been an Italian coinage, but circulated readily wherever there was a vernacular equivalent for *stato*, that is to say in the Romance languages, in English and in Dutch, and more tardily where there was not.<sup>1</sup> It was eventually rendered in colloquial Latin as *ratio status*. What exactly the term referred to, however, remained highly ambiguous.<sup>2</sup> This was in part because both its components were themselves ambiguous. 'Reason' (in all the European variants for *ragion* and *ratio*) could mean 'reflecting about', a ground or reason for something, or a method or way of doing something, and 'state' meant a government or regime, or status, condition, or 'estate', notably the status, condition, or 'estate' of the prince. Reason of state could therefore mean thinking about or discussing the business of ruling, or the methods or ways of acting, or reasons for acting, that were typical of rulers or regimes. Giovanni Botero was the first to use the term as a book-title, in 1589. By that time it had come to be equated with 'Machiavellian' and 'Machiavellism',<sup>3</sup> etc., already well-established terms in the vocabulary of political abuse. Machiavelli's *Prince*, although (or because) it and all his other works had been placed on the first Roman Index of 1559, was widely available not only in older editions and reprints, but also in an increasing number of translations. Machiavelli was also well on his way to becoming a stage-villain and a literary stock-figure.<sup>4</sup> The invention of

<sup>1</sup> *Staatsräson* or *-raison* still recalls that the term was originally borrowed from France, not Italy. Stolleis, *Staat und Staatsräson*, p. 38, cites some German authors celebrating the fact that the virtuous and freedom-loving Germans had no word for 'reason of state'. They did by 1610.

<sup>2</sup> For a fully referenced interpretation of the problems relating to the identity of reason of state see my 'Orthodoxy and Reason of State', pp. 211–37.

<sup>3</sup> *Della ragion di stato*, ed. Firpo, pp. 51–2; all references below are to this edition.

<sup>4</sup> *Oxford English Dictionary*, entries for *Machiavel*, *Machiavellian*, *Machiavellisme*, *Machiavellist*, records uses of such terms in 1568, 1570, 1579, all of them suggesting they were already familiar; Clancy, *Papist*

an -ism for Machiavelli did not indicate any proliferation of similar writings, but merely the presumed existence of many covert disciples of Machiavelli and practitioners of his kind of statecraft. Even the seemingly neutral term 'politician' (*politique*, *politicus*, *politico*) could not long resist being made a synonym for Machiavellist or practitioner of reason of state.

'Machiavellian' was exclusively and universally a pejorative, a synonym for political duplicity, scheming, and the pursuit of power and glory, regardless of religious, moral, and legal constraints and considerations. The Society of Jesus in general and various of its members in particular soon came to be tarred with that brush, since their more hysterical enemies habitually accused them of seeking wealth, power, the favour of the great, in order to enhance their own greater glory, and make themselves masters of the world.<sup>5</sup> By the early seventeenth century, the Machiavellian Jesuit was already a cliché among the Society's host of enemies, Catholic as well as Protestant. A notorious forgery entitled *Monita secreta*, purporting to be the Society's most confidential instructions issued only to the highest-ranking Jesuits, ascribed to the Society an authentically Machiavellian guiding maxim: 'Finally the Society will seek to bring it about, by way of acquiring the favour of princes and persons in authority, that even those who do not love it, will at least fear it'.<sup>6</sup>

'Reason of state', *politicus* (etc.), and of course the generic term *politica* (for which the English idiom was increasingly 'matters of state') differed from 'Machiavellian' etc. in that they retained various neutral descriptive senses. Nevertheless, reason of state too unmistakably designated something that was morally compromised and suspect. It singled out those aspects of *politica* that were hidden from public view, the inner secrets of government, the mysteries of statecraft, the *arcana imperii*. Then as now Machiavelli's *Il principe* was regarded by many, and not only political outsiders, as opening a window on these matters. Vilifying one's enemies as practitioners of reason of state or 'Machiavellians' etc., however, was often no more than employing the old stereotype of the scheming, fawning, duplicitous courtier, but giving

*Pamphleteers*, pp. 168–9, records earlier (non-Jesuit) uses of 'Machiavellist' (1565), and 'Machiavellian State and Regiment' (1572); most *OED* examples are after 1590; e.g. Shakespeare, *Merry Wives*, III. I. 104: 'Am I subtle? Am I politic? Am I a Machiavell?'

<sup>5</sup> A charge current even in Ignatius's time; see Bertrand, *La Politique de Saint Ignace de Loyola: L'analyse sociale*, pp. 609–12.

<sup>6</sup> *Monita secreta* (Secret Instructions), ch. xvii, pp. 126–7 in a bilingual edition, London, 1723. The work of a renegade Polish Jesuit and stylistically indistinguishable from authentic Jesuit documents, it was first published in 1614, and continuously reprinted and translated under various titles, most recently (in a Latin and French edition which still maintains that it was authentic) in Paris in 1985.

it a more fashionable label. The religio-political civil wars in France and the Low Countries were clearly fertile ground for cynicism about claims to be acting from high religious or moral principle, or in the service of some noble cause. The way in which the vocabulary of 'interest' (perhaps yet another Italian export) was used to interpret political action and motivation (and increasingly also the acts and motives of private persons) is clear evidence of this pervasive *Ideologieverdacht*. 'I take it as read that in the deliberations of princes interest triumphs over every other consideration',<sup>7</sup> as Botero put it. According to the 'interest' thesis, whatever people may *say*, what they are *actually* 'after' is power, security, wealth, status, sensual gratification, and at best (or worst) glory, depending on whether they are, for example, *grandi*, members of the *popolo*, princes, courtiers, merchants, clerics, soldiers, etc. Initiates of reason of state were held to base their thinking and conduct on the lion and fox trope,<sup>8</sup> and on maxims and *bon mots* about the impossibility of governing with rosaries (or prayer-books, *paternosters*),<sup>9</sup> *nescit regnare qui nescit (dis)simulare* (a man who doesn't know how to dissemble, doesn't know anything about ruling), *necessitas non habet legem* (necessity knows nothing of law), and *oderint dum metuant* (it doesn't matter if they hate, so long as they fear).<sup>10</sup> Reason of state referred particularly to those situations where ordinary moral, religious, and legal decencies and constraints either could not apply, or at any rate were disregarded,<sup>11</sup> notably the traditionally amoral sphere of foreign policy.

#### JESUITS AND REASON OF STATE

With the publication of Antonio Possevino's *Bibliotheca selecta*, his commentary and annotated bibliography for the forthcoming *Ratio studiorum*, an aggressive anti-Machiavellianism became virtually the Society's official doctrine. Since Jesuit authors like many of their contemporaries

<sup>7</sup> Botero, *Della ragion di stato*, II.6: Capi de prudenza (p. 104): 'Tenga per cosa risoluta, che nelle deliberazioni de' prencipi l'interesse e quello che vince ogni partito.' Similar interpretations of *private* interests, e.g. *interesse particolare* (Guicciardini), 'particular [i.e. private, individual] interest' (Robert Persons), etc. were commonplace. Machiavelli for some reason never used the term.

<sup>8</sup> Cf. Stolleis, *Staat und Staatsräson*, ch. 1.

<sup>9</sup> Attributed to Cosimo de' Medici by Machiavelli, *Istorie fiorentine*, VII. 6.

<sup>10</sup> It was normally attributed to unnamed *politiques* and Machiavellians, since no one expressly endorsed it. Thomas Fitzherbert (*An sit utilitas in scelere*, ch. 6.10, p. 72) gave its source, namely Seneca, *De clementia*, I.12 and II.2, and *De ira*, I.20; Gentillet, *Anti-Machiavel*, p. 386, seems to have been the first to impute it, constructively, to Machiavelli.

<sup>11</sup> Fitzherbert recalled that in 1588, when he was in France, the justification for the murder of the Guise had been that 'the reason of state required it'; *The First Part of a Treatise concerning Policy and Religion*, ch. 4.5, p. 28.

gratuitously equated Machiavellianism with reason of state, that too became a target. Unless the two were equated, however, reason of state denoted esoteric, technical, or professional discussions about specific practical issues in statecraft. This was no more the Jesuits' business than, say, artillery or surgery. As we have seen, they specifically professed to eschew 'meddling in political matters'. In many other respects, too, reason of state was an uncongenial and intractable subject for them, both in form and content.

As to form, Jesuits found it typically exemplified in situation-reports (*relazioni*), deliberations in the councils of princes, *discorsi*, advice or *avvertimenti*, reflections, and *ricordi*,<sup>12</sup> rather than treatises. In so far as it sedimented universal propositions, these were not the universal truths that scholastic theology and jurisprudence dealt with, but cynical maxims or recognisably precarious generalisations, which needed to be interpreted and supplemented in the light of prudence, skill, and experience. And although its opponents treated reason of state as a doctrine or theory, there is no evidence that anyone, least of all Machiavelli, had by that time *theorised* the relationship between governance and moral, religious, and legal norms, unless gratuitous affirmations of their incompatibility are to count as theory.<sup>13</sup> The Society's 'rhetoricians' (writing in the humanist manner) were much better placed to deal with this kind of material than its theologians. But even they need a literary target for a literary assault. And there was simply no extant text for reason of state apart from Machiavelli's *Il principe*, or Innocent Gentillet's *Anti-Machiavel*, which was especially valuable in that it purported to reduce the odious atheist's unsystematic assertions to a set of manageable principles and maxims. But imputing to 'reason of state' generally the specific opinions, 'doctrines', and attitudes which were ostensibly to be found in Machiavelli was as gratuitous as finding a philosophical doctrine in Machiavelli in the first place. Reason of state was only articulated into something like a theory (and was also counterproductively given free publicity) when men like Botero, Possevino, Lipsius, Ammirato, Ribadeneira, Mariana, Persons, and Fitzherbert developed their own case about religion, morality, and policy by contrasting it with something which they had to a considerable degree invented.

As regards content, the presumptive or actual components of reason of state were by no means uniformly objectionable either. In so far as it presented itself as a *description* of the permanent features of the world which the

<sup>12</sup> The first editions of Guicciardini (five between 1576 and 1587, R. Spongano (ed.), *Francesco Guicciardini: Ricordi*, pp. xxiii, xliii–xliv) referred to *praecepta*, *sententia*, *precetti*, *sententie*, *consigli*, *avvertimenti*, *concetti*, *propositioni*, *considerationi*.

<sup>13</sup> Pace Stolleis, *Staat und Staatsräson*, p. 40, referring to Machiavelli.

statesman is compelled to inhabit,<sup>14</sup> it was unexceptionable to Jesuits. They had no reason to take exception to the kind of cynical and world-weary interpretation of political reality and of the motives of most politicians, or for that matter of people generally, that was thought characteristic of reason of state. Their own life-experience as confessors, fundraisers, preachers, pastors, teachers, ecclesiastical politicians, and organisers made it entirely plausible. As for the reason of state premise that rulers must have a knowledge of persons and circumstances, and a prudence which can be acquired only by experience and reading of histories, that was for Jesuits the most obvious of commonplaces. The salient feature of political reality, according to reason of state, is unpredictability (*fortuna*). Reasoners about matters of state might differ, as Guicciardini dissented from Machiavelli, both about the *extent* to which this unpredictability might be abated and also about the most apt *means* for reducing it.<sup>15</sup> But rendering matters of state more predictable and therefore potentially controllable evidently depended on reducing the number of controllers, ideally to a single prince, and crucially on pragmatic knowledge and prudent judgement of persons, details, and circumstance (and specifically 'interests'), in order to gauge accurately how different people would act in various circumstances. But Jesuits did not need reason of state to tell them about the prudent management of persons and circumstances.

'Reason of state', furthermore, was from the beginning used largely in the service of 'absolute' princes. But most Jesuits, too, supported monarchy and absolute princes wholeheartedly. They often used 'absolute monarchy' as a term of approval without any qualms;<sup>16</sup> the linguistic memory of its provenance in *princeps legibus solutus* was clearer. 'Absolutists' in any event took the binding force of *some* moral and possibly even legal limits for granted. Not even Machiavelli's *Il principe* or Guicciardini's *Ricordi* asserted that politics not only *was* but *should be* a religion-, law-, and morality-free zone.<sup>17</sup> 'Absolute' monarchy was therefore not for Jesuits the

<sup>14</sup> Stolleis, *Staat und Staatsräson*, pp. 47–51, makes clear that this is how reason of state was presented for exoteric purposes.

<sup>15</sup> Guicciardini probably had Machiavelli in mind when he derided the idea of imitating the Romans as the road to success, *Maxims and Reflections of a Renaissance Statesman*, Series C, No. 110.

<sup>16</sup> See for example Fitzherbert, *The Reply of Thomas Fitzherbert*, 1614, p. 90 and ch. ix throughout.

<sup>17</sup> In his otherwise admirable *Staat und Staatsräson*, p. 7, Stolleis makes one of the identifying features of early modernity as a distinct epoch (especially from the point of view of the historian of public law) the '*Freisetzung* des politischen Handels und Denkens von religiösen und moralischen *Bindungen* und die dadurch ermöglichte Selbstreflexion und *Verrechtlichung* machtpolitischer Interessen' (my italics). The plausibility of this masterly (and untranslatable) summary of Max Weber's *Politik als Beruf* rests entirely on radical ambiguity. *Freisetzung* (setting free) might imply: so as to allow new, more nuanced links to be formed, or: releasing from intolerable and unwarranted burdens; *Bindungen* (links, ties or constraints) might imply: the severing of links which were too

abomination depicted by Huguenot monarchomachs before their Navarrene conversion. On the contrary, most of its features were unobjectionable to them, and even matched point for point their ideas of monarchy and good order.<sup>18</sup> Moreover, the rulers of Europe and even of Italy in the later sixteenth century all had *some* pedigree; these were not Cesare Borgias. Their legitimacy therefore no longer depended purely on their personal qualities or on 'Machiavellian' methods. Machiavelli himself had acknowledged (*Il principe*, ch. 2) that such methods were not necessary, or not as necessary, for 'old' princes and established polities. Not a few Catholic princes of the time, furthermore, were of the most profound moral and religious seriousness, a possibility Machiavelli seems to have been incapable of conceiving. Legitimizing the rule of such 'absolute' princes was therefore by no means an impossibly difficult operation.

Again, reason of state invariably viewed the exercise of authority from the perspective of princes rather than subjects. But those Jesuits who were in a position to obtain a *permissus superiorum* to write on sensitive political matters had usually themselves exercised authority within the Society; some of them were or had been confessors of princes. They were therefore well aware that governing was a matter of consummate difficulty and hard choices. Jesuit casuistry (the science of moral guidance) did not impose impossible burdens on consciences, least of all on the consciences of princes on whom the temporal welfare of the *respublica Christiana* largely depended.

As moral theologians, casuists, confessors, and ecclesiastics, Jesuits were certainly obliged to take a stand on the permissibility of deceit and (dis)simulation, on the closely related matter of the sacrosanctity of promises, pacts, treaties, etc., as well as on religious toleration and the rights of the Church. In so far as reason of state was unsound on these topics, they had therefore to address it. But Machiavelli had achieved victory for his version of the 'effective truth of things' by contrasting it with a simple-minded moral absolutism which was perhaps taught by some mirrors of princes and primary-school moral education (not that he seems to have known much about the former or much more about what moral thinking looked like than the latter). But all this had little to do with

tight, or: the abandonment of constraints, whether these are in themselves desirable or undesirable; and *Verrechtlichung* means giving legal form to 'macht-politischen Interessen', presumably in total abstraction from religious or moral substance. Since the reasoners of state of our period were not in the least interested in reconstituting the political order as a moral or religious vacuum, I see no point in using Stolleis's sentence as a mark for recognising either the epoch or the 'reason of state' which it intends to paraphrase (to say nothing of its implicit essentialism); still less do I see any reason to applaud any Nietzschean and anti-religious intimations that might be found in *Staatsraison*, which is what Stolleis is doing here, the equivocations notwithstanding.

<sup>18</sup> Evennett, *The Spirit of the Counter-Reformation*, esp. pp. 80–3.

Jesuit moral reasoning. Their casuistry and moral theology provided a great deal of latitude for sanitising otherwise objectionable maxims and practices endorsed by reason of state, given the right sort of prince. In fact it was only the issue of religious toleration that brought the Society into direct confrontation with reason of state, and then only at the purely polemical level.

#### THE PROTOTYPICAL DISCUSSION: BOTERO

All that has been said is well illustrated by the first orthodox treatment of reason of state, the former Jesuit<sup>19</sup> Giovanni Botero's *Della ragion di stato*, which was an enormous publishing success.<sup>20</sup>

First, far from launching an all-out attack on reason of state, Botero was uncertain whether he intended his work to indict it or to teach it. In his letter of dedication, he expressed consternation at finding 'that reason of state is everywhere talked of, and Machiavelli and Tacitus . . . are cited as authorities for it, the former for his lack of scruple and conscience (*poco coscienza*), the latter for his extenuations of tyranny and cruelty, under the barbarous pretext of the *legge di maestà*' (pp. 51–2).<sup>21</sup> He deplored the common expression 'that some things are permitted by Reason of State and others by conscience'.<sup>22</sup> But at the beginning of Book I he defined reason of state in an entirely neutral sense, with no mention of Machiavelli or Tacitus, as knowledge (*notizia*) of the means suitable for founding, or more strictly, conserving (since reason of state presupposes the prince and the state) and increasing a *dominio*; he defined a 'state' as a 'stable dominion over peoples' (*un dominio fermo sopra popoli*, bk I.I, p. 55). On this definition, his whole book was itself an exemplary illustration of 'reason of state'.<sup>23</sup> Botero henceforth rarely referred to Machiavelli again, but silently

<sup>19</sup> Giovanni Botero (1543/4–1617) left the Society in 1580; while he remained a member, his superiors were undecided whether to dismiss him or to raise him to the rank of the Professed. His will in 1613 made the Society his testators and beneficiaries and he was buried in the Jesuit Church at Savona. He was for some years the Vice-curate of Carlo Borromeo, thereafter diplomat for Carlo Emanuele I of Savoy to the Ligue, and finally served Cardinal Federico Borromeo (the nephew of Carlo).

<sup>20</sup> There were ten editions during Botero's lifetime, and forty-two reprints in the seventeenth century; Firpo, *Della ragion di stato*, pp. 460–1.

<sup>21</sup> Stolleis, *Staat und Staatsräson*, ch. 2, esp. p. 39: 'Arcana und *ratio status* treten also in der politischen Sprache jener Zeit gemeinsam auf . . .'; cf. also p. 45 on Machiavelli and Tacitus as 'Geistesverwandte'.

<sup>22</sup> Botero, *Della ragion di Stato*, Dedication, p. 52: 'vedere che così barbara maniera di governo fosse accreditata in modo, che si contraponesse sfacciatamente alla legge di Dio, sino a dire *che alcune cose sono lecite per Ragione di Stato, altre per coscienza*' (my italics).

<sup>23</sup> The pejorative meaning of reason of state resurfaced when the proximity of Machiavelli reminded Botero of it: 'io non so con che giudizio la ragion di Stato si mostri più nimica de' Cristiani, che de' Turchi o d'altri infedeli: il Machiavello . . .' (x.9, p. 338); 'deve il principe cristiano . . . drizzare una ragione di Stato contraria alla legge di Dio, quasi altare contra altare?' (II.15, pp. 134–5).



appropriated much material from him, equipping it with a legitimization which was entirely in keeping with the consequentialist ethic characteristic of Jesuit moral theology.

It was self-evident to Botero that 'there is nothing more necessary for imparting perfection to [a prince's] prudence and the good management of the commonwealth<sup>24</sup> than experience, the mother of this virtue' (p. 98). To establish his own credentials, he cited his own 'years of travel and political *practicare* in the courts of kings and great princes'. But he safeguarded the practical value of scholarship with a pleasing metaphor. Experience acquired at first hand is necessarily narrow in range, whereas history is 'a vast theatre where a man learns what is useful to him, while the expense [of acquiring this knowledge in the first place] is borne by others' (p. 99). His work was replete with illustrations from history, especially ancient history, treated by Botero as a storehouse of authoritative exemplars and lessons<sup>25</sup> in just the same, entirely conventional manner that Machiavelli had treated it.

Botero's overriding concern was with the maintenance and expansion of *lo stato*. His premise was that the principal foundation of a state is the obedience of subjects to their superior (p. 67) – another impeccably Jesuit sentiment. Keeping subjects obedient obviously requires both power and personal qualities in the ruler, notably eminence in justice, *umanità*, *cortesía*, *clemenza*, etc., but principally prudence and valour (p. 95). Botero devoted much space to the sciences suitable for 'refining' prudence: 'moral philosophy', which yields knowledge of the passions, inclinations, and habits of people; *la politica* (philosophy is understood) which teaches how to govern (*temperare*) or second these passions (p. 95), a knowledge of geography, since it affects the character of people (II.2) and different climes even conduce to different heresies (p. 102). Eloquence, the governor of minds, *temperatrice* of commonwealths, *manneggiatrice de' popoli*, is also required (p. 66). Lest he seemed to be outlining the Jesuit curriculum rather than a prince's education, he added (p. 97) that even the busiest of exemplary rulers, such as Alexander the Great, Julius Caesar, and Charlemagne, always found time for study, as well as encouraging learning in others.

But for Botero the decisive connection between the ruler's virtues and actions and the subjects' obedience was *riputazione*. He devoted two entire chapters to 'the means for preserving one's reputation' (II.II), and to 'those princes who, because of the greatness of their reputation, have been

<sup>24</sup> *Repubbliche*, here translated as 'commonwealths', is Botero's generic term for state or polity.

<sup>25</sup> Even Hobbes was still wheeling out this cliché some fifty years later: 'For the *principall* and *proper worke* of History being to instruct, and enable men, by the knowledge of Actions *past*, to beare themselves prudently in the present, and providently towards the *Future* . . .' (italics in the original); *Eight Bookes of the Peloponnesian Warre*, 1629, Preface.

accorded the title “Great” or “Wise” (II.12), adding two more chapters in subsequent editions. He commended the specifically princely virtues in the edifying manner characteristic of the mirror for princes literature, but even there observed that it is by these that ‘the prince can make himself both loved and held in high regard (*riputare*): these two things are the foundations of every government of a state (*ogni governo di Stato*)’ (p. 147). And when he dissented from Machiavelli, it was always in part because he disagreed with him about what the preservation of a prince’s *riputazione* required.

The concern with reputation *inter alia* entailed short shrift for Machiavelli’s rejection of some other traditional princely virtues, notably liberality, associated with magnificence and patronage, which Machiavelli had unaccountably neglected though no Renaissance prince ever did: ‘The prince should display magnificence in all his doings’, engaging in ‘honourable and magnificent enterprises’, especially public buildings and works.<sup>26</sup> Deliberately contradicting Machiavelli, Botero praised *liberalità* (I.20) as a most royal virtue, especially when it promoted men outstanding in virtue, arts, and letters. But he immediately pointed to the tangible benefits that redound to the prince from such patronage: these men ‘are as it were the heads of the multitude, which depends on them for the judgements it makes’ (p. 92). And of course princely liberality must not impoverish him or the state (p. 150). (Contzen later commented caustically that no one with even a smattering of moral philosophy could confuse the virtue of ‘liberality’ with the profligacy and imprudence that Machiavelli condemned.<sup>27</sup>) Also commendable for enhancing *riputazione* and the subjects’ love are: justice in the allocation of honours and burdens (I.15–16); the practice of being economical with words, as opposed to deeds; not showing oneself dependent on the advice or work of any one else; avoiding enterprises which are beyond one’s capacities (p. 123). Valour, too, is commendable

<sup>26</sup> *Della ragion di stato*, II.11 (p. 125): ‘Mostri in ogni operatione magnificenza, con lo spendere in cose ornate largamente; ed onorate sono quelle che appartengono, o al culto di Dio, o al beneficio della republica e all’occorrenze straordinarie’; cf. also I.19–22. Contrast Machiavelli, *Il principe*, ch. 17: ‘De liberalitate et parsimonia’.

<sup>27</sup> Contzen, *Politlicorum libri decem*, III.9.2 (with *Prince* chapter reference), but he explicitly concurred with Machiavelli’s condemnation of the prince ‘who in order to retain the reputation of beneficence, dissipates everything and then has to resort to looting and rapine’. In ch. 14 he praised parsimony as (s. 1): ‘fons . . . et nervus liberalitatis’. Same point in Ribadeneira, *Princeps christianus*, bk II, ch. 20 (esp. pp. 391–2); Mariana, *De rege et regis institutione* (1605), bk II, ch. 17 (p. 183); Botero, *Della ragion di stato*, I.22; Scribani, *Politicus christianus*, ch. v, p. 40: ‘Frequentia tamen potius, quam magna, munera largiatur . . . Neque unquam eo se deducat, ut universum munificentiae fontem exhauiat . . .’; and *Superior religiosus*, ch. XI, p. 102: ‘Licet opes profundere in Principe malum sit, peius tamen est nulla largiri.’

because of its importance for *mantener lo stato*; it too gives rise to *riputazione*. So is keeping one's word (pp. 120–1). Botero particularly prized *secretezza* (II.7), secretiveness and keeping one's own counsels: indeed he said it renders a prince 'God-like', on the obviously Machiavelli-derived ground that 'men, ignorant of the thoughts of the prince, remain in suspense and in great expectation about his designs' (p. 124). Equally the prince is not to embark on innovations or changes (II.9): 'There is nothing more hated in governors, than changing things which on account of their antiquity have acquired *riputazione*' (p. 117). But because 'the people is in its nature unstable and addicted to novelties', merely providing peace, justice, security, and abundance is sometimes not enough, and various means must be found to entertain and divert them. Useful for this purpose are great enterprises both civic and more especially military. A prince must have a special care of the poor, because of the threat posed to public peace by those who, because of their misery and poverty, have no 'interest' (*interesse*, p. 170) in it. The prince must also use every possible means to ensure that newly acquired subjects have *interesse* in his state (*dominio*) and government (p. 175).

The rest of the work (books VII–X) dealt at length with the largely technical questions of policy that also fascinated discussants of 'reason of state': ways and means to maintain and increase a prince's resources: armed men and armaments, treasure, the flourishing of population, agriculture, and the industry of the subjects. Notoriously, Machiavelli had been profoundly unconcerned about matters of finance and wealth, unlike reason of state for which they were central;<sup>28</sup> Botero was far more up to date. But like Machiavelli he also dealt with successful and unsuccessful policies in war and peace, such as the use of fortresses, garrisons, colonies, subversion, treaties; military morale and discipline; the selection and supervision of office-holders; whether it is better to be bold or cautious, etc.

In sum, Botero's reason of state and Machiavelli's differed neither about the prince's objective or end, namely *conservare lo stato* (his own position and the integrity and perhaps increase of his *dominio*), nor about the concern with *riputazione*; the only differences between them were on points which were not moral but technical, so to speak. There remained, however, one politico-moral issue on which the two kinds of reason of state might be irreconcilable, and on which the irredeemably pre-Reformation Machiavelli himself (although he lived till 1527) had absolutely nothing to say: namely, dealing with heretics.

<sup>28</sup> Bireley, *The Counter-Reformation Prince*, pp. 63–9.

Botero provides a paradigm example of the political case for religious uniformity and intolerance which is discussed in the next chapter. What must be noted here is that although Botero's argument was informed throughout by Tridentine Catholic convictions and attitudes, it was premised almost entirely on what the conservation of a prince's *stato* requires. He did indeed advance the providentialist argument that no prince can hope for a happy outcome (*succeder felicemente*) to his enterprises if he neglects God, the author of felicity (pp. 135–6). This, however, was entirely subsidiary to his main argument, which was that in a well-ordered state there can be only one religion, and that the true religion is also the best civic religion. There is, Botero says, 'nothing which sets men more at variance one with the other, than difference or contrariety of faith' (p. 179). And whereas Catholics have proved obedient even under the worst oppressions, the followers of Luther, Calvin, and the rest everywhere foment contentions, *revoluzioni di Stati*, and the ruin of kingdoms (p. 138). True religion teaches obedience.

His recommendations about how to deal with heretics in effect restated Jesuit orthodoxy about the graduated response.<sup>29</sup> Conversion must be the first step. What is especially needed is schools and teachers, and suave preachers of irreproachable lives and sound doctrine. Botero particularly commended the work of the Society of Jesus in 'Germany' (presumably in a broad sense) and Latin America, and the princes favouring it, such as Joao III of Portugal (p. 180). But with Calvinists, whom Botero linked with Muslims under the title of *indomiti* (the unsubmissive), the policy of enticing (*invitar*) people to the faith does not work; left unsuppressed they would turn everything both public and private upside down (pp. 181–2). His main concern was with how to deal with their leaders and their publicity (p. 182). And here Botero's piety only thinly disguised a readiness to set aside moral and legal constraints which was as icy as Machiavelli's. In best Jesuit fashion, he observed that heretics must be deprived of preachers, books, and printing presses: if Antiochus forbade the Jews their Bibles and Diocletian did the same to the Christians, how much more reasonable is it for us to burn the books of Calvin and other similar disseminators of impiety and upheavals (p. 194)? But the most effective methods for dealing with the *indomiti*, as with *Feudatori*, *Grandi* (IV.5–6), factions, and foreign enemies,<sup>30</sup> are to destroy their morale, weaken their forces, and keep them divided.

<sup>29</sup> See above pp. 74–6, 78–82.

<sup>30</sup> Bk vi, ch. viii is entitled 'Del mantener fazioni e pratiche [i.e. machinations] tra' nemici'.

Destroying their morale ('abasing their spirits') is done partly by denying the heretics the splendour and prerogatives of nobility, and any office or distinction that has anything great, grave, or magnificent about it; they are to be restricted to degrading tasks or mechanical work like agriculture, artisanship, or buying and selling. These tie them to the soil or shop and make them glad of peace. But since even abased spirits are capable of resurgence when they acquire power, they must also be deprived of such power. Their young men and leaders are to be held as hostages. They are to be denied instruments of war (use or manufacture of arms, control of strongholds) and money ('the means to acquire or make such instruments', p. 185). But all this is of no avail if heretics are allowed to unite: Botero remarks that nothing serves more to raise spirits than a united multitude, where each animates everyone else (p. 191). The way to disunite them is to remove the inclination and opportunities for co-operation. Apt means to this end are 'fomenting suspicions and mutual distrust among them, so that none of them will take the risk of revealing himself and trusting to another'. One way of doing so is to discredit their most respected leaders,<sup>31</sup> if they give occasion – here Botero recovered himself sufficiently to warn against 'injustice', characteristically on the ground that it is counterproductive. Secret and trusted spies are said to be quite useful for fomenting suspicions (pp. 191–2). As a (presumably exemplary) illustration, Botero cited the secret tribunal instituted by Charlemagne in Westphalia, which exercised summary jurisdiction and carried out instant executions, without any other legal process, on the word of spies (p. 192). In any case, such leaders must not be allowed to form councils or public assemblies of any kind. Finally measures must be taken to prevent union between the heretics of different countries, if possible (emulating the Chinese and the Muscovites) preventing heretics from travelling abroad (v.8).

But such policies are of no avail where heretics are already politically powerful. Botero now turned to the topic of religious toleration, in a chapter (v.9) entitled: 'Of the means to quieten upheavals already under way', which included a clear echo of Machiavelli: 'An evil which at first is like a little stream which can be crossed on foot, acquires might and becomes formidable as it progresses' (p. 201). He dismissed toleration in a few lines, alluding obliquely to the *politiques*: 'Nowadays there are some, as impious as they are mad, who give princes to understand that heresies have nothing to do with *la politica*' (p. 336). Even heretics know better than this, for

<sup>31</sup> He remarked on the dangers posed to commonwealths (*repubbliche*) and monarchies by 'the immoderate greatness of individuals', like Gaspar de Colligny (pp. 165–6).

they do not tolerate Catholics in their dominions (pp. 336–7). But Botero himself elsewhere casually allowed that the best course for a prince who lacked power to deal with heretics by force was to temporise and allow the upheavals to blow over, which they would do once the multitudes lost their leaders. If nothing else works, ‘it is better to concede some or all of their demands, for there are two foundations of rule and government: love and reputation . . . And indeed it can help your reputation if you use artifices to create the appearance that you actually welcome what you cannot in fact prevent, and that you are giving out of love what is in fact being extorted from you by main force’ (p. 199). But the prince should aim to spread disunion among the leaders, after the example of Louis XI of France,<sup>32</sup> and if possible to banish leaders of both factions from the Court (as Henri of Guise and Colligny were banished). If that does not work, the king – not ‘prince’; Botero plainly had recent events in France in mind – must make himself the head of the most powerful faction, as Henri III made himself head of the Ligue (p. 201).

Even this was not his most casually ‘Machiavellian’ advice. For under the heading of ‘Warlike Enterprises’ (III.3), the philohispanic Botero contrasted the peace and harmony of Spain with the chaos of France, attributing the difference to the fact that the rulers of Spain had directed the energies of their peoples into foreign wars and enterprises (including of course intervening in the French civil wars), whereas the French devoted these energies to tearing one another to pieces. His fine words elsewhere about the only just war being a defensive war (p. 336), and about how the morale of rulers and captains depends on a good cause, did not prevent him from recommending wars abroad as the best means to attain tranquillity at home. But then, as Botero pointed out, there was always a real and potentially unifying enemy at the gates, namely the Turk. He concluded by reproaching Machiavelli for never opening his mouth against the Turk (p. 338), and ‘reason of state’ and *la politica moderna* for collaborating with the Turk against fellow-Christian princes (pp. 337–40).<sup>33</sup>

So for all Botero’s ostentatiously anti-Machiavellian stance, he never genuinely confronted Machiavelli’s position, because on his premises and arguments an orthodox prince may always do with a good conscience what

<sup>32</sup> Botero attributed to him (seemingly with approval) the maxim: ‘Qui nescit dissimulare, nescit regnare’ (p. 186), and often used him as an example.

<sup>33</sup> Baldino, ‘Botero et Lucinge: les racines de la raison d’état’, in Zarka, *Raison et déraison d’état*, has elegantly traced the mutual connections between Botero and René de Lucinge, and their common obsession with the Turks.

Botero accused Machiavelli of recommending with no regard for conscience at all. Secret trials, divide-and-rule policies, defamation of character of enemies, and all the rest were all legitimate when done in a good cause. Botero (unlike some casuists) inclined to a particularly indulgent interpretation of the permissibility of simulation, dissimulation, *secretezza*, equivocation, and stratagems;<sup>34</sup> indeed he saw no problem here at all.<sup>35</sup> It was only on breach of promises and treaties, and outright lying, that Botero dissented completely from Machiavelli, in passing, and in connection with preserving one's *reputazione* (II.11, p. 121). In short, even this was at least in part a disagreement of experts who spoke the same language.

The groundwork done by Botero allowed other Jesuits to approach reason of state in general and toleration in particular much more systematically. He had simply not taken seriously the possibility that the means, or intermediate ends, conducive to the princely ultimate end of *conservare lo stato* might be incompatible with the dictates of religion and morality. He argued *ad hoc* that they were *not*, whereas Machiavelli had argued equally *ad hoc* that they *were*; there is no need to consider here whether the lack of 'conceptual elaboration' and 'adequate speculative vigour' that Firpo rightly imputes to Botero<sup>36</sup> is not also imputable to Machiavelli. Botero's Jesuit successors were better casuists than he was, and they were also much more concerned with the issue of toleration and the *politiques*, whose policy Botero had casually endorsed *en détail*, while deploring it as impious and ill-conceived *en gros*.

#### MACHIAVELLIANS, *POLITIQUES*, ATHEISTS, REASON OF STATE: THE ANTI-TOLERATION ORTHODOXY

The permissibility of toleration was the most substantial issue in contention between Catholic orthodoxy and reason of state. It had been a running controversy in the Holy Roman Empire ever since the Peace of Augsburg of 1555. The Peace had been resisted at the time by the spiritual estates and the episcopal electors of Mainz, Trier, and Cologne, and was only accepted grudgingly by the papacy, apparently on the advice of Francisco Borja (himself in turn advised by Nadal, Canisius, and Ledesma).<sup>37</sup> Ever after,

<sup>34</sup> In bk ix, ch. 22, he said briskly that 'li stratagemmi belici non solamente sono leciti, ma di grandissima lode a' capitani'.

<sup>35</sup> He merely defined simulation and dissimulation in the chapter on *secretezza* (p. 113) and noted that Louis XII and Tiberius attached the greatest importance to them. See below, pp. 150–5.

<sup>36</sup> Botero, *Della ragion di stato*, ed. Firpo, Introduction, pp. 17, 18. <sup>37</sup> See below, pp. 134–5.

hard-line Catholics tried to find ways of limiting the application of the Peace or achieving its revocation. In France, toleration had been government policy on and off since 1560. There was also a persistent prospect or practice of toleration as a means to the pacification of the religious wars in the Netherlands, and toleration of sorts in Austria, Hungary, and Poland.

Those Jesuits who went into print in increasing numbers from the 1580s onwards almost all upheld the ultra position as regards France, the Netherlands, and the Holy Roman Empire, at least as far as toleration of Calvinists was concerned. They were by no means alone: by comparison to the attitude of several popes the Jesuits' position was often a model of moderation, and in the Holy Roman Empire the most prominent work opposing toleration was the layman Andreas Erstenberger's *De Autonomia* (1586).<sup>38</sup> Jesuit hostility to toleration was sharpened by the fact that pacifications on the basis of toleration sometimes also involved the convening of some 'national' (that is, territorial) council of clergy and princes and magistrates, in the hope of a purely 'national' religious settlement; notably the Colloquies of Poissy (1561) and St Germain (1562). Huguenots standardly advocated a national council as a means to restore peace in France. In the Jesuit view, the successful conclusion of the Council of Trent in 1563 had removed any possible justification there might have been for such local settlements. But even in 1561 at Poissy, Laínez flatly told Catherine de' Medici, in Italian and in public, that the various parties assembled at Poissy should have put their case to the Council Fathers, and that she should not have permitted meddling in matters in which she had no authority.

But the Jesuits' particular animus was directed against those, mostly Catholics, described pejoratively as *politiques* in France from the early 1560s onwards.<sup>39</sup> And it was the issue of toleration that forms the basis of a whole nexus of equations and connections which they eventually called false, impious, and Machiavellian reason of state. The chronological order in which this nexus was established seems to be this: before Jesuits ever came

<sup>38</sup> *De Autonomia, dass ist, von Freystellung mehrerlay Religion und Glauben*; the title means roughly 'allowing free choice between various religions and faiths'. Possevino provided a lengthy and eulogistic précis in the *Bibliotheca selecta* (1593) from a never-published Latin version he had read in Bavaria (p. 125).

<sup>39</sup> Lecler, *Histoire de la tolérance*, II, p. 74, cites Cardinal de Granvelle in 1564 referring to Coligny as 'plus politique, comme ils appellent en France, que . . . dévot' (my italics). *Politique* does not seem ever to have been adopted as a self-identification; after Henri IV's stunningly successful consolidation of his authority, toleration became state policy and no longer needed or tolerated a party-label.



on to the polemical scene, 'Machiavellian' was already a term of abuse. Machiavelli had been identified ever since Cardinal Pole and Bishop Osorio with treating religion as merely an instrument of statecraft. This, however, was also the original sense of the term *politique* as a pejorative. There was therefore nothing to prevent equating *Machiavellian* and *politique*, which from the 1580s became a Jesuit (and Ligue) commonplace. The equation was utterly tendentious, since Machiavelli in fact had said nothing about either toleration or the enforcement of orthodoxy.<sup>40</sup> At first Jesuits followed their opponents in seeing policies of intolerance and persecution as exemplifying Machiavellianism. Subsequently, however, they came to see tolerationists and *politiques* as the real Machiavellians. From there they moved on to ascribing 'atheism' to heretics and *politiques*; the attribution of 'atheism' to Machiavellians was already well established. 'Reason of state' was then added as a redescription of 'Machiavellianism', but it shortly after became the summary term for the entire nexus of beliefs, motives, and policies which Jesuits tendentiously imputed to their opponents.

#### PERSECUTION AS 'MACHIAVELLIANISM'

In fact it was Huguenots, not Catholics let alone Jesuits, who pioneered the use of Machiavelli in connection with toleration. However, they represented Machiavelli as by implication an *enemy* of toleration and an apostle of *persecution and extermination*. After the St Bartholomew's Day Massacre, Huguenots had finally despaired of the Queen Regent, Catherine de' Medici and her son Charles IX. To condemn Catherine, to whose father Machiavelli's *Prince* had been dedicated, by associating her, the king, and various unidentified Italian or Italianised courtiers with the poisonous writings of Machiavelli was an obvious guilt-by-association gambit.<sup>41</sup> In most tracts this was at best a sub-theme.<sup>42</sup> But *Le Tocsin contre les massacreurs et auteurs de Confusion en France*, which made the Guise family and Catherine de' Medici responsible for the Massacre, saw the Queen Mother as especially addicted to 'this atheist Machiavelli, whose end was to teach the Prince to make himself feared rather than loved, and to reign in

<sup>40</sup> He did refer to the expulsion of the Marranos under Ferdinand, with admiration for the political skill involved and contempt for the substance of what was done; *Il principe*, ch. XXI, p. 90.

<sup>41</sup> Catherine did have a circle of Florentine political advisers who were avid students of Machiavelli (Tuck, *Philosophy and Government*, pp. 42–3).

<sup>42</sup> Most of the tracts in the Simon Goulart three-volume Huguenot encyclopaedia, *Memoires de l'estat de France sous Charles neufiesme*, 'Meidelberg', n.p., 1576–8, hardly mention the theme.

grandeur, rather than to reign well'. It described *The Prince* as 'the Queen Mother's Gospel', claiming that her councillor Morriliers had it always to hand, and that she brought up the princes royal on it.<sup>43</sup> This theme was absolutely central to Innocent Gentillet's (anonymous) *Anti-Machiavel* of 1576.

Gentillet, too, directed his fire at Machiavelli and unnamed Italians and Machiavellians at court, and at the manner of government *à l'italienne ou à la florentine* which had prevailed since the death of Henri II (i.e. since Catherine's regency). He held them all responsible for most of the evils afflicting France, and for inspiring the Massacre.<sup>44</sup> He also standardised the interpretation of Machiavelli as an atheist.<sup>45</sup> But the Huguenots in the aftermath of St Bartholomew could not afford to antagonise the moderate Catholics, since without them there was no prospect of the Huguenot minority surviving in France. So in one place Gentillet dismissed the claim that the practitioners of 'Italian' politics were 'papists': 'in their hearts [they] care nothing about either God or the devil or the pope, or the papacy or any other religion, but are instead true atheists . . . like their master [sc. Machiavelli], although they dutifully go to mass, and know very well how to put on an appearance. In this they show the world how much they have profited from the *philosophie machiavelline*'.<sup>46</sup> But Gentillet's eirenic overtures towards Catholics depended on his claim that there was no essential difference between Catholic and Reformed religion, which few Catholics were likely to find persuasive.<sup>47</sup>

The first *Catholic* writers of this time who found Machiavellianism too good an accusation to pass up, also initially associated Machiavellianism with persecution and killing, this time of English, Scots, and Irish Catholics by the government of Elizabeth. They represented as a Machiavellian subterfuge its justification that Catholics were being punished for the crimes

<sup>43</sup> Anon., *Tocsin*, Rheims: Jean Martin, 1579 (original 1577), p. 54; p. 161: 'La Roynne Mere avoit apris ceste leçon tyrannique de son Machiaveli, que le Prince doit plustost maintenir son estat par rigeur, que par douceur . . .'. The same theme in 'Eusebe Philadelphie Cosmopolite', *Le Reveille-Matin des Francois, et de leurs voisins*, 'Edinburgh', 1574, pp. 40, 98; and more extensively Anon., *Discours merveilleux de la vie, actions et deportments de Catherine de Medici*, s.l., n.p., 1575.

<sup>44</sup> Gentillet (anon.), *Discours sur les moyens de bien gouverner et maintenir en bonne paix un Royaume ou autre principauté . . . Contre Nicolas Machiavel Florentin* (1576); cited from Rathé (ed.), *Innocent Gentillet: Anti-Machiavel*, 1968, pp. 36–8, 473, 592. See also Gentillet's (equally anonymous) *Brieve Remonstrance à la noblesse de France*, pp. 149–50, where Catholicism, Machiavelli, and atheism are linked; for other anti-Machiavellian Huguenots, see Skinner, *Foundations*, II, pp. 307–9.

<sup>45</sup> Stewart, *Innocent Gentillet*, p. 82, fn. 16. <sup>46</sup> *Anti-Machiavel*, p. 536.

<sup>47</sup> He classified the papacy, good works, the sacraments, transubstantiation, and the sanctity of religious orders as inessential; for the eirenic mask slipping see e.g. part II, Preface, pp. 171ff, 178ff; Maxim VI, and pp. 570ff.

of treason and disloyalty,<sup>48</sup> not persecuted for their religious beliefs. One Catholic reply was that the English government was here revealed in its true colours as Machiavellian, caring nothing at all about religion. Here the Huguenot interpretation of Machiavellian politics was simply appropriated, but applied to Protestants.

This line of attack<sup>49</sup> hardly figured in the most popular Catholic interpretation of English heresy, Nicholas Sander's *On the Origin and Progress of the Schism in England* of 1585, or in Ribadeneira's even more popular reworking: *Historia ecclesiastica del cisma de Inglaterra*.<sup>50</sup> Both concentrated instead on the theme of heretical cruelty and depravity. The addition of heretics to cruelty was (as we have seen) a Catholic article of faith. Sander did, however, manage one aside which ran against this entire motif: those who govern England 'claim that this cruelty exercised against every estate is not on account of religion'. Sander agreed: all those with experience in the matter [*prudenti omnes*] 'have said for years that those in charge in England care nothing about faith, whatever they pretend, but are only concerned about the state'.<sup>51</sup>

Jesuits, who had previously contributed almost nothing to either political polemic or the propaganda war against the English government, began to enter the fray after 1580. The first Jesuit to link persecution and Machiavellian atheism was John Gibbons in 1583: 'My purpose is to set before the eyes not only of Englishmen but of all Christians a signal instance of heretical cruelty, and to lay open the counsels of the Machiavellians, who are enemies of all religion and piety, but do not wish to appear as enemies, and therefore have slaughtered utterly innocent men in the most cruel fashion, but not in the name of religion; rather under the lying pretext of treason.' And he then claimed that 'an opinion has taken hold of the minds

<sup>48</sup> William Cecil, Lord Burghley, *The Execution of Justice in England*. The most conspicuous reply was Cardinal William Allen's *A True, Sincere and Modest Defence of the English Catholics*, 1584; Allen was of course not a Jesuit, although Robert Persons presumably collaborated in the composition. For Allen's admiration of the Society see his *An Apology of the English Seminaries* (1581 = ERL 67), p. 29<sup>v</sup>, and ch. vi.

<sup>49</sup> Thomas Stapleton (†1598, a Professor at Douai and not a Jesuit, although an intimate associate of Robert Persons) may have been one source: *An politici horum temporum in numero christianorum sint habendi*, in *Opera omnia*, vol. II, pp. 514–15; the *Oratio* was known (e.g.) to Sebastian Heiss and his opponents: *Ad aphorismos doctrinae Jesuitarum . . . Declaratio Apologetica*, Ingolstadt: Sartorius, 1609, p. 124.

<sup>50</sup> Even the 1604 edition (reproduced in BAE) did not incorporate the Machiavellian theme, despite the *Tratado*. Cardinal Pole had already linked Thomas Cromwell and Machiavelli in the 1540s.

<sup>51</sup> Sander, *De origine ac progressu schismatis Anglicani*, p. 475. Ribadeneira (BAE, bk III, ch. 27, p. 341) also said that the English heretics were worse than the Turks and the Lutherans, both of whom permit toleration, and then referred to 'los politicos de nuestro tiempo, que ahora tienen el gobernalle del reino de Inglaterra'.

of the prudent of this world (or age, *saeculi*), and especially of the Atheists, who take away God and his providence over mankind: namely that there should be no more concern for religion than what conduces either to conserving the condition of the commonwealth, or to overturning it from the very base'.<sup>52</sup> He seemed as unconscious as Sander of any incompatibility between explanations of persecution in terms of the heretics' native cruelty, and explanations in terms of Machiavellianism and atheism.

Here, as with Gentillet, a policy of toleration<sup>53</sup> is reckoned the *opposite* of Machiavellianism, whereas persecution is its pure milk. And the anonymous author of the notorious *Leicester's Commonwealth* of 1584<sup>54</sup> argued in the same vein that it was the Machiavellian Robert Dudley, Earl of Leicester, who was responsible for the persecution of English Catholics, under the pretext of treason (pp. 7–8), whereas 'some union or little tolleration in religion, betwene you and us, might have been procured in this state' (p. 24). He cited foreign models: examples: 'al the countries of Germanie, Polonia, Boemland [sc. Bohemia] and Hungarie: wher a little bearing of th'one wyth th'other, hath brought them much ease, and continued them a peace' (p. 182); France, where 'a necessary mollification [was] thought upon by the wisest of that Kinges Councell . . . And since that time, we see what peace, wealth and reunion hath insued' (p. 183); of 'Flaunders' (p. 183); and Mary Queen of Scots who, 'while she was in government in her owne Realm of Scotland, permitted al libertie of conscience, and free exercise of religion, to those of the contrarie profession and opinion, without restreyn't' (p. 157). He described Leicester as being of no religion, addicted to 'pollicie' (p. 16), and a master of the 'Italian arte' of poisoning (p. 29), all this well before explicitly mentioning 'Signior Machiavel my L. Councillor' (p. 103), and many other references, e.g. to 'subtile and Machiavilian sleights' (p. 165), or to 'a setled rule of Machiavel, which the Dudleys do observe, that where you have once done a great iniurie, ther must you never forgive' (p. 195). The policy commended by *Leicester's Commonwealth* is entirely that of the *politiques*, except in going even further and advocating a religious free-for-all: a 'qualification, tolerance and moderation in our Realme would

<sup>52</sup> *Concertatio Ecclesiae Catholicae in Anglia*, augmented second edition, p. 217<sup>r</sup> and 217<sup>v</sup>: 'opinio occupavit mentes prudentium huius saeculi, praecipue vero Atheorum, . . . ut religio non ultra curanda . . . quam ut ad reipublicae statum vel conservandum, vel funditus evertendum conducit.'

<sup>53</sup> What is more, what was sought here was a toleration of individuals, not merely of politically organised communities with powerful patrons as in France and the Holy Roman Empire.

<sup>54</sup> Anon., *The Copie of a Leter, Wryten by a Master of Arte*, n.p., 1584 (= ERL, 192), another reply to Cecil; *Leicester's Commonwealth* occurs on p. 52. The attribution to Robert Persons is contentious, but he was unquestionably connected at least with its publication; see Holmes, *Resistance and Compromise*, p. 131; *Leicester's Commonwealth*, ed. Peck, Introduction, pp. 25–32; Houliston, 'The Fabrication of the Myth of F. Robert Parsons'.

content al divisions, factions and parties among us, for their continuance in peace: be they Papistes, Puritanes, Familians [adherents of the notorious Family of Love!], or what soever nyce difference or section besides, and would be sufficient to retheyne all parties wythin a temperat obedience to the magistrat and government, for conservation of their countrie . . .’ (pp. 183–4).

TOLERATION AS MACHIAVELLIANISM: THE *POLITIQUES*  
AS MACHIAVELLIANS

Thus far, then, Machiavellianism and atheism had been associated with a policy of *intolerance and persecution*, as opposed to what were in effect the *politique* policies of toleration and accommodation. Botero (1589) and Possevino’s *Verdict* (1592) changed all this. Both works, shortly followed by many others, now associated Machiavellian politics with the ‘worldly politicians’, the ‘neutrals’ (i.e. in the struggle between good and evil), ‘the prudent of this world’,<sup>55</sup> who advocated toleration.

Possevino’s familiarity with the mysteries of statecraft could stand comparison with that of any man of his age (and by comparison with him Machiavelli knew nothing of diplomacy). He had negotiated on the Pope’s behalf with Ivan the Terrible, Czar of Muscovy, and the King of Sweden; he was involved in the reconciliation of Henri IV to the Catholic Church, and had assisted in the reconversion of the important principality of Savoy. But for all the difference it made to his *Verdict on the Writings of De la Noue, a French Soldier; on Jean Bodin’s Methodus Historiae, his Book on the Commonwealth and his Demonomania, on Philip de Mornay’s de Perfectione and on Niccolo Machiavelli*, he might have been a desk-bound scholar.<sup>56</sup> He never mentioned either *ragione di stato* or Botero’s book, then in its third edition. His *Bibliotheca selecta* a year later partly remedied both omissions: ‘Giovanni Botero has also dealt with Machiavelli in an outstanding book in Italian on Reason of State’.<sup>57</sup> Unlike Botero who had not even mentioned

<sup>55</sup> Possevino, *Iudicium, neutrales* (p. 54); *prudenti huius saeculi* (p. 12); his term *politici* was usually abusive: e.g. ‘novi isti politici Genevenses, latente Atheismi verme’ (pp. 9, 14, 20), but he also used it in a neutral sense, e.g. p. 146, or sarcastically, but presupposing a neutral meaning: ‘sese ingentes politicos et conciliarios aestimantes’ (p. 158)

<sup>56</sup> Possevino’s titles were normally models of concision. The *Iudicium* was reproduced in the *Bibliotheca selecta*, 1593.

<sup>57</sup> *Bibliotheca selecta*, p. 126: ‘Ioannes item Boterus Italice libro de Ratione status hoc ipsum [i.e. writing against Machiavelli] egregie persecutus’. He, however, preferred Lipsius (cited pp. 122–4) and the *Freystellung*; at any rate he summarised them but not Botero. He now linked the authors discussed in his *Iudicium* to the *novam administrandi rationem*, an elegant periphrasis to avoid the neologism (p. 121).

them explicitly, Possevino unequivocally regarded *politiques* as exemplifying Machiavellianism. In fact he chose authors to attack solely because of their religious views, particularly their stance on toleration and the Machiavellian mentality that he saw lurking there.<sup>58</sup> This is why he included Bodin in his rogues' gallery, and not because he objected in the least to Bodin's theory of sovereignty. He never even mentioned it.

Possevino was followed shortly thereafter by his friend and confrère Pedro Ribadeneira's altogether more serious *Treatise on the Religion and the Virtues requisite in a Christian Prince for governing and preserving his states. Against the teaching of Machiavelli and the Politiques of these times*, 1595. As the title makes clear, this was a mirror for princes, but a mirror *à la mode*.<sup>59</sup> As one of the first members of the Society, received immediately after its foundation by Ignatius himself, Ribadeneira could be expected to propound the pure Jesuit orthodoxy as regards toleration of heretics. He may have independently hit upon the link between the *politiques* and Machiavelli (whose *Prince* and *Discourses* he cited from elegant Castilian translations), for parts of his book were written before Possevino's *Verdict*,<sup>60</sup> and he did not by any means simply follow Possevino.

About the same time Robert Persons, under the pseudonym 'Philopater', published *Elizabethae Edictum*,<sup>61</sup> an aggressively pro-Spanish, pro-Ligue, and anti-Henri of Navarre work, which argued *inter alia* for the papal deposing power over heretical rulers. He implacably opposed any compromise with the heretics in France. He used violent and abusive language about Elizabeth, her chief ministers (notably Cecil, Leicester, and 'Rawleigh the atheist'), and about heretics, Puritans, the Family of Love, Anabaptists, and Jews, that is, 'the whole *faex* and garbage of heretics and atheists' (p. 81). But *Philopater* incongruously went on to repeat the demand

<sup>58</sup> Not even Gentillet's anti-Machiavellian services could compensate. Possevino also objected that such a council would have no rule of faith, and no criteria for admission or exclusion of participants: why, he asked sarcastically (*Judicium*, p. 28), should women for example be excluded, given Luther's priesthood of all believers?

<sup>59</sup> *Tratado*, 1595; references to the Spanish version (SV) are to the second edition, Antwerp: Plantin-Jean Moreto, 1597, or the revised 1605 edn, reproduced Bibliotheca de Autores Españoles (BAE); the title of the Latin version (LV) was crisper: *Princeps Christianus, Adversus Nicolaum Machiavellum, caeterosque huius temporis politicos*, translated J. Orán, Mainz: Conrad Butgen, 1603. His reference (Dedication) to the 'sect of those who are called *politici*, although they are unworthy of the name', involves a distinction between *politico* as a party-label and as meaning 'statesman' (or political theorist); his casual 'Lanoue et Mornay, ambos politicos' (p. 17 SV), means the former only.

<sup>60</sup> SV, p. 90: 'este año passado de 1588'. The *Iudicium* was his only source for De la Noue and Mornay, but he knew and cited Bodin independently (once as an authority); his reference to Tacitus as an authority for false reason of state is presumably from Botero, whom he never cited by name.

<sup>61</sup> Cited as *Philopater*. Peter Holmes uses the equally colourless short title *Elizabethae*.

of *Leicester's Commonwealth*<sup>62</sup> that 'benevolence and toleration are to be tried, which is what German princes for the most part do. For in my view persecution and oppression . . . have already been proved by practice and experience to be of no use; instead they make for more hostility and a greater readiness to resist' (p. 448). What reconciles these contradictions is of course that the Armada had failed, and that the execution of a papal sentence of deposition depended on Catholic subjects having the requisite power, which they obviously currently lacked in England (p. 198), but not in France. *Philopater* nowhere repeated the accusation of English Machiavellianism explicitly, and mentioned the *politiques* only in passing (p. 448). His defence of the Catholic Ligue was, however, explicit enough (pp. 211–12), as was Persons's hostility to any compromise with the heretics of France or their candidate for the throne (pp. 184, 201–2, 204). But he did bring in reason of state: 'By which it appears most evidently, that what the heretics are doing in England is not a matter of religion but only of the political state (*status tantum politici*), and temporal advantages' (p. 392). The most notorious of Persons's anonymous works, *A Conference about the Next Succession* (1595), argued the same, but now with frequent references to both reason of state and Machiavellianism.<sup>63</sup>

All these works were composed in the period of the Ligue's most intensive campaign to prevent the succession of Henri of Navarre, following the assassination of Henri III by a Ligueur for attempting to secure that succession. The authors, like Botero and unlike some French Jesuits, were all linked either to the Ligue, or to the Spanish government which actively supported it, and the *Seize* irreconcilables. What they all urged was not merely the legitimacy in principle of secular punishment of heretics, which Catholics generally did not doubt, but also the imprudence, impiety, and immorality of doing anything else. The neglect of this duty, and policies of toleration generally, were laid at the door of the kind of Machiavelli-inspired reason of state which would allow anything at all, if it made politically for a quiet life and success.<sup>64</sup> Machiavellian reason of state was thus now associated not only with heretics (itself an adventurous association) but more durably with a *politique* policy of subordinating religion to the polity. Equally,

<sup>62</sup> *Philopater* contains many direct references to *Leicester's Commonwealth*, as well as verbal and substantive echoes, not least the allusion to the highly secretive 'Familians' (i.e. the Family of Love; cf. *Philopater*, p. 78; *Leicester's Commonwealth*, p. 183). It also anticipates many themes of the *Conference*.

<sup>63</sup> It is discussed in chapter 10.

<sup>64</sup> Contrary to *Leicester's Commonwealth*, Ribadeneira attributed Mary Queen of Scots's downfall to divine punishment for her policy of toleration (SV, p. 91); he assumed that she had an alternative, but then to irredentists there was *always* an alternative.

however, reason of state was becoming a more differentiated notion. The differentiation is explicit in Ribadeneira.

#### TRUE AND FALSE REASON OF STATE

Ribadeneira began by equating Machiavelli's 'teaching' (*estudio, disciplina*) about *la policia y gobierno de la Republica* with 'reason of state, as it is commonly called' (the Latin version read: 'quam plerique omnes status rationem vocant'. He then set down what he (rightly) took to be the foundation of Machiavelli's 'doctrine': 'the target which the prince must always keep in sight is the conservation of his State (*Estado, status et imperium*), and he must employ any means, whether good or evil, just or unjust, provided they are useful to that end'.<sup>65</sup> But then, quite unlike Botero and Possevino, Ribadeneira insisted that there are two sorts of reason of state: one is a 'solid and real reason of state', the other a 'vain and [merely] human', 'false and pernicious reason of state'. The distinction between them is that the former prudently and devoutly acknowledges the responsibility of princes towards God, religion and the virtues, whereas the latter imprudently and impiously denies it. As Ribadeneira untranslatably but suggestively formulated it: the former *de religion haze estado*, whereas the latter *de estado haze religion*.<sup>66</sup> He iterated the distinction emphatically:

Let no one imagine that I reject all reason of state as worthless, or that I think there is no such thing, or neglect those precepts of prudence by which, under God, regimes are made stable, grow and are governed and preserved. I maintain on the contrary that there is a certain method and way of governing the commonwealth and the political state (*Reipublicae et politici status gubernandi rationem et viam, razon de Estado*), which princes must always have before their eyes, lest they should lose their way in governing and ruling their principalities.<sup>67</sup>

Not even the *end* that Machiavelli postulated for reason of state was as such malign or mistaken. Ribadeneira thus plainly recognised that 'reason of state' (both the term and the manner of thinking) was now so fashionable that it would be folly to surrender it to his enemies. On the contrary, he even described Possevino as a 'master of the whole of good reason of state'. The

<sup>65</sup> *Tratado*, p. 20.

<sup>66</sup> P. 20 (SV): 'Pero que esta razon de Estado, no es una sola, sino dos: una falsa y aparente, otra solida y verdadera, una engenosa y diabolica, otra cierta y divina, una que de estado haze Religion, otra que de Religion haze estado; una enseñada de los politicos y fundada en vana prudencia y en humanos y ruines medios, otra enseñada de Dios'; p. 37 (LV): 'vana . . . et humana politici status ratione ac disciplina'.

<sup>67</sup> P. 5<sup>v</sup> (LV), p. 20 (SV).



distinction between true and false reason of state was plainly a strategy for appropriating and domesticating reason of state for orthodoxy. As we shall see later, Ribadeneira also adumbrated another much more risky strategy: equating reason of state and prudence.

#### ATHEISM

The final link in the chain was the accusation that heretics were also guilty of atheism, and it seems to have been forged by Possevino's *Book about the Atheisms of the Sectaries of our Time* in 1586.<sup>68</sup> He did not accuse the heresiarchs of atheism as such, but of various doctrines which denied either the divinity or the humanity of Christ, and which were atheist at least in tendency: 'Heresy always hastens to Atheism as its centre or proper sphere.'<sup>69</sup> The imputation of atheism to Machiavelli was already conventional: Possevino's *Verdict* in a two-page summary of the most noxious of Machiavelli's policy prescriptions taken directly from Gentillet also took over Gentillet's description of him as an 'importer of atheism'.<sup>70</sup> Possevino now extended the charge of atheism to *politiques* generally. Dealing in his *Verdict* with la Noue's proposal for a universal council, or at any rate a national council of the French Church (p. 19), he countered: 'Given all [the obvious objections], does this sort of political man mean this seriously, and does it spring from a zeal for implementing the truth (*veritatis executiendae studio*)?' 'Implementing the truth' was of course precisely what *politiques* thought politically and morally impossible.

It was, however, misleading and dangerous to identify reason of state with the doctrine of the *politiques*, let alone to impute atheism to both. This was yet another factitious confrontation, and merely delayed the recognition of realities. Possevino had been careful to single out Huguenot *politiques*, and had not attacked Michel de l'Hôpital, let alone Possevino's fellow-Jesuit Emond Auger who supported Henri III almost to the end. Those first described as *politiques* certainly included people who were religiously indifferent, or positively heterodox like Bodin. In the main, however, they

<sup>68</sup> *De Sectariorum . . . ATHEISMIS*, 1586; reproduced in his highly popular *Moscovia, et alia Opera*, 1587, and in the *Bibliotheca selecta*.

<sup>69</sup> Possevino, *De Sectariorum . . . ATHEISMIS*, p. 40<sup>v</sup>; cf. *Iudicium* (on De la Noue), p. 9: 'Novi isti politici Genevenses, latente Atheismi verme . . .' See also Fitzherbert, *A Supplement*, p. 381: 'Atheisme is indeed the very centre wither all heresies do naturally tend and finally fall . . . especially when they are pusht on with false reason of State.'

<sup>70</sup> *Iudicium*, pp. 161–2. The old accusation (Stewart, *Innocent Gentillet*, p. 129) that orthodox critics of Machiavelli had never read him is groundless; even Possevino transcribed from Gentillet only the most genuinely Machiavellian propositions.

were orthodox Catholics like the supporters of Michel de l'Hôpital, or Calvinists like Gentillet, Duplessis-Mornay,<sup>71</sup> and Languet. Toleration was definitely a second best for them. The appalling conditions in France in the 1570s and 1580s merely made civil peace seem the greatest good the political order could bestow, even if it was not the supreme political good as such, but only the best currently attainable. The price to be paid for this good was 'absolute' monarchy, as the only reliable guarantor of that strict super- and sub-ordination which was the *sine qua non* of order. By parity of reasoning, since no supra-state sovereign was possible, there could be no perpetual peace and order between states. The best attainable here was an armed peace. And Jesuits dissented from none of this on principle: Possevino's *Verdict* and Ribadeneira's *Christian Prince* objected only to Bodin's religious heterodoxy, and his endorsement of toleration.<sup>72</sup>

Once the linkage between Machiavelli, atheism, the *politiques*, heresy, and the policy of toleration had been established, it easily outlasted the accession of Henri IV to the throne and the mutual embrace between him and the Society of Jesus. Possevino's *Bibliotheca*, as the approved advance reading-list for the *Ratio Studiorum* which eventually appeared in 1599,<sup>73</sup> will have helped to spread the word. At any rate by the time of Suárez's *De legibus*, the topos was the subject of a throw-away line: if the *politici* establish laws that are contrary to the true religion, 'they are heretics, or indeed atheists, which is more likely'.<sup>74</sup>

In writing to oppose the *politiques*, Jesuits first laboured to demonstrate the legitimacy in principle of secular punishment of heretics, on the basis of the arguments which we have already considered. But anyone with even a rudimentary theological or casuistical education knew that it was one thing to say that rulers have a right to punish heretics, and quite another to say that they are obliged to do it, or well-advised to do it. The Society's favourite reading on this moral topic, Cicero's *De officiis*, argued that in the last analysis there is no conflict between what is right (the *honestum*) and what is advantageous (the *utile*). But toleration was precisely one of a number of issues where the *bonum honestum* or *bonum morale* and the *bonum utile* (as the schools phrase the distinction) were coming apart, and where mere worldly prudence, cunning, or astuteness seemed to urge one

<sup>71</sup> He is one of many bridges between France and the Netherlands, contributing to the Calvinist cause in both; see van Gelderen, *The Political Thought of the Dutch Revolt*, index references Duplessis-Mornay and *Vindiciae contra tyrannos*.

<sup>72</sup> *Iudicium*, pp. 124–46; *Bibliotheca selecta*, pp. 134–44.

<sup>73</sup> See Fumaroli, *L'âge de l'éloquence*, pp. 180–1.

<sup>74</sup> *De legibus*, III.12.2. His only source seems to have been Ribadeneira's *Virtues of a Christian Prince*, bk 1, ch. 3, which he praised in III.12.5.

thing, and spiritual wisdom quite another. Reason of state, especially when identified with *politiques* and Machiavelli, here probed this neuralgic point in the European moral consciousness.

#### THE PROVIDENTIALIST ARGUMENT

Jesuits along with other Anti-Machiavellians had therefore to produce arguments to show that toleration was not only immoral and irreligious, but bad policy too. One argument which all the Jesuits used was that immorality and ungodliness on the part of rulers provoked the wrath of God, and therefore that crime and impiety do not pay. No Jesuit at all argued that God invariably rewards the just and punishes the wicked *in this life*,<sup>75</sup> but some version of the providentialist argument was a commonplace. It of course only had a bearing on toleration in so far as toleration was itself offensive to God, although the unhappy outcome of tolerationist policies was used circularly as evidence of God's disapproval. But what is once again evident here is the *lack* of a concerted strategy among Jesuits, since some of them (such as Persons) argued repeatedly that it had in fact had a happy outcome.

Possevino from first<sup>76</sup> to last asserted that despite the prevalence of heresy in France, 'with Christ as our leader . . . there is no cause for despair, for [God] has formerly restored the situation in this kingdom from a worse condition to its pristine state'.<sup>77</sup> One of his more extraordinary assertions, especially so soon after the failure of the Armada and reproduced unaltered in editions of the *Bibliotheca selecta* after the failure of the Ligue, was that 'Catholic Princes who have adhered to God with their whole soul have never failed to triumph over their enemies'.<sup>78</sup> Already in 1569, when, addressing *The Christian Soldier* to a papal army sent to second the Catholics in France, he had assured his readers that 'the Great God does not bear the title of *the God of Armies* ['the Lord of hosts' in the English Bibles] without good reason. He will avenge the outrages and effronteries done

<sup>75</sup> Bireley, *The Counter-Reformation Prince*, pp. 30–1 distinguishes between providentialist, and intrinsic or immanent pragmatism; I mean the former, but bringing 'pragmatism' into it at all does not seem to me to be very helpful.

<sup>76</sup> Not quite first: his first ventures as a Jesuit in his native Savoy were conducted under the auspices of the belief that religious persecution was imprudent and merely created hypocrites. Since heresy had been introduced by false and bad teaching, it should be combated by good and true teaching; cf. Martin, *The Jesuit Mind*, pp. 91–2.

<sup>77</sup> *Iudicium* (on la Noue), p. 83; Ribadeneira said much the same exhorting the soldiers and captains of the Armada; see Bireley, *The Counter-Reformation Prince*, p. 114.

<sup>78</sup> *Iudicium* (on Machiavelli), p. 158

to him. He will assuredly act, but not by means of angels; instead he will move valorous captains to defend his honour.<sup>79</sup> And Ribadeneira wrote that 'for princes who zealously observe all these things [i.e. divine worship and obedience to holy laws], God ensures that everything turns out well, he preserves their kingdoms, and blesses them both on earth during this wretched life, and in heaven with sempiternal felicity'.<sup>80</sup> Botero too claimed that 'if a captain or prince is pleasing to God, and the sins of the people do not stand in the way of this good fortune, then it is beyond doubt that victories and triumphs [will follow]. And even if good fortune does not always accompany such *virtù*, because God also favours Gentiles, Turks and Moors against Christians, nevertheless this is how things ordinarily turn out.'<sup>81</sup> But the convoluted qualifications here speak for themselves. For Jesuits generally, a much more salient point was that there is no such thing as fortune or fate. As Ribadeneira put it: 'kingdoms and states are all from God, are given by him and preserved by him, and without him cannot be preserved by any human wisdom or prudence'. This was also the burden of Lessius's *On God's Providence, against the Atheists and Politiques*,<sup>82</sup> the only Jesuit tract that comes close to referring to no other theme apart from the providential.

No doubt Jesuits were secure in the knowledge that the Church was assured of ultimate triumph, and that the *felix progressus* of their own enterprise was evidence of divine favour. By the late sixteenth and early seventeenth century there was much about the fortunes (so to speak) of Protestantism and Catholicism to support optimism, not least the hardening of confessional antagonisms between Protestants, and the consolidation of France. And no doubt the idea of God as a kind of cosmic underwriter of an insurance policy which protected, provided the dues are paid punctually, would tend to boost morale. But such cosmic optimism gave no ground for expecting success in any particular circumstances, and obviously Jesuits were often cast into moods of dejection.<sup>83</sup> Providential optimism was certainly impregnable against experiential refutation.<sup>84</sup> For if success did not

<sup>79</sup> *Il Soldato Cristiano*, 1569, p. 8.

<sup>80</sup> *Princeps Christianus*, p. 40; his supporting evidence was historical episodes drawn largely from Possevino's *Iudicium* (pp. 159–61), in turn transcribed largely unaltered from *Il Soldato Cristiano* (pp. 8, 68–71).

<sup>81</sup> *Della ragion di stato*, pp. 321–2.

<sup>82</sup> *De Providentia Numinis et Animi Immortalitate*, 1613; English translation Rawleigh his *Ghost* 1631(= ERL 349).

<sup>83</sup> For Jesuits in France, see Martin, *The Jesuit Mind*. The reports about the state of Catholic religion in the Holy Roman Empire from the Jesuits there until the 1580s were especially gloomy.

<sup>84</sup> Holmes, *Resistance and Compromise*, p. 142: 'The providential theory was a wonderful piece of self-justificatory "heads-I-win, tails-you-lose" philosophy.'

attend orthodox policies, this was because God was punishing someone for their sins, but not necessarily either the author or the executors of the policy. In the nature of things, there would be no shortage of sins or sinners worthy of punishment to choose from. But this meant precisely that God's favour cannot be assured even by the most theologically and morally impeccable policies and personnel. The race is not necessarily to the swift, and Job's life was not one of uninterrupted successes. The guarded formulations of a Botero make clear that Jesuits recognised well enough that they were on treacherous ground. Perhaps Auger was on safer ground, though not politically, in telling princes as well as Catholics generally to do what is right, even if they should perish in the attempt.<sup>85</sup> But this was not the line Jesuits normally took. As Scripture and rhetoric both proclaim, one must speak to a fool according to his folly.

<sup>85</sup> *Le pedagogue d'armes*, p. 15<sup>r</sup>: 'ou il est question d'appointer [parleying] avec l'ennemy ou rebelle de chose qui altere tant peu soit-il la Pieté, et pureté de la Religion et doctrine, le Prince n'y doit jamais *pour mourir* condescendre . . .' (my italics); the long title of the work ignored this possibility: 'Pour instruire un Prince Chrestien a bien entreprendre et heureusement achever un bonne Guerre, pour estre victorieux de tous les enemis de son Estat et de l'Eglise Catholique.'

*Reason of state and religious uniformity*

## THE POLITICAL UTILITY OF INTOLERANCE

The decisive argument to persuade princes to enforce Catholic orthodoxy was that heresy endangered the 'state'. The argument was intended to stiffen the resolve of rulers sufficiently intimidated by the difficulties involved in attempting to restore religious uniformity by force to listen to the seductive advocates of toleration. For the Society itself, the welfare of the Church and of endangered souls was justification enough for the enforcement of religious uniformity. Ignatius had mentioned no other consideration in his seminal letters to Canisius,<sup>1</sup> and extra-spiritual concerns were still only an afterthought for Bellarmine decades later.<sup>2</sup> Possevinio in his ultra-orthodox *Verdict* normally regarded his work as done when *politiques*, heretics, and Machiavellians had been shown up as doctrinally deplorable.

Jesuits were not alone in regarding the political dangers of heresy as the clinching argument against toleration; even Lipsius found it persuasive.<sup>3</sup> The case for intolerance that Jesuits produced was impeccably 'reason of state'. Some of them even enlisted Machiavelli himself. The same argument, *mutatis mutandis*, appears in Bellarmine's *De Laicis*, Botero's *Della ragion di stato*, Possevinio's *Iudicium*, *Bibliotheca selecta*, Ribadeneira's *Tratado/Princeps Christianus*, Robert Persons's *Conference*, Juan Mariana's *De rege et regis institutione*, Thomas Fitzherbert's *An sit utilitas in scelere*, and his *First and Second part of a Treatise concerning Policy and Religion*,

<sup>1</sup> Ignatius saw no moral difficulty even in the death-penalty for heresy if all else failed. His treatment of Bobadilla over the latter's uncomplicated and public rejection of the *Interim* of 1547, which had infuriated Charles V, was a masterpiece of equivocation: he neither endorsed nor repudiated Bobadilla's rejection; O'Malley, *The First Jesuits*, p. 273.

<sup>2</sup> *De officio principis Christiani*, bk 1, ch. 8, pp. 62–3; *De laicis*, ch. 18 (p. 323).

<sup>3</sup> Lipsius, *Politicorum sive civilis doctrinae libri sex*, 1589. Book iv, chs. 2–4 (English translation *Six Bookes of Politickes or Civil Doctrine*, 1594) and *De una religione adversus dialogistam liber*, 1591. He was a favourite authority of Possevinio, Lessius (his confessor, and author of a *Defensio postuma*), Scribani, Becanus, and Adam Contzen. Lipsius's adherence to the 'Family of Love' (Tuck, *Philosophy and Government*, p. 63) was presumably unsuspected.

Becanus's *Manuale* and *De fide haereticis servanda*, Scribani's *Politicus Christianus*, Adam Contzen's *Politicorum libri decem*, and other such works. The structure of the argument was always the same:

(1) Everyone of any consequence agrees that religion is necessary to the preservation of the commonwealth, or state. (2) Christianity is the civil religion *par excellence*. (3) Catholic orthodoxy upholds and reinforces this function of religion at every point, whereas heresy always undermines it. (4) Peaceful coexistence between different religions in the same state is impossible. (5) It follows that toleration, *except in extremis*, is not only irreligious and immoral, but also bad policy.

#### RELIGION AS THE FOUNDATION OF CIVIL SOCIETY

The civil function of religion was an obvious starting-point, since it was precisely the kind of uncontentious premise needed for less palatable inferences. Hardly anyone dissented from it, and the experience of all known civil societies supported it, for all had a civic religion,<sup>4</sup> even the Incas.<sup>5</sup> What everyone has always known must have been learnt from nature.<sup>6</sup> Ribadeneira appealed to the consensus of the ancient (i.e. pagan) philosophers, but also cited chapter and verse from Bodin (*De la Republique*, bk 4, ch. 7) and Machiavelli himself (*Discorsi*, bk 1, chs. 11 and 12).<sup>7</sup> Obligations receive in religion their strongest support. As one etymology was thought to imply, religion is a consciousness of obligation, dependency, being bound, duty.<sup>8</sup> It enlists all the most robust motives: hope of rewards and fear of punishment, glory and shame, pride, self-love (*philautia*, *amor sui*). It is the main social cement.<sup>9</sup> Mariana's principle in his celebrated (and notorious) *On Kings* was: 'reward and punishment are, so to say, the foundations which sustain sociability and union among men'. Fear of punishment was, however, more reliable: '[it] often restrains people where the splendour of virtue by itself would be ineffectual. And although fear of the power of

<sup>4</sup> E.g. Persons, *Conference*, pp. 206–7: 'There is no nation so fearful or barbarous, whose myndes are not indued with some religion of worshipping God.'

<sup>5</sup> Ribadeneira, *Princeps Christianus*, p. 24, citing his fellow-Jesuit José Acosta.

<sup>6</sup> Fitzherbert, *First Part of a Treatise*, Preface, s. 8: 'as Cicero saith: . . . the consent of all nations in any thing whatsoever, is to be accounted the law of nature; and therefore whatsoever is universal, and common to all men, must needs be natural'.

<sup>7</sup> *Princeps Christianus*, pp. 16 and 24 (bk 1, ch. 1).

<sup>8</sup> Even in antiquity it was disputed whether the root was *legere* (to select, gather) or *ligare* (to bind); Mariana favoured the latter: *De rege* (1605), bk 11, ch. xiv, p. 201; Lessius (*De iustitia et jure*, 11. 36.1), and Suárez (*Opus de virtute et statu religionis*) were agnostic on the point.

<sup>9</sup> Auger, *Pedagogue d'armes*, p. 9: 'estant la Religion esbranlee, il est mal aise d'asseurer l'estat, pour estre celle-la le cymment de cestui-cy pour le maintenir'.

judges might prevent open crimes, what will inhibit people from covert ones, except mindfulness of the awful majesty of God?' (bk. 11, ch. 14, pp. 204–5). He then referred to the example of the legislators of antiquity: the whole paraphernalia (*apparatus*) of the ancient religions was no doubt inept and superstitious, but at any rate they were prompted by the 'universal impulse of nature' to recognise that 'it is the sanctity of religion that sustains public laws and treaties among men'. And they 'were right to have laid the foundation of happiness in religion, and to have punished those who despised religion with death or exile' (pp. 206–7).

However, political utility might be claimed for *any* religion. Machiavelli had said nothing about any *doctrinal* content of the religion of the Romans. He had dwelt exclusively on its power to enlist the motive of hope by its promise of secular glory, and fear and awe by its smoking altars and bloody sacrifices,<sup>10</sup> in other words, by its dramatic, theatrical quality. Curiously, no Jesuit to my knowledge pointed to the obvious theatricality of *Catholic* ceremonies as one of the sources of their power over minds and imaginations, or contrasted it with the lack of such theatricality in reformed religion. Yet Jesuits hardly needed to be told about the power of theatre, one of their great educational innovations, or about the superior motivational efficacy of the visual over the oral: the Spiritual Exercises of Ignatius are built on the visual imagination. What was needed, however, was a political argument in favour of Catholicism specifically.

But in a notorious passage in the *Discorsi*, Machiavelli had argued, albeit with an equivocation on which Ribadeneira commented caustically, that Christianity is unsuitable as a civic religion, since it divides men's loyalties between their *patria* and their souls, and praises virtues which are incompatible with the civic and martial virtues.<sup>11</sup> By contrast, the religion of the Ancients nourished a patriotic and martial spirit. As Rousseau recognised, Machiavelli's argument was curiously incomplete; to finish it he should have explained that if Christians *did* exhibit martial and civic virtues, it was not because they were Christians. Jesuits (especially Spaniards, who knew a thing or two about martial valour) regarded Machiavelli's argument as fatuous. Ribadeneira cited the argument extensively, confident that its obvious absurdity would arouse contempt. He remarked sarcastically that if the spectacle of animals being killed were enough to generate martial

<sup>10</sup> *Discorsi*, 11.2; also 1.11–15.

<sup>11</sup> *Ibid.*, 11.2 (pp. 282–3); Ribadeneira cited part of this in translation, the rest in paraphrase, with reference: *Tratado*, bk 11, ch. 34 (BAE, p. 567); after Machiavelli's 'our religion has now shown us the truth and the true way', he observed in brackets: 'the *políticos* habitually use these and similar expressions, the better to deceive (*engañar*)'.



valour, there would be no more valorous people than butchers. And if animal blood had this effect, how much more effective would human sacrifices be? Why then did the Incas fall to a handful of Christians? A Christian soldier confident of his cause would be more ready to face death than anyone else.<sup>12</sup>

The counter to Machiavelli was invariably that true Christianity teaches subjects a conscientious obedience reinforced by immortal hopes and fears, and not a merely external obedience like that prompted by the Machiavellians' *oderint dum metuant*. In Botero's words: 'Among all the religions (*leggi*), there is not one more favourable to princes than Christianity, because it submits to them not only the bodies and capacities of the subjects but their minds and consciences as well, and constrains not only the hand, but also the emotions (*affetti*) and the thoughts.'<sup>13</sup> As Fitzherbert put it: 'In what state soever he liveth, [the true Christian] is humble, meke, peaceable, obedient, temperate, liberal, iust, religious and consequentlie a good, and excellent member of his commonwealth, in so much that if the precepts of the Christian religion were sincerely followed and observed, there should need no political laws.'<sup>14</sup> And Machiavelli's aspersions against Christianity for withdrawing men from service to the commonwealth were groundless: 'no lawful vocation in any good common wealth nor any mans duty towards his country, nor the lawful desire, or possession of riches, and honours, nor the execution of valorous, and magnanimous acts either in warre or peace, is hindered [by Christianity].'<sup>15</sup>

This, however, left untouched what Jesuits took to be the defining *politique* argument, namely that rulers ought to concern themselves with external peace and justice, and not with the religious beliefs of their subjects, provided those subjects were peaceable and law-abiding.<sup>16</sup> This Machiavellian/reason of state position gave rulers a choice about *which* religion to uphold and favour, or whether instead to allow toleration, thereby exploiting the political utility of religion without antagonising any religious faction. As Ribadeneira explicitly admitted, on this matter at any rate the

<sup>12</sup> *Princeps Christianus*, bk II, chs. 34–8; ch. 35, p. 477 'An, quaeso, ulla umquam par huic fatuitas et ineptitudo?' Fitzherbert repeated Ribadeneira almost verbatim: *Second Part of a Treatise*, ch. 24, esp. ss. 27–8.

<sup>13</sup> *Della ragion di stato*, bk II.16 (p. 137). <sup>14</sup> *The Second Part of a Treatise*, ch. 15.22 (p. 205).

<sup>15</sup> Ch. 15.18 (p. 351); see also ch. 37.14 (p. 600), and Ribadeneira, *Tratado*, bk II, ch. 35 on rewards and honours as a 'stimulus', and chs. 34–9 on Christian fortitude, especially military.

<sup>16</sup> E.g. Ribadeneira, *Tratado*, p. 24: 'Ellos quieren que el fin principal del gobierno politico sea la conservacion del estado y la quietud de los ciudadanos entre si, y que se tome por medio para esta conservacion y quietud tanto de la religion quanto fuere menester, y no mas.' The other Jesuit Anti-Machiavellians also took this as the *politique* or Machiavellian axiom.

heretics were on the same side as Catholics against the *politiques*, since they certainly did care which religion was upheld by the state: 'Although the heretics are the sparks of hell and the enemies of any more pure religion, they at least profess some religion . . . But the *politiques* and partisans of Machiavelli recognise no religion, and remove any distinction between truth and falsehood.'<sup>17</sup> What still remained to be presented, therefore, was a reason of state argument for the pre-eminent political utility of Catholicism, which at the same time disqualified heretical religions from the role of civic religions, but also ruled out the possibility of a pacification based on religious neutrality on the part of the state.

#### THE UNSUITABILITY OF HERESY AS CIVIC RELIGION

Fitzherbert (like the others) therefore set out to prove that 'the Catholike Roman religion is not onlie the true religion, but also most politicall, that is to say, most agreeable to true reason of state; and . . . that the doctrine of the sectaries . . . is no lesse contrarie to true reason of state, than to the veritie of our holie scripture'.<sup>18</sup> But the Catholic religion could obviously not perform its unifying and morals/morale sustaining function if it was itself a source of disunity. It was therefore incumbent on Jesuits to deny that the Catholic religion was in any way responsible for civil upheavals, whereas the contemporary heresies were a nursery of rebellion, disobedience, disorder, and atheism.

The hard work already done in anatomising heresy (see chapter 4) could now be turned to political use. If heretics were proud, unsubmissive, factional, and prone to every sort of immorality, they would hardly make good subjects.<sup>19</sup> Conversely, two of the 'marks' (*notae*) of the Catholic Church themselves guaranteed its political utility, namely its antiquity and its continuity. This point was all the stronger in that these had long been singled out as decisive marks of the true Church without any political *arrière pensée*.<sup>20</sup>

<sup>17</sup> *Princeps Christianus*, p. 5<sup>v</sup>; Fitzherbert, *First Part of a Treatise*, Preface, s. 6, also took it that 'Protestants or puritanes' would welcome the part of his work that was intended 'for the confusion of their common enemies, and ours (I mean Atheists, for such are the Politikes, whom I especially impugne)'.

<sup>18</sup> *The Second Part of a Treatise*, ch. 6.26 (p. 46).

<sup>19</sup> The most extensive discussion of this whole topic is Fitzherbert, *Second Part of a Treatise*, chs. 15, 24 to end of the book.

<sup>20</sup> Turrianus, *Adversus Magdeburgenses Centuriatores*, Preface (p. v<sup>r</sup>), cited Tertullian: 'consuetudo, quae idoneus testis est traditionis'. According to Valentia, *Analysis* (Rocaberti edn, p. 86), the True Church can always be recognised by prudent judges, because they will look not 'praesentem tantum modo statum . . . sed etiam ad perpetuam eius continuamque successionis seriem'.

Their political bearing was that antiquity and continuity are also what gives laws and institutions their authority, a point which no reasoner of state would deny; it was obviously true, for one thing.<sup>21</sup> Change and innovation by contrast undermine this authority, except for adaptive change in response to changed circumstances.<sup>22</sup> Mariana urged that nothing could be more destructive of the authority of religion (and hence, by implication, of its politically beneficent effects) than to allow the introduction of new rites; introducing foreign ones would be as bad.<sup>23</sup> Since only the Catholic Church enjoys antiquity and continuity, its authority alone is deep-rooted; this will become all the more apparent once the novelty of the innovators' doctrines has worn off.<sup>24</sup>

The authority of Christian rulers and 'states' was inseparable from that of the Church. An epigrammatic formulation of the time which went from mouth to mouth was: the state is no less in the Church than the Church is in the state.<sup>25</sup> It was therefore impossible to detract from the ancestral religion without detracting from the authority of rulers. The Ligue's 'fundamental law' of Catholicity, a law even more unchangeable and fundamental than the Salic Law,<sup>26</sup> restated the ancient custom which acknowledged the unbreakable connection. The great *politique* Henri IV admitted it by recanting. It was therefore the heretics who were the great disturbers of the peace, civil as much as religious. For the early Auger it was obvious that 'the enemies of Christ cannot long forbear discharging their venom on the political state'.<sup>27</sup> And John Hay asked the Kirk (in his remarkable Scots spelling) what the value of their protestations of obedience to magistrates was, 'quhen noch onlie ze have raisit uprore in ye contrey, and expelled ye cheif Magistrats, bot in zour preachings plainlie wald thrall all kings and

<sup>21</sup> One of Machiavelli's central concerns had been with how to fashion for new princes the kind of authority which 'old' princes could take for granted.

<sup>22</sup> Ribadeneira, *Princeps Christianus*, bk II, ch. xxxii (pp. 456, 459): with things 'muy recebidas y asentados, aque sean malas', princes who follow the 'rule of prudence' will proceed 'poco a poco, pelando pelo a pelo la cola del caballo' (BAE, p. 565).

<sup>23</sup> Mariana, *De rege* (1605), bk II, ch. 14, p. 209, and bk III, ch. 17, p. 363: 'We know by long experience that no new religion was ever admitted without grave calamities and upheavals accompanying it.' See Ferraro, *Tradizione e ragione*, pp. 195–9, 353.

<sup>24</sup> Contzen, *Politicorum libri decem*, III.18.3 (p. 95); IX.22.5 (p. 678): 'When [heresy] first prostituted itself to a world avid for novelties and weary of the old, it easily attracted minds ignorant of virtue by [purveying] a semblance of good.' But now it is seen in its true colours.

<sup>25</sup> An early version is Perpinya, *Orationes duodeviginti*, p. 461: 'Etenim ita coniuncta est religionis causa cum reipublicae statu.'

<sup>26</sup> *Conference*, p. 35; he cited Du Haillan in support of his claim that it was 'no very ancient law'.

<sup>27</sup> *Le pedagogue d'armes*, p. 27<sup>v</sup>.

kingdoms?'<sup>28</sup> In short: the heretics started it; the reaction of Catholics was purely defensive.<sup>29</sup>

#### THE IMPOSSIBILITY OF PEACEFUL COEXISTENCE

Implicit here, or as often as not explicit, was the belief that any disagreement in religious matters automatically escalates into conflict, factions, and a struggle for supremacy, unless suppressed by whatever means are efficacious. To most Jesuits this seemed the inescapable lesson of all experience. There were matters on which people could agree to differ, but religion was not one of them: 'However tightly blood-ties, similarity of manners and mode of life, or common homeland may bind wills to benevolence, diversity of religion will make such benevolence collapse.'<sup>30</sup> The argument was certainly persuasive. Political conflicts were almost universally regarded as evidence that something was seriously amiss, and religio-political conflicts were obviously the most intractable.<sup>31</sup>

The argument was sometimes entirely general, without reference to the particular character of the heretics and heresies of our age: it was simply religious differences as such that were incompatible with civil harmony. Thus Bellarmine, whose *Controversies* scarcely ever adopted anything except an ecclesiastical perspective, nevertheless declared categorically:

freedom of belief is pernicious even to the temporal welfare of kingdoms and the public peace . . . , for where faith and obedience are shown to God, they are also shown to the prince: [the] Faith itself teaches and demands it. And again, dissent about matters of faith disposes people to disunity in souls and wills; but every kingdom divided against itself will be rendered desolate; and the experience of our own time shows this so clearly, that proving it would be a waste of effort.<sup>32</sup>

<sup>28</sup> Hay, *Certaines Demandes*, demand no. 130 (p. 77).

<sup>29</sup> Perpinya, p. 532: 'illos [i.e. the heretics] provocasse, nostros nonnisi defendi sui causa arma cepisse, intellegitis'; to the same effect Contzen, *Politicorum libri decem*, ix.17.

<sup>30</sup> Mariana, *De rege* (1605), bk III, ch. xvii, p. 354; cf. Ribadeneira, *Tratado*, bk I, ch. 27 (chapter title): 'Que es imposible que hagan buen liga herejes con catolicos en una republica'; Botero, *Della ragion di stato*, bk v.2: 'non è cosa alcuna, che renda più differenti o contrari gli uomini l'uno all'altro, che la differenza o la contrarietà della fede'.

<sup>31</sup> Even Viroli, despite his animus against monarchy, admits that virtually all peaceable persons in our period preferred monarchy to other forms of government, except perhaps the most narrowly aristocratic republics, because of its superior efficiency at repressing conflicts. Cf. van Gelderen, *The Political Thought of the Dutch Revolt, passim*, for the prevalence of complaints about the lack of concord and obedience in the supposed 'United' Provinces, pending the devising of some acceptable substitute for the former (Spanish) governor.

<sup>32</sup> *De laicis*, pp. 335, 342.

Contzen for his part argued more circumspectly that there might be some kingdoms where diversity of religion could be borne for some time without upheavals, but in the Holy Roman Empire civil and ecclesiastical peace were inseparable, because there the Church was no less in the state, than the state was in the Church.<sup>33</sup> But Auger long before had claimed that, on the contrary, what he called the 'warlike peace' of the German Interim, which to him amounted to a 'full liberty of conscience', was irrelevant as a precedent for a consolidated monarchy like France.<sup>34</sup> For other Jesuits there was in this respect no difference between the Holy Roman Empire and any other kingdom.<sup>35</sup> More usually, however, it was the character of modern heresy and heretics that made a peaceful coexistence with them and stable rule over them impossible.

Here the way in which heretics and heresies had already been characterised for pastoral and polemical purposes fitted seamlessly with the contentions of Catholic reason of state. From the point of view of 'merely worldly policy' and secular reason of state, the civic function of religion is to promote good order in the polity by inculcating obedience, dutifulness and the other civic virtues. But both the character-traits of the 'so-called Reformers' and their central doctrines are incompatible with civil peace and harmony. Heretics are animated by pride, and where there is pride it is vain to look for obedience. Their doctrines, moreover, are mere cloaks for pride. *Sola fide*, *Christian liberty*, *sola Scriptura*, the supremacy of the private conscience, the private interpretation of Scripture and the Priesthood of all Believers all exalt equality and undermine the super- and sub-ordination which is the *sine qua non* of political good order.

The Counter-Reformation's depiction of what the Reformers meant by *sola fide* was certainly a travesty, but the fact remains that Catholics invariably saw this doctrine as removing a decisive incentive for virtue by devaluing good works. One of Scherer's choicer sarcasms was: 'The [Protestants] want to demonstrate to the whole world that unlike the papists they don't rely on good works, and so they don't do any.'<sup>36</sup> Conrad Vetter cited the

<sup>33</sup> First in his *De pace Germaniae* (1616), which subsequently became *Politicorum libri decem*, ix.10–23; ix.17.4 (p. 669): 'Imperium Romanum non minus est in Ecclesia quam Ecclesia in Imperio'; s.6, (pp. 670–1): 'est etenim ea Imperii Romani constitutio, ea iurium et jurisdictionum permistio, quae Ecclesiastici et Politici status summam concordiam exigit'.

<sup>34</sup> *Le pedagogie d'armes*, p. 17: 'tels pais n'ont rien de semblable avec la Monarchie françoise, la ou toutes choses se gouvernent au clin d'oeil d'un seul Roy'.

<sup>35</sup> E.g. Possevino, *Iudicium*, p. 161; Ribadeneira, *Princeps Christianus*, p. 116: 'Potestas enim Ecclesiastica et Civilis germanae sunt sorores et veluti corporis unium membri, vel (ut verius dicam) ille animus, haec corporis vicem obtinet.'

<sup>36</sup> Scherer, *Alle Schriften*, vol. II, p. 43<sup>v</sup>. What is more, the gibe originated from the Lutheran preacher Johannes Andreas; Fitzherbert, *Second Part of a Treatise*, ch. 35.86, p. 562.

later Luther himself lamenting what had been done with his doctrine, and the neglect into which good works had fallen. Catholics saw the Reformers' denial of the sacramental character of matrimony as one illustration of what happened when the significance of 'works' was denied. Luther had undoubtedly given hostages to fortune by endorsing the bigamy of George of Saxony, and by excessively racy formulations like: 'If the wife is unwilling, let the serving-maid come instead.'<sup>37</sup> We have already seen that Catholic polemicists attributed any degree of immorality to heretics and especially to heresiarchs. Such claims might not persuade *politiques*; in fact we shall see Jesuits who had their doubts about them. But the Catholic indictment of *scriptura sola* for opening the door to sectarianism seemed to have substance, and the case for a *iudex controversiarum* was certainly powerful. So also was the more insidious claim that, given the doctrine of *scriptura sola*, religion became not a school of virtue and obedience, but instead an incentive to speculation, dissent, and contrariety of opinions, with no prospect of a resolution: everyone a theologian<sup>38</sup> and no one an obedient and faithful subject.

By their fruits ye shall know them, and in the conventional Catholic interpretation, all the turmoil in Europe since the beginning of the heresies<sup>39</sup> was the fruit of the unsubmitiveness inherent in the New Gospel. As Sebastian Heiss put it, with an array of mixed metaphors: 'We used to enjoy public peace when we all sat under the same tree of religion and were of one mind. That was before Luther, Zwingli, Calvin rose up, those rocks on which any solid peace founders, those abysses into which public tranquillity falls.' He cited the German Peasant Wars, the Revolt of the Netherlands, and the civil wars in France. 'And wasn't it Calvin's Furies (*Eumenides*) that stirred up Britain and soaked it in showers of innocent blood?' It was 'the nefarious discipline of Luther and Calvin which cuts the sinews of both ecclesiastical and civil laws, and leads to the collapse of due obedience to the lawful magistrate.'<sup>40</sup> Ribadeneira's *Christian Prince* devoted an entire chapter to the argument that 'heresies are the cause of the ruin and revolutions of kingdoms'.<sup>41</sup>

<sup>37</sup> A favourite for Catholics from Surius onwards. See e.g. Ernhoffer's *Schutzschrift*, p. 52; Fitzherbert, *Second Part of a Treatise*, ch. 30.2, p. 438, and generally Vetter, *Zweyhundert Luther*, 1607, with references and citations for each of his accusations against Luther.

<sup>38</sup> Perpinya, *Orationes duodeviginti*, p. 537: 'Omnes enim, qui ab Ecclesia desciverunt, . . . volunt esse doctores.'

<sup>39</sup> *Ibid.*, pp. 497–9. <sup>40</sup> *Ad aphorismos doctrinae Jesuitarum*, p. 60; 'discipline' is sarcastic.

<sup>41</sup> *Tratado*, bk I, ch. 27; see also Epilogue (bk III, ch. 44). Similarly, in best 'reason of state' style, Mariana, *De rege*, bk III, ch. 17.

The Reformers' devotion to Romans 13 and I Peter 2 could therefore be discounted. Perpinya pointed out that in the very same chapter in which Calvin paraded the doctrine of obedience, he took away its substance by restricting the command to obey and suffer to private persons only, while justifying rebellion on the part of lesser magistrates and public assemblies; he also noted Calvin's hostility to monarchy.<sup>42</sup> The Reformers' apparent attachment to liberty was also regarded as a subterfuge. Once they got the upper hand politically, they were as intolerant of dissent as the true Church and orthodox princes, but with no comparable justification.<sup>43</sup> And to complete the demonstration that modern heresy was incapable of performing the civil functions of religion, it was according to Jesuits characteristic of heretics not only to practise rebellion, but also to teach and justify it. Jesuit polemicists in France<sup>44</sup> were naturally entirely conversant with Protestant resistance theory, and arguably they, and even more the Ligue that most of them supported, drew on it freely. German, Belgian, English, and Scots Jesuits also had to be *au fait* with the works of their heretical countrymen. By the early seventeenth century, they had acquired an encyclopaedic knowledge of heretics justifying resistance; Persons's *Treatise tending to Mitigation* of 1607 cites Calvin at length, also Hotman, the *Vindiciae contra tyrannos*, Bèze's *Droit de Magistrats*, the *Reveille-Matin*, Knox, Buchanan, and numerous German Lutherans writing against Calvin. He also derived helpful material for his argument from the (Anglican) Bishop Richard Bancroft and even Richard Hooker.<sup>45</sup>

By this time, such accusations were tit-for-tat: Jesuits were responding to Calvinist, Lutheran, *parlementaire*, Anglican, and Puritan accusations that it was *Jesuits* who encouraged not only rebellion but even casual assassination of rulers. Jesuits replied that nothing they taught in this area was in the least peculiar to the Society, or offensive to the Catholic princes that allowed them to publish.<sup>46</sup>

The upshot was that princes, whether Catholic or heretical, would find heretical subjects ungovernable. Their word and good faith are not to be

<sup>42</sup> *Orationes duodeviginti*, pp. 533–5.

<sup>43</sup> *Ex uno discite omnes*: Hay, *Certain Demandes*, p. 78: 'Why in xe [*sic*] beginning of zour new Evangell preached ze [i.e. ye] libertie of conscience and now constraine al men to subscribe zour new doctrine, zea thame quhome ze knaw to beleve ye contrar?'

<sup>44</sup> This of course included many foreigners; Ribadeneira was in Paris in the 1580s, and so were Persons, Fitzherbert, Possevino, and many others, for long or short periods.

<sup>45</sup> E.g. pp. 38–9, 40–7, 105, 107, 113, 116, 118, and 125; p. 118 is the only Jesuit citation of Hooker known to me.

<sup>46</sup> Contzen, *Disceptatio de secretis Societatis Jesu*, 1617, p. 49.

trusted.<sup>47</sup> Furthermore, heretics are likely to support their disobedient co-religionists abroad against their own lawful rulers.<sup>48</sup> A Catholic ruler who has not reduced his own subjects to religious unity will therefore be safe neither from domestic nor from foreign enemies.

THE REASON OF STATE COUNTERFACTUAL  
IN PERSONS AND FITZHERBERT

Jesuits sometimes even supported their view that 'there can be no conciliation between Catholics and heretics'<sup>49</sup> by arguments which set aside doctrinal or moral issues, and confined themselves to purely 'Machiavellian' considerations. These arguments were explicitly counterfactual. They were designed to demonstrate that even on the Machiavellian premise that morality and piety could be ignored when reason of state demanded it, the policy of toleration was misguided (or, in some versions, fully justified given the circumstances). The mode of argument resembles one employed in Thomist theology in discussions of the effects of divine grace on the human condition, and the *etiamsi daremus* of the scholastics, who had long argued that natural law would be binding and would have the same content even if we granted what it would be impious to suppose, namely that there is no God.<sup>50</sup>

So, for example, Mariana, taking the moral and religious objections to a policy of toleration as read, devoted an entire chapter to demonstrating that a commonwealth divided into politically organised religious factions was inherently ungovernable. If the prince favoured one faction, the other would begin by conspiring to defend itself when the opportunity offered. Once its members felt they have enough power, they would demand freedom of worship, would gradually add menace to supplication, and would then take up arms. If they were victorious, they would either subject the king to their power, or force him to embrace their religion, or lose both his throne and his life. On the other hand, if a king tried to show equal favour to both sects, he would be equally suspected by both.<sup>51</sup>

<sup>47</sup> This follows *ex hypothesi* from the depravity of heretical morals; e.g. Becanus, *De fide haereticis servanda*, ch. vii.7; x.8.

<sup>48</sup> E.g. Fitzherbert, *First Part of a Treatise*, ch. 35; Ribadeneira, *Historia ecclesiastica del scisma in Inglaterra*, esp. (BAE) bk II, ch. 39, on 'los medios que ha tomado la Reina [Elizabeth] para turbar los reinos convecinos'.

<sup>49</sup> The formulation is Bellarmine, *De laicis*, ch. 19, chapter heading; cf. Mariana, *De rege*, bk III, ch. 17, p. 353: 'Paci autem nihil magis adversatur quam si in eadem republica, urbe aut provincia una plures religiones sint.'

<sup>50</sup> See Finnis, *Natural Law*, pp. 43, 54.

<sup>51</sup> *De rege*, bk II, ch. xvii.



## PERSONS' CONFERENCE AND NEWS

A very similar and politically much more dangerous analysis (to judge by the execration heaped upon the book) pervades Persons's *Conference*, rightly described by Peter Holmes as 'arguably the best political work written by an Englishman between More's *Utopia* and Hobbes's *Leviathan*', apart from Hooker's *Laws*.<sup>52</sup> Persons argued that it was in each individual's *interest* to have a prince of his own religion. Leaving 'matter of conscience' aside, it would be folly in terms of 'reason of state also, and worldly pollicie' for anyone 'of what religion soever he be, to promote to a kingdome in which himself must live, one of a contrary religion to himself', in view of the 'continual danger' and 'a thousand molestations and injuries' to which those are exposed who differ from the 'prince and realme in matters of religion'.<sup>53</sup> Those not of Elizabeth's religion would therefore be very ill-advised to allow her to be succeeded by anyone except one of their own co-religionists, even if the laws of succession were clear (which they demonstrably are not). Persons marginalised the doctrinal point, which Bellarmine and other Jesuits stressed until it rapidly fell out of favour after the accession of Henri IV, that Catholics, if they are able, are morally obliged to prevent the accession of a heretic, or to depose a heretic if he or she succeeds.<sup>54</sup>

If Englishmen attended to their own best interest, they would also ignore a claimant's 'race or nation', and for that matter gender (p. 178). Dispassionately cutting through platitudes about 'natural princes', Persons offered some striking arguments against the 'vulgar prejudice' against foreign rulers. One was that the distinction between 'straingers' and fellow-nationals 'seemeth to be a thing that dependeth much of the opinion and affection of each people and nation'.<sup>55</sup> In fact well-behaved subjects find that foreign rulers, especially those governing from abroad or attaining their office peacefully, are ordinarily more benign and lenient than rulers of their own nation, as a matter of 'pollicie', 'wisdom and reason and state'

<sup>52</sup> *Resistance and Compromise*, p. 135.

<sup>53</sup> *Conference*, bk I, pp. 217–18; for other references to 'reason(s) of state' and 'pollicie' cf. bk II, pp. 117, 205, 207, 238.

<sup>54</sup> *Conference*, pp. 214–16. Ribadeneira, *Scisma in Inghilterna*, bk III, ch. 36 (p. 278) thought it a commonplace which no Catholic king or prince would even dream of punishing a theologian for advancing. It is still maintained in Azor, *Institutiones morales*, and in Laymann and Forer, *Pacis compositio*.

<sup>55</sup> Bk II, ch. 9. He noted the Huguenot ploy of representing the Guise (from Lorraine, 'which is a province joyning hard uppon France, of the same nation, language, and manners, but only under a different prince', p. 202) as 'straingers and forayners'. Again, 'the Florentines are hated and called straingers in Siena, albeit the one state be not 30 myles from the other, and both of one nation, language, manners and education'. But the 'Biscaynes' (Basques) of Spain do not regard the Castilians as foreigners, although they are of a different nation (pp. 202–3).

(p. 207). Terms and conditions favourable to England's ancient liberties (p. 225) would inevitably be demanded of foreign-born rulers. And having no relatives or faction of their own to advance, they would be more dispassionate and equitable in distributing favours (p. 224). These arguments were in the best tradition of Jesuit hostility to 'national' particularism, as well as being intrinsically plausible. They would of course have facilitated the accession of one of the Spanish or Portuguese (i.e. Catholic) claimants, but Persons held out little hope that they would prevail over the inveterate prejudice of 'all men' against foreign rulers (p. 194).

Persons's analysis thus inferred injunctions about prudent conduct almost exclusively from what it was in people's *interest* to do, not what they *ought* to do. He had in fact already advanced the same argument in an earlier work, the startling *Newes from Spayne and Holland* (1593).<sup>56</sup> There he had confined himself even more exclusively to 'consideration of wisdom and pollicy temporal . . . though we set aside al feare of God and religion'. In the 'Second part' of that work, he had proposed various 'politique and important discourses . . . and some considerations also of state as they termed them' (p. 21<sup>v</sup>). The subject was whether, setting aside all regard of partiality to religion, the current way in which 'English [*sic*] affayres' were being governed was 'in it selfe and according to reason, experience and law of pollicy, to be accounted wise and prudent'. The *Newes* argued that it was imprudent, 'not only for lack of iustice and conscience (for of that [those governing England] would take no regard), but that even in nature of humane wisdom and pollycy set downe by Machavel him selfe, or by any other of less conscience then he' (p. 22<sup>v</sup>), the practice of the English government was contrary to all 'wisdom and pollicy'. It was 'a great oversight in reason of state' (pp. 22<sup>r-v</sup>) to establish a religion different from all other Protestant religions, thereby losing all possible friends abroad. It was absurd to believe that all Protestants were of the same religion and could be relied on to support each other once the common Catholic foe was 'extinguished', given their 'great and irreconcilable differences'. Persons here once more cited Bishop Richard Bancroft's *Survey of the Pretended Holy Discipline* and referred to the execution of the Puritans Barrow, Greenwood, and Penry by the English government (p. 25<sup>f</sup>) as evidence of the extreme hostility between the various Protestant sects.

<sup>56</sup> Anon., s.l., 1593; (= ERL 365). Clancy, *Papist Pamphleteers*, p. 148, and Allison and Rogers attribute it to Persons; Milward attributes it to M. Walpole SJ, but gives no reason. It contains a rare English citation of 'Ribadenyra', pp. 19<sup>r</sup> and 20<sup>r</sup>. I see no reason to doubt that Persons wrote both the *Conference* and the *Newes*, although both may have involved collaborators. The distinctive and remarkably crude but elaborate emblem at the end of the *Newes* is, incidentally, the same as that at the end of the 'Preface and Occasion' of the *Conference*.

It was equally a grave 'defect of fore sight and pollicy not to grant liberty of conscience to al', unlike German princes (p. 25<sup>v</sup>). Violent means create martyrs, alienate opinion abroad (p. 28<sup>v</sup>), and only inflame the zeal of people, especially of Englishmen, who are of the same race as the Germans, and likely to respond to toleration in the same way (p. 26<sup>v</sup>). Preferment would have made those of different religion more compliant and indifferent (p. 26<sup>r</sup>). The English government cannot in any event exterminate the English Catholics by any secret 'designments, conferences and consultations', because they are too numerous, many are conforming outwardly and are therefore unidentifiable, and they are too well-informed and too well-connected by ties of friendship, kinship, alliance, obligation, and affection even with 'the very parties themselves that must be executioners of this act in every shire' (pp. 33<sup>r-v</sup>). The Puritans cannot be eliminated either, because their religion 'buyldeth directly upon the Protestants first groundes of religion'. The Anglicans can therefore only deal with them 'by policy and humane ordination, or by turning to catholique answers, contrary to their own principles'; in fact the only supporters the official Church has are persons with some 'particuler interest' to advance (p. 30<sup>v</sup>, misnumbering for p. 29<sup>v</sup>). The *Newes* then passed on to the uncertainties of the succession to Elizabeth, announcing and outlining the argument of the *Conference*, which by implication was already written (p. 41<sup>r</sup>).

In this extremely clever piece, the demands of religion and morality were never considered in isolation from 'human pollicy', and Persons did not bother even with Ribadeneira's distinction between true and false reason of state. 'Reason of state' (or 'pollicy') was understood as Machiavellians were thought to understand it, and the whole argument was based on it. There was indeed a very brief excursus justifying Catholic persecution of heretics, but even here Persons's interlocutor instantly recovered himself: 'But [because] that is not graunted by al but remainyeth in dispute, (I wil quoth he) yeald an evident difference heerof in pollicy and reason', namely that Catholic princes had only successfully eradicated heresy by force when the sects were new, with few followers (p. 27<sup>r</sup>).

#### FITZHERBERT'S *TREATISE CONCERNING POLICY AND RELIGION*

In this connection, the work most consistently underrated even by intelligent and historically sensitive commentators<sup>57</sup> is the *Treatise Concerning*

<sup>57</sup> E.g. Clancy, *Papist Pamphleteers*, pp. 181–7; it is however a valuable discussion. Bireley, *The Counter-Reformation Prince*, p. 116, uncharacteristically dismisses Fitzherbert.

*Policy and Religion*, by the erstwhile English Secretary to Philip II, and Robert Persons's collaborator, friend, and disciple Thomas Fitzherbert. This two-volume work inevitably had a restricted public,<sup>58</sup> since it was in English and was never translated.<sup>59</sup> It was nevertheless well received by both Catholics and Protestants.<sup>60</sup> Fitzherbert's much briefer Latin version of his thesis, his *Does Crime Pay* (*An sit utilitas in scelere*), could hope to reach a much larger audience, but it was much more pious, as befitted a person by then a Jesuit priest and head of the English College at Rome (which he remained until his death in 1640).

Although Fitzherbert was politically extremely well versed, and incidentally very sensitive to fashions in language (if not spelling), he alienates the modern reader by parading the usual providentialist case for a virtuous reason of state, and by trying to refute modern atheists and sceptics by patristic theology. The book is also unquestionably prolix, but this was largely the consequence of its reason of state argumentation which, as Fitzherbert pointed out,<sup>61</sup> required that 'precepts are to be deduced of things that are most frequent, and ordinary (which breede an experience) and not of things more rare, or seldome seen, which are commonly casual, and to be referred to chance' (1.35.40, brackets in the original), a common fault in the arguments of Machiavellians and *politickes* (or *politikes*, *politiques*, etc.; he used all these spellings interchangeably). Fitzherbert also had an incomparably broader historical knowledge than Machiavelli to draw on.<sup>62</sup>

According to Fitzherbert, 'politikes' (whom he did not usually identify more precisely) 'graunt and acknowledge the necessity of religion, as well to the institution [i.e. establishing], as also for the administration and conservation of commonwealth, [but] . . . preferre in al thinges, reason of state before reason of religion'. In virtue of this, they claim to practise 'true and perfect policy' (*Preface*, s. 2). Fitzherbert countered by dwelling

<sup>58</sup> As a result, and conveniently for the Society, his exculpation of the assassination of Henri III, which was much more blatant than Mariana's, seems to have gone entirely unnoticed (*First Part of a Treatise*, ch. 31.9).

<sup>59</sup> Unless otherwise indicated, all references are to the *First Part*, second edition, 1615 (= ERL 175; the *Second part* is vol. 180), by chapter and paragraph; the first edition was 1606 and 1610. It was published three times. This does not compare with Ribadeneira's *Tratado/Princeps Christianus*: four Spanish editions, four Latin editions (two each in 1603 and 1604); translations into Italian (two editions and French. Lipsius's *Politicorum sive civilis doctrinae libri sex* easily outshone all Jesuit political works with ninety-six editions, mostly before 1650, and translations into every major European language; cf. Bireley, *Counter-Reformation Prince*, p. 74.

<sup>60</sup> DNB, entry *Fitzherbert*, but without any evidence.

<sup>61</sup> Epistle to his Son (Fitzherbert became a priest only after his wife's death), p. C2: 'for the better confutation of Macchiavillian and Atheistical polikes, who referring al the effects of Gods secret Judgments, yea and of many of their own errours to chance, are best convinced by experience which is cheefly deduced from history, and shoven best by multitude of examples'.

<sup>62</sup> E.g. his five chapters on Roman history in the *Second part* (11.9–13).

on the inherent limitations of human 'wit' and 'policy' (ch. 1), in other words reason of state (e.g. Preface, 3). Neither 'political science' nor human prudence could *guarantee* what 'politickes', 'statists' and 'Macchiavillians' understood by success. Yet the greater likelihood of success was the only justification they could offer for the indifference to moral, religious and legal considerations that their 'reason of state' counselled. The *First part of a Treatise Concerning Policy and Religion* was thus designed to undermine 'Machiavellian politikes' and atheists in terms of their own principles; the *Second part* then provided an exemplary statement of the position that Catholic Christianity is the best possible civic religion,<sup>63</sup> as compared not only to heretical religions, but also to those of pagan antiquity and the Mohametans.

'Political science' (ch. 7)<sup>64</sup> is the speculative knowledge (*scientia*) of policy, polity, or politics (terms he used interchangeably) established by the Ancients and subsequently amplified 'by infinit authors ancient and moderne' (7.40). But because it is speculative knowledge, it cannot provide all that the 'statist'<sup>65</sup> or 'politike' needs. A *politike* is 'one that practiceth that parte of humane prudence which concerneth state, and [is] properly called Policy' (Preface, s. 3). But policy and prudence consist of 'the institution [establishing] and execution of good lawes, or in wise counsellis, deliberations, plots and designments' (7.1), and none of these can guarantee political success.

Laws, by which Fitzherbert meant both 'constitutional' and civil and criminal laws, are quite incapable of coping with the inherent mutability of commonwealths. He supported this point by an array of historical examples, but also by reference to the philosophy of order and the universal experience of mutability, which not even the most untheoretical proponent of reason of state could deny (6.2–5). As for laws establishing the form of government, there could not be any certainty about which form of government will suit a particular commonwealth, or about how best to adapt it to all the possible conflicts, seditions or mere endemic 'mutability' to which it is subject (7.5–8, 14–21). Civil and criminal laws, again, are universal, but 'concerne the actions of men which are infinit and particular' (9.4), and therefore cannot provide for all cases, but 'must leave place for the determination and judgements of men according to equitie', with all the possibility of

<sup>63</sup> See the admirable summaries in the *Preface*, and the last chapter of the *Second part*, ch. 37.

<sup>64</sup> This term, a rendering of Aristotle's *episteme politike*, occurs neither in Possevin's *Bibliotheca selecta* nor in the *Ratio studiorum*; nor in Lessius, Botero, Scribani, Contzen, Grotius, or Hobbes, all of whom have *doctrina civilis* or 'civil philosophy'.

<sup>65</sup> He used this term to mean 'those conversant with statecraft', or *politikes*, but also as a synonym for 'Machiavellians'.

error and injustice that entails. Laws, furthermore, 'must act by precept or prohibition, or by permission or reward or punishment' (9.6ff). But precept and prohibition are both equally ineffective. Precepts which convey a *knowledge* of duty in no way ensure *performance*. Performance requires an adequate motive, and as St Paul says in Romans 7, there is within men a much more powerful 'carnal law' which runs counter to civil law, and which consists 'onlie [in] a mans own profit, pleasure, and delectation' (9.11–20), his 'self-love and particuler interest' (9.18, with a marginal reference to 'Machiavel de principe').

Punishments, rewards, or education are no more effective in ensuring obedience to laws. 'Anacharsis compares laws to a spiders webbe which takes onlie the little flees [i.e. flies], while the great ones break through it' (9.11), given the corruption of judges and juries, favours, pardons, and all the rest. Some legal penalties are treated with indifference. The afflictions attending the pursuit of virtue seem worse to many people than the law's punishments (9.28). Rulers, what is more, are above the law and its punishments (9.32). As for rewards, the rewards for *vice* 'are alwaies either assured, or at least hoped for and expected', whereas 'for virtue there neither is any reward to be had many times, nor yet hope of any by political law'. Consider how 'crownes and Sovereignties [are often] procured by murders, mischiefes and most wicked meanes' (9.22–5), whereas many suffer death for actions for which they should be rewarded. As for good education, it often has no effect on rulers, nor is it necessarily any more successful with subjects, given the impediments to its effectiveness: wicked or impoverished parents, the resistance of vicious natures to instruction, bad company after the conclusion of education, and the dearth of able, conscientious, and virtuous instructors (ch. 10).

In short, there are 'no assured meanes, to make the commonwelth vertuous' (9.33–4). By this time Fitzherbert had obviously lost track of his own argument. Until chapter 9 he had been arguing that neither laws (command and prohibition) nor rewards and punishments can ensure *political success*. But he was now saying that they could not remove the causes of *sin* (9.5, 9.9–10) or make men *virtuous* (9.33). But for Machiavellians and politiques as Fitzherbert represented them, the point of law and governance was not to make men virtuous, but to make them amenable to control. And by his own account Machiavellian policy *can* make subjects amenable to being 'mannaged'<sup>66</sup> by accommodating itself to human carnality, self-love,

<sup>66</sup> Ch. 29, chapter heading: 'to manage matters of state'; this is one of the very first uses of the term that I can recall, as are 'statist' and 'statism', e.g. in the long title of the work and 28.43, ch. 30, and in *The Reply of T.F.*

interest, and vice (9.12). There are people to teach it, like Machiavelli (9.18), states which practise it, namely tyrannies, and it can even enlist a counterfeit religion, like that of 'some sectaries of this day, whose doctrine tendeth wholie to the libertie of the flesh' (9.19).

But Fitzherbert soon recovered.<sup>67</sup> For he now turned to the second part of 'policy' (after 'laws'), namely: 'councels [i.e. advice, consultation], plots and designments either for war or for peace' (ch. 11, chapter heading; chs. 13–15). These are the very marrow of reason of state; and here the most glaring failures of 'politikes and worldly wisemen' were apparent for all to see.

Unanticipated reversals and failures of designs, plots and enterprises are in fact the actions of Providence (chs. 16–23), and not the result of 'chance', 'accident', or 'fortune' as Machiavellians think: all that happens is part of God's design (ch. 12). In any case, a Machiavellian 'policy' separated from true reason of state cannot provide sure ways of avoiding them. Fitzherbert pointed this moral with his usual vast array of historical examples. He especially relished reciting the errors and failures of Cesare Borgia, the 'Arch-politike' and Machiavelli's paradigm (3.4, 11.4, 13.4, 29.32, 31.29 and 45, 34.26, 37 and 59), and Henri III who 'in cunning subtilty and al Machiavillian policie . . . [was] inferior to none in his age' (3.11, 4.5–9). (Henri's unforgivable sin was his opposition to the Ligue and his assassination of the Guise princes to whom Fitzherbert was devoted.) And for those who thought that aristocracies would prove more prudent, Fitzherbert added the errors of whole senates. Policies 'that seemed not only to be grounded upon great reason, and contrived with great prudence, but also succeed for some tyme notably wel', failed in the end (13.9, 12 and 14). In short, 'the common crafts and subtilty of worldly men (which is now commonly called machiavillian policie)' (3.5) could not prevent the very best-laid and most prudent plans failing. Conversely, history recorded many instances of men like the Emperor Charles V, who had succeeded despite the most elementary and egregious errors of policy (4.1–4).

After a conventional refutation of atheism and denials of God's providence (chs. 23–4), Fitzherbert explained why good men are afflicted in this life (ch. 25), why wicked men prosper (ch. 26) and 'why good and bad men doe many times prosper, or are afflicted alike' (ch. 27). There were those who 'either got, or conserved their states by tyranny and wickednes, and nevertheles died their natural deaths; yea, and left flourishing Empires,

<sup>67</sup> Clancy, *Papist Pamphleteers*, p. 184, is dismissive about the rest of the book, but it is typical prudence literature of the type endorsed by advocates of reason of state, and Fitzherbert could hold his own with any 'statist'.

kingdomes, or states unto their children' (35.39). Fitzherbert therefore cannot be accused of any facile providentialism. But he was also undermining his own argument that 'no sinful policy can be truly accompted wise or political' and his claims about 'the necessity of grace to the perfection of policy' (ch. 28, heading). No doubt 'statists, how expert soever they be, can never warrant [sc. guarantee] the good successe of their plots and designment' (28.42). But then the operations of God's 'abstruse and hidden' designs (p. 88) entail that a virtuous and religious policy cannot 'warrant' it either.

But again Fitzherbert was not defeated. He argued that God's passivity in the face of political sin cannot be relied on. It is folly to provoke his wrath by a 'politike' stance on religion and morality. But Fitzherbert also laid aside his much-trumpeted distinction (from Ribadeneira, whom he never mentioned) between mere worldly wisdom, prudence, cunning, or sagacity and a policy which is 'truelie wise and political' (28.1, see also Preface, s. 3), and considered what was expedient and justifiable solely in terms of the *politikes'* own end of success. He (like other Jesuits and other anti-Machiavellians) charged Machiavelli and his followers with advocating policies of dividing and ruling, sowing domestic factions, operating according to the maxim *oderint dum metuant*,<sup>68</sup> neutralising or killing potential leaders, and destroying the morale of subjects by depriving them of honours, positions, and the opportunity to meet, as well as of arms. Fitzherbert as usual named no specific Machiavellian who advocated such courses of action.<sup>69</sup> But then he could hardly cite Botero, even though he had explicitly endorsed all these policies as a way of dealing with 'indomitable' heretics.<sup>70</sup> Fitzherbert's reply was that 'it is evident inough [*sic*] in true reason of state' that even if there were no wrath of God to fear, such 'Macchiavillian policies' cannot save princes from the hatred they provoke (31.49). Ch. 33 equally deliberately ignored all considerations of justice and religion in the startlingly 'Machiavellian' 'example of a deliberation, touching the maintenance of a civil warre in a forraine country', to show how risky any such policy was. Here he cited Guicciardini's *Avvisi politici* (i.e. *Ricordi*) to the effect that 'experience teacheth that respect of gratitude for benefits past, litle availeth when it is any way encountred with reason of state which (as Gucciardin saith) *vince ogni partito*, doth with princes overwaigh al other considerations' (33.8). He illustrated the point with the example of the ingratitude of the French Catholics to Philip II (34.16). His conclusion was 'that the absurdity

<sup>68</sup> The maxim is attributed to Machiavelli inferentially, not directly (34.4).

<sup>69</sup> Fitzherbert, *First Part of a Treatise*, e.g. chs. 31.14–17, 22, 27–8, 34.3–6, 14–15.

<sup>70</sup> *Della ragion di stato*, IV.3–4, especially ch. 4, pp. 182–3, 194; see above.



of Macchiavel, is most manifest in true reason of state, seeing that in counselling princes to wickednes and tyranny, upon confidence of [i.e. reliance on] humane force and policy, he exposeth them to an assured danger, and doth not geve them any assured or probable remedy, but rather heapeth danger upon danger' (34.40). The answer to the question posed by the title of Fitzherbert's Latin version of his argument: Does political crime pay? is that it does not, for *honestas* is the best policy, even in terms of the *utilitas* familiar to Machiavellian reason of state.

The whole *Second part of a Treatise* is devoted to the argument that in instilling the obedience and providing the motivation which will make subjects risk life and limb for the commonwealth, 'only one religion (to wit the Christian Catholike religion) is truly political, or fit for government of states' (Preface, s. 5), quite apart from the fact that it is also true.

The upshot of these arguments was that, in strict reason of state and even ignoring any religious considerations, it is the Catholic religion which is the best support of thrones, whereas heresy on the contrary saps their foundations, and Machiavellian politics are self-defeating. Neutrality between religions is a highly impolitic option for rulers. Even a merely worldly wise prince will therefore use all prudent measures to uphold the Catholic religion, will extirpate heresy if possible, and will refuse to concede *libertas credendi*.

Under the circumstances it was certainly unfortunate, to say the least, that the terminology of Jesuits included the word *exterminare*<sup>71</sup> to describe what should be done with heretics and heresy. The term was sanctioned by its use in a frequently invoked passage from Aquinas's *IIa-IIae*, 2, art. 3 (my translation):

It is a much more serious matter to corrupt the faith, which gives life to the soul, than to counterfeit money, which is [merely] an aid to temporal life. Hence if counterfeiters or other criminals are at once handed over for execution by secular princes, there is all the more reason why heretics, the moment they are convicted of heresy, may be not only excommunicated, but also justly killed . . . The Church is indeed merciful and proceeds to a first or second correction, as the Apostle teaches; but if after this [the heretic] still proves stubborn, the Church, despairing of his conversion, looks to the salvation of others, by separating him from the Church by a sentence of excommunication; and furthermore leaves him to secular judgement to remove him (*exterminare*) from the world by death.

<sup>71</sup> In classical Latin, *exterminare* meant 'to banish', but 'to destroy' had become a common meaning in late and medieval Latin. Aquinas's meaning was unambiguous: to 'remove from the world by death' is to execute. Matters were not improved by the variant *extirpare*; Jesuits sometimes wrote *exstirpare*, confirming their awareness that the word meant to 'root' (*stirps*) out.

Aquinas seemed to have in view individual heresiarchs but, as Jesuits repeatedly pointed out, crusades against heretics (for example, Albigensians or Waldensians) were fully endorsed by ecclesiastical tradition and papal sanction.<sup>72</sup>

The habitual use of this terminology, compounded by polemical indifference to the distinction between dealing with *heresy* (where *extermination* might merely be a somewhat strident metaphor) and dealing with *heretics*, made the Jesuits liable to the charge of preparing a 'bloodbath'. This fitted in nicely with lurid fantasies about the Jesuits' personal relish of cruelty that were such an enduring feature of the *leyenda negra*. Replying to this charge, Mairhofer, Scherer, and Rosenbusch pointed out that *extirpare* meant essentially to remove or eliminate, and *exterminare* to banish, neither of which necessarily entailed a blood-bath.<sup>73</sup> Indeed, the most extreme policy envisaged in Germany after the Peace of Augsburg was mass-expulsions. And clearly Jesuits regarded neither mass-expulsions nor a 'blood-bath' as usual or desirable ways of dealing with heretics. But, as with witchcraft, they were entirely capable of steeling themselves to endorsing the ghastly paroxysms of torment and killing that were sometimes resorted to as the *ultima ratio*.

Moreover, the orthodox view that heresies and at least some heretics are to be 'exterminated' does not stand alone. It has to be taken together with the involvement of prominent individual Jesuits in armed enterprises against heretical states, and with the conventional view in the Society that repression of heresy is a legitimate *casus belli* between states, and of civil wars as well;<sup>74</sup> the distinction between foreign and civil wars was hard enough

<sup>72</sup> E.g. Bellarmine, *De laicis*, ch. 22, p. 342.

<sup>73</sup> Rosenbusch, *Antwort und Ehrenrettung*, p. 15: 'Austilgung' (extermination, eradication) means different things to different people: the theologian 'eradicates' heresies with books, the soldier with weapons; the same language was used by Lutherans (pp. 25, 27); the doctrines of heretics and their persons must be distinguished (p. 40); *Replica*, p. 128: *haeretici sunt comburendi*, 'unless there are *constitutiones* (i.e. positive laws) against it, or it is inexpedient for a variety of reasons'; in any case true heretics must be distinguished from nominal heretics. Mairhofer, *Catholische Schutzschrift*, 1601, pp. 224–33: Jesuits are only saying the same as all Catholics, the Church Fathers, the Lutherans themselves and the laws of the Empire about the punishment of evil-doers (pp. 224–5); he had never advocated that all heretics 'are to be eradicated and exterminated', since more gentle methods may be effective and many are Lutherans under duress (pp. 225–6); these are, furthermore, 'politische Sachen' which have their own judge (p. 233). Scherer, *Rettung der Jesuiten Unschuld*, 1586, dismissed the accusation as a 'Fantasey', and countered with some particularly bloodthirsty lines from Luther (the 'Lermprediger und Mordprophet') about washing his hands in the blood of Catholics (pp. 14–15, 19).

<sup>74</sup> G. Torres, *Confessio Augustiniana*, 1580, ch. XIII, s.viii: 'Gladium portare Imperatores etiam contra haeticos'; this might merely mean the right to 'punish', but Toledo was explicit: 'iuste et licite potest inferri bellum hereticis a Principis catholicis, postquam per Ecclesiam declaratum fuerit, eos esse haeticos', *Ennaratio*, vol. II, qu. 10, art. viii, p. 107, citing Castro, *De iusta punitioe*, II, ch. 14. The Ligue's activities presupposed the justifiability of civil war.

to make in the sixteenth century, and in the Holy Roman Empire for a good deal longer. Equally, the Society collectively did not condemn such miserable episodes as the Duke of Alba's mass-executions in the Netherlands in the 1580s or the St Bartholomew's Day Massacre in France in 1572. There is evidence that individual Jesuits tried to save Protestants when they could during the latter.<sup>75</sup> But more usually, they interpreted it as a punishment from God upon rebels, in the course of which (as is the way with war and the wrath of God) not a few innocents suffered as well. An even more exculpatory view was that the Huguenots were preparing a *coup d'état*, and that the massacres were a swift preventive measure, legitimated by necessity.<sup>76</sup> Jesuits thus could provide a justification for policies which (like the very darkest reason of state) required brutalities.

#### THE TOLERATION CAVEAT

But the Jesuit position on intolerance and persecution was in fact invariably subject to a caveat, which made its proximity to reason of state even closer. As was mentioned earlier, a policy of intolerance could not be an unconditional moral or religious imperative. Possevino did not admit any exceptions, but the texts he commended in his *Select Library* did. Even the merely hortatory mirror for princes included in Ioannes Busaeus's *On the Different Ranks and Conditions of Men* asserted that Christian rulers are duty-bound to extirpate heresy, but then qualified: 'when it can be done without endangering the safety of the Catholic Church (*salvae Ecclesiae Catholicae incolumnitate*)'.<sup>77</sup> According to Ribadeneira a prince is indeed to 'exterminate the contagion of heresy', but

without occasioning tumults and without detriment to the Catholics, considering prudently and circumspectly the condition of his kingdom, and whether it is a few or many who suffer from the heretical leprosy. For when heretics occupy the whole kingdom, or the greater part of it, [princes] cannot uproot the tares without at the same time tearing out the wheat. Or, if there is a fear or danger of great upheavals

<sup>75</sup> Martin, 'The Jesuit Emond Auger and the Saint Bartholomew's Massacre at Bordeaux', pp. 117–124.

<sup>76</sup> Orazio Tursellini, *Epitomae historiarum libri X*, 1620, p. 624, has the remarkable line: '[Gregory XIII's] Pontificatus initia laetiora laetus de Parisiensi Hugonotorum caede nuncius fecit.' Rosenbusch's *Replica*, p. 145, treats the Massacres as an 'extraordinaria iustitia'; Scherer, *Rettung der Jesuiten Unschuld*, p. 46, jeered at Osiander's talk about 'simple (*einfaeltige*) Christians' in France: 'It is these simple Christians who in 1572 conspired together, and were totally resolved to ambush their own King, the Queen, the Queen Mother and his brother, and other noble Catholic lords as well', but because the Catholics miraculously got wind of this murderous enterprise, the Calvinists 'themselves fell into the pit that they had dug for others'. Contzen, *Politicoorum libri decem*, IX.21.6, p. 676, says that even some Lutherans agree that those murdered on St Bartholomew's Day were not martyrs.

<sup>77</sup> *De statibus hominum* (1613), p. 447.

(*revoluciones*) or wars, Christian prudence teaches the use of dissimulation,<sup>78</sup> lest more harm than good should come of it.<sup>79</sup>

Bellarmino himself had the same proviso:

if it can be done without harm to the good, [heretics] are without doubt to be extirpated; but if not . . . , and the danger is that the innocent will be punished instead of the guilty, or if they are stronger than we are and there is a danger that more of ours will perish than of theirs if we make war upon them, then we must lie low (*quiescendum est*).<sup>80</sup>

This caveat was here and elsewhere justified by reference to the parable of the wheat and the tares (Matt. 13: 24–30). Even Azor, whose *Moral Doctrines* dismissed the possible permissibility of toleration in a couple of lines, added that ‘if we read that it has sometimes been allowed, that is no wonder; the state of affairs, the customs and the times will not have permitted anything else. But where it is allowed, atheism or paganism will shortly be introduced. Nevertheless, Christian princes permit it, in order to obviate more, or graver and worse evils.’<sup>81</sup>

The general line that would be adopted had already been prefigured in a now little-known masterpiece of reason of state *more Jesuitico*, the verdict on the Peace of Augsburg submitted by Ledesma, Nadal, and Canisius to their Superior General, Francisco Borja, through whose mediation it became the view of Pope Pius V.<sup>82</sup> Writing from the Imperial Diet at Augsburg on 4 May 1566,<sup>83</sup> these dominant figures in the Society (respectively the senior theologian at the Roman College, Ignatius’s caretaker who was almost elected General, and the Society’s chief agent for the whole Holy Roman Empire) concluded that the Peace amounted to

no more than a permission, dissimulation [i.e. non-enforcement] of ecclesiastical jurisdiction, and a suspension of the law of the Empire. These methods . . . seem to have been accepted by the Catholics temporarily, as a concession to the harsh and inescapable necessity of the times and the perversity of the sectarians, so that greater evils might be avoided, since the Catholics were in a state of extreme fear . . . , and seemed to have no room for better policies. (p. 89)

<sup>78</sup> Here meaning: taking no notice of, ignoring, overlooking what a prince can do nothing about; cf. below.

<sup>79</sup> *Princeps Christianus*, p. 178. <sup>80</sup> *De laicis*, ch. 22 (p. 343).

<sup>81</sup> Azor, *Institutiones morales*, vol. 1, pp. 1239, 1296.

<sup>82</sup> Köhler, ‘Der Augsburger Religionsfriede und die Gegenreformation’, 1878, pp. 571–2; Heckel, ‘Autonomia und Pacis Compositio’, vol. 89, 1959, p. 230, notes that Laymann and Forer’s *Pacis compositio* still treated the Peace of Augsburg as a contract made *propter necessitatem*.

<sup>83</sup> Letter 384, *MHSJ, Epistolae Nadal*, vol. III, 1902, pp. 88–96. Nadal’s covering letter (in Italian) explained the terms and circumstances of the Peace, and incidentally commented on some German terminology, e.g. *practici* (i.e. the German *Practicken*) to mean ‘machinations’.

The Peace merely allowed the suspension of laws which were in fact unenforceable, 'until such a time as Christ increases the power of [the Catholics], so that they can vindicate their rights' (p. 90). In a covering letter, the Jesuits advised that a formal protest by the papal legate would merely make matters worse (pp. 93–5). Yet another accompanying letter (like all the rest principally the work of Nadal) pointed out that the situation of the Catholic Church and the Catholic estates had greatly deteriorated since 1555 when the Peace was signed, and that, moreover, the Peace nowhere conceded full freedom of religion (pp. 100–4). Although I have not found this document cited in any Jesuit book, its general point became policy: 'There is to be no peace with heretics, whether temporary or perpetual, unless extreme necessity (*dringende Not*) demands it, and only in order to prevent something worse.'<sup>84</sup>

In short, Jesuit thinking about toleration admitted the plea of *necessity*,<sup>85</sup> meaning that all other courses of action would have even more harmful consequences for the Catholics, princes and estates alike. This is an instance of the consequentialism of Jesuit thought, coupled with the obvious political judgement that it is better to have Catholic rulers, rather than to end up with heretical ones simply because Catholics did not have the prudence to temporise. For the same reason Jesuits were inhibited from condemning outright all attendance by Catholics at heretical services, if they were in high office under a heretical prince.<sup>86</sup>

Jesuit thinking here moved even closer to 'bad' reason of state, where 'necessity' was also the ordinary justification for departures from legality and morality. The only way Jesuit ultras could avoid allowing toleration was by denying that any such necessity existed. Thus Possevino argued that virtually all the greatest cities of France were now (1592) under Catholic control and Belgium too was consolidated; he also pointed to the successes of intolerance in Bavaria, Savoy, and (as he thought) Poland.<sup>87</sup> Catholic irreconcilables argued that the Augsburg Peace was not binding because it had been signed under duress, especially after they had successfully prevented a Protestant succeeding to the Archbishopric of Mainz. This view was urged even more forcefully once the strictly Catholic Maximilian of Bavaria (1595–1651) and his brother-in-law, the equally strictly Catholic

<sup>84</sup> Mairhofer, *Catholische Schutzschrift*, p. 357.

<sup>85</sup> Nadal's letters refer to *dura necessitas* (p. 89) and *necessitas* (pp. 90 and 101); similar expressions e.g. pp. 89, 92, 101.

<sup>86</sup> For Persons's and Allen's casuistry of this point see Holmes, *Resistance and Compromise*, chs. 7–8 and Zagorin, *Ways of Lying*, ch. 7.

<sup>87</sup> *Iudicium*, 1592, pp. 12–15, 82–3.

Ferdinand II (Archduke of Inner Austria, Emperor 1619–1637), both ruled. Both had been educated at Ingolstadt, both had Jesuit confessors, and they were able to undo the toleration granted by Archduke Matthias to the Hungarians in 1606 and to the inhabitants of Upper and Lower Austria in 1609, and by the Emperor Rudolph to the Bohemians in the same year, before his deposition in 1611. A leading protagonist of a policy of forcible restoration of religious uniformity in the Holy Roman Empire was Adam Contzen, Confessor to Maximilian of Bavaria.<sup>88</sup> He never categorically denied that toleration in extreme necessity might be permissible (although he came close<sup>89</sup>), but he mostly avoided the issue by the argument that current circumstances allowed the restoration of religious uniformity in Germany.<sup>90</sup>

However, those less sanguine about Catholic prospects reveal a usually unexplicated assumption in this whole position. The paradigm case of ‘heresy’ presupposed here, and for that matter by medieval treatments of heresy, was that of heretics as a minority, confronting powerful Catholic rulers and a still functioning Church. But this paradigm did not fit those provinces of the Holy Roman Emperor where the Emperor’s writ barely ran, or the Spanish Netherlands, France from 1560 onwards, England and Scotland, Scandinavia, Poland, or Hungary. And in such cases Jesuit reason of state became indistinguishable from any other sort. Given the principles of ‘necessity’ and ‘avoiding a greater evil’, the theological and moral considerations regarding toleration became moot when religious unity was unenforceable, and the question was therefore entirely one of assessing which policy was more expedient.<sup>91</sup> Under certain circumstances, some Jesuits even denied that peaceful coexistence between Catholics and heretics was impossible. We have already seen Persons and Fitzherbert doing so in advocating toleration of Catholics in the British Isles, once the prospect of an

<sup>88</sup> On Contzen as a politician see Bireley, *Adam Contzen*; on his political thought see Seils, *Staatslehre Contzens*.

<sup>89</sup> *Politicorum libri decem*, ix.23.1 (p. 679): ‘sometimes prudent men and lovers of their country are induced by their zeal for peace and concord to prefer even a base and dangerous peace to discord; they see this as being expedient politically (*in politicis utiliter fieri*), and think that it might be reconciled (*accommodandum*) with religion’. But in section 3 he changed tack: such counsels of moderation and mixing of religions are offered ‘either by malevolent setters of traps, or by the simple, or by those only superficially instructed in *pietas*, but replete with the opinions of civil prudence [i.e. reason of state]’.

<sup>90</sup> xi.22, title: ‘Posse pacem Religionis constitui in Germaniae’; and s. 3, citing examples in the Holy Roman Empire and France.

<sup>91</sup> Even the Confessional Manual of Vitelleschi for Lamormaini is extremely cautious: ‘Si permittit haereses crescere in suis provinciis, aut non impedit, *quoad potuit* . . . ? Si haereticorum *defensor vel fautor* fuit?’, Dudik, p. 235 (my italics).

armed *reconquista* had evaporated.<sup>92</sup> Persons expressly described the 'main and fundamentall axiom [of Thomas Morton, his Protestant antagonist], of the impossibility of Catholicke and Protestant people together' as 'not only false and erroneous in itselfe . . . but pernicious to the commonwealth, . . . hurtfull to the state . . . and offensive to forreine nations'.<sup>93</sup> Catholic rulers were of course *entitled* to extirpate heresy, and Catholics were entitled, indeed required, to resist the accession of a heretical king, provided that they were strong enough. But this was irrelevant in England,<sup>94</sup> unless and until Catholic primacy had been restored by foreign arms.<sup>95</sup> Given heretical rulers and, for all he knew, Catholics as a small minority, toleration was all that he could look for.<sup>96</sup> And his argument was simply that such a policy worked, in the sense that it achieved peace and the security of rulers,<sup>97</sup> whereas a policy of persecution did not. The questions whether toleration or persecution is morally justified, and whether the minority in question is composed of heretics or Catholics, could be simply set aside. As he put it in his *Judgment of a Catholicke English-man* (1608): 'Would God His M.<sup>ties</sup> ears . . . could reach into these partes beyond the seas . . . to heare what is said, what is written, what is discoursed by men of best iudgment in this behalfe, not only in regard of iustice and piety, but in reason also of State and Policie': differences of religion weaken a state abroad; and 'wise men fynd no reason, eyther of Religion or State, why such extremities should be pursued, with such rigour, at the instigation of partyes interessed, to the evident danger of so great and honorable Kingdomes . . .'.<sup>98</sup> There is no discernible difference between this and what Persons himself interpreted as reason of state.

Eventually, this position was given magisterial formulation in a textbook for the university market by the Imperial Confessor Martin Becanus, in his *Handbook of Controversies*<sup>99</sup> of 1623. In a section headed 'On Controversies raised by the Politiques (*De controversiis Politicorum*)', he distinguished his

<sup>92</sup> See Holmes, *Resistance and Compromise*, chs. 4 and 18; and Clancy, *Papist Pamphleteers*, ch. 6, for excellent discussions of the positions of British Catholics on these questions.

<sup>93</sup> *A Treatise Tending to Mitigation*, pp. 31–2.

<sup>94</sup> E.g. *A Discussion of . . . M. William Barlowe*, p. 260; *Philopater*, p. 198; *Newes*, pp. 27<sup>r-v</sup>.

<sup>95</sup> The situation he envisaged in *The Jesuit's Memorial* (published posthumously, and not intended for publication); see Holmes, *Resistance and Compromise*, pp. 161–5.

<sup>96</sup> In the *Treatise Tending to Mitigation*, 1607, *Leicester's Commonwealth* (1584), and *Conference*, pp. 262–3, the Catholics were represented as one of the 'parties' in the kingdom, without mentioning their minority status.

<sup>97</sup> E.g. *Leicester's Commonwealth*, pp. 182–4; *Philopater*, p. 448; *Treatise tending to Mitigation*, p. 35.

<sup>98</sup> Ss. LXXXVI–LXXXVII, p. 124; cf. *Newes*, p. 27<sup>v</sup>.

<sup>99</sup> Becanus, *Manuale controversiarum huius temporis*, 1625, book v (the 1623 edition has the same chapter and section numbering, but quite different pagination).

own doctrine from that of 'those who care more about the polity than the faith of Christ'.<sup>100</sup> These, he noted, are not a separate sect, but are 'mixed up' with every religion. He insisted that freedom of conscience entails the 'freedom to become a heretic, and heresy is a sin, and in fact a greater sin than theft, murder or adultery', and that a ruler can no more permit the former than the latter, or assist heresy in any way, because at least when it is first introduced it disturbs the peace of the commonwealth, which cannot be preserved without the unity of faith.<sup>101</sup>

But the real problem was whether a prince was justified in tolerating heresy if he found Catholics and heretics already intermingled in one of his provinces, or whether he was obliged to extirpate it by force (p. 715). This, Becanus said, was similar to the question whether he might tolerate usury, prostitution, adultery, and blasphemy. His answer, worthy of a *politique*, was that 'some think (more from zeal than from knowledge) that a prince may under no circumstances permit [heresy] . . . and that he must rather lose his life, his fortunes and his principate than tolerate heretics'. Becanus named no one as advocating this, presumably because he was dissenting from Catholics, and (what is worse) other Jesuits, perhaps even Bellarmine.<sup>102</sup> The correct answer is that there are three cases where tolerating heresy, or any other evil, is licit: 'first, when it is done for the sake of a greater good; second, when it is done in order to avoid a greater evil; and third, when the person permitting evil to be done cannot prevent it (which is self-evident)' (2<sup>a</sup> conclusio, p. 717, brackets in original).

As to the second of these cases, Becanus described it as a theological commonplace that 'of two evils, if both cannot be avoided, the lesser evil is to be chosen', citing Aquinas 2a-2ae, 10 art. 11, Cajetan, Molina, and Valentia. Permitting evil, as opposed to doing it, is in its nature neither good nor bad but indifferent, and can be right or wrong depending on circumstances. In the third case, the 'impossibility' he had in mind was not physical but moral: all the options except toleration are ruled out by prudent calculation<sup>103</sup> of what the survival of the prince requires. Finally, the greater good that he envisaged was the conversion of heretics by good example in the long term, which would be unlikely to happen 'if [the prince] were unwilling to tolerate the heretics' (p. 719). Aside from this consideration of a prudent piety, the rest was an explication of the idea of

<sup>100</sup> Book v, introduction. <sup>101</sup> Book v, ch. xvii, p. 723.

<sup>102</sup> In his unpublished *Responsio ad . . . Archiduci Matthiae concessio libertatis religionis* of 1608 (*Auctarium Bellarminianum*, ed. Le Bachelet, p. 597), Bellarmine wrote that 'rationes quae peccata suadent ut temporalia mala vitentur, Machiavellum potius sapiunt quam pium christianum'.

<sup>103</sup> Book v, ch. xvi, p. 719: what else can he do if the Catholics are too few?



'necessity', construed as what the maintenance of the prince's state requires, the *politique* idea *par excellence*.

Jesuit statecraft could thus justify both tolerance and persecution, depending on circumstances, on the basis of precisely those considerations that would commend themselves to a reason of state concerned with the maintenance of the prince's state and civil tranquillity. An orthodox prince must have precisely the same concern or end. No clear-cut confrontation between orthodoxy and reason of state took place, notwithstanding the much-trumpeted distinctions between true and false reason of state, spiritual and carnal prudence, and so forth. A Jesuit who, true to the authentic traditions of his Society, did not believe in the efficacy of the merely edifying, could make use of reason of state without surrendering such advantages as might be derived from moral and religious exhortation.

## *Jesuit reason of state and fides*

Jesuits, then, were capable of the most extensive asset-stripping of 'reason of state'. But the aspect of reason of state they found most difficult to sanitise was its attitude to *fides*, good faith. Ironically it was their stance on precisely this matter that earned them the most opprobrium. Machiavelli's maximally objectionable chapter 18 of his *Prince* was entitled 'How princes should keep faith' (*Quomodo fides a principibus sit servanda*<sup>1</sup>). A near-synonym for *fides* was *honestas*.<sup>2</sup> Among the standard accusations levelled at Jesuits was that they were themselves Machiavellians in defending lying and deceit (under the name of 'equivocation'), and denying that 'faith is to be kept with heretics'. A related charge was that Jesuits as a matter of policy insinuated themselves into the favour of all, but especially of princes, by the leniency of their casuistry.<sup>3</sup>

In fact Jesuits taught no doctrine in these matters that was not also taught by other theologians, Protestant as well as Catholic. Their teaching was not monolithic and their casuistry was no more consistently lax than anyone else's. They were singled out for attack because of the fame of their casuists, because of their prominence in *causes célèbres* where *fides* and veracity were central issues, and they were made proxies for those whom their opponents (especially Catholics) did not dare to attack openly.

<sup>1</sup> How broadly Machiavelli understood *fides* is clear from the chapter's first line: 'Quanto sia laudabile in uno principe mantenere la fede, e vivere con integrità e non con astuzia, ciascuno lo intende' (*Il principe*, p. 72).

<sup>2</sup> It meant honesty but also more generally what is honourable, or upright conduct; e.g. Fitzherbert, *An sit utilitas in scelere*, ch. 1.2 (p. 6): 'Cum igitur Macchiavellus utilitatem, quam in scelere ponit, ab honestate secludit . . .'; according to Lessius, *De iustitia et iure*, IV.1.17, *honestum* refers to every work of virtue: 'ratio [i.e. the nature] honesti moralis consistit in conformitate cum iudicio rectae rationis'.

<sup>3</sup> Persons, *A Discussion of . . . M. Barlowe*, preface, s. 100, cited Barlowe's description of Persons as 'a Diabolical Machiavellian'. The most famous indictment of Jesuits for lenient casuistry is Pascal's *Lettres Provinciales*, esp. Letter v: 'ils couvrent leur prudence humaine et politique du prétexte d'une prudence divine et chrétienne'; *Oeuvres complètes*, 1858, vol. 1, p. 51. Contzen's *Disceptatio de secretis Societatis Jesu*, pp. 28–9, summarised the less preposterous charges from scores of anti-Jesuit tracts, often phrasing them more wittily than the originals; e.g.: 'you [Jesuits] live in a delicate, worldly, splendid, and idle manner. Your aim is leisure with dignity (*otium cum dignitate*).'

The controverted issues in Jesuit casuistry related to what should count as breaches of the duties of *fides* and *honestas*. For not every promise bound unconditionally, and no one, not the meanest subject and still less a prince, was under an obligation to tell 'the truth, the whole truth, and nothing but the truth' in all circumstances. However, different considerations qualified these duties in the case of rulers and private persons.

#### VERACITY AS A DUTY OF PRIVATE PERSONS

What especially concerned Jesuit casuists was not criminals trying to evade their just deserts, but Catholic priests and subjects whom heretical regimes confronted with 'bloody questions',<sup>4</sup> unwarranted impositions of oaths of fidelity, and the refusal to recognise the seal of the confessional. The practice of Catholicism itself had been made a criminal offence by these regimes. The mere presence of priests or assisting them in any way was potentially capital, especially in England under the Act of 1585 against Jesuits and Seminary priests, and torture was routinely used to extract information and confessions. The general topic in casuistry which covered these matters was that of the rights and duties of persons accused at law. In trials at that time, circumstantial evidence was not sufficient to secure convictions. The entire machinery of justice depended on the duty of subjects to tell the truth (in criminal cases invariably under oath) in denunciations of malefactors to the authorities, confessions, and giving evidence as witnesses. Casuists therefore could not allow a right to perjury (such as now exists *de facto* in English and American law), without undermining the operation of courts. This is to say nothing of the moral heinousness of calling on God as witness to a lie. And it could not be a casual matter to allow Catholics to 'deny Christ before men' (Matthew 2: 33, Mark 8: 38, etc.) or to permit an appearance of *Protestant* religious uniformity to be created, simply because Catholics were hiding their allegiance.<sup>5</sup> The Society, moreover, understood well enough that the blood of martyrs is the seed of the Church, and it treasured its martyrs.<sup>6</sup>

On the other hand, priests and lay-people were under no moral obligation to present themselves voluntarily for butchery, torture, or financial ruin.

<sup>4</sup> Clancy, *Papist Pamphleteers*, pp. 137–9.

<sup>5</sup> Recusancy (i.e. open refusal to attend the Established Church) was in fact rare, and at least occasional conformity was common in England before the 1580s.

<sup>6</sup> See for example the martyrologies in Scribani's *Amphitheatrum honoris* and Ribadeneira's *Catalogus*; the Jesuit martyrs Edmund Campion, Robert Southwell, and others were venerated by the whole Society, and the former throughout the Catholic world. For this entire topic Gregory, *Salvation at Stake*, especially ch. 7, is essential reading.

Heroic virtue and works of supererogation which involved contempt of one's life, health, and external goods were always the most admirable and commendable course to take. But there was certainly no duty to seek out martyrdom (which savoured of suicide). Indeed, the Society's directions to those on the English mission as well as to their flocks positively discouraged martyrdom.<sup>7</sup> There is a right, albeit not an unconditional one, of self-preservation (considered below, chapter 11) and in many cases a clear duty to preserve innocent others. And what Catholics *in partibus infidelium* most needed was priests who stayed active as long as possible, escaping functionaries of the heretical states, and fleeing back to Catholic safety if necessary, to return another day. Such priestly missions and operations obviously demanded concealment and deception. Moreover, priests bore a heavy responsibility for the welfare of the faithful lay-people who sheltered them.

What complicated the situation was that Jesuits were saddled with a tradition which for some reason<sup>8</sup> regarded lies as *mala in se*. Some lies were admittedly worse than others,<sup>9</sup> but lying to political superiors, denying one's faith, and the lies and deception common in politics, diplomacy, and war did not qualify for the indulgence extended to polite forms like 'Miss X is not at home'. Classing something as *malum in se* meant that it was prohibited in all circumstances, and therefore excluded any possibility of considering lies as permissible evils.

#### EQUIVOCATION AND MENTAL RESERVATION

Jesuits had accordingly to find some half-way house between an unconditional duty of veracity, and licensing outright lying. But, given the conventional Protestant belief that Catholics in general (though not perhaps one's Catholic neighbours) were traitors and rebels, and that the concealment and deceit which Jesuits legitimated as 'equivocation' or 'amphibology' were intended to assist their treason and rebellion, it was inevitable that Jesuits would be accused of the most egregious Machiavellianism.

<sup>7</sup> See Holmes, *Elizabethan Casuistry*, pp. 20, 51–5, and especially part 11, case 7 (p. 77): 'no one is bound to confess his faith to someone who questions him if it means endangering his life'; then, after a ref. to Matthew 10: 32: 'Provided . . . that he does not deny his faith and does not lie, it is lawful for him to do anything he can – using equivocation, silence, returning the question, or any method he likes – to avoid making a reply.'

<sup>8</sup> Sommerville also confesses himself baffled: 'The "new art of lying"', in Leites, *Conscience and Casuistry*, p. 163. See Zagorin, *Ways of Lying*, ch. 2, for how the tradition came to be established.

<sup>9</sup> Aquinas (2a-2ae, 110, art. 2) distinguished various degrees of lying: 'the greater the good intended, the more the gravity of the sin of lying is diminished'. For a modern discussion, with extensive translations of classic texts, see Bok, *Lying: Moral Choice in Public and Private Life*.

Since there is excellent recent work clarifying the issue of equivocation, only a summary is needed here.<sup>10</sup> According to Jesuit casuists, the moral position of Catholics under persecution was as follows. The natural law duty to obey lawful governors, even heretical ones, includes the obligation to answer lawful questions from their officers, and to refrain from lying. The oddity of Catholic doctrine was that deception, unlike lying, was not regarded as inherently sinful. It was only sinful if it was intended to harm those whom one has a duty not to harm, or to escape punishment for culpable acts. Deception can of course be by words or deeds, whereas lying involves utterances. But morally there may be no difference between denying that I am a Catholic, saying nothing when I am asked whether there is any Catholic present, going about in the garb of a layman if I am a priest, or participating in the religious services of heretics. Sommerville is undoubtedly right to say that the only reason why Catholic casuists had any problems here at all was because they adhered to the rigorist position that lying is *malum in se*.<sup>11</sup> As Persons pointed out acidly, if Jesuits were such great Machiavellians, they would not have troubled themselves much about lying.

How then could priests and other Catholics conceal their identity, or protect themselves or each other under interrogation, while being forbidden to lie? As was traditional in orthodox moral theology, Jesuits began by considering what a lie essentially is. One interpretation was that it is affirming what you believe to be false, or denying what you believe to be true: 'speaking against your mind', as the expression was. But an alternative interpretation was that lying is any utterance intended to deceive. In that case whether lying was wrongful or licit would depend on whether the deception was itself licit. But then it would sometimes be permissible to lie, and Jesuits could not accept that. There was, however, a possible way out. Answers to questions need not always be unambiguous or complete, and by no means everyone who asks is entitled to any answer at all. But to refuse to answer was in some circumstances tantamount to an admission of guilt. The only options were therefore either 'equivocation' or 'mental reservation'. 'Equivocation', also called 'amphibology', meant utterances which were true in one sense, but false in another, the hope and intention being that the questioner would misunderstand you in a way that saved the situation. The cliché was the answer 'Non est ibi' ('he is not here', but

<sup>10</sup> Particularly Rose, *Cases of Conscience*; Leites, *Conscience and Casuistry*, esp. J. P. Sommerville (ch. 5), Margaret Sampson (ch. 2) and John Bossy (ch. 7); Zagorin, *Ways of Lying*, esp. chs. 7–9.

<sup>11</sup> Sommerville, in Leites, *Conscience and Casuistry*, p. 163; e.g. Toledo, *Enarrationes*, II, p. 368: '... non licet unquam mentiri, sed licet subterfugere'.

also 'he does not eat here') in reply to a knife-bearing murderer's question whether you know where his intended victim is. But equivocations of this kind presupposed a questioner dumb enough to be taken in<sup>12</sup> and was of little or no utility in the face of persistent questioning.

'Mental reservation', a special kind of equivocation, was much more promising, but it was also morally considerably more problematic. It involved the idea of a 'mixed proposition', consisting partly of a spoken utterance (e.g. 'I am not a priest'), which as it stood was untrue, and partly of an unspoken mental addition (e.g. 'in the sense you mean, of someone engaged in treason'). The two together made a true proposition, neither denying what one believes or knows to be true, nor affirming what one believes or knows to be false. In defending this position, all manner of ingenious and subtle reflections about the character of discourse were invoked or hit upon, notably that of what might be called the contextuality of all utterance. The doctrine was neither uniquely Jesuit, since it was warranted by no less an authority than Azpilcueta himself, nor did all Jesuits accept it.<sup>13</sup>

Equivocation and mental reservation were (and are) morally defensible. As Elliott Rose points out, it is not self-evidently a lie to answer a question which has a concealed point with a statement which as it stands is false, but in terms of the point of the question is true. The familiar example was the traveller from Bologna being asked whether he had come from Bologna by officials with instructions to intercept travellers from there, because of the erroneous belief that there was plague there. If the traveller from Bologna knew there was no plague in Bologna, and answered 'no', even under oath, he was in fact answering truthfully the real question being asked, namely whether he was a potential plague-carrier.<sup>14</sup> In the same way, if a Jesuit denied that he was a priest or a Jesuit, understanding the point of the question to be whether he was engaged in subverting the English state, he was truthfully answering the substance of the question. All the same, the doctrine was obviously morally precarious: *any* 'incomplete' utterance can be made true by a 'tacit' supplement, for example the utterance 'I am not a priest' by the mental reservation 'of Apollos at Delphos'.<sup>15</sup> The English authorities responded by including an express denial of any equivocation or mental reservation in the words of the oaths they imposed. This was futile, since any such denial could be nullified by a further mental reservation.

<sup>12</sup> Anyway, as Sommerville points out, *non est ibi* only works in Latin and German.

<sup>13</sup> Garnet, *Apology*, p. 140; Persons, *A Treatise Tending to Mitigation*, chs. vii–viii; cf. Zagorin, *Ways of Lying*.

<sup>14</sup> Rose, *Cases of Conscience*, p. 92.      <sup>15</sup> *Ibid.*, p. 90.

Catholic moral theology also regarded it as entirely legitimate for a priest to deny, even under oath, something he knew only under the seal of the confessional: a priest who knows something only under the seal of the confessional knows nothing at all, as far as any superior or court in this world is concerned.<sup>16</sup>

This doctrine was not manufactured by the Society for its own purposes, and all Jesuits hedged its use about with severe restrictions. In particular, no Jesuit casuist allowed it any place in the duty to fulfil contracts or promises.<sup>17</sup> It was only ever admissible in reply to questions which there was no moral right to ask and no moral duty to answer. The accusation of Machiavellianism was absurd, not least because in justifying equivocation casuists were concerned not with the activities of politicians, but virtually exclusively with inoffensive private persons in desperate straits.<sup>18</sup> Protestants of course saw priests and Jesuits as not private persons but enemy agents.

#### FIDES AS A DUTY OF RULERS

As regards *fides* as a duty of princes, Machiavelli had indeed stated a highly objectionable position, which Jesuits automatically attributed to reason of state and the *politici* generally, though with little enough justification. In *The Prince*, Machiavelli had been concerned largely with princes, or founders of states, or republics in respect of relations with their enemies and conquered territories. The well-being of subjects was nowhere an independent consideration for him.<sup>19</sup> For their part Jesuits were concerned with the interests of princes to the extent that these interests were inherently legitimate, and congruent with those of the Church and of Catholic subjects.

<sup>16</sup> Polanco, *Directorium*, p. 20<sup>v</sup>: the priest 'potest dicere et iurare se nescire, quia nescit ut homini subiectus'.

<sup>17</sup> Sommerville (in Leites, *Conscience and Casuistry*, p. 176) notes that Lessius, *De iustitia et iure*, II, ch. 42, dub. ix, conceded that mental reservation might qualify a promise or an oath. But in the cases of promises, Lessius immediately excluded ambiguous speech or *tacita restrictio* by insisting that the harm or scandal that would arise made deception here a mortal sin, except over trivial matters (ss. 45–6). He then dealt with affirmations (not promises) where there is no right to question and no duty to answer (ss. 47–8).

<sup>18</sup> Persons, *A Treatise tending to Mitigation*, p. 290, however, objected that Thomas Merton's (for these purposes) totally inflexible stance on veracity made it impossible to excuse even 'stratagems, that is to say pollicies, deceiptes and dissimulations of enemies in warres', or the ambiguous utterances of Jesus himself (e.g. John 2: 19, Matthew 27: 11, John 7: 8–10), a popular point in this connection; see Zagorin, *Ways of Lying*, e.g. p. 209.

<sup>19</sup> Although he claimed that certain policies would benefit subjects, his only interest was their bearing on the prince's *mantenere lo stato*; e.g. ch. vii (Borgia's pacification of the Romagna, pp. 36–7, 39), ch. ix (coming to power by the favour of the people), ch. xvi (on parsimony benefiting the people), ch. xvii (benefits of being feared), etc.

All the same, it was imperative to make it possible for orthodox princes to operate in a morally extremely difficult terrain: in diplomacy, war, domestic faction-fighting, and dynastic and prerogative matters the prevailing 'rules of the game' were difficult or even impossible to reconcile with adherence to unconditional moral imperatives.

Reason of state, as we have seen, aimed at extending the prince's power. But if a prince invariably adhered to moral and religious norms, he made himself vulnerable to enemies and rivals, as a man who always takes money to the bank at a predictable time becomes vulnerable to robbers.<sup>20</sup> For Jesuit moral theorists to insist that princes must practise total frankness and unconditional adherence to promises would therefore have been equivalent to weakening those they relied on as the protectors and vanguards of orthodoxy. On the other hand, for a prince to have a reputation for probity and good faith could also be a political asset: for example, it made it rational to participate in joint ventures with him. Moreover, a prince's example spoke much more eloquently than his words, and subjects could be expected to model their own conduct on his conduct, not his exhortations or his laws.<sup>21</sup>

Jesuits therefore operated a two-pronged strategy. They offered general persuasives to *honestas* and *fides*. But they also explored just how far impossibly strict standards of *honestas* and *fides* could be attenuated without undermining those virtues themselves and the good ends to which they ordinarily conduced. Once again, Jesuit morality was not wholly consequentialist, but neither did it espouse an ethic of duty which was oblivious to consequences. Their Protestant adversaries, as Rose has rightly said,<sup>22</sup> 'were blessed with a simple and scoutmaster-like certainty about the absolute, unconditional obligation to tell the unvarnished truth at all times', and they could therefore make the Jesuits' more circumspect position appear all the more villainous by comparison.

The case in favour of morality offered by Jesuits was for the most part highly traditional, and none the worse for that. However, reason of state as the model of discourse about politics for those initiated in its *arcana* put virtue on the defensive, and although 'vices [unlike virtue] need no teacher . . . , [i]t is a peculiar evil of our time that we have in Machiavelli a public teacher of vices'.<sup>23</sup> To complicate the rhetorical task for the orthodox

<sup>20</sup> Machiavelli, *Il principe*, ch. XVIII (pp. 72–3): 'Non può per tanto uno signore prudente, né debbe, osservare la fede, quando tale osservanzia li torni contro, e che sone spente le cagioni che la feciono promettere.'

<sup>21</sup> Fitzherbert, *First Part of a Treatise*, e.g. 31.22: 'no lawes or edicts can so move the minds of men, as doth the life of the governour'.

<sup>22</sup> Rose, *Cases of Conscience*, p. 73.

<sup>23</sup> Contzen, *Politicorum Libri decem*, II.4.1 (p. 67); see also Fitzherbert, *First Part of a Treatise*, 9.15–19.



further, reason of state was not interested in denying orthodox general maxims about the advantages of virtue, *fides*, and *honestas*. In so far as it offered universally true propositions of its own, they were intended for the prudent who would know how to read them. As a universally true proposition, Machiavelli's 'people will sooner forget the murder of their father than the loss of their patrimony'<sup>24</sup> was preposterous. But *cognoscenti* would appreciate the limitations, exceptions, and qualifications implicit in such general propositions. The same was true of those of the Jesuits, and they were better supported by inductive evidence.<sup>25</sup>

Fitzherbert stated the principal argument for *fides* against reason of state paradigmatically:

How impious and absurd [Machiavelli's] doctrine is . . . , yea and how pernicious to princes and their states, it wil the more evidentlie appeare if we consider how dangerous and dammageable al falshood, and deceit is to commonwelth, for the conservation whereof, nothing is more necessarie then truth, and fidelity, as wel in the princes as in the people. Therefore Cicero teacheth that *Fides*, which we may calle *fidelity* (consisting as he sayth, in the *verity, and constant performance of words, promises and covenants*) is *fundamentum iustitiae, the foundation of iustice*, which is the proppe and stay of state.

He applauded the Romans' religious esteem for *fides* and their intolerance of any breach of it, because without it 'what trust and confidence should there be amongst men, what traffick or commerce with strangers or frends? what assurance in leagues with forrain princes, in contracts and marriages . . . ? what love? what society? what commonwealth?'<sup>26</sup> The advantages of this virtue to the prince were as great as its social utility.<sup>27</sup>

However, society can obviously survive numerous violations of good faith up to some indeterminate threshold level. This allowed reason of state to slip in its exceptions for princes, while acknowledging the importance *in general* of good faith.<sup>28</sup> It seems indeed to have been Jesuits who first

<sup>24</sup> *Il principe*, ch. 17 (p. 70).

<sup>25</sup> Fitzherbert, cited above pp. 128–31; *An sit utilitas in scelere*, pp. 188–9. The *Second Part of a Treatise* ran to 697 pages, 18 pages of index, an 8-page preface, a 6-page 'anatomy', and an 8-page table of chapters.

<sup>26</sup> *First Part of a Treatise*, 31.17–18; italics in the original; marginal references to Cicero, *De officiis*, bks 1 and 11; he also claimed (*First Part of a Treatise*, 34.58–60; *Second Part*, 24.16) that according to some of his Florentine defenders, Machiavelli had deliberately misled Lorenzo de' Medici with bad advice, in order to secure the collapse of his principate and the restoration of the republic; this remarkable interpretation was later reinvented by Rousseau.

<sup>27</sup> Busaeus, *De statibus hominum*, ch. 3, pp. 441–2; Mariana, *De rege* (1605), bk 11, ch. ix: 'De mendacio', p. 166, and bk 111, ch. x111, 'De fide'; Ribadeneira, *Tratado*, bk 11, chs. ii–iv, xv; Contzen, *Politicorum libri decem*, 11.7.

<sup>28</sup> Mariana, *De rege*, bk 11, ch. x (p. 164), distinguishes between those who counsel outright immorality for rulers, but not subjects (p. 163), and those who 'more cautiously (*modestius*) enjoin on the prince

imputed to Machiavelli the view that 'ordinary mortals must walk by the straight road of zeal for what is upright (*honestatis*) or beneficial (*utilitatis*), but the situation is different (*non eandem esse rationem*) with rulers, to whom the well-being of the multitude is entrusted'.<sup>29</sup> Machiavelli had made no such distinction in *The Prince*.

Machiavelli had notoriously counselled princes to create an *appearance* of honesty, fidelity, and all the other virtues, and indeed to have these virtues, but also to know how not to be virtuous when it became necessary.<sup>30</sup> This would allow them to reap the benefits of virtue without paying the price. Such frivolity about moral obligations was not open to Jesuit political theorists. But here, as ever, what was crucial to Machiavelli was reputation: appearances and their susceptibility to manipulation. As is evident from our discussion of Botero, Jesuit writers on statecraft had nothing to learn from Machiavelli about its significance. Fitzherbert can stand for them all: 'As for reputation (which is also called *Honour, estimation, fame, good name, or credit*), no smale regarde is to be had therto . . . , seeing that of all external goods it is the principal, and most pretious . . . Which is evident in matters of state, for that reputation conserveth the states of princes manie times, no lesse, or rather more, then wealth and force . . . .' And again: 'as the reputation of a princes greatnes, welth, and power, striketh a terrour and feare into the harts as wel of his suiects, as of strangers, and withholdeth them from conspiring against him; so also the opinion of his weaknes, worketh the contrarie effect, and is the very mother, and nurse of rebellions, conspiracies and al hostile attempts'.<sup>31</sup>

For Jesuit statists, reputation was not only an instrumental good, but the desire for reputation (for glory) was explicitly singled out by Mariana as natural, and as a pre-eminent stimulus to good actions public and private. Implicitly Jesuits all admitted as much, for they all regarded fear of its opposite (dishonour and ignominy<sup>32</sup>) as a praiseworthy motive. The Jesuits' rejoinder to Machiavelli was simply that his advice demanded an impossible

adherence to equity and all the virtues, and do not allow him to sin or to depart from equity as he pleases, but allow him to deceive by lying, and to engage in frauds when he is compelled to do so by necessity, lest by an excessively rigid adherence to justice, he should enmesh himself in danger and the commonwealth in a multitude of calamities'.

<sup>29</sup> Mariana, *De rege*, p. 163.

<sup>30</sup> *Il principe*, ch. XVIII (p. 73); ch. xv (p. 65) to the same effect.

<sup>31</sup> *First Part of a Treatise*, ch. 31.10 (the omitted sections are quotations from Aquinas and Tacitus); ch. 31.50.

<sup>32</sup> *De rege*, bk II, ch. XIII: 'De Gloria', pp. 198, 192, 194: 'Pudor [the protector of the virtues] est quidam dedecoris et ignominiae metus.'

degree of artistry at hypocrisy and duplicity on the part of the prince,<sup>33</sup> and of gullibility on the part of his subjects, enemies, and competitors.

Such being the state of publike persons, and especially of princes (whose actions are subject to the eyes and censures of al men) that their least faults cannot passe either unknowne or uncontrold of the people . . . What then shall we say of tyrannical acts, such as Machiavel commendeth in his prince, I meane murders, breach of promisses and othes, frauds and deceit, and al kind of iniustice? Can any man with reason thinke that . . . a people [can] be so simple, or senseles as not to know, and see a tyranny when they see the manifest effects, and feele the heavy waight therof in themselves?<sup>34</sup>

According to Mariana, 'there are many worse sins then lying, but few which bring more ignominy on those who perpetrate it'. And once a prince 'has acquired the reputation of perfidiousness and injustice, all his private and public dealings (*rationes*) will collapse . . . What benefits can a man enjoy, if his good faith is doubted? . . . And just as a dishonest merchant both loses what he has unjustly acquired by fraud and deception, and deters others from further dealings with him, so also the Prince.'<sup>35</sup> Safer for princes to practise magnanimity; far safer too to assume that God exists, and that he will not let dishonourable conduct go unpunished.

Jesuit writers on statecraft therefore in no way minimised the significance of reputation, but merely contrasted the kind of reputation a Machiavellian prince could expect with the glory that could come to an upright prince, not only in this life and the hereafter but also from posterity. All this, if perhaps no more conclusive than 'false' reason of state, was at any rate argument in the same genre, and not mere moralising or pious exhortation. A particularly telling point, as Fitzherbert realised, was to show that Machiavelli's own exemplary practitioner of false reason of state Cesare Borgia, and others of the same ilk, had come to a predictably bad end.<sup>36</sup> And as for virtue making a prince vulnerable, Jesuits replied that Machiavellian policies did the same. The kind of fear he encouraged princes to inspire in their subjects as the most reliable means of controlling them would inevitably also inspire hate: 'men hate him whome they feare, and everyone desireth the destruction of

<sup>33</sup> Mariana, *De rege*, (p. 163): 'Itaque hi [i.e. the *politiques*] Principem ex dolo, fraude et mendacio componunt, fronte probitatem ostentare iubent . . . Quae res privatis probro essent, Principi afferre laudem.' And Ribadeneira, *Princeps Christianus*, bk II, ch. 3 (p. 278): 'Quae Machiavellus et Politici tradunt de simulatione et fictis Principis virtutibus . . . eo omnia spectant, ut perfectissimum hypocritam et simulandi artificem forment, qui aliud dicat, aliud agat, sitque instar monstri ex variis formis compositi.'

<sup>34</sup> Fitzherbert, *First Part of a Treatise*, 31.15 (p. 273). <sup>35</sup> *De rege*, bk II, ch. x (p. 167).

<sup>36</sup> *First Part of a Treatise*, e.g. 3.4; 13.4; 29.32; 31.29 and 45; 34.26; 37; 59.

him whome he hateth'.<sup>37</sup> And though 'dead men do not bite', their friends and relatives might.<sup>38</sup>

Jesuits of course did not ignore fear as a resource for princes.<sup>39</sup> But unlike fear and hate, the love of subjects can be relied on, and virtue is the way to it: 'a prince who is loved has as many bodyguards as he has citizens'.<sup>40</sup> Machiavelli personalised the state; consequently personal allegiance was highly important, and in arguing that it is better to be feared than loved he was merely saying that love, unlike fear, was not under the ruler's control.<sup>41</sup> Jesuits, too, persistently personalised the state; they were simply more optimistic about the capacity of good princes to inspire and retain their subjects' love. And in their view fear and love could be joined if a prince had the virtues requisite for *riputazione*.<sup>42</sup> However, just as they did not assume that a prince's virtue would necessarily be rewarded in this life, so they nowhere assumed that it would automatically secure him a good reputation; Scripture itself all too often affirmed the opposite. Reputation is something that must be carefully nurtured, because even 'the iustest and best men are sometimes so calumniated, that they incur infamy and disgrace'. Hence 'not only reason of state, but also conscience bindeth [princes] to be most careful of their reputation and good name, and not to permitte the lest blemish therof'.<sup>43</sup>

#### SIMULATION AND DISSIMULATION

For all the evident advantages of *fides*, it was, however, undeniable that deceit and fraud sometimes paid. Even more obviously, for a prince to conceal his plans from potential enemies at home and abroad might be an indispensable precondition for their successful execution.<sup>44</sup> He must at least keep them guessing,<sup>45</sup> and better still mislead them. Secretiveness as a princely virtue<sup>46</sup> presented no moral problem. Keeping something secret

<sup>37</sup> Cicero, *De officiis*, II.23, citing Ennius; the translation is Fitzherbert's, *First Part of a Treatise*, 34.4.

<sup>38</sup> Another pseudo-Machiavellian maxim, though closer to his thought than some; see Fitzherbert, *An sit utilitas*, 6.9 (pp. 70–1); for the 'Machiavellian' maxim 'divide and rule', see ch. 7.19 and *First Part of a Treatise*, chs. 7.21 (p. 46) and 34.10–14.

<sup>39</sup> See index, references for fear, punishment. <sup>40</sup> Fitzherbert, *An sit utilitas*, ch. 6.5 (p. 68).

<sup>41</sup> *Il principe*, ch. XVII (pp. 69–70).

<sup>42</sup> Botero, *Della ragion di stato*, ch. II.II: 'Quali virtù siano piu atte a partorire amore e riputazione'; he also links *riputazione* and love in I.8 (p. 67).

<sup>43</sup> Fitzherbert, *First Part of a Treatise*, ch. 31.52, 54, 55, 56.

<sup>44</sup> Botero, *Della ragion di stato*, bk II, ch. VIII (p. 112): 'La segretezza facilita l'esecuzione de' disegni e 'l maneggio dell' imprese, che, scoverte, averebbono molti e grandi incontri.'

<sup>45</sup> Botero, bk II, ch. XI (p. 124): 'oltre che [la segretezza] lo rende simile a Dio, fa che gli uomini, ignorando i pensieri del prencipe, stiano sospesi ed in aspettazione grande de' suoi disegni'.

<sup>46</sup> Scribani, *Politicus christianus*, bk I, ch. xvi: 'Secretorum firmissimus custos sit Princeps', p. 118.

is only wrong if the person kept in the dark has a right to know, and the subjects and enemies of princes have no such right. For Botero *secretezza* not only deserved a separate chapter (bk II, ch. VII), but he recurred to it throughout the book. And Fitzherbert, for all his insistence on 'real, plaine and true dealing' by princes and their counsellors, nevertheless says that 'nothing is more necessarie in handling matters of state then secrecie'.<sup>47</sup>

The distance between keeping others guessing and deliberately misleading them is, however, not great. Suppose a prince knows or suspects that he has a traitor in his camp. Is it morally justified to shut him off from information, but unjustifiable to feed him false information?<sup>48</sup> In warfare, deceiving enemies has always been an indispensable part of strategy.<sup>49</sup> And if, in a just war, it is even permissible to kill, maim, or ruin the innocent if it is unavoidable, how can it be unjust merely to deceive enemies deliberately? But at this point Jesuits attempted to draw a line between outright lying, which is always forbidden, and various other sorts of deception which are permissible, and may even be part of prudence. They also tried to preserve the distinction between prudence and cunning (*astutia*), which will be discussed later. The orthodox prince is to be upright, faithful, and God-fearing, but he should be no one's fool and no one's pawn.<sup>50</sup>

Jesuit writers were not of one mind about princely deceptions, or more technically simulation and dissimulation. In so far as simulation or dissimulation were lying, they were impermissible. But as a famous maxim had it: *Qui nescit (dis)simulare, nescit regnare*: 'The person who does not know how to (dis)simulate, does not know how to rule.'<sup>51</sup> Botero saw no difficulty. He coolly remarked that dissimulation greatly helps princes to keep their designs secret. He then distinguished: 'It is called dissimulation to give an appearance of not knowing or not caring about what you in fact do know or do care about, just as simulation is making it appear as if one thing were in fact another.'<sup>52</sup> But the distinction had absolutely no significance in his thought, and was not even intended as a moral but merely as a conceptual

<sup>47</sup> *The First Part of a Treatise*, ch. 29.27–8 (p. 251); ch. 31.17–20.

<sup>48</sup> Contzen, *Politicoorum libri decem*, x.52. <sup>49</sup> x.38: *strategmata pugnatium*.

<sup>50</sup> Equally the prince must listen, but never trust anyone too much; e.g. Fitzherbert, *First Part of a Treatise*, 3.8 (p. 23): 'it is wel and wiselie said: that *Diffidentia est mater securitatis*; Distrust is the mother of security'.

<sup>51</sup> It is not classical: Zagorin, *Ways of Lying* (p. 174 n. 47) and not in Machiavelli. Botero (v.v, p. 186) took it from Azpilcueta, who gave no source. Neither did Lipsius (Bireley, *Anti-Machiavellian Prince*, p. 86). Mariana is presumably citing Ribadeneira, for they both have 'Qui nescit *simulare* (not *dissimulare*): Mariana, *De rege*, II.X, p. 164; Ribadeneira, *Princeps Christianus*, bk II, ch. 4, p. 287; Fitzherbert, *First Part of a Treatise*, 31.30 (p. 179) and Scribani, *Politicus christianus*, bk I, ch. VI, p. 54 have *dissimulare*, but in bk II, ch. xiii, Scribani makes no distinction between them.

<sup>52</sup> *Della ragion di stato*, II.7 (pp. 113–14).

distinction. Other Jesuits were not so casual about the moral issue, but they too maintained no distinction between simulation and dissimulation, or their respective moral permissibility.

According to Ribadeneira, 'for Machiavelli and his partisans and disciples the *politiques*, simulation [*is*] the most powerful resource and firmest foundation on which false reason of state rests'.<sup>53</sup> According to them, 'kings live amongst enemies, and therefore they must go armed, and make use of some dissimulation to deal with dissimulators'.<sup>54</sup> Deploring all this in the name of *fides*, charity, humanity, and the good of the commonwealth, he nevertheless qualified: 'it is not in fact a lie to hide something by silence, and to conceal the secrets (*arcana*) of councils and actions' even though many people will be led to 'deceive themselves'. 'It is also not lying, but rather prudence, to dissimulate and connive at many things', although others are misled thereby. 'Nor is a prince to be considered a deceiver if he is on his guard, and considers diligently what and whom to believe, even though his face never displays any distrust: there are few enough people he can trust.' He then gave the standard justifications in terms of necessity and the good of the commonwealth, especially in time of war. He cited Navarrus, according to whom there are two 'arts' of simulating and dissimulating: the art of those who do it without cause or utility, and that of those who because of necessity or advantage (*commoditas*), 'prudently signify one thing in place of another'. He concluded with the warning that in simulating or dissimulating the prince should never follow the pestiferous precepts of Machiavelli.<sup>55</sup> But the only difference between his 'godly' and Machiavelli's pestiferous counsels seems to be that he made the justifiability of (dis)simulation depend on the goodness of the prince's purposes and the pressing nature of the circumstances, and on the contention that if a prince succeeds in being misunderstood as he intends, this is not lying.

Mariana's position was even more equivocal. Following his usual method of stating dispassionately and convincingly the case for and against any controversial position, he led the reader to expect a resolution which he did not in fact offer. But his re-affirmations of conventional doctrine seem to be partly retracted in the small print, so to say.<sup>56</sup> Thus, after pious sentiments

<sup>53</sup> *Princeps Christianus*, bk II, ch. 4, p. 287.

<sup>54</sup> *Tratado* (p. 235). He also cited Tacitus on Tiberius, and Seneca's assertion that 'el príncipe que no usare desta simulacion y astucia será de los otros príncipes engañado, y por no perder la consciencia, perderá el Estado'. Although Ribadeneira was alone among the authors who cited Navarrus on equivocation in applying it to princes, as Navarrus intended, rather than to private persons, he did not mention equivocation in this connection.

<sup>55</sup> *Princeps Christianus*, bk II, ch. 4, pp. 293-4.

<sup>56</sup> Ferraro, *Tradizione e ragione*, ch. 9, is excellent on this matter.

about the importance of princes keeping their word and practising scrupulous veracity and *fides*,<sup>57</sup> he defended dissimulation and hiding plans. No one who finds it hard to keep his mouth shut will be capable of executing any great design.<sup>58</sup> And, as Ferraro points out, Mariana's attenuations of the pieties with which he had begun culminated in the chapter on prudence,<sup>59</sup> where he did not retract his ban on lies, but explicitly allowed princely 'dissimulation' for the sake of both the kingdom and its subjects, to keep enemies in suspense and force them to weaken themselves by needless military expenditure. He had not distinguished dissimulation and simulation. He used *simulare* in his version of the maxim about the necessity of (dis)simulation to government, when he was outlining the reprehensible sort of lying and deceit, and also condemned the opinion that *alta dissimulatione* is needed by princes. But in his recapitulation in the chapter on prudence he asserted: 'we have shown that it is never licit for princes to lie, but that there is need for *dissimulation*'.<sup>60</sup> If there is any distinction here, it must again be between uttering plain falsehoods and merely concealing the truth, with *suggestio falsi* as the desired outcome of such *suppressio veri*. His point, I imagine, was that there is no moral wrong in secrecy or concealment of intent when dealing with enemies who are owed no openness. But Jesuits apparently could not bring themselves to say straightforwardly that deceit and lying are sometimes permissible, whereas breach of faith is not, a position that would arguably have been entirely defensible. Contzen's verdict on Lipsius's *Six Books of Politics*, who in one notorious passage allowed lying short of outright big lies, attenuated what Lipsius had said, and thus avoided the issue.<sup>61</sup>

Fitzherbert's position seems more straightforward, but it involved him in the same perplexities. He too conflated 'falshood, deceit, trecherie and periurie in a prince', thus equating lies and pretence with breach of *fides* and even perjury. But he stressed the need for secretiveness, prudence, and discretion, the point of which is of course to leave enemies in ignorance, or guessing wrongly. But he apparently thought a way out of the moral difficulties here was to be found in what he took to be the Romans' distinction between simulation and dissimulation. The former he equated with telling a lie (i.e. feigning, pretending that something is the case when it

<sup>57</sup> *De rege*, bk II, ch. XI, 'About Flatterers', p. 170; bk III, ch. XIII, 'De fide'. <sup>58</sup> P. 170.

<sup>59</sup> Bk III, ch. XV (1605), 'On Prudence'; see Ferraro, *Tradizione e ragione*, pp. 212–13; Ferraro numbers chapters subsequent to ch. VIII one chapter less than my references.

<sup>60</sup> Bk II, ch. X, pp. 163–4; ch. XI, p. 170.

<sup>61</sup> Contzen, *Politicorum libri decem*, III.4.4, says of Lipsius's distinction between mild, medium and grave frauds that by 'mild *astutia* or *fraus*' Lipsius seems to mean '*diffidentiam* and *dissimulationem*', in other words caution and taciturnity, which are 'precepts of virtue, not indulgence to vices'.

is not), the latter with concealing the truth. Simulation is always illicit, but 'discret dissimulation is both lawful and commendable, yea and some times so necessarie in princes, that it may wel and truly be sayd; *Qui nescit dissimulare, nescit regnare, He which knoweth not how to dissemble*, that is to say discreetly to cover and cloke his intentions when occasion requireth, *knoweth not how to raygne*'.<sup>62</sup> But the examples and texts he adduced as evidence of both divine and natural punishments for *simulation* all related to treacherous murders of enemies or princely perjury, and not merely lying to enemies about one's intentions. He never *explored* the distinction between telling a lie and concealing the truth.

The position of Karel Scribani,<sup>63</sup> another rhetorician, is equally difficult to pin down, since he seems to match every condemnation of simulation with an endorsement of its practice when it accords with the demands of prudence. He was unable to see any clear difference between lying and simulation;<sup>64</sup> both were equally wrong. On the other hand, he could envisage many occasions (for example, protecting the innocent, one's life, or the *patria*) where everyone would simulate (p. 224). He could only say that 'those simulators popularly known these days as *politiques* are to be entirely shunned' (p. 221). A prudent man will, however, use dissimulation, as great men like Moses, Abraham, and David did, and will not be morally blameworthy for doing so, but will never lie (p. 224): what matters is the prudent use of dissimulation.<sup>65</sup>

Curiously, the position of the theologian Leonard Lessius was altogether more relaxed, perhaps because he did not recognise that what he had to say had any bearing on the war against Machiavelli and the *politiques*, neither of whom he mentioned. In *On Justice and Right*,<sup>66</sup> he admitted that lies are *mala* (s. 36), as an abuse of the natural function of signs. But this in itself hardly seems a very serious matter, and is made serious only because 'it is usually done with a view to deceiving our neighbour'. He denied that Augustine's authoritative *On Lies* was in fact Augustine's final opinion, or that it classed all lies as mortal sins (s. 40). Equally, he asserted that dissimulation, simulation, lying, and deceit, between which he saw no real difference (ss. 33, 39), are serious wrongs only if done for an evil purpose. He virtually took the legitimacy of *amphibologia, vel restrictione tacita* in

<sup>62</sup> *First Part of a Treatise*, 31.30 (p. 279). <sup>63</sup> *Politicus Christianus*, bk II, ch. 13.

<sup>64</sup> P. 218: 'Quod de mendacio dixi [sc. that it is never permissible], de simulatione dictum volo, cum simulatio quoddam genus mendacium sit.'

<sup>65</sup> P. 216: 'magna tamen in omni hoc genere opus prudentia. Neque enim semper simulatio probanda . . . neque semper crimina dissimulanda, ne audere deteriora discant . . .'; 'Cum vero dissimulare virum prudentem putem aliquando posse, aliquando debere, cum aut privatum aut publicum bonum simulationem deposcit; tamen mentiri numquam puto debere, numquam posse.'

<sup>66</sup> *De iustitia et iure*, bk II, ch. 47, dub. VI (a very short section).



appropriate circumstances for granted. Only *mendacium perniciosum*, involving the honour of God, the good of our neighbour, religion, the sacrament of confession, oaths, contracts, etc., is morally a grave matter (though in trivial cases even these may be venial sins – s. 44). Everything depends on the necessity that prompts lying. The greater the reluctance with which it is resorted to, the greater the good that is sought by means of it, or the greater the evil that it is intended to avoid, the more pardonable it is (ss. 45, 46 *ad finem*). On the venial/mortal tariff system operating in casuistry, this amounted almost to a permission.

So far from confronting reason of state with re-assertions of categorical moral imperatives, therefore, Jesuits in fact tied themselves in knots precisely because they recognised the force of reason of state descriptions of the actual norms and mores prevailing in the political world and attempted to accommodate orthodox moral norms to that world. The only matter in this area on which they could not give way was over the sacrosanctity of promises and treaties: *pacta sunt servanda*.

#### THE SANCTITY OF TREATIES

Jesuits were commonly vilified for teaching that treaties with heretics are not morally binding. Their moral theology of course noted various exceptions and qualifications to which *pacta sunt servanda* is subject. They carefully distinguished various sorts of promise, the obligations consequent on each, and also the limits of such obligations. But then it cannot possibly be maintained that all promises bind unconditionally. The question is whether Jesuits included promises made to heretics in the category of promises that do not bind. More precisely, the issue was that of reciprocal promises entailing performances on both sides, variously known as pacts, pactions, compacts, conventions, covenants, stipulations, capitulations, treaties, contracts; these terms and their equivalents in other languages were interchangeable, except in technical legal parlance.

The general position of the Society's theologians and casuists on this matter was stated so succinctly and comprehensively in Becanus's *On the Duty to Keep Faith with Heretics* (*De fide haereticis servanda*) of 1608<sup>67</sup> that there is no need to look anywhere else. The work was ostensibly aimed

<sup>67</sup> Cited from *Opuscula Theologica*, 1610, vol. II, Opusculum I, references by chapter and section. A repetition of all the charges against the Jesuits just after his book was written by an anonymous 'Batavian' in the *Foederatiorum inferioris Germaniae defensio tertia* . . . , prompted an Appendix to Becanus's pamphlet, and shortly thereafter a new pamphlet, *Quaestiones Miscellaneae de Fide Haereticis servanda, contra Batavum Calvinistam* (repr. *Opuscula*, vol. II, Opusculum II). Becanus's *Quaestiones Batavae* appeared the following year (repr. *Opuscula*, vol. III, 1612). These added nothing new. They were also uncharacteristically prolix.

at unnamed *Politici*. But its more specific concern was to rebut certain charges made by Calvinists, and also by some Lutherans. They objected to the Catholics' highly restrictive interpretation of the terms of the Peace of Augsburg of 1555, and claimed that it reflected – or betrayed – the Catholic doctrine that pacts with heretics were not binding. According to Becanus, Joannes Molanus in his *De fide haereticis servanda* (1584), Lipsius, and Ribadeneira had already refuted this libel, but a succinct treatment *more scholastico* was now needed ('To the Reader', pp. 1–3). He was in fact summarising a long-running polemic<sup>68</sup> sparked by Osiander's *Warning against the Jesuits' Bloodthirsty Attacks and Evil Machinations* (1585), to which Scherer and Rosenbusch had replied the following year; Osiander had then issued a rejoinder, to which Mairhofer replied in 1601. Heiss somewhat later made another contribution, in reply to the highly successful *Doctrine of the Jesuits in Aphorisms* (*Aphorismi doctrinae Jesuitarum*, by 'P. Coton') of 1608, which even received an English translation in 1609.

Becanus's position is plain enough. Promises are binding, provided they concern acts which are in themselves permissible and honourable (*licita et honesta*); one obviously cannot have a moral duty to do something which is inherently immoral, even if one promised to do so.<sup>69</sup> The obligation to keep promises arises out of the duties of truthfulness, good faith, justice, and religion; the last three, however, impose more stringent duties than truthfulness does.<sup>70</sup> But there are circumstances when, appearances notwithstanding, no real promise or contract ever existed, for example when it demanded acts which were contrary to morals or law, or impossible to carry out. Again, it might have involved a serious error (particularly one induced by fraud) about the thing contracted for; in that case no *substantialis consensus* (agreement about the substance of the contract) ever existed, and such agreement is constitutive of any contract (III.8). Or a promise might have been made under the kind of unjust duress which a 'constant person' would find oppressive.<sup>71</sup> In such a case, the person coerced could invalidate the contract if he chose; otherwise it became valid (III.4). It should be noted here that, according to Becanus, only the fear of *unjust* infliction of evils (III.4) made a promise void. Heretics, for example, are obliged by a

<sup>68</sup> See references to this polemic above, pp. 132–3.

<sup>69</sup> Ch. II.7: 'nemo potest obligari ad peccatum'.

<sup>70</sup> v.5; VI.13; Becanus's discussion here as often draws heavily on Lessius.

<sup>71</sup> 'A constant person' is a scholastic term of art, meaning a not unduly fearful person. Becanus (III.11) cites Lessius's list (*De iustitia et iure*, bk II.17, dub. VI) of evils 'which to a constant man are terrifying (*formidabile*)', as indeed they are: e.g. fear of death, mutilation, torture, long imprisonment, exile, servitude, physical violation (*stuprum*), etc.; also the fear of these happening to wives or children, close relatives or friends: 'quia horum mala nostra reputamus'.

recantation induced by the fear of the punishment for heresy (III.3). And a promise to pay a ransom to a robber (IV.6) was not invalid because it was extorted by fear, because fear was no better or worse a motive than any other:<sup>72</sup> it was the ruler's laws which made such ransom-demands illegal, and he could release persons from such promises, which were as such binding. A promise or contract which was originally valid may also cease to be binding (VII.2). A contract becomes invalid when the other party to it does not perform its part, and also when 'the condition of things or persons changes so much that the promissor, in the judgement of prudent persons, does not seem to have intended such an outcome'.<sup>73</sup> This was obviously dangerously indeterminate and capable of potentially limitless application, but the appeal to an independent 'judgement of prudent persons' was designed to exclude these risks.

Where a promise or contract was null and void from the beginning, or subsequently became so, it might be voided or dispensed from by someone competent to do so, who might also release from an oath confirming it, if any had been taken (IV.9). But in no case does abrogating, rescinding, or cancelling a promise or treaty justify a violation of the right of another, or the duties of good faith, honesty, veracity, justice, or religion, all of which were or might be implicated in any promise, especially one confirmed by an oath.<sup>74</sup>

The bearing of this on pacts with heretics, according to Becanus, is as follows. Public and private relations with heretics should be avoided altogether whenever possible, given the well-known lack of probity and fidelity of heretics, especially Calvinists, which quotidian experience demonstrates (VII.3ff). Some relationships with heretics are inherently illicit, especially concelebration *in divinis* (VIII.3), but also any collaboration with notorious 'strikers (*percussores*) of priests' (VIII.6), in the quaint phrase of canon law, or with those excommunicated by name and after a formal process. But according to Becanus, 'to my knowledge there are no persons specifically excommunicated for heresy in the Holy Roman Empire or several neighbouring kingdoms' (VIII.7). Although stricter laws operated in Spain

<sup>72</sup> Becanus and the Jesuit theologians generally here took a position indistinguishable from Hobbes's (*Leviathan*, ch. XIV, pp. 97–8); they denied that acting out of fear made an action 'involuntary' or eliminated 'consent': 'Nam qui ita contrahit, absolute consentit. Omnibus enim consideratis, vult' (III.3–4). See Garnet, *Apology*, p. 43.

<sup>73</sup> Becanus, VII.2: 'si status rerum vel personarum ita mutetur, ut promissor secundum iudicium prudentium non videatur illum eventum voluisse comprehendere'. The source is Aquinas, *2a-2ae*, II, art. 3, ad 5, perhaps via Lessius, *De iustitia et iure*, II.27, dub. V.20.

<sup>74</sup> Agreements and promises of any degree of formality normally called on God as witness, and were therefore sometimes discussed under the topic *iuramentum*.

and Italy (VIII.7), the Council of Constance in the previous century had greatly relaxed the former canon law ban on all dealings with heretics, even excommunicated ones (VIII.6).<sup>75</sup> Thus neither marriage (IX) nor commercial, family, or other dealings with heretics were inherently wrong or prohibited by the Church, though circumstantially they might be both.

Granted all this, a promise made to heretics *in licitis et honestis* was as binding as a promise to Catholics. Indeed to break such a promise was to violate the *ius* of the heretic, as much as stealing his goods or killing him would be (VII.8). The case was no different from promises made to pagans, Jews, or Turks (VII.16). If anything, the obligation to heretics was greater, because – and here Becanus struck an eirenic note conspicuously absent in many other Jesuits – heretics and Catholics are more closely conjoined in virtue of their common baptism (IX.2), and because they worship the same true God, unlike pagans (VII.9), pacts with whom are nevertheless binding. Another *a fortiori* argument was the permissibility and binding character of treaties in the Old Testament between Jews and Gentiles or idolators (VII.10).

Popes could undoubtedly strike down illicit treaties between Catholic rulers and heretics, but not if doing so conduced to fraud and deceit. And a pope must condemn such a treaty the moment he becomes cognisant of it, otherwise the treaty is binding (Appendix, p. 75). Implicitly, too, Jesuits accepted that a papal excommunication (which would make any covenant void *ab initio*) might lapse if it was not renewed. Elizabeth's formal excommunication remained in force, and subjects were therefore freed from their obligation of obedience to her, but English Jesuits said that they would have been content to allow this excommunication to be buried in oblivion, since it had not been renewed by Pius V's successors.<sup>76</sup> That argument, unlike Becanus's, was, however, suspiciously *ad hoc*.

Becanus unhesitatingly applied all this to treaties which conceded toleration to non-Catholics, though not if they conceded free choice of religion to all (X.1). This was how he maintained the distinction between committing an evil,<sup>77</sup> and tolerating a lesser evil in order to avoid a greater. He clearly

<sup>75</sup> The *Extravagans: Ad evitanda scandala* of Martin V was also much invoked by Henry Garnet in his anonymous *Apology against the Defence of Schisme*, 1593. Mairhofer, Scherer, and Rosenbusch did not refer to it. Persons and Allen (Holmes, *Cases of Conscience*, pp. 29–31, 91, 107) decided that marriage with heretics was always a mortal sin, although the marriage was valid; Becanus's *Manuale*, bk v, ch. XIII, was altogether more indulgent as far as Germany was concerned.

<sup>76</sup> Garnet, *Apology*, pp. 143–5, says that he had never read the bull of Pius V, a notable instance of his prudence.

<sup>77</sup> VI.10: 'Quae intrinsece et ex natura sua mala et illicita sunt, nunquam bene et licite fieri possunt, etiamsi ob bonum finem fiant . . . '.

had in mind the Peace of Augsburg, the Edict of Nantes, and the various pacifications in his native Netherlands. Some of the toleration edicts in Eastern Europe were extremely problematic and had been condemned by Bellarmine, but Becanus made no mention of them. After rehearsing the familiar objections to toleration (x.1–13), he introduced the usual caveat (x.14). If toleration of heretics cannot be prevented by Catholic princes and magistrates ‘without grave detriment to the public good, [they] may be tolerated . . . This conclusion is founded on the common axiom: *Of two evils, the lesser is to be chosen*, that is, if we cannot avoid both’ (x.14). He could cite not only Aquinas (2a-2ae, 10, art. 11) in support, but also Valentia and Molina, and even St Augustine on the toleration of prostitution. Once any such treaty conceding religious liberty had been made, it was binding (x.16). The same duty applies to good faith even in wars with heretics (xi.1–3), unless they do not keep faith with us (xi.4).

Thus the fact that an agreement was with heretics was morally irrelevant (vii.17). Becanus indeed went further. Even convicted and sentenced heretics were not morally obliged to submit themselves for punishment or to surrender their property: enforcement of sentences was a duty of the ‘ministers of justice’, not theirs. Until they had been legally expropriated, heretics retained a right to use their property, and consequently if anyone deprived them of it, other than a minister of justice, it was a breach of their right and thus an injustice (viii.13–17). Becanus here persistently used the language of *ius*, i.e. subjective right; the rights in question were rights under natural, civil or ecclesiastical law, sometimes all three.

Becanus’s position (he rightly reiterated that it was the ordinary Catholic position) was thus straightforwardly anti-Machiavellian, but it differed in no way from that of any identifiable *politique*. He, Scherer, Rosenbusch, Mairhofer, and indeed Catholics generally were, however, less than clear about the case of a treaty whose terms did not make it perpetual but specified no expiry date. What, for instance, was the moral position if one of the parties regarded the treaty as expired, but the other party did not? Nor did they clarify what was to be done when the other party was deemed to have broken its part of the treaty; or what would be the appropriate procedure for nullifying or abrogating a treaty whose unforeseen and illicit consequences were recognised only after it had been concluded.

These were not minor oversights, since they all had a bearing on the Peace of Augsburg of 1555. If anyone urged Ferdinand I to act as if he had never signed that Peace, it was admittedly not the Jesuits but the Pope.<sup>78</sup>

<sup>78</sup> Köhler, ‘Der Augsburger Religionsfriede’, pp. 565–7, a suspect source.

The German bishops, not having been party to the Peace, persistently denied that they were bound by its conditions. It was hardly surprising that Catholics insisted on a strict construction, at least when the Peace favoured them, whereas Calvinists (whom the Peace did not include<sup>79</sup>) demanded that *usus* and prescription, under which they enjoyed toleration, should enter into the interpretation. In addition, it was not even clear whether the Peace was an imperial law or a treaty. If the former, it could in principle be abrogated and superseded by a later imperial law; if the latter, what precisely was the procedure (if any) for winding it up? By the 1620s a third category had been invented for the Peace, namely that it was a 'fundamental law', that is to say, part of the 'constitution' of the Holy Roman Empire, and thus not unambiguously either a law or a treaty but something like the provisions governing the role of the Electors, or the relationship between the Emperor and the *Reichstände*. In all this, the fundamental issue was clearly: who is the ultimate judge of controversies?

The failure to specify clearly any arbitrator or any unambiguous procedure for derogating from, annulling, rescinding, or terminating the Peace of Augsburg is no proof of Jesuit duplicity. If it was a treaty, these difficulties were inherent in the relationship between 'sovereigns'. The point about pacifications was precisely their ambiguous status in this respect. They ordinarily took the form of an *edict*, a law, or (most ambiguously) a 'peace'. But in principle what had been done by a legal procedure or a 'sovereign prince' could be undone in the same way and by the same authority. Given the universal professions of reverence for the *ancient laws*, such pacifications were for the most part not treated as constitutive of a commonwealth or state – France, the Holy Roman Empire, Poland, Hungary already had a political identity as *respublicae* – but as the kind of occasional 'reformation' that any commonwealth needs. But a constitutive part of any political order was precisely the existence of a settled procedure for making, restoring, and occasionally changing the laws, and therefore pacifications presumably fell within its competence. In fact, however, pacifications much more closely resembled a treaty between warring states than an ordinary edict or *constitutio* (statute). And whereas the latter had in Bodinian logic a *iudex*

<sup>79</sup> The two 'religions' to which the Peace explicitly referred were the Catholics and those of the Augsburg Confession of 1530, i.e. the Lutherans; Laymann and Forer (following the *Freistellung*) argued that even this was unclear, since there were two versions of the *Augsburg Confession*, the *variata* and the *invariata*, and Lutherans now adhered to neither consistently. The Peace could be made to extend to Calvinists only in virtue of their endorsement of the Augsburg Confession in the *Consensus Tigurinus*, but that consensus had been rejected by part of the Lutherans, and there was no substantial identity between Calvinists and Lutherans. See Anon., *Pacis Compositio*, 1629, qu. LXIX–LXXI.

*controversiarum*, the former did not, unless it was the Pope. But by this time, Jesuits of the highest seniority in the Empire (Contzen, Lamormain, Forer, Laymann, Vervaux), although dutifully rehearsing the doctrine of the papal *potestas indirecta*, in fact found less and less of a role for the papacy in relation to the polity, and allowed godly princes a greater sovereignty, even with respect to the administration of the Church.<sup>80</sup> The papacy's eventual condemnation of the Peace of Westphalia was universally ignored.

Becanus of course recognised the possibility of the Pope acting as arbiter in inter-state disputes. Since any ambiguity about a treaty between Christian states or a contested law or edict might raise moral questions, and any such treaty or law concerning religious freedom necessarily raised issues of faith, the papacy was the competent arbiter, *in ordine ad fines spirituales*. But Becanus conspicuously left this possibility undeveloped, as did Contzen somewhat later.<sup>81</sup> On the contrary, denying the old canonist claims that the Pope is *dominus mundi* and has all *potestas*, Becanus insisted on the limits to papal competence to dispense from agreements made with heretics. Such dispensations would not tend to *aedificationem* (the end to which papal action had to be subservient, according to II Cor. 13: 10), but rather the contrary (Appendix, pp. 74–7).

Specifically, the role of the papacy arose in the context of the obligation to observe safe-conducts (*salvis conductus*, ch. XII). As part of their justification for refusing to participate fully at Trent, Protestants claimed that Catholic safe-conducts were worthless, since Hus and Jerome of Prague were burned in violation of such a safe-conduct, and that this proceeding was justified on the ground that *fides* need not to be observed towards heretics; indeed the fate of Hus was treated as evidence that this was what Catholic doctrine was. Becanus had some powerful rejoinders, for example that despite ample opportunity neither Hus nor Jerome of Prague claimed that there had been any breach of a safe-conduct; nor did Luther in invoking Hus as a forerunner. As to the force of safe-conducts in general, Becanus pointed out that they could be either unconditional, such as the safe-conducts offered to Protestants to attend Trent and to depart at will;<sup>82</sup> or they might be offered *salva justitia*, leaving the ordinary course of justice unimpaired. Hus's safe-conduct, unlike that offered by Trent, was issued by the Emperor, and *salva justitia*. But in either case, as with any law or legal instrument, an inferior cannot bind a superior (*superior legibus et pactis inferioris non ligatur*, XII.13), unless the superior signifies his willingness to be so bound.

<sup>80</sup> See Bireley, *The Counter-Reformation Prince*, pp. 232–3.

<sup>81</sup> See p. 363.

<sup>82</sup> Becanus cited the safe-conducts issued by Trent in great detail in *Questiones miscellaneae*, qu. IV.

The Emperor's safe-conduct therefore could not impede the jurisdiction of the Church, which in proceeding against Hus as an impenitent heretic was (in that respect) a superior authority (ch. XII.13–14). Becanus did not here mention that burning Hus was of course an act of *imperial* authority; in one of the few additions which his *Miscellaneous Questions* made to his earlier argument, he remedied this omission by saying that Hus was in fact burned under the laws of the Empire against heresy, and that he could have been burned for violating the terms of his safe-conduct.<sup>83</sup> But in the former case, what was the point and worth of a safe-conduct under which Hus could be punished for offences committed before it was issued?

Since the Jesuits were usually unwilling to make the Pope the supreme arbiter in inter-state or intra-state disputes, and could not realistically deny the ambiguous legal character of pacifications, the matter had to be left unresolved. But there is here no evidence of any duplicity. In our period the matter was once more dealt with authoritatively by Paul Laymann and Lorenz Forer, both well-known theologians at the University of Dillingen and both connected with Ferdinand II's Jesuit confessor Wilhelm Lamormaini, in their anonymous *Pacis compositio* of 1629.<sup>84</sup> This was at the height of the successes of the Catholic forces, and in the context of an imminent Edict of Restitution which would return property confiscated by Protestants to its original owners, or (as Jesuits urged) to the Society of Jesus, which would make better use of it. In the *Pacis compositio* Laymann and Forer went over the whole theological and legal ground again in the specific context of the *Religionsfriede*. Their intellectual acuity and rhetorical grasp of the political logic of the situation were conspicuous. Thus they did not merely discuss the philosophical and moral differences between a treaty and a law (or 'pragmatic sanction'<sup>85</sup>), but also explained why it was polemically convenient for Protestants to insist that the Peace of Augsburg was the former rather than the latter: a treaty cannot be abrogated unilaterally. Nevertheless Laymann and Forer themselves accepted that it was indeed a treaty.<sup>86</sup> But from this followed equally unpalatable consequences for Protestants. A treaty, unlike a law, cannot bind those who were not parties to it, namely (in this case) the Pope and the bishops and spiritual

<sup>83</sup> *Quaestiones miscellaneae*, qu. IX. 2.

<sup>84</sup> Heckel, 'Autonomia oder Pacis Compositio', pp. 150–1, and *passim*.

<sup>85</sup> In *Pacis compositio* (e.g. Prefatio and p. 105) the terminology throughout is *pactum*, *conventio*, *transactio*, *Vergleichung* oder *Vertrag*, and most usually *foedus*, as opposed to *lex sive constitutio*, or *pragmatica sanctio* (i.e. a legal acknowledgement of a *de facto* state of affairs).

<sup>86</sup> Qu. xxv (p. 105): 'Pacificatio illa, seu Pax Religionis, potius vim et natura foederis seu transactionis habet.'



estate, particularly the Bishop of Augsburg.<sup>87</sup> What is more, toleration *in perpetuum* could not be promised by any treaty, since the justifying necessity might disappear, and toleration might no longer be the lesser evil, given changed circumstances. Forer and Laymann, however, did not think a toleration-treaty without a time-limit was intrinsically evil (s. 34, p. 115). The Pope could have absolved Catholic princes from their oath to obey the Pacification but had not done so, and therefore the treaty was binding (qu. xxix, pp. 128–9). Fellowship within the human race would be impossible if treaties, introduced in accordance with the *ius gentium*, were not adhered to. Nevertheless, in any cases of doubt about the implications of the treaty, a strict interpretation of the treaty must be adopted, especially when the treaty is prejudicial to ecclesiastics, and detrimental to souls and the Catholic Church.<sup>88</sup>

Thus even here, and given that it would have been possible to make out a case which was even more favourable to Catholics, there was no question of Jesuits compromising the duty to keep promises and observe treaties. Only a military victory and with it the elimination of the parties to the Peace *qua* independent parties would have terminated the duty. No doubt this is what Contzen envisaged both in his *On Peace in Germany* and the relevant sections of the *Ten Books on Politics*, but the ‘Machiavellian’ practice that he had in mind there was *divide et impera*.

<sup>87</sup> Cardinal Otto Truchsess, the Bishop of Augsburg at the time of the Peace, and the leading German bishops were absent (at Trent), and they repudiated everything in the Peace which impinged on the rights of the clerical estate; Heinrich, a later Bishop of Augsburg who had instructed Laymann and Forster to consider the matter, was therefore not bound by the Peace either, nor were the clerical estates; *Pacis compositio*, ch. 11.

<sup>88</sup> Ch. xii, pp. 460–1.

## CHAPTER 8

### *Reason of state, prudence, and the academic curriculum*

#### REASON OF STATE AND PRUDENCE

Jesuits, then, were willing and able to show flexibility in accommodating moral rules to the demands of the prince's role, and the more orthodox the prince, the more sympathetic he was likely to find them. But reason of state and the *politici* demonstrated all too clearly where making allowances might lead. The original strategy of anti-Machiavellians (Jesuits and non-Jesuits alike) for keeping reason of state in check, while appropriating its plausibilities and *chic*, was to distinguish 'true' reason of state from the machinations, designments, politickes, *practiques/Praktiken*, fraud, worldly wisdom, craft, and cunning typical of the 'false' variety. But more convincing than any such merely verbal distinction was the equation of true reason of state with prudence. Prudence had always meant the competence and judgement in handling affairs that goes beyond merely knowing rules, and which can be learnt only by practice and experience.<sup>1</sup> On the most charitable interpretation, reason of state operated in circumstances where strict adherence to the ordinary rules would yield perverse results.<sup>2</sup> That this might happen if *laws* were too strictly executed was already a cliché in Cicero's day.<sup>3</sup> Reason of state generalised and radicalised this perception into the distinction between what circumstances ('necessity') demanded, and the ordinary rules of morality, religion or piety, and law.

To Jesuits it was the merest commonplace that ruling demanded more than merely adhering to general rules, that prudence was this additional ability required to handle circumstances, and that it was an indispensable quality in any superior. This most rule-addicted of religious orders left ample room for discretion, foresight, judgement, and circumspection, in a

<sup>1</sup> Suárez, *De religione Societatis Jesu*, p. 1064: 'diuturnam experientiam, quae ad prudentem gubernationem maxime necessaria est, et brevi tempore acquiri non potest'.

<sup>2</sup> Machiavelli, *Il principe*, ch. 18, pp. 72–3.

<sup>3</sup> Cicero, *In Verrem*, 2.5.2: 'ex quo illud: summum ius, summa iniuria, factum est iam tritum sermone proverbium'.

word, prudence, whether it be Ribadeneira's standard formula for praising anyone in any position of authority,<sup>4</sup> Ignatius writing to Canisius about dealing with the rulers and heretics of Germany,<sup>5</sup> Mercurian's instructions to Persons and Campion,<sup>6</sup> Borja's reflections on the preacher's craft,<sup>7</sup> manuals for confessors,<sup>8</sup> Soarez on rhetoric,<sup>9</sup> or Scribani instructing either religious superiors or Christian statesmen in the art of government.<sup>10</sup>

Botero and Ribadeneira clearly tended to equate reason of state with prudence, but it was not a deliberate strategy. They began by setting out their material in the manner conventional in mirrors of princes, and in the teaching on the virtues of the theology-faculties. Accordingly, prudence should have a chapter, just as all the other cardinal and specifically princely virtues should have theirs. But virtually all the *practical advice* that they had to give could be described as 'counsels of prudence', or required prudence in its application. Prudence could thus end up being co-extensive with the whole of statecraft. And persons as well educated as these could hardly fail to notice that their work was an exercise in 'practical reason', and therefore fell under the aegis of the moral, and what is more distinctively princely, virtue of *prudence*.

Certain compositional peculiarities of Ribadeneira's *Treatise on the Religion and the Virtues of a Christian Prince* illustrate this happening. In other writings, where prudence was securely harnessed to piety, learning, and virtue, he used the term in the conventional sense of 'dextrous and farsighted management of men and affairs'. But in the *Treatise*, his concern was to safeguard religion against the prevalent tendency of *politicos* and reason of state to subordinate religion to *estado*. Given how well versed he was in Machiavelli, he will also have noticed that the principal culprit had described his prince in salient places as *sabio* and *prudente*. So from Book II onwards, we find Ribadeneira not only explicitly equating reason of state

<sup>4</sup> E.g. (all references to BAE): Jesuits: pp. 56, 73, 106, 100, 127, 145, 146, 157, 166; statesmen and cardinals: 73, 100, 144, 158, etc.

<sup>5</sup> *Eplg* VII, Letter 4709, 13 Aug. 1554 (p. 298): 'Ex iis tamen, quae hic scribentur, vestrae prudentiae erit videre quanam regiae maiestati proponenda sint' (my italics).

<sup>6</sup> *Letters and Memorials of Fr Robert Persons SJ*, p. 316: great need for 'prudence [which] for the most part consists in this: that you should know whom to deal with, when and how . . .'.

<sup>7</sup> Borja, *De Ratione Concinandi*, reproduced in Ribadeneira, *Vita Francisci Borgiae* (transl. A. Schott, 1598, p. 457), about the 'prudens Ecclesiastes'.

<sup>8</sup> Polanco, *Breve directorium ad confessarii ac confitentis munus rite obeundum*, 1560, esp. p. 17<sup>v</sup>: De prudentia confessarii, and p. 3<sup>v</sup> on *cautio* and *discretio*; V. Reginaldus (Valère Regnault, or Regnaud), *Praxis fori poenitentialis* (1630), Preface, p. 45: 'praeter scientiam speculativam, requiri in Confessario practicam; aut praeter scientiam requiri prudentiam'; book II, 'De Prudentia . . .', incorporated the relevant sections of his *De Prudentia et ceteris in confessario virtutibus requisitis* (1610).

<sup>9</sup> Soarez, *De arte rhetorica* (1573), p. 14<sup>v</sup>.

<sup>10</sup> Scribani, *Superior religiosus. De prudenti ac religiosa gubernatione* (1619); *Politicus christianus* (1626).

with prudence, but also making the same distinction between two kinds of prudence that he had made between two kinds of reason of state.<sup>11</sup> The trigger was unsurprisingly those contexts where the laws of God demanded one thing, and false (but specious) prudence something else.

In dealing with the cardinal and other virtues, Ribadeneira dutifully repeated Aquinas's description of prudence as 'the leader and teacher of all the moral virtues of the Christian prince' (e.g. ch. 31, first paragraph, and ch. 23, first paragraph). But he in fact ranked it below the others, seemingly as merely an adjunct to keeping laws and rules. Far and away the most important virtue for him was justice, especially with regard to the distribution of 'honours' (i.e. offices) and burdens (i.e. taxation), and the administration of laws. In the concluding chapter he described it as 'the prime and principal virtue, after religion and piety', and essential to the maintenance of any collectivity whatever.<sup>12</sup> But having dealt with the other princely virtues of *fides*, clemency, liberality, magnanimity, and temperance, Ribadeneira reached prudence, which, he said, teaches 'innumerable' things (ch. 31). The remaining virtue of fortitude only took up a great deal of space because under this heading he refuted Machiavelli's libels on Christianity as a civic and martial religion.

His discussion of prudence eventually took up eleven whole chapters (chs. 23–33). He had at once to make the distinction between true and false prudence, including the remarkably casual formulation that it should be 'Christian and not political (*christiana non politica*)'.<sup>13</sup> Equally piously conventional was his description of prudence as a divine gift to be sought from God, contrary to much of what ch. 33 had said about the methods for acquiring prudence. But for the rest of the discussion he used the term in its ordinary sense, normally without any qualifying adjective, to cover practical advice which is unmistakably reason of state, and which qualified as 'true' or 'real' reason of state only because of its virtuous objectives. In one place he even claimed that it is 'Christian prudence [which] teaches dissimulation'.<sup>14</sup> And in his *Preface to the Christian and Pious Reader*, which like such things generally was presumably written last, he at once equated reason of state and prudence: 'Some may be under the impression that the laws of religion and those of civil and political prudence are very different,

<sup>11</sup> *Tratado*, bk 1, ch. xiv, p. 80: 'con prudenzia humana y con esta falsa razon que llaman de estado'; ch. xv, p. 90 (LV): 'perniciusum humanae prudentiae consilium et nefaria Politicorum calliditas'; also bk 1, ch. x, p. 470 (BAE), where he equated the *prudencia* and *sabiduria* of ungodly kings. His Jesuit translator slipped in various additional references to prudence.

<sup>12</sup> *Tratado*, BAE, pp. 585–6. <sup>13</sup> Bk 11, ch. xxiii, p. 407 (BAE).

<sup>14</sup> Ch. xxvi, p. 153 (SV)/178 (LV).

and that no one can well teach how to govern states who has not himself governed them.' But, he said, he had no intention of laying down laws (*leyes*) for princes about how to govern, and he emphatically denied that he 'devalued all reason of state, as if there were none, or those rules (*reglas*) of prudence by which, after God, states are founded, grow, and are governed and conserved'.<sup>15</sup>

Ribadeneira had evidently realised belatedly that prudence was no 'safer' than reason of state. As he said in the last chapter: the prince must be armed with every sort of weapon, including secrecy and dissimulation, to deal with 'other princes and false friends who can harm him, [but] he must not for that reason become a disciple of Machiavelli, and for the sake of the prudence of the serpent, lose the Christian simplicity of the dove'.<sup>16</sup> But in describing how this combination was to be managed, he found himself persistently attenuating the importance of prudence, reducing it to some kind of aptitude for choosing morally inoffensive means, quite contrary to the role he himself had assigned to it.

None of this happened with Mariana. Unlike Botero he did not devote almost half his book to prudence,<sup>17</sup> but his chapter on it nevertheless contained the meat and marrow of his advice to princes and (as we have seen) allowed it its traditional role of overriding the moral and religious imperatives which he had paraded in the previous parts of the book. He also made clear at the very beginning of his last and longest chapter (ch. xvii, against freedom of worship and toleration) that he was here dealing with one of the principal deliverances of prudence (p. 352); and appealed throughout the rest of the book to the judgement of the prudent and discerning. But since he did not mention reason of state, he was not obliged to shield his concept of prudence from it rhetorically; he clearly thought that he had done so as to substance.

#### PRUDENCE CONSIDERED PHILOSOPHICALLY

It might be supposed that a clarification of the nature of prudence relevant to reason of state was to be found in the teachings of the Jesuit Schools. But the Jesuit theologians in their discussions of prudence hardly ever linked it

<sup>15</sup> P. 2 (LV)/20 (SV); this was followed by the distinction between true and false reason of state cited earlier, p. 105.

<sup>16</sup> P. 585 (BAE).

<sup>17</sup> *De rege*, bk III, ch. 15. Botero's discussion of princely *virtù* (*Della ragion di stato*, bk 1.1) was divided into those qualities which bring a ruler love rather than reputation, and those which do the reverse; the latter (to which he devoted most of his book) were prudence and valour.

to reason of state, a striking illustration of what C. S. Lewis has called 'the insulating power of context', especially when that context is an academic tradition. Their concerns were for the most part austere epistemological, and their accounts merely replicated the difficulties about prudence that true reason of state had already encountered, and added new difficulties of their own.

Jesuit theologians regularly presented their teachings as commentaries on Aquinas, *the* theologian as far as the Society was concerned.<sup>18</sup> They tended to follow his order of exposition and his questions and his answers, with more or less amplification from other authorities, and they normally minimised any appearance of difference between themselves and Aquinas.<sup>19</sup> The authoritative texts for any discussion of prudence were therefore inevitably Aquinas, *2a-2ae*, 47–52, and *1a-2ae*, 57–61, as well as his commentators, notably Caijetanus and the Salamanca Dominicans, and Aristotle, especially *Ethics* VI.5, where the translations equated prudence with *phronesis*. Jesuit theologians saw themselves as sharing St Thomas's view of the place of knowledge and the intellect in moral agency, and therefore his view of prudence. Whether they were right in thinking so is a fascinating episode in *Rezeptionsgeschichte*, which can only be pursued here to the extent that it clarifies some of their incoherences.<sup>20</sup>

The consideration of prudence concentrated on three interrelated issues: the status of prudence as knowledge, its status as a moral virtue, and the role of prudence in the translation of general moral norms into specific guidance for conduct.

#### PRUDENCE AS KNOWLEDGE AND AS A MORAL VIRTUE

Prudence undoubtedly is (or involves) understanding something, and therefore knowledge. Augustine's definition was just what scholastic theology needed and liked, because it was crisp, was itself drawn from Cicero and

<sup>18</sup> The *Ratio studiorum* prescribed the Angelic Doctor as the norm, but without requiring theologians to follow him in everything ('in verba magistri iurare' was the idiom). In any case, even exegesis of St Thomas demanded resorting to supplementary authorities; see the fine study by Bondi, 'La *Bibliotheca Selecta* di Antonio Possevino', pp. 43–76.

<sup>19</sup> But not on his vexingly difficult concept of prudence as exercising an *imperium* over the will, which Lessius attenuated as a metaphor (*De iustitia et iure*, bk 1, ch. 1, ss. 23–4: 'nemo enim sibi ipsi proprie imperat, dum aliquid facit'), and which Vazquez and Suárez rejected outright as absurd or redundant: Suárez, *De legibus*, I.4.4 and I.5.6; Vazquez, *Commentarius in primam secundae*, disp. 49, ch. 4. See Finnis, *Natural Law and Natural Rights*, ch. XI.8.

<sup>20</sup> The difficulties in interpreting Aquinas, and hence whether Jesuits understood him, are illustrated by the disagreements between sympathetic commentators like John Finnis (and Germain Grisez) on the one side and Jean Porter and Alisdair MacIntyre on the other.

had been cited frequently by Aquinas. According to Augustine, prudence is *scientia*: 'knowledge of those things which are to be sought, and those to be fled from [or: avoided] (*prudentiam esse rerum appetendarum, et fugiendarum* [or *vitandarum*] *scientia*)'.<sup>21</sup> But *scientia* was ambiguous even in antiquity as between speculative knowledge and a skill or expertise, and prudence seemed to be neither. Aquinas more usually defined prudence as 'right reason in doing things (*recta ratio circa agibilia* [or *operabilia*]', e.g. *2a-2ae*, 47, 2, *sed contra*; 47, 8, *resp.*). Jesuit accounts of prudence also referred to it as *notitia* and *cognitio*, *intelligentia* or *intellectus*, all again entirely unspecific terms. Furthermore, the authoritative documents, especially the Vulgate Old Testament, often equated prudence with wisdom (*sapientia*), and so did colloquial usage; Fitzherbert said that wisdom and prudence were quite distinct, but 'in common speech are commonly confounded', and he usually 'confounded' them himself, as we shall see. But wisdom, prudence, and knowledge (*scientia*, *notitia*, *cognitio*) are not interchangeable concepts; for one thing, all the Western vernaculars have a separate word for wisdom.

It was therefore far from clear what sort of knowledge prudence is, or involves. Specifically: knowledge as such must be certain, and for scholastic theologians the only kind of knowledge whose certitude was uncontestable was *scientia*, knowledge of what is universal, necessary, and unchangeable. Prudence, however, 'is a matter of the intellect and yet is conversant with individual things' (Valentia). But how could there be certain knowledge about particulars and contingents, which are only 'known' by sense, experience, or memory, and are therefore inherently uncertain and indemonstrable? As Valentia observed: 'It is certain that not only sense but also the *intellectus* knows and encompasses individual things, even though there is considerable controversy about the way in which it does so.'<sup>22</sup>

Aquinas did not resolve the difficulty. The 'actions' of prudence (in this kind of writing prudence and all the other virtues, habits, and faculties of the soul are consistently personified as agents) are 'to deliberate well, to judge rightly, and to direct implementation' (*bene consultare, recte iudicare, et praecipere executionem*: *2a-2ae*, 47, 8 and 51, 2 ad 2; *praecipere*, unhelpfully, can mean either 'teach' or 'command'). And it calls upon an intuitive knowledge of moral first principles (*synderesis*, *2a-2ae*, 47, 6 ad 1), as well as upon well-advisedness (*eubulia*), practical judgement (*synesis*),

<sup>21</sup> Cited by Aquinas, e.g. *2a-2ae*, 47, 1, *sed contra*; 47, 4, 1; Fitzherbert, *First Part of a Treatise*, runs together Cicero and Augustine to make: 'rerum expetendarum fugiendarumque scientia', and adds St Basil's 'eorum quae agenda et non agenda sunt cognitio'.

<sup>22</sup> *Commentarii theologici, tomus tertius*, disp. 1, qu. 1 (p. 914B).

and knowledge of when to make exceptions (*gnome*); Aquinas for some reason described all these as 'parts of prudence' (qu. 48), but not 'integral parts' (qu. 49). The capacities that any act of prudence requires are said to be memory, *intellectus* or *intelligentia*, teachability, acumen, ability to reason (*ratio*), foresight, circumspection, and caution (2a-2ae, 49). But of all these, only *synderesis* and *ratio* unequivocally are (or yield) knowledge, and neither of them deals with particulars, *contingentia*, things that might be otherwise, mere 'facts' 'known' by experience via the senses. The cognitive status of prudence therefore remained in doubt, for the whole point about prudence was that it was not a matter of intuitive certainties, first principles, or necessary deductions from them.<sup>23</sup>

But even if the status of prudence as knowledge *could* be vindicated, this merely raised the question why prudence should be considered a *moral* virtue at all. The source of the difficulty was that Jesuits, like Aquinas, had to assimilate the Greek *areté* to the Christian notion of a moral virtue. But *areté* notoriously meant excellence, or being good *at* or good *for* something, a concept remote from the Christian (and for that matter the modern) notion of a moral virtue, though not so far from *virtus* or Machiavellian *virtù*. Moreover, in common usage 'prudence' had never had any necessarily moral connotation either. Aquinas had himself been obliged to distinguish prudence *simpliciter* (as a moral virtue) from prudence *secundum quid* (in a certain sense), according to which a morally bad man might yet be said to be a prudent merchant, sailor, physician, or general (e.g. 2a-2ae, 47, 4 ad 2; 47, 13 resp., 54.2 ad 1; 55.2 resp.; 1a-2ae, 57, 4 ad 4).

Prudence in either sense designated a capacity or virtuosity (*virtus*) of the mind or intelligence. The traditional description of it as *virtus intellectualis* was therefore unproblematic. But this did not make it a *moral* virtue. Indeed, of the four 'cardinal' virtues sanctified by tradition (prudence, justice, fortitude, and temperance), only justice or *pietas* was unambiguously a moral virtue, the others being perfectly compatible with moral depravity unless strategically redefined. Aquinas had offered a reconciliation by interpreting as a virtue whatever is conducive to the *causa altissima* or the *finis ultimus* in the sphere of human conduct (2a-2ae, 47, 2, ad 1; 51, 2 ad 2; 1a-2ae, 57, 4 ad 3), namely the *bonum humanum* or *bene vivere* (47, 2 ad 1); elsewhere he calls it happiness (*beatitudo*, 1a-2ae, 62, 1; 2a-2ae, 3, 8). Prudence is that capacity to survey circumstances (*inventio*), to judge what the contingencies call for (*iudicare*), and to decide the will to action (*praecipere*

<sup>23</sup> In the 'practical syllogism' (*enthymeme*), which has the form: (a) theft is morally wrong; (b) this act x is theft; therefore (c) x is morally wrong, the particular (b) is not known in the same way or with the same certainty as (a). Aside from the banality (Finnis) of such reasoning, it has nothing to do with prudence, and is nowhere referred to by Aquinas in this way, or in this connection.



*executionem*, 2a-2ae, 49,1). Prudence is therefore involved in and reinforces justice, fortitude, and temperance. For to be virtuous is impossible except by habitually acting in specific circumstances according to the virtue that they require, and it is prudence which relates virtue in general to the specific. So conceived, prudence is indeed an intellectual excellence (*areté*), and given its conversancy with the practice of the good life (its object, the *materia* to which it gives *forma*), as well as its character as a settled disposition in all one's acting (a *habitus*), it is a moral virtue, and indeed the chief moral virtue, involved in the practice of every other virtue.

This, however, did not resolve the problem, since certitude and therefore knowledge is only to be had of 'generals', universals, or principles, and on Aquinas's account prudence was precisely *not* essentially a knowledge of principles, but rather how to apply them. The logical fork here was therefore that to the extent that the *knowledge*-status of prudence was vindicated, it ceased to be a practical or a moral virtue. Conversely, in so far as its *practical* character, its conversancy with the variable and circumstantial was stressed, its status as knowledge was threatened.

Jesuit theologians plainly did not agree on how to deal with this dilemma. Valentia and Laymann thought the solution was to grasp the nettle. As Valentia defined it, 'prudence, in the most appropriate sense of the term, means the faculty whereby the practical intellect determines, by an imperative act, . . . what is to be done in any particular case'.<sup>24</sup> It is therefore 'a virtue of the intellect, given what is its subject [sc. what it is that acts], namely the intellect, and what is its own immediate and formal object [i.e. its subject matter], which is things to be done' (dub. 2, p. 916B). But 'its quality as a *moral* virtue comes (as it were) from without, in the sense that the intellect is set to work and spurred on by a right appetite . . . to which prudence gives its shape as a good to be done and congruent with this right appetite . . . Thus prudence is inherently an intellectual virtue, since it is that by and in itself; it is moral only by an impulsion of the appetite, in which prudence itself does not immediately inhere' (my italics). Laymann concurred:

Although prudence is in essence not a moral virtue but a virtue of the intellect, none the less it is the leader and queen of all the moral virtues, none of which can stand without it. For the will cannot follow what is good (*honestum*), or determine virtuous means, unless it is shown the way (*ratio*), and it is prudence which shows the way. Hence, as St Bernard says: 'Discretion (or prudence) is not so much a [moral] virtue, as a governor, and the one who holds the reins of the virtues, who orders the affects and instructs the morals.'<sup>25</sup>

<sup>24</sup> *Commentarii theologici*, 1609 (first edition 1595), vol. III, disp. 4. generalis, qu. 1, pt 1, 4, p. 913C–D.

<sup>25</sup> *Theologia moralis*, bk III, pt 1, s. 2.

In short, prudence is a virtue of the intellect; its link to moral virtue is established by the separate consideration that all action has as its object some good, which in turn prompts or elicits desire and will, and these in turn set reason to work, to show what is necessary for the realisation of this good. True prudence will only concern itself with a real good, with what is known to be truly good for man (or in accordance with reason, which amounts to the same thing); false goods, once recognised as false, will no longer elicit 'appetite', 'passion', or 'will', nor will prudence concern itself with them. Like Aquinas, the Jesuit commentators allowed, however, that there was a false prudence which directed itself to some 'false' or 'counterfeit' good suggested by wrongful passions, or by inattention or negligence, and then considered apt means to that 'good'; or alternatively false prudence envisaged a true good but adopted wrongful means to it. This is 'prudence' *secundum quid*, in virtue of its resemblance to true prudence.

Neither Valentia nor Laymann explained in this context *why* true prudence excludes immoral means to virtuous ends. This was arguably the critical issue as regards reason of state, since the end it postulated, the preservation of the state, was evidently a good end. But their reason was undoubtedly that immoral means, those which violated a moral or religious rule, would not in fact be conducive to the true good of the individual or the collectivity. This was Suárez's reply to the *politici* (as he found them interpreted by Ribadeneira), the only theologian I have found expressly mentioning them in this connection, apart from Bellarmine.<sup>26</sup>

#### MEANS AND ENDS

This account explained how prudence was both a moral and an intellectual virtue. But it did not clarify in what sense it was knowledge. Some of the difficulties here arose from the fact that Jesuits invariably interpreted action and practice in terms of the categories of ends and means. In considering actions (and much else, given his teleological view of the universe), Aquinas too had habitually distinguished between an 'end' (*finis*) and *ea quae sunt ad* [or *propter*] *finem*. His account of *synderesis* and of how one descends from its generalities to practice is, moreover, 'seriously underdeveloped' (Finnis) on even the most sympathetic reading, and is couched in terms which might suggest a syllogistic and mechanical operation. Their most authoritative

<sup>26</sup> Suárez, *De legibus*, III.xiii.5; Bellarmine, *De officio Principis Christiani*, ch. 8, pp. 60–3.

source therefore did little to protect Jesuits against their own habits of mind. As a pre-eminently practical virtue, the certitude of prudence had therefore to lie in the choice of either means or ends, or (as in Aquinas's account of it) of both. The choice or employment of means was, however, a conspicuously implausible candidate as something that could be known with any certainty. In his unfocussed and *pro forma* discussion of prudence *en route* to his main concern with justice, Lessius defined prudence as 'a virtue of the *intellectus*, by which we know what is right (*honestum*, or 'fitting') and what is base (*turpe*) in any matter we have to hand (in quovis negotio occurrente)',<sup>27</sup> the italicised words emphasise that prudence deals with individual actions, and specific circumstances, and is not merely abstract *scientia* of principles (ss. 3, 4, 7, 13, 14). Rather, presupposing *synderesis* (general knowledge of moral principles) as its foundation, and also presupposing an ordinate and virtuous desire to live rightly (*honeste*), 'the task (*munus*) of [prudence] is to seek in any particular business at hand the appropriate means'; 'after diligent enquiry and consideration of the matter, to come to a conclusion about what, how, in what place, at what time, and with what other circumstances we must act in order for the work to be done in accordance with virtue' (s. 17).

This did not establish that prudence was knowledge (*notitia*) and certitude, something his admired friend Lipsius expressly denied.<sup>28</sup> Lessius acknowledged the familiar objection that 'prudence deals with individual actions, in which there can be no certainty, given their extreme variability, . . . and therefore the judgement of prudence cannot be certain' (bk 1, ch. 1, s. 3), but tried to refute it by interpreting prudence as some kind of capacity for moving, by some intellectual operation he did not specify more closely, from general principles to particulars. But the additional material required for this operation could not be as certainly known as the principles, and it was precisely this additional material which was critical to the nature of prudence (s. 4). His illustration 'this house is rightly built' (s. 4) begged the question, and was irrelevant on his own grounds, since it dealt with something *factum*, the subject of *ars*, whereas prudence is concerned with *acta* (ss. 13–14).

Moreover, whereas for Aquinas it was prudence that made it possible to determine the concrete, substantive content of the virtues, which he

<sup>27</sup> *De iustitia et iure*, bk 1, ch. 1, ss. 1 and 8, my italics.

<sup>28</sup> Lipsius, *Six Bookes of Politickes*, bk 4, ch. 1, esp. pp. 59–60, described prudence as confused, unstable and wavering, 'the election of those things which never remaine after one and the same nature'. And 'if the things themselves are uncertaine, Prudence itselfe likewise must of necessitie be so'.

identified as whatever is necessary for the good life, Lessius's account *presupposed* virtues already known independently of prudence, and presupposed also that at any rate those virtues relevant to civil life consist essentially in habitual and willing conformity to general rules of conduct. In his account of the cardinal virtues, Lessius made barely a reference to prudence. He did not allow prudence to determine the ends conduct should aim at, because he had already assigned that role to virtue, and knowledge of virtue to theology and casuistry. The drift of Lessius's thought was therefore inexorably in the direction of assigning to prudence the restricted role of determining *means*. He did so explicitly and repeatedly.<sup>29</sup> But the whole point of casuistry, which is what Lessius was engaged in, was to eliminate private judgement, uncertainty, and diversity of opinion, and Lessius wished to eliminate these even from prudence, not to allow prudence to reintroduce them. Nothing therefore remained for prudence to do, on this account, except to make choices between morally inoffensive means where such a choice existed. Not even the choice of the lesser evil was exclusively and safely left to prudence, since the judgement of what was the lesser evil also fell within the province of the science of casuistry.

Given the shrivelled scope that Lessius left to it, prudence therefore could not possibly qualify for the elevated rank Aquinas had assigned to it as the virtue which directed and showed the way to all the other virtues (2a-2ae. 47, 4 ad 2 and ad 3). Lessius's attempt to find a place for it in the economy of the soul was tortuous (ss. 23–35). And his distinction between wisdom and prudence also collapsed; he asserted that, unlike prudence, '*sapientia* is purely speculative, deals with divine things, and judges by final causes, nor does it postulate a rightly ordered appetite' (s. 13), which (apart from the last clause) made no sense in terms of any current use of the term.

But when Jesuits tried to explain what sort of indubitable knowledge there might be of *ends*, the only certainties they offered were of such utter generality that a knowledge of them was entirely useless for guiding conduct, such as that it is right to live temperately and justly, to act *fortiter* and to bear adversity patiently.<sup>30</sup> But anything that made ends more specific and practicable would be less certain. And any such 'end' could be equally

<sup>29</sup> E.g. *De iustitia et iure*, summarily bk 1, ch. 11, s. 13: 'prudentialia proprium est, inquirere media ad finem idonea', ch. 1, ss. 7 and 8 (necessary circumstances of time, place, method, etc.), s. 17: 'praescribere et adhibere omnia necessaria ad finem intentum', 'quae media et quae circumstantiae', 'idonea media', 'quid, quove modo, loco, tempore'; ss. 18, 22, 24, 28, etc.

<sup>30</sup> These are the 'universal moral principles' referred to by Lessius, I.I. ss. 19–20.

well (or badly) described as a knowledge of means or of an end, and would then be equally uncertain.

For example: a ruler can know with philosophical certitude that his end must be the common good. But Jesuit theologians, or for that matter their predecessors to my knowledge, had not explained how he could *know* that this 'end' in this particular set of circumstances concretely means (say) the security of the commonwealth, rather than (say) patronage of the arts, fostering agriculture or commerce, practising tender compassion for the poor or whatever other 'end' the common good might conceivably intimate, imply, or entail. And an 'end' like security is in fact merely a very abstract criterion for judging between various courses of action open to a ruler, and cannot tell him what to do. His 'end' might equally well be said to be the maintenance, financing and deployment of a well-equipped and disciplined army, and/or the creation of a chain of fortresses, and/or an alliance with some neighbouring prince, etc. These might however also be categorised as 'means' to the 'end' of security. Prudence therefore inheres in actions that can be described indifferently as either means or ends, and a prince's prudence could therefore be said to relate to either or both. *Respice finem* is an excellent maxim of prudence, but knowing what specific *finis* is to be chosen is just as much a matter of judgement, sagacity, understanding, knowledge of circumstances (i.e. opportunities and dangers), in short of prudence,<sup>31</sup> as choice of means to it. Nevertheless, Jesuit theory relentlessly pushed in the direction of confining the role of prudence to the choice of means, the ends being 'postulated' or 'presupposed', despite the fact that the circumstances in which prudence was called for made this restriction of its scope gratuitous.<sup>32</sup>

The most careful discussion here was once again Valentia's.<sup>33</sup> For him, too, the ends of the virtues are prescribed by *synderesis*, and 'the goodness of the formal objects of the virtues, in other words their intrinsic ends, is self-evident, *per se nota*' (p. 917D). He restricted the function of *synderesis* to knowing the 'ends of the moral virtues, in so far as they are formally ends'. But this seems to mean no more than knowing the formal *definition* of each virtue: 'thus the end of temperance (in this formal sense) is to make temperate use of what delights the sense of touch . . . and so for all the other virtues' (p. 919C, brackets in the original). The means (*media*) to

<sup>31</sup> Cf. Porter, *The Recovery of Virtue*, pp. 156ff, for a related set of difficulties concerned with Aquinas, 2a-2ae, 47, 6.

<sup>32</sup> Lessius, *De iustitia et iure*, bk 1, ch. 1, s. 20 is opaque about whether prudence prescribes ends at all.

<sup>33</sup> *Commentarii theologici*, vol. III, disp. 4<sup>a</sup> generalis, qu. 1, pt 1.

those ends, however, are not self-evident, but are determined by prudence itself in particular cases, with due consideration of all the circumstances (p. 918A). Discussing the highly material question of the scope of prudence (dubium 3: *quam late pateat Prudentiae functio*), Valentia says once again that the task of prudence is only to decree the *means* for attaining what virtue envisages (p. 919D). But he then expanded the scope of prudence by a significant qualification which has no parallel in Lessius: prudence not only holds up before the prudent person's mind the means which are appropriate to the presupposed end (p. 920C–D), but it also

defines and determines those things or actions in which the formal nature and goodness of the ends inheres as in their subject, for it determines in particular cases in which action or which quantity and quality of the thing the mean (*mediocritas seu medium*) between the extremes of deficiency and excess of each virtue consists . . . And in so doing, it sets before the eye [of the mind] and determines means conjoined, so to say, with the ends . . . And so, although prudence does not set before us the formal end of virtue itself, it sets it before us and attains it materially and as a subject, so to speak, determining that in which it inheres. (p. 920C)

His convoluted expression is evidence enough that he was going against the grain of his own vocabulary.

Unlike Lessius, then, Valentia and following him Laymann were making an attempt to give prudence something like the scope which would justify the pre-eminence Aquinas had assigned to it. There was also no suggestion of reducing prudence to the capacity to operate the 'practical syllogism' in its vulgar, mechanical form. Nevertheless, even Valentia did not altogether avoid the reduction of prudence to a knowledge of how to judge and determine apt, and moral, means to predetermined ends (e.g. pp. 919B and C, 920A, 921D, 924A), and he seems not to have considered at all how prudence could choose between possible *ends* in any particular set of circumstances.

#### WORLDLY PRUDENCE

On the account Aquinas (and *a fortiori* Aristotle) had given of it, prudence was indistinguishable from individual judgement, or at least left prudent persons collectively the arbiters of right conduct. But giving individual judgement such a sovereignty ran directly against the aspirations of casuistry and theology. Where the theological–philosophical impulse was less strong than in Valentia and Laymann, the dominant preoccupation of Jesuit theologians was to safeguard the supremacy of religion and morality, and of ecclesiastics, theologians, and casuists as their authoritative interpreters.

Normally it was St Paul's comments on 'carnal prudence' (*prudentia carnis*; Romans 8: 6–7)<sup>34</sup> that provided the occasion for driving home this lesson. Aquinas had already dwelt on the distinction between carnal and true prudence (*2a-2ae*, 55, 1 and 2), treating it as the distinction between what ordinary, carnal men understood by prudence, also called *astutia*,<sup>35</sup> and what a mind enlightened by the Word would understand by it, even if that was folly in the eyes of the world (I Cor. 3: 18–19). Since the carnally minded had not vanished from the world, Paul's comments were of undiminished relevance.

So Azor, although his treatment of prudence was otherwise perfunctory, cited Aristotle's distinction between personal, economic, and what the Greeks called *political*, the Romans *civil* prudence, but then distinguished the last into two parts: 'one consists of making laws, and choosing magistrates, and maintaining them, the other of obeying laws and magistrates and superiors'. The idea that prudence is 'obeying laws and magistrates and superiors' seems inexplicable except as an attempt to prevent prudence ever overriding obedience. In later chapters Azor listed prudence in sixth place among the princely virtues, thus making explicit the superiority assigned by Jesuits generally to *religio* and justice over prudence,<sup>36</sup> and then immediately contrasted it with 'false prudence, [which] is to use deceit, cunning, and frauds (*dolis, astu, fraudibus*) under the guise of prudence', with an edifying digression on the regal duty of maintaining *fides*, and its utility.<sup>37</sup> Twice he almost touched on reason of state, for under 'clemency, leniency, humanity, mildness' he mentioned *oderint dum metuant* as a maxim of tyrants, and in the context of *fides* he referred to flatterers at court, and the dependence of *societas* on *fides*. But he did not pursue the matter.

<sup>34</sup> The Douai-Rheims translation retained the Vulgate's 'wisdom of the flesh' (Greek *phronema*). The AV's version 'carnally minded' and Luther's 'fleischlich gesinnt' destroyed the connection with Matthew 10: 16, another favourite quotation, where the AV retained 'wise': 'Be ye therefore as wise as serpents, and as harmless (variant: simple) as doves.' The Douai-Rheims translation also had 'harmless' as the dovelike attribute, with a footnote suggesting the attractive alternative 'guileless'. The serpent irresistibly invoked Genesis 3: 1, where AV and Douay-Rheims both had 'subtile'; Luther had written 'listig', artful, cunning.

<sup>35</sup> Lessius, *De iustitia et iure*, 1.2, ss. 21–4 on *astutia, dolus, fraus*; Laymann, *Theologia moralis*, bk II, pt 1.2, s.6, on '*prudentia falsa seu fucata . . . prudentia carnis*'; cf. also Valentia, *Commentaria Theologica*, vol. III, disp. 4<sup>a</sup> generalis, qu. 5, pt. II (p. 944A–D).

<sup>36</sup> Busaeus, *De statibus hominum*, De regum virtutibus, pp. 438–44, devoted one thirteen-line paragraph to prudence, ranking it the third of the virtues, a long way behind *religio* or *pietas* and *iustitia*, and simply conflating it with wisdom.

<sup>37</sup> *Institutiones morales*, vol. II, bk II, ch. 5, p. 1234. Both his and Busaeus's list of virtues and their order of presentation tracked Aquinas, *De regimine principum*, see Ptolemy of Lucca, *On the Government of Rulers: De regimine principum with portions attributed to Thomas Aquinas*, transl. James M. Blythry, Philadelphia: University of Pennsylvania Press, 1997.

Bellarmino's *Office of a Christian Prince* devoted a chapter to prudence (bk 1, ch.viii). The whole trend of his discussion, which set prudence in the context of the duties the ruler owes to God, the Pope, his bishop, and his confessor, intimated clearly his overriding concern to prevent prudence from providing a way of evading rules and obedience. He began with one of his characteristic syllogisms:

Prudence is the virtue which directs means to their end. However, our end is eternal life, and the means to this end is to observe [God's] commandments, *Mt.* 19 [17ff]; therefore it is [the deliverance] of prudence that we should strive with all our minds to keep God's laws and commandments; and thereafter that we should rule those subject to us, as much as lies within our power, in such a way that they too should run towards that end for which they were created by God, that is to say eternal felicity, by observing the divine commandments.<sup>38</sup>

The very next paragraph distinguished prudence in this true sense from *prudentia carnis*, 'which should rather be described as cunning (*astutia*) and not as prudence' (p. 60). Since he was writing a 'mirror of princes' and not a theological treatise on the virtues, Bellarmine at once made the connection with false reason of state. He condemned the 'political craftiness' (*versutia politica*) that corrupts religion in order to conserve the kingdom, and soon loses both; that *astutia*, that *stulta prudentia*, that 'stupid *versutia* of the false *politici*, which wants to be called and considered true prudence', and which is prepared to commit any crime, in order to avoid a change in their *status politicus* (pp. 61–3). This left prudence with nothing to do.

The difficulties inherent in combining 'true' prudence and reason of state are clearest in Fitzherbert, who unlike Bellarmine at least made an attempt. For the most part he used prudence, wit, wisdom, judgement, discretion, circumspection, and policy interchangeably, in no way different from current usage.<sup>39</sup> And a considerable part of his argument was precisely that it was imprudent, in the ordinary sense of the term, to risk the wrath of God by impious and unjust policies. He had at the very beginning of the Preface identified political prudence with policy: it is 'that parte of humaine prudence which concerneth state, and is properly called Policy'. This is to

<sup>38</sup> *De officio Principis Christiani*, ch. viii, pp. 59–60.

<sup>39</sup> *The First Part of a Treatise*, e.g. 3.11, 13, 3.24, 7.7, 11.2: 'the wisdom of contrivers'; 'prudently contrived, wisely, dexterously and powerfullie executed'; 38.3: 'civil or political wisdom and prudence'; 28.11, 26–8, 29.25, 30.5, 31.30, 38.36, etc. He referred indifferently to the 'wisdom' or 'prudence' of the serpent (Matthew 10: 16 and Genesis 3: 1): e.g. *First Part of a Treatise*, Epistle, unnumbered third page, 29.13 and 3.6–7.



be distinguished from *prudencia carnis*, which Machiavelli taught (9.18). Fitzherbert's ideal was 'adding the continual use of devout and fervent praier, to humane counsell and diligence, and joyning therby the *wisdom of the serpent with the simplicity of the dove*, pietie with policie, gifts of grace with habilitie of nature, and finallie the wisdom of God with the prudence of man.' (29.13).

But when it came to *how* these two were to be combined, Fitzherbert's argument gave out altogether. Benedetto Pereira SJ, in a neat and lively commentary on the serpent in Genesis 3.1,<sup>40</sup> had made some interesting references forward to Christ's instruction to his disciples: 'Be ye prudent as serpents' (Matthew 10.16). Taking the attribute of the serpent to be *calliditas* (Vulgate), *astutia*, *prudencia*, or *solertia* indifferently, and treating these terms as capable of a good as well as a bad sense (as indeed they were), he distinguished between 'two kinds of prudence and cunning (*calliditatis*) of serpents: one is what they use to safeguard life and health, and to seek out and secure for themselves what is useful and suitable [which is the prudence Christ was counselling]; the other is what they employ to ambush and harm human beings' (s. 23).

Fitzherbert was far from developing such ideas from what was already a well-regarded commentary, or Pereira's suggestive metaphors of snakes turning deaf ears to snake-charmers, rolling their whole body into a coil to protect their head, shedding their skins, and knowing how to clear their eyes which are wont to become occluded. Indeed he seemed even to forget everything he elsewhere said about prudence and reason of state when he came to the theological heart of his discourse, namely chapter 28.<sup>41</sup> He now cited Plato's *Laws* and Scripture to the effect that not only absolute wisdom 'but also civil or political wisdom and prudence . . . is neither given to man by nature, nor taught by philosophie, nor got by industrie or experience' (28.3). On the contrary, 'the law of God is the true rule and square (*sic*), by the which al prudent actions are to be measured, for it comprehendeth in it selfe and teacheth al true vertue and goodnes, without the which there can be no true prudence' (28.7–11). He demanded that the end of every action be truly good, not 'crafty or subtile'; that 'the meanes to attaine to that

<sup>40</sup> Pererius (i.e. Pereira), *Commentariorum et disputationum in Genesim tomi quatuor*, 1601, vol. 1, bk 6, qu. 1. In s. 20 he conjectured that the serpent was '*ytale*, which is a beautiful animal'. Cornelius à Lapide, in an otherwise vapid discussion of the same text, objected that the *ytale*s and (the other option) the basilisk are both stupid animals: *Commentarius in Pentateuchum*, 1630, p. 79.

<sup>41</sup> Chapter title: ' . . . that no sinful policy can be truly accompted wise or political; . . . whence true wisdom is, what it is and wherein it consisteth. Also the difference betwixt wisdom, prudence, and policy; and lastly the necessity of grace to the perfection of policy is signified . . . '.

end, be correspondent therto, that is to say, they be also good and iust', and asserted that 'prudence and vertue are so ioyned that the one cannot possibly be without the other' (28.12–15). And 'seeing true prudence excludeth al wickedness and impietie, true policy must also exclude the same' (28.36–7). This was plainly not the political wisdom, prudence, and policy he had invoked in the rest of the book.

Importing the theologians' account of wisdom and prudence therefore did nothing to clarify what was involved in combining serpentine prudence with columbine simplicity. Indeed the theologians had not even offered nearly as much of a reconciliation between the *utile* and the *honestum* as their confrères fighting on the battlefields of reason of state had achieved independently. The effect of their approach was to reduce the status of prudence, and to circumscribe its scope very narrowly by the rules of justice and by the requirements of the Church and religion. Only when these left morally neutral choices available, or regulated matters merely permissively rather than prescriptively, was there any room for prudence in the conventional sense. The ever-expanding province of the casuist seemed to swallow up almost the entire agenda of princes and government. Casuistry *ex vi termini* descends to cases. As Molina said: 'The more general moral discourses are, the less useful they are, and the less true to specific actions which are to be done, as Aristotle prudently teaches in *II Ethics*, ch. 7'.<sup>42</sup> Indeed the only political matter on which the casuist could claim no particular *professional* expertise was a knowledge of circumstances, or of which policies were likely to prove effective. By virtue of his office, the casuist is required to know the grounds and scope (let us say) of clerical immunity and the liberties of the Church. But *qua* casuist he knows nothing about, say, the foreign policy or domestic politics of the Serenissima, or the likely response of the Venetians to papal initiatives and measures, etc. These, then, might constitute the area in which rulers and their advisers were properly supreme, and in which the Society might claim it did not meddle. But here too there seemed to be nothing left to discuss, once a well-informed casuist had delivered his verdict. He (or a prudent confessor) would be required *ex officio* to apprise himself of such information and considerations, if his *casus* was (say) what is right conduct of princes towards Venice in respect of its infringements of clerical immunity. It was therefore puzzling when Bellarmine, at the end of his discussion of the relationship between princes and their confessors, mentioned that 'it also seems to be necessary that the Prince should admonish his confessor not to meddle with government, or matters of state (*negotii status*),

<sup>42</sup> Molina, *De iustitia et iure*, tract. II, disp. xxxv, p. 162A.

or the government of the king's own household, unless he is asked by the prince himself for his advice'.<sup>43</sup> Given the scope of the confessor's office, it is unclear what could count as unwarranted 'meddling'. At best, since a facility with casuistry could also be acquired by a prudent prince or counsellor, it would be their casuistical expertise against the confessor's in a dispute over policy.

#### GOVERNANCE CONSIDERED PHILOSOPHICALLY

Reconceptualising reason of state as prudence therefore did not offer a secure location for the discerning practical judgement and skill on the part of rulers and superiors that Jesuits in fact regarded as indispensable. Prudence itself seemed to presuppose principles and doctrines whose exploration and validation was properly the business of moral theology (here encompassing philosophy). This was understood to furnish some of the ultimate intellectual resources for rhetoric, jurisprudence, history, scripture-commentary, cases of conscience, and *politica*. It was entirely usual for authors writing in any of these genres to invoke the authority of theologians and vice versa, and thus these genres were highly permeable.

The texts from this period which standardly figure in histories of political thought display debts to university disciplines on every page, but they were all of them extra-curricular products, so to say, unless they were precisely theology or jurisprudence. Since the *Constitutions* debarred Jesuits from staffing law-faculties (the only other location in the higher curriculum for politics), the theological faculties alone provided an institutional locus for Jesuit political theory. In view of the political suspicions and hostility the Society aroused, it had less reason than anyone else to make a special place for *politica* in its curriculum, even if the egregious Thomas Bell claimed that Machiavellian statecraft was one of the staples of a Jesuit's education.<sup>44</sup> The Society's definitive *ratio studiorum* of 1599 did not explicitly mention *politica* at all. Indeed, it infuriated Jesuits working in hostile parts<sup>45</sup> by failing to allow even an expanded role for history, one of the adjuncts of rhetoric in the lower curriculum that was most exploitable for political purposes. It

<sup>43</sup> *De officio Principis Christiani*, p. 50.

<sup>44</sup> Bell, *The Anatomie of Popish Tyrannie*, 1603, bk 1 (p. 2): 'He is not worth a rush amongst them [i.e. the Jesuits] that is not able to manage a kingdom. Matters of state, titles of princes, genealogies of kinges, right of succession, disposing of sceptres, and such affaires are their chief studies. Some feare they are more cunning in Aretine, Lucian and Machiavell, then in their breviaries.'

<sup>45</sup> Dainville, *L'éducation des Jésuites, XVI<sup>e</sup>–XVIII<sup>e</sup> siècles*, pp. 439–42.

was the new Protestant University of Leiden which first established a chair in politics, in the Arts faculty.<sup>46</sup>

Jesuits came to occupy chairs at ancient universities, often to the disgust of rivals, especially Dominicans, as well as acquiring their own colleges, seminaries, and universities. They were keen to vindicate their standing in the academic world. Their teaching had therefore ideally to be unimpeachably traditional. The safest and best-established location for *politica* in the scholastic curriculum was lectures in theological faculties on *de legibus* from Aquinas *Summa theologiae*, 1a-2ae, qus. 90–106, and on *de iustitia et iure* from 2a-2ae, qus. 57–120. Both texts had already been glossed and commented on by a host of commentators, especially in the sixteenth century by the *recentiores* or *moderniores* Tomasso de Vio Caetano (Cajetanus), Francisco de Vitoria (Victoria), Domingo de Soto (Sotus), Martin Azpilcueta (Navarrus), and Alonso a Castro.<sup>47</sup> Some of these commentators had expanded Aquinas's repertoire of *quaestiones* by means of so-called *relectiones*, lectures which pulled together various texts and issues to compose a *quaestio* not previously accorded separate treatment and addressing a more contemporary issue.<sup>48</sup> All the same, the scholastic curriculum was emphatically not tailored to the specific requirements or concerns of the Society of Jesus. Radical curricular innovation was of course not ruled out where there was a compelling need. The streak of intellectual ruthlessness that has always been part of the Jesuit psyche is seen, for example, in the establishment and consolidation of controversial theology in the 1580s by Valentia, Costerus, and Bellarmine. Amongst the *controversiae* were eminently political topics. If Jesuit theologians for the most part adhered to the *de legibus* and *de iustitia et iure* format, it was therefore simply because by and large it suited them.

In the first place, the format locked governance securely into a framework constituted by morality (justice), legality, and religion, without in the least compromising the energetic pursuit by princes of those objectives to which Jesuits attached importance. The range of authorities, and consequently of positions and vocabularies it encompassed, allowed ample flexibility. Furthermore, allegiance to a common framework of *topoi*, *loci*, authorities, and arguments was itself an essential bond of unity for this most

<sup>46</sup> For the new 'civil' or 'political' science, in both its practical intent as *prudentia gubernatoria* and more academically in *opera compendiosa et systematica*, and the broadly Protestant character of the genre, see Weber, *Prudentia gubernatoria*.

<sup>47</sup> Pereña's edition of Suárez's *De legibus* gives its genealogy of commentaries, all originally lectures, but widely diffused in manuscript versions.

<sup>48</sup> See the introduction to Vitoria's *Selectio de potestate civili* in Vitoria, *Political Writings*, p. xvii.

international, diffuse, and faction-prone of organisations; the framework was also shared by Catholics generally and (by the late sixteenth century) an increasing number of 'heretics'.

Moreover, the method of scholastic moral theology was as valuable and amenable for Jesuit purposes as its substance. Methodological topics were more hotly debated in the later sixteenth and seventeenth century than ever before, no doubt in response ultimately to the proliferation of mutually exclusive candidates for the status of *scientia*. But if the best that opponents of scholasticism could come up with in the moral sciences and humane letters was biblicism, Ramism and various other rhetoric-derivatives, and cabalistic mystery-cults, there was nothing in them to compel Jesuits to abandon 'school-Divines' and 'school-Divinity'.<sup>49</sup> Scholasticism was not only a method of presenting arguments, but also and more important, a canon of authorities and a set of authoritative models for breaking up a complex topic into manageable parts. These parts were discrete *quaestiones* (also *disputations* or *controversiae*), to be handled by means of propositional reasoning, which ideally began with free-standing, indubitable universal propositions (*sententiae*, principles, axioms), and moved syllogistically to equally indubitable conclusions, by way of some well-supported middle term. The scholastic method was thus methodical in the ordinary sense of the term. It proceeded (at least ideally) from one well-grounded proposition to the next, and hung its virtuous circle of principle-inference-conclusion-principle on what was certain either *de fide*, or by self-evidence, or by experience. Again, it heard both sides. Its power over minds is testified to even by its most vocal critics. Whatever their criticisms of the 'schoolmen', they retained its ideal of a definitional and syllogistic procedure. As for readers too shallow to cope with its rigour, too fastidious to tolerate the 'barbarisms' of its Latin, or too undereducated to cope with Latin at all, the Society of Jesus could readily reproduce the substance of scholastic theology in forms suited to them.

To a modern audience, the vices and weaknesses of the scholastic method are rather more apparent than its strengths. It relied on knock-down arguments. And one of its 'proofs' consisted in amassing authorities. The *reductio ad absurdum* here is the head-counting involved in 'probabiliorist' and 'tutorist' casuistry.<sup>50</sup> Even without that, the appeal to authorities often

<sup>49</sup> See the full account and defence in Persons, *A Treatise Tending to Mitigation*, ch. 9.

<sup>50</sup> Probabilism accounts a casuistic opinion as 'probable' (i.e. 'capable of proof, or approbation', permissible), if an 'authority' can be quoted in its favour; tutorism, the contrary doctrine, asserts that those opinions should be adopted for which the larger number of authorities can be cited. See Zagorin, *Ways of Lying*, ch. 9. But an analogous procedure of amassing authorities also operated in

transformed a substantive dispute into an exegetical one: who had correctly interpreted the authorities? The phenomenon is not unknown even in our own age. Again, once a *quaestio* had been included in an authority, that was sufficient justification for perpetuating it. A great deal of flotsam was consequently simply carried downstream in the academic tradition. Furthermore, the demarcation of a topic-area for analysis was usually perfunctorily gestured at in the preliminary *divisio* (or *dispositio*), or simply taken over from scholastic tradition. Departure from the received order and topics was costly in terms of energy and risky in a Society which placed a high premium on conformity, eschewal of novelties, and obedience to authority. A theologian nurtured in scholastic techniques and substance could turn them to excellent use when called on to write an opinion on some controversial issue, or a monograph, polemic, or whatever, when the topic was limited and fixed.<sup>51</sup> The systematic treatment of a whole area (notably that of *respublica*) was another matter altogether.

A less obvious but (from the point of view of the historian) more serious defect is that the various 'proofs' adduced did not require weighting or prioritising. Ordinarily, the 'proofs', from Scripture, Tradition, 'reason' or 'reasons' (i.e. derivation in some way from first principles), and from experience would simply be accumulated, since all *ex hypothesi* yielded the same conclusions. The *decisive* consideration for a particular theologian, let alone the overall ranking of considerations in the productions of the Society's theologians taken together, is therefore often far from obvious.

The *de legibus* and *de iustitia et iure* formats as the paradigms for political theology rule out any idea that the Jesuit theologians' accounts of politics were collectively subservient to some putative single project of the Society as a whole, or of its superiors. Jesuit superiors on the contrary recurrently complained about the prevalence of free-thinking (the *libertas concinandi* or *opiniandi*) among theologians, and its elimination was one of the less realistic ambitions of the *ratio studiorum*.<sup>52</sup> Valentia, Lessius, Molina, Suárez, Becanus, Laymann, and their like were not the sort of people to whom others could give instructions about what it was to do theology. But although

the supposedly modern *mos italicus* legal reasoning; see Maclean, *Interpretation and Meaning in the Renaissance*. Azor, *Institutiones morales*, vol. 1, bk 11, chs. IX–XVII; is a thoughtful discussion of what was and what was not authoritative; his practice when citing authorities was another matter.

<sup>51</sup> For example the reports reproduced in Juan de la Pena, *De bello contra Insulanos. Intervencion de Espana en America*, ed. Pereña *et al.*, or the various 'opinions' reproduced in *Auctarium Bellarminianum*, Le Bachelet ed.

<sup>52</sup> A. Mancía, 'La Controversia con i potestanti ed i programmi degli studi', pp. 10–13, 28, especially n. 132 for the directive of Aquaviva: 'nihil se magis optare testatus est, quam ut eorum (i.e. the Fathers composing the *ratio*) opera, opinandi licentia, quae quotidianis et periculis et altercationibus nostros perturbat, cohiberetur' also nn. 215, 232.

the thematics of *de legibus* and *de iustitia et iure* were not tailored to the specific requirements of Jesuit political theory, they were not tailored to any other specific requirements either. And so, like an experienced tradesman's kit, they contained some tools usable for tackling any job, but also many items that continued to be carted about for no better reason than the inconvenience and risks of a general clear-out. The much less strictly programmed 'Controversies' part of the curriculum afforded more freedom of manoeuvre, and extra-curricular publications allowed still greater freedom. When Suárez wrote his *Defensio fidei Catholicae* against James I/VI, there was no pattern he was obliged to follow, not only because he was eximious, but because no such pattern had been established.

## CHAPTER 9

### *The theory of political authority*

It seemed, therefore, that a right understanding of reason of state and political prudence presupposed a right understanding of the nature of political authority, *potestas*. But whereas there was an Aquinian paradigm for discussing laws, the nearest equivalent for *potestas* was some recent scholastic models, notably Vitoria's *Relectio de potestate civili*, first published in 1557 (though originally delivered in 1528), on which many Jesuits drew freely. It was not too difficult to find support in Aquinas himself for much that Jesuits wanted to say about *potestas*. The fact remains, however, that the *Summa theologiae* 1a-2ae always discusses *potestas* under the heading of laws, rather than the other way around, and ordinarily refers not to the ruler but to the 'legislator'.<sup>1</sup> But for Jesuits, whereas *potestas politica* wholly encompassed law-making, the converse was not the case. *Potestas* therefore had logical as well as (so it seemed) chronological pride of place over laws. Arguably they took a quite different view of law and political obligation.<sup>2</sup>

#### THE NATURE OF *POTESTAS*

In European vernaculars and colloquial Latin the same terms were casually used for both legitimate authority and might.<sup>3</sup> In classical Latin *potestas* meant legitimate authority: there was a separate vocabulary to designate power without any connotation of right: *potentia*, *vis*, *dominatio*, *coercitio*, *coactio*. Modern writers sometimes used *potestas legitima* to avoid any confusion. Generically, *potestas* is any right (*ius*) or rightful capacity (*facultas*) to act. *Ius* in one of its senses and *potestas* are therefore interchangeable

<sup>1</sup> For example qu. 90, art. 3; qu. 92, art. 1; qu. 96, arts. 4–6; qu. 97, arts. 1, 3, 4.

<sup>2</sup> In my view, Aquinas's position here is not only 'seriously underdeveloped' (Finnis, *Natural Law and Natural Rights*, p. 46), but is more ambiguous about the 'will' and 'command' character of law than Finnis allows.

<sup>3</sup> E.g. *pouvoir*, *puissance* (*souveraine*), *power*, *potestà*, *poder*, *potere*, *regime*, *regimen*, *Regiment*, *Gewalt*, *Macht*, *Herrschaft*, *Oberkeit*, *gouvernement*, *government*, *gobierno*, *governo*, *imperio*, *principato*, *principauté* *dominio*, *empire*, *state*, *sovereignty* (and its European equivalents), etc.



concepts. Thus Molina in *On Justice and Right* defined *ius* as 'a capacity (*facultas*) to do something, or obtain it, or demand it, or to occupy some status with regard to it', and political *potestas* as 'a capacity (*facultas*) of someone with authority and superiority (*eminentiam*) over others, in respect of their government'.<sup>4</sup> And Lessius too defined *ius* in one sense as 'a rightful *potestas* to obtain something, or to some use or quasi-use of it (*functionem vel quasi-functionem*), whose violation constitutes an injustice (*iniuriam*)'.<sup>5</sup>

But there are many persons who have some kind of *potestas*, and everyone has various sorts of *ius*, whereas the issue here was the *potestas* and *ius* of rulers: *mera* or *suprema potestas*, *potestas politica* or *civilis*, a *potestas coactiva*, or even *potestas dominativa politica seu gubernativa* (Suárez, *On Laws*, III.I.10). And synonyms for it were *imperium*, *auctoritas*, *praelatio*, *superioritas*, *regimen*, and most commonly *principatus*. The components of this kind of *potestas* were the *iura maiestatis*: the rights to command and legislate, to adjudicate, to visit insubordination with punishments up to and including the deprivation of life, limbs, liberty, or possessions, to conduct relations with other commonwealths, and to wage war against them for just cause.

There was also another generic term for political power hallowed by tradition, namely *dominium*. Lessius, noting its derivation from *dominus* (lord), defined it as 'a right of governing or disposing of something, as being one's own'. He divided it, entirely conventionally, into dominion over property (*dominium proprietatis*), which he confined to things, and jurisdictional dominion (*dominium iurisdictionis*) over persons. But although he then allowed that there could be a *dominium* (i.e. proprietorial dominion) over human beings,<sup>6</sup> he was clearly uneasy about using *dominium* as a synonym for *potestas*. Molina, too, had invoked the same distinction, with *ius* as the *genus*, and dominion (as the 'perfect right of disposition over something') as a species. But he then confined *dominium* exclusively to rights over things, equated jurisdictional dominion with *potestas* (divided into ecclesiastical and lay), and discussed rights over persons exclusively in terms of *potestas*.<sup>7</sup> The reason for the Jesuits' evident reluctance to use *dominium* to denote

<sup>4</sup> Molina, *De iustitia et iure*, tract. II, disp. I, ch. 2, dub. I, p. 24D: *ius* is 'facultas aliquid faciendi, sive obtenendi, aut in eo insistendi vel aliquo modo se habendi'; disp. XXI, p. 96B: *potestas* is 'facultas alicuius auctoritatem et eminentiam super alios habentis ad eorum regimen et gubernationem'.

<sup>5</sup> Lessius, *De iustitia et iure*, II.ii, s.2.

<sup>6</sup> Ibid., II.iii, dub. I: *dominium iurisdictionis* and *proprietatis*; dub. II, ss. 7, 10: *dominium perfectum*; II.iv, dub. IX; s. 54: natural equality; but s. 55: servitude permitted by *ius gentium et civilis*; II.v, dub. 4: sale of children permitted (s.17) by *ius naturae*.

<sup>7</sup> Molina, *De iustitia et iure*, tract. II, disp. XXI on *dominium in genere* and its subdivisions; disp. XXII (title): 'De origine laicae civilisque potestas'. Molina was a leading Jesuit authority not only on justice and rights, but also on slavery, of justifications of which he was (*pace* Tuck and Alden) a merciless critic. See below, pp. 204–5.

political authority was that they were committed to the doctrine that human beings are naturally free and equal.<sup>8</sup> This could hardly be reconciled with an idea of subjection contaminated by association with lordship, despotic rule, slavery/servitude and domination. Thus, after acknowledging that *dominium* was a traditional term for political *principatus*, Suárez immediately qualified: 'this dominion is not the sort to which corresponds slavery in the proper sense, in other words subjection to a despot (*propria servitus despotica*), but rather civil subjection. It is jurisdictional dominion.'<sup>9</sup> As Salmerón put it: 'The Lord (*Dominus*) has not instituted authority as a *dominium*, but as a ministry (*ad ministerium*).'<sup>10</sup>

The scholastic orthodoxy was that understanding anything was knowing its cause(s), in other words what accounts for it being as it is. Vitoria had paraded the categories of causation in his account of civil authority. But the concept added nothing to the idea of a 'reason' or 'ground' apart from generous opportunities for confusion.<sup>11</sup> Accounts of authority could dispense with the language of causality altogether. The German term of art at the time was 'Grund und Ursache' (grounds), Bellarmine spoke in terms of *rationes*, Suárez mentioned 'causes' as an afterthought,<sup>12</sup> and Molina did not refer to them at all. Nevertheless, the methodological orthodoxy was that political authority was to be explained by tracing it back to some *cause*, *source*, or *origin* (the English term still employed by Locke was 'original') which at the same time gave rise to legitimacy. Once such an unimpeachable stopping- (subsequently starting-) point had been found, what remained to be done was to demonstrate an unbreakable connection between this *terminus a quo* and some favoured form, order, or office of political authority concretely existing in the world, and its bearers or occupants. *Ex hypothesi* any such political authority was therefore derivative and not (so to speak) original or primordial.

But authority and *principatus* could also be justified in another way, namely as a necessary *means* to some state of affairs, or 'end', which itself was uncontestably right and desirable. But with political *potestas*, the 'origin' was some enduring need (i.e. some 'end') to be met, and its 'origin' or 'cause' and its 'end' were therefore the same thing.

<sup>8</sup> See below, pp. 204–5.

<sup>9</sup> *De legibus*, III.1.7 and 12; he was evidently aware that the Greek for *dominus* was *despotes*.

<sup>10</sup> Salmerón, *Commentarii in omnes epistolas B. Pauli*, vol. XIII, p. 680: 1, an allusion to Luke 22: 25: 'The rulers of the Gentiles lord it [*dominantur* in the Vulgate] over them, but it shall not be so among you.'

<sup>11</sup> It added nothing to Locke's argument in the *Second Treatise*. The distinction between the effect of a cause and the consequence of a principle was utterly opaque, and remained so in Hobbes, *Leviathan*, ch. 5 (pp. 32–3).

<sup>12</sup> *De legibus*, I.13.1: 'In explaining the nature of law we have declared what virtually all its causes are.' He had previously hardly mentioned causes.

SCRIPTURAL LEGITIMATION

The most obvious and indispensable way of legitimating political authority was to demonstrate it as an emanation of the will of God, which is accessible to human understanding from Revelation and from Nature, God's creation, knowable by reason. The principal source of revealed knowledge about authority was unquestionably Scripture, as the codex of both divine law and orthodox doctrines. It was also the annals of providential history, but it was in those days beyond contention that the whole point of scriptural history was precisely to teach doctrine. It was theology taught by example, just as secular history was philosophy taught by example.

The scriptural texts and doctrinally pregnant historical episodes which Catholics regarded as bearing directly on political authority were those which Christians had used for that purpose since earliest times. The magistral Reformation drew on exactly the same texts to refute Anabaptist rejections of coercive authority, and to correct misunderstandings of Christian liberty, which (so it seemed to Calvin and latterly to Luther) people were only too likely to interpret in a carnal sense. Romans 13: 1–8, I Peter 2: 1–2, and Titus 3: 1 naturally occupied pride of place, along with familiar Old Testament texts and episodes.<sup>13</sup> Both Catholics and evangelicals also regarded the councils of the early Church and the Church Fathers, especially St Augustine, as authoritative sources of doctrine. But the Catholics' insistence on Roman ecclesial continuity meant that they could draw on a much more extensive corpus of documents elucidating God's continuing self-revelation to the Church,<sup>14</sup> namely 'tradition': scholastic authorities of all kinds, Church councils through the ages, most recently Constance and Trent, and the practice and teaching of popes, saints, and Christian emperors and kings.

SALMERÓN ON ROMANS 13

Whether a Jesuit discussion of authority took the form of a commentary on Scripture, or was explicitly substantiated by 'reasons' and 'tradition', made little difference to substance. Salmerón's commentary on Romans 13<sup>15</sup> will serve optimally to illustrate the genre of the scriptural commentary. He

<sup>13</sup> Other New Testament favourites were Luke 20: 25 (= Matthew 22: 21) and 22: 25 (= Matthew 20: 25–6), Matthew 17: 25–6, I Cor. 9: 19 and 7: 23, I Cor. 9: 19 and 7: 23; Old Testament *loci* included Deut. 17: 14ff, Prov. 8: 11, Hosea 8: 4, I Kings (Vulg. = AV I Samuel) 8: 10ff, 10: 24, 11: 35, 19: 15.

<sup>14</sup> This self-revelation through time was not understood as progressive. Dates mattered for Catholic theologians only in the case of official declarations of doctrines as *de fide*, since denying them after that date was heresy.

<sup>15</sup> *Commentarii in omnes Epistolas B. Pauli*, bk iv, disp. iv–v, pp. 674ff.

was at the time of writing (probably in the late 1570s<sup>16</sup>) the last surviving authentic voice of the Society's founders, Bellarmine himself briefly assisted him in the work of publication, which was completed posthumously,<sup>17</sup> and this was also the first such commentary by a Jesuit, known and cited by all the rest.

For Salmerón, Romans 13 merited no less than two 'disputations'. His preoccupation was (inevitably) with the virtue of obedience, and his principal doctrinal message was that if authority is to be efficacious, it must be exercised by *persons*. Christians owe obedience to such persons in virtue of their office, irrespective of their personal vices and failings. As he memorably put it, 'it is not authority in the abstract that bears the Sword' (p. 682.2). He had already dealt with monarchy at length elsewhere, characteristically while considering what form of government Christ had instituted in the Church.<sup>18</sup> But Romans 13 (especially verses 1–7) allowed him to adumbrate virtually every other staple topic in political theory: the duty and limits of political obedience; resistance and tyrannicide; the relationship of Christian liberty to civil liberty; the authority of popes and bishops in temporal matters; clerical immunities and ecclesiastical liberty. He found occasion to refer not only to scriptural *loci*, but also to ecclesiastical and secular history, philosophy, jurisprudence, philology, patristics, the classics, and scholastic theology. Jesuit scriptural commentary mirrored the scholastic orthodoxy that all of these were appropriate in the exegesis of a scriptural text, just as scriptural texts were authoritative in philosophical and moral topics.

On Romans 13: 1, 'every soul is to be subject to the higher authorities', Salmerón offered the philological comments that 'every soul' is a synecdoche, a figure of speech not infrequent in Scripture (p. 675.2), and that the Vulgate's 'higher authorities' (*potestates sublimiores*), the Greek equivalent, and the Hebrew term that they both translate are all comparatives, but mean a superlative, a common Hebraism (p. 676:1). 'By *potestates praeeminentes*'<sup>19</sup> we are to understand *persons* equipped with public authority, whether they be kings, or princes, or leaders or any sort of magistrates, whom all are to obey' (p. 676.2, my italics). The verse therefore means that everyone ought to be subject to those invested with public authority (*potestate publica praeditos*), whether ecclesiastical or lay (p. 676.1). The reference, he later explained (p. 682.2), is to 'what those learned in the law call *merum imperium* [i.e. sovereignty]', which he rendered as '*potestas* over life and death'.

<sup>16</sup> O'Malley, *The First Jesuits*, p. 108.      <sup>17</sup> Brodrick, *Bellarmino*, vol. 1, pp. 124–5.

<sup>18</sup> Same volume of *Commentarii*, bk 1, pt III, disp. 11–14.

<sup>19</sup> He also used *dignitates supereminentes, sive praecllementes* as a comparably honorific synonym.

This authority became necessary after the Fall, in order to coerce and punish the wicked; there would have been no coercive authority without the Fall (p. 674.2). Equally, private property was introduced after the Fall, and this too requires authority to defend it. The worship of God and defence against foreign enemies (p. 675.1) were further responsibilities of civil authority. As to the means by which a specific *potestas publica* came to be established, Salmerón was indifferent: the *patria potestas* of Adam; common consent establishing kings, emperors, leaders, or consuls; or violence and tyranny. What matters is not how it was in fact introduced, but the end it serves. For the 'natural polity', as Salmerón termed it, that end is its conservation (p. 680.1). But it is authority as such, *potestas in abstracto* (p. 680.2), that derives from natural law, not 'that this or that person should be prince' (p. 680.1); as far as that is concerned, authority is conferred by humans on humans. Resistance to such obviously necessary authority comes from those who under the name of liberty actually seek licence (p. 675.2).

Authority must be exercised by mere mortals, who inevitably will not use their authority in its abstract perfection. But Salmerón insisted that even tyrants are as much a dispensation of divine providence as good rulers. He had remarked elsewhere that the very worst condition is the complete absence of government, *anarchia*.<sup>20</sup> He was as always highlighting the Society's salient preoccupation: obedience. Private persons are not to judge whether princes reign by right or unjustly, or to act against them on their own initiative (pp. 680.2–681.1). They are not permitted to kill a tyrant on their own authority (p. 681.1), unless it be an invader, in which case killing him is in effect an act done with public authority, even if done by a private person. Further than this Salmerón was not prepared to go; he steered (as he thought) a middle way between Cajetan, who seemed to him to violate the Council of Constance's decree against tyrannicide, and Bucer, who would not allow even invaders to be resisted (p. 678.2), but on the other hand would not recognise the Vicar of Christ as one of the authorities whom St Paul commands us to obey (p. 681.1).

Salmerón pointed out that if St Paul's 'Let every soul [etc.]' were taken literally, then the King of France, for example, might command Englishmen or Spaniards. The sense of the text is therefore: 'Let every soul obey those whom they recognise, or ought to recognise, as having legitimate authority *over them*' (p. 676.2). Ecclesiastics, especially popes and bishops, must therefore obey secular rulers only when and if these are 'superiors' *for*

<sup>20</sup> *Commentarii*, disp. 11, p. 236: 'Omnium deterrima . . . est *anarchia*, ubi quisque pro libidine sua vivit et nullo bono vel malo regimine gubernatur.'

*them*. His concern was obviously with the independence of the Church, which 'like any community made up of many cannot stand, unless there is one prince' (p. 676.2). (That sentence incidentally illustrates how casually Jesuits equated authority and monarchy, when they were not on their guard.) The sheep of the ecclesiastical flock must therefore submit to Christ's Vicar. And 'sheep' includes even Christian kings and emperors, for they are no less subjects of the Church than any other lay person. The need for this universal subjection would be obvious even if there were no explicit scriptural text, because 'without such a head, even an association of a dozen people could scarcely survive. If all were equal, and no one were obliged to obey another, the Church would not be like an ordered line of battle, but a Babylon, with as many opinions as there are heads' (p. 677.1). In the best Jesuit tradition, Salmerón rejected any attempt to claim for the papacy dominion over the whole world (p. 679.2). But it seemed obvious and uncontentious to him that popes have superior authority over princes in some things by divine right. Popes have even deposed emperors, kings, and princes, or excommunicated them. But such subordination of princes to the Church does not infringe their rights: civil, secular authority is earthly (*terrena*), and received from earthly men; it has earthly subjects and an earthly end, namely worldly peace, and the means conducive to it, namely civil laws and virtues (p. 677.2). The papal and episcopal power does not take this authority away, but rather perfects it, by encouraging obedience in subjects.

#### THE NATURAL GENESIS OF AUTHORITY

What Scripture supported by tradition taught about civil authority was for Thomists independently verifiable by 'reason'. The legitimacy of *potestas* could be placed beyond rational doubt by deriving it from the most general and least circumstantial feature of association, in other words from human nature. And if in all this there was much rehearsing of Aristotelian–Thomist commonplaces, so much the better: it is not the theologian's office to entertain his audience with novelties.

It was unquestionable that human beings seek, need, and want association, *societas*.<sup>21</sup> This indeed is a natural instinct,<sup>22</sup> and a presupposition not

<sup>21</sup> *Societas* often meant *an* association (as in *Societas Jesu*), but its technical meaning here was the state of being associated. 'Partnership', Pagden and Lawrance's rendering (*Vitoria: Political Writings*), is elegant like the rest of their translation, but its ineliminable connotation of equality of the partners makes it unusable here.

<sup>22</sup> E.g. Mariana, *De rege*, bk 1, ch. 1, p. 13: 'naturae instinctu et impulsu'; Valentia, *Commentarii*, Contr. 7<sup>a</sup> generalis, qu. iv, p. 820: 'appetitus naturalis'; Molina, *De iustitia et iure*, tract. II, disp. xxii,

merely of the good life, but even of mere survival. Evidence cited included man's lack of innate skills and knowledge necessary for survival, as compared to most animals; the consequent extreme dependence on being taught;<sup>23</sup> the long period of infantile helplessness and vulnerability; the great differences in aptitude between human individuals, as compared to the members of other species; the weakness of women; in short, the need of human individuals for mutual assistance, as well as their inclination towards sociability. Bellarmine invoked Aristotle's *Politics* bk I, ch. 2: 'Man is by nature a civil (*civile*) animal, even more so than bees and cranes<sup>24</sup> or any other sort of animal. And if any man lives alone, he is either a beast or a god, that is, he is either less or more than a human being.'<sup>25</sup>

Molina, whose account is largely the model for mine as it was the model for Jesuits, brought home how much humans depended on each other for even the most simple necessities of life by a pleasing illustration. He invited his readers to survey the multiplicity of labours, skills, materials, and co-operative efforts that go into making the humble loaf of bread, an artefact both necessary and agreeable, and yet highly perishable. The only connection he did not here note was the dependence of the loaf on institutions.<sup>26</sup> As he summarised (p. 101C): 'Just as man needs association with others of his species more than other animals do with theirs, so Nature, which is not deficient in what is necessary, has endowed him with a greater aptitude and inclination for society than other living things.' Indeed, as Bellarmine pointed out in *The Laity* (ch. v): 'Why was man endowed with the gift of speaking and hearing, if he ought to live alone?' The good life postulates society: most virtues can only be practised in and through interaction, and sociability is not merely an instinct and necessity, but also a gratification and pleasure.<sup>27</sup> Social pleasures include

p. 104B: 'sine naturalibus instinctibus'; R. Persons, *Conference*, p. 6: 'natural instinct of society . . . of this come families, villages, townes, castles, cyties and commonwealths', etc. Pereira stressed the pleasures of sociability: 'animal sociabile, id est gaudens societate hominum, amansque humanum convictum et consuetudinem', *Commentarii in Genesim*, bk IV, ch. 1, s. 71 (p. 174).

<sup>23</sup> Cf. Molina, *De iustitia et iure*, II, disp. XXII; e.g. p. 103C: 'man alone is brought forth by nature naked and unarmed, lacking all skills and instincts, and in need of so many things to support life that neither one man, nor a whole and complete family suffices to furnish them all'; p. 104A-B: 'unlike the brute beasts'.

<sup>24</sup> Aristotle had only mentioned bees (*Politics*, 1253.a9–10). Greenleaf, *Order, Empiricism and Politics*, pp. 45–7, notes the much-used crane analogy in Bodin's *Methodus*; Suárez, *Defensio fidei*, III.1.7, ascribes it to St Jerome.

<sup>25</sup> *De laicis*, ch. v, p. 316; he promptly added that Christian hermits were no exception.

<sup>26</sup> Molina, *De iustitia et iure*, II, disp. XXII (pp. 103C–104A); this was presumably the source for Locke, *Second Treatise*, s. 43. An even more extended illustration of human interdependence is Mariana, *De rege*, bk I, ch. 1, pp. 14–16.

<sup>27</sup> Molina, *De iustitia et iure*, p. 104A: 'Denique instrui, imbuique non posset peritia et moribus, quae ingenuum probumque virum [N.B.] decent, atque ita periret amicitia, ususque multarum

friendship, which Jesuits greatly valued;<sup>28</sup> in an attenuated form friendship might be held (following Aristotle) to characterise social relationships more generally.<sup>29</sup>

Sociability and association are thus part of the order of Nature in any possible condition of the human race, and the blessing of the Author of Nature must therefore extend to them and to whatever they necessarily presuppose. The argument then moved on to the various *kinds* of naturally (and in that sense divinely) legitimate human association. These accounts (loosely derived from Aristotle's paradigm in the *Politics*, bk 1) arranged the various kinds of association in a sequence, in which the more complex 'naturally' grew out of the more simple. The primordial association is the family; associations of families produce the *vicus* (village or hamlet); associations of *vici* produce the city, or province; and associations of cities or provinces produce the commonwealth, the *societas perfecta*. This format is likely to mislead the modern reader. When such accounts were not simply a matter of following precedent, their point was *not* to explain how commonwealths or offices of authority had in fact come into being, or to offer a 'conjectural history' of their genesis, in the manner customary since the eighteenth century. Nor were such accounts intended to explain political authority as something transmitted in some way from the family to the commonwealth, so that its legitimacy is validated by the legitimacy of its origin and the transmission process. This was certainly the logic of a Lockean account. But the Jesuits never argued that there is already political authority in the primordial association, and that it is somehow amalgamated and transmitted to the commonwealth. On the contrary, it was an important part of their argument that political authority *cannot* be derived from the authority of the commonwealth's component associations, still less from its component individuals. What such 'genetic' accounts aimed to show was that just as the simpler associations have a *potestas* commensurate with their ends, so there must also be a *potestas* commensurate with the end and dignity of the 'perfect' association, which lesser associations naturally demand and generate.

Thus Pereira summarised Aristotle's account of the development of the polity, but then declared himself unable to say whether this order was in fact

virtutum. Adde, insuavem iniucundamque esse sapientiam, nisi aliis communicetur, et de ea cum aliis disseratur.' Mariana at this point introduced deliberate divine intention; *De rege*, pp. 17ff.

<sup>28</sup> The 'amicizia eroica' between Bellarmine and Baronius was celebrated; cf. Zen, 'Bellarmino e Baronio' in de Maio *et al.*, *Bellarmino e la controriforma*, pp. 279–321.

<sup>29</sup> E.g. Fitzherbert, *An sit utilitas in scelere*, ch. 6.20 (pp. 79–80): 'cum amicitia . . . sit reipublicae utilissima et maxime necessaria . . . quemnam ex hoc [Machiavellian divide and rule policies] remedio fructum percipiet princeps . . . nisi ut, cum civium amicitiam dissuavet, rempublicam . . . dilaceret?'



how the first city came to be built at the beginning of the world.<sup>30</sup> On the actual historical manner in which individual dynasties and principalities were generally established, Jesuits were as cynical as everyone else.<sup>31</sup> The founders of polities or dynasties were the likes of Cain, Nimrod, Romulus, Nebuchadnessar, and Augustus. As Suárez casually remarked: 'We admit that empires and kingdoms have often been established and usurped by tyranny and force (*per tyrannidem et vim*). But we deny that this has anything to do with the intrinsic rationale or nature of such a principate (*ad intrinsecam rationem seu naturam talis principatus*).'<sup>32</sup> He no more thought that such disreputable origins disfranchised established regimes than Contzen thought that Augustus's methods in establishing the principate implied the illegitimacy of the later emperors.<sup>33</sup> Serving his ultimate ends was normally the very last thing intended by the human instruments that God uses.

#### POTESTAS IN THE 'NATURAL FAMILY'

The primordial association corresponding to the instinctive and facultative organisation of the human person is the family. Suárez described it as 'in the highest degree natural and, as it were, fundamental' ('as it were', either because *fundamentalis* was one of the neologisms scholastic Latin so effortlessly generated, or because it was a metaphor); it was also the nursery of the virtues. He even eliminated the possible slight implied in describing the family as a *societas imperfecta*: it is, he said, 'not imperfect in respect of being ordered towards domestic or "economic" government', but in that it is not the association that answers to all human needs, or that has every sort of *potestas* within it; in particular, it lacks legislative, judicial or coercive power.<sup>34</sup> That assertion was anything but self-evident. Filmer was as usual both right and acute in his comment that it all rather depended on what was to count as a 'family', on the definition of which 'politicians

<sup>30</sup> Pereira, *Commentarii in Genesim*, bk 7, p. 345 (s.75).

<sup>31</sup> E.g. Bodin, *Six livres de la Republique*, I.vi, p. 69: 'La raison et lumière naturelle nous conduit à cela, de croire que la force et violence a donné source et origine aux Republiques.'

<sup>32</sup> Suárez, *De legibus*, III.1.11. cf. *Leicester's Commonwealth*, p. 127: 'if you will examine the succession of governments, from the beginning of the world unto this daye, either among Gentile, Jewe or Christian people, you shall find that the sword hath bene alwayes better then half the title, to get, establishe, or mainteyne a kingdome'. To the same effect Persons, *Conference*, pp. 34–5.

<sup>33</sup> Contzen, *Politicorum libri decem*, v.4.11: 'Augustus most cunningly (*callidissime*) usurp[ed] the titles of magistrates and ceremonies, drawing right and might to himself. By such means, heads of assemblies (*praesidibus*) and free magistrates were reduced in a short space of time to mere slaves in purple [sc. togas].'

<sup>34</sup> *De legibus*, II.1.3, with a reference back to I.6.20–2.

[sc.: political theorists] and lawyers do not well agree'.<sup>35</sup> How one was to arrive at the description of the 'natural' family seems indeed never to have been explained in the political theologians' casual and allusive accounts. Adam and Eve either before or after the Fall provided at best an awkward model. The 'natural' family obviously included at a minimum husband and wife, 'for without their association the human race could be neither increased nor preserved', and also the 'association between parents and children, for which the first association between husband and wife is ordained'. To this might also be added 'some relationship between master and servants'.<sup>36</sup> But the Adamite family could hardly be the model for that, since the servants would be Adam's great (etc.)-grandchildren. Nor could the 'natural' family be equated with the households of Greek or Roman antiquity: neither Aristotle's 'slaves' and 'despots', nor the Roman *dominus* and *patria potestas* or the status of *mancipius* and *servus* accorded with natural right.<sup>37</sup>

The concerns of those who did consider such matters in more detail were normally not political or anthropological, but doctrinal and casuistical: namely how to explain the polygamy of the scriptural patriarchs, and the fact that divorce was considered normal and licit in Jewish as well as classical antiquity. Polygamy and divorce were not unequivocally prohibited by natural law either.<sup>38</sup> Tomás Sanchez, deservedly *the* Jesuit authority on marriage, said flatly that there was no scriptural text prohibiting divorce outright, and he was impressed by the fact that 'the wisest of the pagans, notable investigators of natural right, thought repudiation of spouses legitimate'.<sup>39</sup> Exotic institutions such as polyandry could be rejected out of hand. But polygamy was not self-evidently incompatible with either the primary or the secondary ends of matrimony, respectively procreation, and domestic harmony and fellowship and the 'avoidance of fornication', that is, the intemperate and irresponsible indulgence of sexual appetite, especially extra-maritally.<sup>40</sup> Conversely, divorce under some circumstances

<sup>35</sup> Sommerville, *Filmer: Patriarcha and Other Writings* (all references to Filmer are to this edition), pp. 15–16.

<sup>36</sup> Suárez, *De legibus*, III.1.3, apparently following Molina, *De iustitia et iure*, p. 101C.

<sup>37</sup> Suárez (ibid.) casually introduced servants into the family under the aspect of helpers (*adiutorio et ministerio*). Azor, *Institutiones morales*, vol. II, bk II, ch. xxx, attenuated Aristotle's natural slavery, to reconcile it with natural liberty and equality.

<sup>38</sup> Suárez, *Tractatus de gratia Dei*, vol. VII, p. 368, used the plurality of wives and the dissolubility of marriages by mutual consent, as well as usury, lying, and simple fornication, as 'particularly obscure and difficult' instances to illustrate his contention that it is improbable that all moral verities can be known naturally.

<sup>39</sup> Sanchez, *De sancto matrimonii sacramento disputationes* (two enormous folios, 1602), vol. II, bk VII, p. 134, s. 3.

<sup>40</sup> Lessius thought polygamy much more tolerable than polyandry, because one woman cannot satisfy many men (sexually, as follows from the sequel) except by preventing conception, and polyandry

was obviously favourable to both ends. It was a commonplace long before Locke that 'whereas *some* degree of inseparability is inherent in marriage), complete indissolubility is not inherent in it either by natural law, or by the nature of the sacrament'.<sup>41</sup>

All this left unresolved the question of the structure of the 'natural' family, and in particular the distinction, if any, between it and the clan, a distinction which could be of considerable political significance. For even in the family, there is unquestionably already some *potestas*: namely that of the *paterfamilias* and in some respects the *materfamilias*, or the patriarch in extended families. This *potestas* had at one time included the power of life and death, as was apparent from the history of archaic Greece and Rome, and barbarous peoples.<sup>42</sup> Jesuits thought paternal authority basically uncontentious, but saw its 'natural' justification in terms of the interests of the household, not the father. As Suárez remarked in another connection, it is contrary to all right order that power over a community should be exercised for the good of anyone but that community.<sup>43</sup> And given that domestic authority encompasses the relationship of both husbands and wives, and masters and servants, it clearly cannot be authority in virtue of paternity.<sup>44</sup> The authority over children and servants is *jointly* in both parents; the proper relationship between husband and wife is one of equality;<sup>45</sup> and the

places paternity in doubt (*De iustitia et iure*, iv. ch. iii, s. 74). Sanchez agreed that polyandry was prohibited by natural law (*De matrimonio*, vol. II, bk VII, disp. 80, p. 269), but thought that polygamy was not 'omnino contra ius naturae . . . sed aliquo modo adversari iuri naturae' (s. 8, pp. 289–70). He regarded monogamy as in essence a command of divine positive law, and its conditions as therefore alterable by God (vol. I, bk II, disp. 13). According to Azor, *Institutiones morales*, vol. I, bk VI, ch. 13, in the opinion of theologians and Fathers of the Church the Mosaic permission of polygamy was not simply as a lesser evil, but rather as a good at that time.

<sup>41</sup> Sanchez, *De matrimonio*, vol. I, bk II, disp. 13, s. 7 (p. 134; compare Locke, *Second Treatise*, s. 81). Lessius (*De iustitia et iure*, iv, ch. III, dub. VII) asserted indissolubility on the basis of the needs of children and the 'instinct and inclination' for life-long matrimony. He might equally well have argued for easier divorce, given his typically jaundiced comment that 'the intolerable burden of living always with the same spouse and obeying him [or her?] in matrimonial duty leads to disgust (*fastidium*), resentment and antipathy . . . so that often they can hardly bear the sight of each other'.

<sup>42</sup> Azor, *Institutiones morales*, II, bk II, ch. 19 (p. 183E). Bodin (*Six livres de la republique*, I.4, p. 32) thought this power inherent in fatherhood as such, and that it ought to be restored. No Jesuit endorsed either view. Azor's extremely well-informed discussion in chs. XIX–XX, merely explains ancient law and practice; in ch. XXI (pp. 190E, 191B) he repudiated it as contrary to *ius naturale*.

<sup>43</sup> *De legibus*, I.7.4–5.

<sup>44</sup> Molina, *De iustitia et iure*, p. 103A.

<sup>45</sup> E.g. Lessius, *De iustitia et iure*, II, ch. 12, ss. 84–5: 'The wife is not the servant [or slave: *mancipium*] of the husband but his partner (*socia*), also having for her part authority to administer [sc. the household], even though under the husband lest she should do something without order or in spendthrift fashion'. He was not suggesting that only wives were likely to be disorderly or spendthrift, and discussed at length the rights of a wife when the husband was a waster: half the matrimonial property and the whole of the dowry were always her property (e.g. s. 87). Molina, *De iustitia et iure*, tract. III, disp. 2.20, said that it was shameful for a husband to punish his wife; spouses are

authority of the male could not possibly mean a *personal* moral, physical, or intellectual superiority of every husband over every wife.<sup>46</sup> But from the standard Jesuit standpoint, a joint monarchy was scarcely more compatible with good order than acephaly. There had to be monarchy *somewhere*, and the monarchical role fell to the male,<sup>47</sup> though why remained unexplained. Bellarmine derived a moral lesson from God's creating man first and women second (according to one of the biblical accounts), but it was a universal lesson about the need for super- and sub-ordination, not a specific one about female inferiority.<sup>48</sup> His personal sentiments on the other hand were misogynist enough.<sup>49</sup> But Contzen disliked gibes against women,<sup>50</sup> and no Jesuit denied that women were capable of ruling, and therefore of exercising lesser offices of authority.<sup>51</sup>

What sort of duties offspring (not 'children': parents are owed duties as long as they live) have to parents was unclear. It could not be the same as the duty a wife has to obey her husband; as Molina said, children owe *both* their parents far more respect and obedience than she does her husband.<sup>52</sup> Lessius asserted that we owe our parents not only obedience, but also *observantia* ('an internal esteem and a feeling (*affectus*) of reverence', and not merely external acts<sup>53</sup>), because they are the 'authors of our birth and upbringing', and that this debt towards parents is inexhaustible. He had, however, described married love and love of children as merely natural passions and as such not virtues; marriage suits the inferior part of human nature, and its 'act' is inherently shameful, as is shown by the fact that even the worst people seek privacy for it.<sup>54</sup> (Nothing of this sort is to be found in Sanchez.) Why then were parents entitled to reverence, let alone

always to be advised to cultivate peace and mutual benevolence. Like all the others, he represented marriage as *mutuum ius* (ibid., 2.2); the 'ownership of the wife's body' that was sometimes referred to was reciprocal: she equally 'owned' her husband's. Sanchez, *De Matrimonio*, bk vii, disp. 80.6 (p. 269), preferred to speak of *mutua corporum traditione*. 'Uxor enim non subditur viro ut famula, sed ut socia et collateralis, ac in domestica gubernatione principatum tenens' (s.12, p. 270).

<sup>46</sup> Cp. Contzen, *Politicorum libri decem*, 1.26.3: 'Aequitas eiusdem naturae paria iura desiderat, ut vir more patrisfamilias, non asperitate domini imperet.'

<sup>47</sup> Pereira, *Commentarii in Genesim*, vol. 1, bk iv, s. 71 on *Genesis* 1.26; Suárez, *De legibus*, III.3.6.

<sup>48</sup> *De laicis*, ch. vii (p. 318): 'so as to demonstrate the order and superiority he [God] wished to exist among human beings'.

<sup>49</sup> For a reliable account (despite some untenable generalisations conventional in feminist literature), and especially for some truly horrible remarks from Bellarmine's *Sermons*, see Ruggiero, 'Bellarmino e la donna', in Maio, *Bellarmino e la controriforma*, pp. 895–918, esp. p. 898.

<sup>50</sup> Contzen, *Politicorum libri decem*, 1.26.1 (p. 60): 'It is no wonder that everyone says what they like about the female sex, seeing that no one defends them.'

<sup>51</sup> Suárez, *Defensio fidei*, III.8.10: *capax regiae potestatis*.

<sup>52</sup> Molina, *De iustitia et iure*, p. 102A.

<sup>53</sup> Lessius, *De iustitia et iure*, II, ch. 46, dub. III, s.18; the distinction and terminology is Aquinas: 2a-2ae, 102, 104.

<sup>54</sup> *De iustitia et iure*, IV, ch. 2, p. 668.

to *inexhaustible* debts and *observantia*, especially if they were abusive or negligent? The shortest way here, as ever, was to stuff querulous mouths with the response of St Paul: 'Children obey your parents in all things: for this is well pleasing to the Lord', and with the Fourth Commandment.<sup>55</sup>

The duties between spouses and between parents and offspring are nevertheless mutual and reciprocal. The respective duties of masters and servants were more difficult to describe; they would be at best contractual and at worst quasi-despotic. It is difficult to see how *observantia* could enter the picture, as Lessius claimed, for the status of being a master was not intrinsically worthy of respect or admirable.<sup>56</sup> There were also justifications for servants terminating this relationship unilaterally which had no parallel in the case of children, parents, spouses, or subjects.<sup>57</sup>

#### PATRIARCHALISM

The family or household could serve very well as one *model* for the best ordering of political authority, namely monarchy.<sup>58</sup> The converse was also true, since it is impossible to tell which served as the analogy for what in the monarchy–family analogy. But for Jesuits the family or household was a non-starter as the 'origin' of political authority, in the sense of a source of powers which could be delegated or compounded in order to establish political authority. This was despite the fact that arguments were being developed in our period,<sup>59</sup> notably by Bodin and by James I/IV himself, which seemed to demonstrate that there was a way of deriving political authority from the family, namely from patriarchal authority. But the patriarchalist aspects of Bodin's and James's theories were never discussed by their Jesuit critics, even by Contzen (who had read Saravia – another early patriarchalist – and cited him approvingly). Only Suárez regarded patriarchalist arguments as meriting a special refutation.

<sup>55</sup> Col. 3: 20; the whole chapter was especially useful because of its unconditional and non-contractual tone, and because it demands attitudes and not merely performances.

<sup>56</sup> *De iustitia et iure*, II, ch. 46, s. 18. Being master of an apprentice or a pupil entitled to respect, but this would be *magister*, not *dominus*.

<sup>57</sup> Ch. 46, dub. 1–v. Contrast Azor, *Institutiones morales*, vol. II, bk II, ch. 1 (p. 125A): *pietas*, 'by which we owe veneration, honour and dutifulness (*obsequium*) to those who *deservedly* [my italics] occupy some office'. He (p. 125B) equated it with the virtue of gratitude, 'the duties we owe to those who have deserved well of us (*benemeriti*) or who have done us some good'.

<sup>58</sup> Bodin used the model of paternal authority in the same way; *Six livres de la Republique*, bk 1.2 (p. 11): 'La famille est la vraye image de la Republique'. See Janine Chanteur, 'L'Idée de Loi Naturelle dans la République', in Denzer, *Jean Bodin*, pp. 201–3, 205.

<sup>59</sup> Sommerville, *Filmer*, Intro., pp. xvi–xviii; see also his *Ideology and Politics in England 1603–1640*.

Patriarchalism ought to have been attractive to Jesuits. There was no compelling reason for thinking of the 'natural' family as the nuclear family. The 'patriarchal' family, or clan, was a more cogent and historically plausible paradigm, for this was the Adamic family, and after the Flood, that of Noah and his sons, patriarchs all. Patriarchy also tallied very well with the secular historiography and ethnography of the time. Jesuits often conceded that it was one of the ways in which civil authority had in fact come to be legitimately established historically.<sup>60</sup> The authority of fathers, and *a fortiori* patriarchs, evidently included the right to command their 'subjects', and therefore to make or abrogate rules for their households (as St Thomas had explicitly said<sup>61</sup>), to judge, and to punish. Molina conceded that in 'barbarous nations', where 'families' have not coalesced into a commonwealth, fathers have much more authority than they do now, including a right of life and death in punishing injustices.<sup>62</sup> Fathers would, moreover, have both the right and the duty to defend their families or clans against others, and to lead them into 'war' against them, a kind of *ius belli*. Taken together, these patriarchal *potestates* seemed to amount to *imperium* or *plena potestas*. In effect, there was no absolute discontinuity between the authority of a patriarch and the authority of a commonwealth, because there was no absolute discontinuity between the large family and the small commonwealth, as Filmer was to argue forcefully. Hobbes himself, who was obviously no more a patriarchalist than Suárez, said so more than once.<sup>63</sup>

Furthermore, a patriarchalist account of political authority did not depend on individual consent, and should have been attractive for that reason alone. It was also unambiguously monarchical. It raised no *special* difficulties about natural freedom and equality. Jesuits should have welcomed such an impressive reinforcement of the pro-monarchical and anti-elective sentiments which pervaded the Society.<sup>64</sup> The fact that they either rejected or largely ignored patriarchalist argument was therefore not on account of any objectionable practical implications, because it had none, but because it was theoretically insolvent.

<sup>60</sup> Salmerón, *Commentarii*, vol. XIII, p. 675: 'The first way of establishing (*introducenda*) kingdoms is by *patria potestate*, as Noah did when he divided the world among his three sons'; Molina, *De iustitia et iure*, tract. II, disp. 20 (pp. 94A–B): 'Adam and Noah, as the parents of all, had legislative and coercive authority over their posterity and subordinates'; Suárez, *De legibus*, II.2.3; Bellarmine, *De laicis*, ch. 7 (p. 319).

<sup>61</sup> *Ia-IIae*, qu. 90, art. III, ad 3; such 'praecepta vel statuta . . . non tamen quae proprie habeant rationem legis', because not directed to the common good.

<sup>62</sup> *De iustitia et iure*, tract. III, disp. 2.19.

<sup>63</sup> *Patriarcha*, e.g. p. 12; Hobbes, *Leviathan*, e.g. ch. 17, p. 118; ch. 20, p. 142. Cf. Contzen, *Politiorum libri decem*, I.25.5: 'prima regna non erant nisi magnae familiae'.

<sup>64</sup> Ignatius, Polanco, Ribadeneira, Suárez, and Contzen all expressed themselves at length on the disadvantages of elections, whether in the Society or in any other collectivity.

Thus Suárez expended more space on patriarchalism in *On Laws* and *The Work of Six Days*, which were not polemical, than in his *Defence of the Faith* (1613), which was. After making the standard point that there is no reason in the nature of things for imputing authority or dominion to one person rather than to any other, Suárez noted the possible objection (he mentioned only St John Chrysostom making it) that Adam in the nature of things had primacy and consequently authority (*imperium*) over all men. He replied in best Aristotelian fashion with a distinction between domestic authority (*oeconomica potestas*) and political authority. Adam's authority over Eve and their children, and in the course of time servants, was household authority. With the subsequent multiplication of households, their heads would in their turn have household authority.

Political authority however does not begin until several families begin to gather into a self-complete community, which could take place neither with the creation of Adam, nor by his will alone, but by the will of all who came together in it. And so there is no foundation for saying that Adam by the nature of things had political primacy in that community. For this cannot be inferred from any natural principle: by the force of natural right alone it is not due to the progenitor that he should also be the king of his entire posterity.

And if not even Adam's claim to natural political authority could be sustained, it must follow that 'political authority (*potestas dominandi seu regendi politice homines*) was not given to any human being immediately by God; . . . as far as the force of natural right alone is concerned, it inheres in the human community'.<sup>65</sup>

He made the same point in *Defence of the Faith* (III.2.7) with a pointed illustration: '[this power] is not immediately in a certain person, such as Adam, James, or Philip', names evidently not chosen at random. Here he also made more of an effort to reconcile the Aristotelian–Thomist conception of the 'origin' of legitimate authority in consent (and therefore freedom and equality) with the scriptural story of original patriarchy (and therefore lack of freedom and natural inequality):

The first way of conferring this authority on a prince at his original (*primaeva*) institution, is by the free consent of the people. But this consent can be understood in various ways. One such way is that it is given gradually and as it were incrementally (*successive*), with the cumulative increase of the people. So for example . . . Adam was obeyed as parent and *paterfamilias*, and afterwards, as the people grew, this subjection could have continued and the consent extended to obeying him as king as well . . .; and perhaps many kingdoms began in this way. (III.2.19)

<sup>65</sup> Suárez, *De legibus*, III.2.3; for Filmer's reply seen fn. 35 above.

Suárez was here making a crucial assumption which he did not spell out until *The Work of Six Days* (v.7.14):

merely being a progenitor is not enough to found a principate with full (*perfecta*) jurisdictional dominion and political authority over a self-sufficient (*perfectam*) community which coalesces out of many families, even if one person is the first parent of all of them. And the reason is that a son is emancipated by the use of reason, freedom and coming of age, and by the same token is freed from the authority of his father, and becomes an independent moral agent (*sui iuris*). Hence, if he has a family, he has household authority of his own, equal to the authority which his father has in his family, nor is he obliged by the nature of things to join in one people with his father.

And against Soto (but also against Molina,<sup>66</sup> whom he did not mention), who believed that Adam had juridical power over his descendants, Suárez argued that mere generating of descendants is not enough, because to this must be added the consent of those who coalesce in one community.<sup>67</sup> 'Political union does not come about without some sort of express or tacit agreement (*pactum*) to help one another, nor without some sub-ordination of individual families and persons to some superior or governor of the community, without which such a community cannot stand.'<sup>68</sup> Mere multiplication or propinquity (*vicinitas*) of families and households does not produce any community.<sup>69</sup>

The references to pacts and consent here will be explained later. But as Filmer saw, it was essential to Suárez's position to maintain that on achieving adulthood a man<sup>70</sup> is emancipated from paternal authority and becomes *sui iuris*, a term from Roman law used to refer both to self-governing communes and to emancipated individuals. His philosophical point was that authority over a collectivity of households logically cannot be the authority of the head of a household. Even so, Filmer could reasonably complain<sup>71</sup> that Suárez never justified his claim that at some point every individual becomes *sui iuris* with respect to fathers and patriarchs. But that this should be the case was essential to the entire Jesuit view of moral responsibility and obligation.

<sup>66</sup> Cited fn. 60. <sup>67</sup> Suárez, *De opere sex dierum*, v.7.14.

<sup>68</sup> v.7.3, referring back to his fuller discussion in his *Defensio fidei Catholicae*, III.2 and 3.

<sup>69</sup> v.7.3 and 14.

<sup>70</sup> He left undiscussed the situation of women, although he, like Bellarmine, fully endorsed the Tridentine decrees which emancipated them from *patria potestas* in respect of choice of their state of life and/or a marriage partner. He also did not consider the position of widows, who might be heads of households.

<sup>71</sup> *Patriarcha*, p. 18.



FROM THE FAMILY TO THE POLITY

Because it does not satisfy all human needs, the family naturally points beyond itself to the *vicus*, village, or settlement; the implication that a settled and pastoral life was more natural than a nomadic one was presumably unintentional.<sup>72</sup> Jesuit accounts were particularly casual about the next 'stages', the association of *vici*,<sup>73</sup> into towns, or towns into larger units. They also in this context virtually ignored the existence of associations intermediate between the household and the commonwealth: confraternities, *communes*, sodalities, guilds, corporations, etc., which were allotted a pivotal place by their contemporary Althusius. But they were not offering a typology of associations, merely a list of the essential building-blocks (as it were) of the self-complete society.

The *vicus* and town in their turn are 'imperfect', in that they cannot produce the great societal goods of peace, security, and justice. Molina seemed to reckon security of families or individuals against each other as the principal incentive to associate in a commonwealth.<sup>74</sup> For 'politicians' like Ribadeneira, Botero, Fitzherbert, Scribani, or Contzen, security against external enemies was a more obvious incentive. Mariana's account in *On Kings* (bk 1, ch. 1, p. 17) has a golden-age idyll of families without greed, ambition, or servitude, enjoying their own company under some leafy tree, rapidly degenerating into the dominance of the more powerful over the less, and the exposure of all associations to mutual violence, from which a need for both justice and defence arises. Contzen had barely mentioned the composition of the *respublica* out of *pagis seu vicis* before he included soldiers among the three sorts of men necessary to the republic, along with farmers and artificers.<sup>75</sup> Security against other associations presupposes a control over resources at least commensurate with theirs, and so there is a going rate for the appropriate size of *respublicae perfectae*. In Contzen's lapidary formulation: 'All human power is relative.'<sup>76</sup>

<sup>72</sup> Cain, not the pastoral Abel, was the founder of the first city, although Nimrod was an alternative. Pereira preferred to regard Nimrod as the founder of the first tyranny; *Commentarii in Genesim*, bk xv, ch. 10 (pp. 561ff).

<sup>73</sup> Even Azpilcueta (cited Suárez, *Defensio fidei* III, ed. E. Elorduy and L. Pereña, p. 24, n. 46) gave more detail about the process: 'Laica vero [potestas], quia naturalis est, naturali modo ab imperfecto, et minimo incipiens prodire potest in domo, et pago . . . et paulatim crescens per media, scilicet oppida, et civitates [i.e. cities] ascendisse ad summa, et perfecta, scilicet regnum multarum civitatum, et Imperium multorum regnorum.'

<sup>74</sup> *De iustitia et iure*, p. 104C–D. <sup>75</sup> *Politicoorum libri decem*, I.4.1–2.

<sup>76</sup> VIII.1.2: 'Omnis humana potentia comparate dicitur. Quicumque enim inferiorum collatione est potens, ille si maiorem aggredi velit, se sentiet esse imbecillum.' Cp. Hobbes: 'The Multitude

The very limited success of *respublicae perfectae* past and present in achieving these 'ends' of security and justice, and the same natural imperatives which ordained the family, the clan, the *vicus*, the town, and the commonwealth, arguably point to the universal *civitas* as the ultimate end and the only fully self-complete association. Molina never attempted to justify the multiplicity of states.<sup>77</sup> Suárez too did not rule out the idea of a universal *civitas* in principle, but on the pragmatic grounds that a state encompassing all mankind was neither necessary, nor was it possible, morally speaking, to govern it (unlike the Church).<sup>78</sup> Bellarmine seems to have been more receptive to the idea of a universal monarchy.<sup>79</sup> Contzen made a point which was striking in the context, namely at the start of what turned out to be the Thirty Years War: he rejected *autarkeia* as an appropriate description of the commonwealth, because it ignored the extent to which commonwealths too were mutually dependent.<sup>80</sup> All Jesuits in any event acknowledged that there were moral obligations between human beings simply as human beings, irrespective of their particular political allegiance.

#### NATURAL LIBERTY AND POLITICAL SUBJECTION

All the lesser forms of association already intimated a difficulty which became acute with political authority, namely how to reconcile subjection to authority with 'natural liberty', or 'natural equality', the two concepts being interchangeable. It was axiomatic in scholastic philosophy that human beings [*homines*, not *viri*] are naturally free and/or equal.<sup>81</sup> There is no 'natural' difference between ordinary sane adults which entails that one

sufficient to confide in for our Security, is not determined by any certain [sc. definite] number, but by comparison with the enemy we feare', *Leviathan*, ch. xvii, p. 118.

<sup>77</sup> Kleinhappl, *Der Staat bei Ludwig Molina*, p. 16. Azor (*Institutiones morales*, vol. II, bk xi, ch. 1, p. 109B) cited a *realpolitische* observation of St Thomas: 'Unless there were fear of enemies, a single city could not hold together; in the same way, for fear of enemies, a community of several cities which make up a kingdom is necessary.'

<sup>78</sup> *De legibus*, III.2.5. Bellarmine was responding in an aside prompted by Calvin's argument that, since there was no universal secular head, why should there be a spiritual one (*De Romano Pontifice*, bk I, ch. 9, p. 330).

<sup>79</sup> See Arnold, *Staatslehre Bellarmins*, pp. 96–7; Bireley, *Counter-Reformation Prince*, p. 39.

<sup>80</sup> *Politicorum libri decem*, I.4.3.

<sup>81</sup> The source is *Digest*, I.1.4: 'Iure naturali omnes homines liberi nascuntur', but it was axiomatic even then; it was rendered as: 'omnes homines natura aequales genuit' in Gregory the Great's *Magna moralia*, bk 21.11, from which Bellarmine cited it, e.g. in *De laicis*, ch. 11, pp. 311 and 314, and elsewhere; see also e.g. Azor, *Institutiones morales* II, bk II, ch. xxx (p. 218A); Lessius, *De iustitia et iure*, bk II, ch. 4, dub. 9.54–5: *servitus* is 'contra primaevam naturae conditionem'; Molina, *De iustitia et iure*, tract. II, disp. 22 (p. 102A); Suárez, *De legibus*, III.1.1, III.2.3, etc.

should be the servant of another.<sup>82</sup> The axiom applied to all human beings, and not merely to heads of families, or wise men, or males, or Christians, or Europeans, or adults without surviving parents, etc. It had a variety of substantive implications. For example, parents could not deny their offspring a free choice of marriage partner, or entry into a religious order or the celibate state.<sup>83</sup> Again, via the link with natural right, it implied a fairly capacious right of self-defence (to be considered later). Equally, servitude or slavery could only be legitimately incurred if there had been some culpable act to justify such an abridgement or forfeiture of natural liberty,<sup>84</sup> or if it was espoused voluntarily. There were profound metaphysical, moral, and religious grounds why Jesuits should insist that this freedom applied to all individuals regardless of external circumstances: not least the Jesuit doctrine of free will and the view of human agency and morality that it articulated. Moreover, it had a religious counterpart in Christian liberty, which in some form was a necessary constituent of any Christian orthodoxy. It was for example orthodox scholastic doctrine that individuals are obliged to follow the dictates of their own conscience, even an erring conscience.<sup>85</sup>

By definition, free and equal persons cannot be related in terms of command and obedience.<sup>86</sup> It was therefore an especially complex matter to reconcile natural liberty and equality with the onerous obligation to submit to *principatus*, a power which was peremptory, coercive, and binding in conscience. A later way of reconciling natural liberty (or equality) and subjection was to *derive* subjection itself from natural liberty. Individuals could be held to impose some superior on themselves, by alienation, transfer, or delegation of some of the rights they enjoyed in virtue of natural freedom or equality. But despite some appearances to the contrary, this was not the strategy of the Jesuits any more than it had been their Dominican masters'. Neither Jesuit theorists nor other contemporary polemicists

<sup>82</sup> E.g. Bellarmine, *De laicis*, ch. vi (p. 317). Molina, *De iustitia et iure*, tract. II, disp. 33–5, dismissed the idea that there were 'natural slaves'. Toledo had asserted earlier (*Ennarratio*, vol. II, qu. 10, art. XI, p. 115) that Sepúlveda wrote his book to excuse the innumerable injustices of the Spaniards against the *Insulanos*, and cited the verdict against natural slavery of 'omnes communiter, Victoria, Soto, Caietanus, Major . . .'.  
<sup>83</sup> Lessius, *De iustitia et iure*, II, ch. 40, s. 63: 'In his, quae ad statum vitae pertinent, quisque est sui iuris, nec potest ad ea nisi suo consensu obligari; ut patet in matrimonio, sacerdotio, caelibatu, etc.'

<sup>84</sup> Becanus, *Summa Theologiae Scholasticae*, pt II, tract. III, ch. III (p. 497): 'dico, de iure naturali esse, ut omnes sint liberi, *nulla supposita culpa vel iniuria*' (my italics).  
<sup>85</sup> Azor, *Institutiones morales*, vol. I, bk II, ch. VIII, p. 158, describes it as 'communis omnium Doctorum sententia'; Persons, *A Discussion of the Answer of Mr. William Barlow*, p. 280: 'Shismatikes and Heretikes, . . . for so long as that repugnancy [sc. to Catholic truth] endureth, should sinne in doing contrary to the *dictamen* [of their consciences].'

<sup>86</sup> Valentia, *Commentarii*, disp. VII, qu. v, pt 2 (p. 859): 'Ut communiter dici solet, par in parem non habet potestatem.'

employing the vocabulary of contract and consent argued this position.<sup>87</sup> There were, however, many *societates* which *were* contractual and consensual in this sense, not least the Society of Jesus itself.<sup>88</sup> Jesuits seem to have been fending off in advance accounts of the derivation of political authority from individual rights and contracts which were possible, but which no one as yet was actually putting forward.

Thus they explicitly denied that civil society is an association of previously (or conceptually) free and equal individuals. Indeed it is not an association of *individuals* at all. Its component parts are not individuals, but lesser associations. Furthermore, no one can transfer a right he or she does not have.<sup>89</sup> Therefore, if natural liberty and equality do not include (but positively exclude) the right on my part to make laws, command, punish, coerce, or fight wars, rights which together make up political authority, I cannot authorise anyone else to exercise such rights over me or anyone else. Indeed, I cannot even transfer or alienate all the rights I *do* have under natural law. Perfect alienability presupposes *dominium perfectum*, which was in fact a rather rare kind of right. Molina cited with approval the position of Vitoria and Soto, which was uniformly adopted by the other Jesuit theologians as well:<sup>90</sup> 'Individuals are not permitted to kill malefactors, but the *respublica* may, as is clear from practice and from Scripture, and as the nature of things demands; it follows that the authority (*potestas*) which arises from the nature of things in the *respublica*, is something quite different from a gathering up of the particular *potestates* of individuals.' Furthermore,

if civil authority were in some way based on the individuals which make up [the commonwealth] conceding some of their rights to the commonwealth, then if any one cohabitant was unwilling to give his consent, . . . the others would have no right or authority over him . . . Consequently everyone newly born, or newly come into the commonwealth, would have to be asked whether he consents to the authority of the commonwealth over him, and his consent would have to be waited for, which is ridiculous.<sup>91</sup>

But what of the right of individuals and families to kill and punish? Molina's answer was that these rights, to the extent that they exist, cannot

<sup>87</sup> For evidence, and Suárez as a partial exception, see chapter 11.

<sup>88</sup> This is especially clear in Suárez's account: *Tractatus de religione Societatis Jesu*, bk III, esp. chs. 1, 2 and 4 (*Opera omnia*, vol. 16).

<sup>89</sup> Suárez, *Defensio fidei*, III.5.12: 'Quia nemo potest donare nisi quod habet'.

<sup>90</sup> E.g. Suárez, *De legibus*, III.3.1: 'Before men congregate into one political body, this *potestas* is not in individuals . . . Therefore this *potestas* can never emanate directly from men themselves.'

<sup>91</sup> Molina, *De iustitia et iure*, tract. II, disp. 22, pp. 105A–106C.

account for political *potestas*. If we suppose that the authority to kill somehow emerges spontaneously (*consurgit*) with the emergence of families, we may equally suppose that it emerges spontaneously with the commonwealth, without being communicated to it by its parts. And as for the claim that where there is no superior authority, even individuals have the right to inflict just punishment (or revenge, *vindictam*) on evil-doers who have done them injustice, Molina replied that he would in no way dare to admit any such right. It would imply that private persons would be entitled to inflict punishment (or revenge) on their own authority for some injury done to them, when a public authority had neglected to punish it for whatever reason, or that they could reserve the power of punishing to themselves when they constituted the commonwealth (pp. 105C–106A).<sup>92</sup> He had already explained that the objection to allowing private individuals such a right (as opposed to a simple right of self-defence) was that aggrieved individuals would be the worst possible judges, namely judges in their own cause.<sup>93</sup> Locke seems to have still been worrying away at these objections to his ‘strange doctrine’ that individuals in a state of natural liberty have a right to punish.<sup>94</sup>

In sum, then, the postulate of natural liberty and equality did not function in Jesuit thinking as it was to in later natural-rights thinking, namely as providing a portfolio of individual rights, whose transfer in part or *en bloc* accounted for political authority. At most, natural liberty imposed some not especially stringent restrictions on the scope of political authority, which itself comes into being in quite another way.

Natural liberty and equality are a matter of *ius*. They therefore cannot possibly mean the right to do as you please, for no one has such a right – except those of perfect sanctity, for whom what they please is always what they ought to do.<sup>95</sup> And so, although ‘natural liberty’ is a set of rights of individuals rather than societies,<sup>96</sup> it cannot be the antithesis of either natural or civil society or their requirements. Contrary to what Filmer seems to have imagined he had found intimated in Bellarmine,<sup>97</sup> all that any Jesuit had

<sup>92</sup> As Costello notes in *The Political Philosophy of Luis de Molina S. J.*, pp. 45–6.

<sup>93</sup> Tract. II, disp. 22, (pp. 104C–D).

<sup>94</sup> Tract. III, disp. 6.31; compare Locke, *Two Treatises of Government*, II.22.

<sup>95</sup> Contzen, *Politicorum libri decem*, I.22.7: ‘*Libertas est quidem illa potestas vivendi ut velis*, sed necessarium tamen est, ut iuste et recte velis’ (italics in original, no source given).

<sup>96</sup> Natural liberty was, however, also sometimes used of civil societies in relation to others; thus when Las Casas denied Sepúlveda’s claim that Latin American Indians were naturally slaves, he was impugning both the servitude of individual Indians to the *encomendero*, and that of Indian *pueblos* and peoples to the *conquistadores*; Hanke, *Aristotle and the American Indians*, ch. 5.

<sup>97</sup> *Patriarcha*, p. 3: ‘Cardinal Bellarmine (bk 3, *De laicis*, ch. 6) and Mr Calvin (*Institutes*, bk 4, ch. 10) both look askint this way.’

ever claimed was that no specific individual is naturally in *servile* subjection to any other specific individual. Filmer himself explicitly acknowledged 'natural liberty' in this sense.<sup>98</sup> Natural liberty is entirely compatible with rightful subordination, and therefore with the status of children, pupils, clients, apprentices, wives, servants (other than slaves), and subjects. It had no disruptive potential for any even minimally orderly relationship. All that it excluded was the ownership of one person by another, except as punishment for some particularly heinous offence. There were some derogations from natural liberty, all of which seem to have been conceded out of excessive deference to Roman law from which they derived.<sup>99</sup> They could however be abridged or even nullified by positive laws, and Jesuits fully approved of their being abridged or nullified.<sup>100</sup>

#### 'DIRECTIVE' AND 'COERCIVE' AUTHORITY

Political *potestas* and *principatus* were thus not derivable from any *potestas* of the individuals and associations that compose the polity. Their cause or 'origin' was invariably and entirely conventionally explained in terms of the requirements of the *communitas perfecta*, or its 'common good'. For Jesuit theologians two aspects or components of political authority needed to be distinguished, both of them 'necessary' and 'natural' but in different ways: namely 'directive' and 'coercive' authority. This distinction, too, was a scholastic commonplace, a *vulgaris distinctio* as Suárez called it (*On Laws*, I.17.4). Its relevance to the explanation and justification of political authority was however far from clear.

Bellarmino argued in *The Laity* (ch. VII, p. 318) that there would have been *principatus politicus* and political authority even if mankind had not been subject to the Fall. The authority here, he explained, would be 'directive' authority: the authority to direct and guide. The counterfactual hypothesis of a human condition without sin, a condition of men *in puris naturalibus* (Aquinas's term), demonstrated the universal and therefore 'natural' indispensability of authority in this sense. As Bellarmine put it: 'even [in the state of innocence] man would naturally have been a civil and social

<sup>98</sup> *Patriarcha*, p. 65.

<sup>99</sup> Lessius, following Molina (*De iustitia et iure*, tract. III, disp. 1), argued that each individual is *dominus* over his own freedom just as much as over his reputation or money (*De iustitia et iure*, bk II, ch. 5, s. 15), but not over his life and members (ch. 4, s. 57). For these and other derogations from natural liberty, see below, pp. 297 n. 78, 298.

<sup>100</sup> The laws of Christian states, for example, forbade the enslavement of Christians as a result of war (Lessius, *ibid.*, s.12); equally Christians enslaved by corsairs or Muslims were deemed fully entitled to seek freedom by flight; slaves from South America imported for sale in Spain were set free.

animal, and hence would have needed a governor (*rector*). There would have been differences of age, gender, application to different tasks, natural aptitude, physical constitution, and the influence of climate. And 'right order postulates that the inferior be governed by the superior, the woman by the man, the younger by the older, the less wise by the wiser, and the less good by the better'. 'Even among the angels there is super- and subordination; why then not among human beings in the state of innocence?' (pp. 318–19). For even in the state of innocence there could be collisions of intent and frustrations of purposes which did not spring from anyone's vice or malice (excluded *ex hypothesi*), but simply from a mutual ignorance of intentions, lack of knowledge, or cross-purposes. Social existence always requires *direction* for purposes of 'co-ordination'.<sup>101</sup> Bellarmine did not even consider the possibility that *in puris naturalibus* such collisions and frustrations could be resolved by consensual decision-making. The Society's rooted belief was that order presupposes orders.

Endorsing Bellarmine, Suárez explained: '[Directive power] is not based on sin or any sort of disorder (*deordinatio*), but [is grounded] in the natural condition of man, which is that of a social animal and naturally demands a manner of living in a community, which must necessarily be ruled by a public authority.' In his *The Work of Six Days*, he demonstrated in great detail that even in the state of innocence there would have been not only domestic community (and incidentally vegetarianism), but also political society, and therefore *dominium gubernativum*, albeit no servitude or coercive authority.<sup>102</sup> All the other accounts, most of whose authors were either demonstrably or presumably aware of Bellarmine, are very similar. But then Bellarmine's was very similar to the Dominican accounts.

#### COERCIVE AUTHORITY

But all this at most demonstrated that social life requires that individuals with superior moral authority should have direction in respect of some matters and some persons. On this basis, the subordination of wives to husbands would, however, have to be reversed wherever the wife was wiser, older, or more virtuous, or replaced by a relationship of equality where the partners were equal in wisdom and virtue; similarly with parents and offspring, old and young, etc. Moreover, in so far as directive (i.e. moral)

<sup>101</sup> Finnis's felicitous term, connoting ordering towards a common purpose; *Natural Law and Natural Rights*, pp. 231–3 and index references 'co-ordination'.

<sup>102</sup> *De legibus*, III.1.12; *De opere sex dierum*, v.7.12: 'Neque subiectio respondens huic dominio [sc. iurisdictionis] esset defectus, vel imperfectio repugnans perfecti statum innocentiae.'

authority depends on *personal* qualities and attributes, it could contribute nothing to the justification of *institutional* authority. There was nothing to guarantee that rulers and office-holders would have any moral authority qualifying them to 'direct'. Presumably, despite their endemic personalisation of *principatus*, Jesuits were assuming a greater wisdom in institutions and laws than in persons. In any event, what ultimately mattered was not directions given by moral authority, but commands emanating from coercive authority.

Pereira observed that 'there are two kinds of dominion over men: one over slaves, the other over free persons who freely choose someone or many persons by whom they are ruled and governed in accordance with previously laid down laws (*praescriptas leges*)'.

*Imperium* over slaves (*servos*) is coercive and by force (*violentem*), and therefore involuntary and bitter; whereas rule over free persons is voluntary and agreeable (*iucundum*), in as much as it is chosen and accepted by the latter for their own benefit. Furthermore, rule over slaves is entirely for the benefit and advantage of the master; for this reason it cannot be other than burdensome and hateful to those who are subject to it. And indeed it is against a man's natural inclination (*appetitum*) to surrender to someone else the benefit of whatever he does and toils over, rather than enjoying it himself. But rule over free persons is for the benefit of the subject, or rather for the public and common good, and not for the good and advantage of the ruler.<sup>103</sup>

Political rule which is not for the good of the subjects of a *principatus* would be contrary to all right order,<sup>104</sup> just as (in Vazquez's words) 'nothing could deserve the name of law which was introduced for a private and not for the common good'.<sup>105</sup> Subjects had therefore to be governed *politice* and as *cives*, not treated like animals or slaves.<sup>106</sup> 'If there is any "servitude" in the relationship between rulers and ruled, it is more properly imputed to the ruler than the subject.'<sup>107</sup> Even the Pope was 'the servant of the servants of Christ'.

But despite all this, and quite contrary to Pereira's ideal of free subjection, political authority was by the Jesuits' own definition the relationship

<sup>103</sup> Pereira, *Commentarii in Genesim*, vol. 1, bk 4, s. 72 (p. 174), on Genesis 1: 26.

<sup>104</sup> Suárez, *De legibus*, 1.7.4.

<sup>105</sup> Vazquez, *Commentarii in Primam Secundae*, vol. II, disp. CLI, ch. 2.7.

<sup>106</sup> The terminology, originally from Aquinas, is that of Salas, *De legibus*, disp. 1, Sect. IX, 4a, s. 56: 'human beings are not subject to their rulers as if they were slaves (*serviliter, atque ut mancipia*), but *politice, et ut cives*' and Bellarmine, *De laicis*, ch. VII (p. 319): 'non debere unum alteri *dominari* quomodo homo dominatur bestiis, sed solum debere unum altero regi *politice*' (my italics). Mariana rejected the authority of fathers as a pattern for political authority, because a king unlike them does not exercise a despotic principate; *De rege*, bk 1, ch. 8 (p. 74).

<sup>107</sup> Bellarmine, *De laicis*, ch. VII (p. 319); also *De Romano Pontifice*, bk 1, ch. VII (pp. 320–1): 'omnes enim qui laborant in alterius commodum, dicuntur ei servire'.



between lawful superiors and subjects. It was justified by reference to what the common good required, not by whether it was submitted to voluntarily or not. Indeed coercive authority *presupposed* an inability to agree on what is for the common good, and the unwillingness on the part of at least some subjects to comply with its requirements. It was therefore hard to see how consent could be a prerequisite for its legitimacy.

Coercive authority is, so Jesuits were arguing, both 'natural' and 'necessary', two vital attributes in any legitimating discourse at this time. It is not unconditionally necessary for human life, or natural as honey is natural to bee-life. But it is necessary, natural, and indispensable in the condition of sin, and therefore in all actual civil societies pending the Second Coming. Brief discussions intended as prefaces to something else might not even bother to qualify 'natural' and 'necessary'. Persons's *Conference* simply says that

if ther be not some to repress the insolent, to assist the impotent, reward the vertuous, chasten the outrageous, and minister some kind of iustice and equality unto the inhabitants, [men's] living together would be farr more hurtful then ther living a sunder, for that the one would consume and devour the other, and so we see that uppon living together followeth the *necessity* of some kind of iurisdiction, in Magistrats, and *for that the former is of nature, the other also is of nature*.<sup>108</sup>

The Jesuits' justifications for coercion were *passim* and allusive. They usually appeared under the general heading of punishment, not least because the *de legibus* paradigm, with its Thomist–Isidorean *topos* (1a-2ae, 92, art. II) of the four 'effects' of law (to command, forbid, permit and punish) meant that coercion had to be included under 'punish'. *Principatus* and law in their directive aspect might be thought adequately justified by reference to the fact that divine and natural law required supplementation by positive law and by the commands and decisions of princes and judges, in order to serve as guides and criteria of conduct for private individuals.<sup>109</sup> But the principal requirement for attaining the common good was not that subjects should be clear about what rules they must obey, but that they should *obey* them.

Even those Jesuits not as cynical as experience or bile seems to have made some of their brethren thought it would be a 'moral' absurdity for rulers to rely solely on their subjects' devotion to duty and the common good. Promoting the common good is neither an ordinary nor an effectual *motive* for most individuals: the common good is not the object of their passions or

<sup>108</sup> Persons, *Conference*, pp. 7–8, my italics.

<sup>109</sup> Becanus put it summarily in his *Summa Theologiae Scholasticae*, tract. III, ch. VI, qu. 2 (p. 581): 'neque lex naturalis sufficit, cum non descendat at particularia; neque lex Mosayca, quia ille iam abrogata est; neque lex Evangelica, quia illa solum tractat de rebus divinis et caelestibus'. This is all a *précis*, partly *verbatim*, from Bellarmine's *De laicis*, ch. X (p. 321). See also Suárez, *De legibus*, 1.3.18.

will, which dictate their conduct. Even reason itself is set to work by what the will presents to it as *desirable* ends, or *odious* outcomes to be avoided. As Fitzherbert formulated the doctrine familiarly: although reason since the Fall has retained 'so much dominion over the sensual powers that it may subdue them with the assistance of the will, rectified and guyded by grace; yet when the will is perverted, reason either is wholly seduced and deceived therby, or at least remaineth so weake and powerless, that it looseth the command and dominion which it ought to have'.<sup>110</sup> And if right reason could not ordinarily be relied on to dominate over disorderly passions, order-producing passions and incentives would have to be marshalled to tilt the balance.

Jesuit theologians did not of course doubt that individuals *could* deliberately intend or aim at the common good for its own sake. Supreme princes might have no other motive for seeking it.<sup>111</sup> And ideally the good subject, tutored by the 'discipline of the laws' (as Valentia called it), comes to love right conduct and virtue, and therefore also the common good, for their own sake. In a spectacular severing of the link between heresy and moral depravity which Jesuits all too often asserted, Fitzherbert even allowed that there were many heretics, not least among his own friends and relatives, who had a naturally good nature which inclined them to goodness towards others, and therefore also to the common good. Pagans too had been conspicuous for such good nature. But all this in no way prevented Jesuits from regarding self-interest as a reliable guide to what to expect from people at most times. As Mariana put it in his chapter on prudence in *On Kings* (bk III, ch. 15, p. 333): 'Let this be firmly fixed in [the Prince's] mind: there is nothing that motivates either princes or private men so much as profit (*utilitas*).' Suárez summed up: 'Individuals not only have difficulty in knowing what is expedient for the common good, but also rarely aim at it as such. And therefore it has proved necessary to have laws which look after the common good, showing what is to be done on its account, and coercing in order to ensure that it is done.'<sup>112</sup>

We have already seen that this is the method of the Spiritual Exercises, and that the prudential, reason of state argument was that religion, especially true religion, is an indispensable adjunct to government because of the powerful incentives and sanctions it could enlist to induce people to act obediently and rightly. Scribani remarked that 'hardly anyone is virtuous

<sup>110</sup> Fitzherbert, *First Part of a Treatise*, ch. 1.7–9 (pp. 3–4).

<sup>111</sup> *Ibid.*, ch. 9.32: rewards and punishments are of no avail, since the prince 'feareth no penaltie of the law, being him selfe above the law'.

<sup>112</sup> *De legibus*, 1.3.19.

without any reward . . . and very few are satisfied with pure virtue for its own sake; no rewards, no virtue'. He immediately followed this with a comment emblematic of Ignatian moral psychology:

Does not God himself lure his own with rewards, and embellish his promises with riches as a reward . . . Take away the promise of heaven as a reward, and who will be left? Who will be a lover of continence? Who will yield himself to the chains of a monastery or constrict the innate liberty of his spirits with shackles, if you were to take away the reward of heaven?<sup>113</sup>

The classical cliché had it that rewards and punishments are the foundations, or sinews, of the commonwealth.<sup>114</sup> One does not spoil an aphorism by lengthy qualifications.<sup>115</sup> But no prince or commonwealth could ever have sufficient resources even to punish every evil act, still less to reward every compliance with laws and commands. Indeed, whereas evil acts certainly *deserve* punishment, no one is owed any reward merely for being law-abiding, except perhaps impunity.<sup>116</sup> Jesuit writers on statecraft insisted that princes were to deal out rewards (principally in the form of honours and offices) in small and conspicuous doses,<sup>117</sup> and in accordance with merit.<sup>118</sup> But such rewards could at best be an incentive for those sufficiently well-placed to aspire to them, not for subjects at large. As for the way of the world, we have already noted Fitzherbert's comment that it was rare enough for the virtuous not to suffer for their virtue, let alone being rewarded.<sup>119</sup>

Rewards are thus not the foundation, or sinews, of the commonwealth. The passion to be counted on was 'fear of punishment, [which] often restrains those who are not bridled by the splendour of virtue'.<sup>120</sup> Suárez stated the Society's position magisterially. Noting St Thomas's point that punishing is inherently the act of a political superior, whereas rewarding is not, he went on:

<sup>113</sup> Scribani, *Politicus christianus*, pp. 2, 109.

<sup>114</sup> Azor, *Institutiones morales*, vol. 1, bk v, ch. 5 (p. 580B–C), attributed the tag to Cicero quoting Plato and Solon. Cf. Mariana, *De rege*, p. 204.

<sup>115</sup> There was, however, no objection to elegant variations, like Ribadeneira's *Princeps Christianus* (p. 317): 'The commonwealth is kept in being and ordered by rewards and punishments, as if by equal weights.' The Spanish version here had a very early mechanical metaphor: 'porque el premio y la pena son las dos pesas que traen concertado el reloj de la republica'. The clocks referred to were the kind driven not by clockwork, but by (as it happens) unequal weights.

<sup>116</sup> Valentia, *Commentarii theologici*, disp. vii, qu. 1, pt II (p. 800B–C): 'ad obtinendam impunitatem, id est, ut quis evadat poenam a legislatore positam praevicatoribus'.

<sup>117</sup> E.g. Mariana, *De rege* (1599), bk II, ch. 12, pp. 202–3.

<sup>118</sup> E.g. Ribadeneira, *Tratado del Princeps Christianus*, bk II, ch. vi; Mariana, *De rege*, bk III, ch. 4.

<sup>119</sup> Fitzherbert, *First part of a Treatise*, esp. ch. 9.21–9.

<sup>120</sup> Mariana, *De rege*, p. 204; cf. also pp. 82, 236, 244–5, 331.

It is much more common for laws to envisage a punishment than to promise a reward, because punishment is *moraliter* more necessary. For the greater part of mankind is prone to sin and is prompted to act by its desires, and therefore most people *must more frequently be constrained by the fear of punishment (et ideo frequentius timore poenae coerceri debent)*. Hence also judges and guardians of the law are ordinarily more obliged to punish transgressors of laws than to reward the law-abiding. And this is why it is appropriate [sc. for Isidore and Aquinas] to specify punishments rather than rewards as the effect of law.<sup>121</sup>

There was also a slightly more recondite but no less influential consideration at work. Jesuit casuistry had little place for (so to say) unassigned duties, owed by or to abstract individuals; it was far more comfortable with duties owed in virtue of some determinate role, function, or office, such as that of soldier, judge, wife, priest, prince, teacher, etc. But if such roles are 'private', they connote duties to the commonwealth only *per redundantiam*; that is, the benefits to the commonwealth which result from their performance 'redound' to it only indirectly, rather than being deliberately intended. The universal assumption, instinct in the very bowels of the Society, was that in order for the public business to be done, it must be assigned as the responsibility, charge, duty, office, or function of specific agents or agencies. The authority of Aquinas and Aristotle as well as all experience could be invoked in support of the proposition that what is the responsibility of all is liable to be attended to by no one.<sup>122</sup> The connection between the good of the commonwealth and that of its members might in any event be imperceptible to the ordinary subject. The laws must often demand acts or forbearances which, taken individually, seem to be of no consequence or benefit to the commonwealth at all, since only their cumulative effect is important,<sup>123</sup> whereas their disadvantages to individuals are only too perceptible. To secure effective compliance with authority, altogether more powerful motives and incentives had to be enlisted.

Thus Molina said summarily that

ever since the Fall, men's passions (*sensus*) have been inclined to evil from their youth; therefore if men lived outside a political community, so that there was no public, superior *potestas* able to constrain and repress them by its might (*potentia*) and authority (*auctoritate*), everything would be filled with slaughter, sedition, rapine, theft, fraud and deceit, the mightier oppressing the weaker, and the condition of the human race would be worse and more wretched than it is today, when men are united in separate commonwealths.<sup>124</sup>

<sup>121</sup> Suárez, *De legibus*, 1.17.13, my italics.

<sup>122</sup> E.g. Suárez, *De opere sex dierum*, v.7.17: 'quia si bona essent communia, homines negligerent custodire et operari illa'; Molina, *De iustitia et iure*, tract. II, disp. xx, s. 5.

<sup>123</sup> Bellarmine, cited p. 272 on prohibitions of the export of specie or the bearing of arms.

<sup>124</sup> Molina, *De iustitia et iure*, tract. I, disp. xxII (p. 104D).

Mariana offered a menacing reflection:

It is true that fear is not in every respect the best teacher of duty, but it is a necessary one all the same. For in such a sewer of depravity [as this world is], unless fear were to keep men within bounds, all [other] remedies would be pointless. And a ruler must take care to ensure that individuals should have cause to fear something worse than what they suffer already. Fear by its nature is a thing without limits; there is some limit to suffering, but not to fear. For we suffer in proportion to what we have to bear, but we fear in proportion to what we are capable of suffering. A ruler therefore never exhausts his power and authority to punish crimes.<sup>125</sup>

Valentia quoted the opinion of Isidore of Seville: 'Laws have been made so that the fear of them will constrain (*coercetur*) human audacity, so that innocence can be safe among the unrighteous, and that the latter's capacity to harm will be reined in by the dread (*formidine*) of punishment'.<sup>126</sup>

As these quotations already make clear, Jesuits relied more on the threat of punishment than its infliction. This is obvious even in the pioneering polemical treatise of Geronimo Torres, the *Augustinian Confession*. The burden of his main chapter dealing with the right and duty of the Church to punish heretics was in fact the *threat and fear* of punishment: *poenarum terroribus* (ch. XIII.5, p. 125<sup>v</sup>). 'Fear . . . makes heretics eager to seek the truth', and 'a whole army of people has returned to the Church [because of fear of] the penalties decreed against heretics' (ch. XIII.6, p. 127<sup>v</sup>).<sup>127</sup> Punishments are to be resorted to when deterrence (their primary intent) has failed, though even then their exemplary character was to the fore. Mariana's sinister point mentioned earlier was obviously concerned with what would be effective in inspiring fear, and would therefore not require 'execution'. As Becanus put it summarily (paraphrasing *1a-2ae*, 90, 3 ad 2): 'Coercive power (*vim coactivam*) is required in a lawgiver, so that he can *effectively* induce subjects to obey the law'.<sup>128</sup>

Passing references to coercive authority often lacked nuance. But for Jesuits an important purpose of punishment and coercion, or the threat of them, was to establish virtuous habits of conduct. Before people can run they must first be taught to walk. The impeccably Ignatian logic here is illustrated in an occasional piece by Valentia entitled 'Contrition Arising from the Fear of Punishment'. His target was what he (accurately) summarised as Luther's teaching in the *Sermon on Confession*, namely that 'contrition

<sup>125</sup> Mariana, *De rege*, bk I, ch. 9, p. 92; bk III, ch. 15, p. 331; he then tempered these alarming remarks by invoking the princely duty of clemency and avoiding cruelty.

<sup>126</sup> Valentia, *Commentarii*, disp. VII, qu. V, pt 3 (p. 856A).

<sup>127</sup> Torrens, *Confessio Augustiniana*; chapter or section headings or marginalia from bk I of the vastly expanded 1580 edition.

<sup>128</sup> Becanus, *Summa theologiae scholasticae*, pt II, tract III, qu. V, s. 2 (p. 467), my italics. Equally tersely, Suárez, *De legibus*, I.17.5.

which does not spring from the love of Justice and the love of God is not true but counterfeit, since it does not come from the whole heart and is not voluntary but coerced'. Valentia admitted that grief or remorse which was *merely* a fear or desire for immunity from punishments was indefensible. But it is not perverse or inordinate that motives should be somewhat mixed (so to say), and that fear of punishment should play its part in generating 'a good and saving grief for sins'. Both Scripture and the Church Fathers propose to their auditors evils they will suffer for wrong-doing, a pointless exercise if it were not intended to inspire fear. In any event, the grief or contrition which arises from fear of punishment is neither perverse nor inordinate. For it is right and in conformity with reason to fear punishments, since they are indeed an evil; by contrast, immunity from this kind of punishment is rightly sought and loved as a certain sort of good. And if contrition for sin, fear of punishments, and a temperate love of immunity from them are *per se* good motives, then it is right and in accordance with reason to be impelled to contrition by the effect of such fear and love as motives.<sup>129</sup>

Valentia's topic was the 'court of conscience'. But the same considerations applied to motivation in obeying civil laws. The crucial point for him as for his fellow-Jesuits was obviously that self-love is not illegitimate, but on the contrary both natural and right. Molina argued against suicide that 'in the first place it is contrary to self-love, in that we are commanded by natural law to love ourselves no less than our neighbour',<sup>130</sup> an unexpected but logical corollary of Christ's summation of the Law and the Prophets: 'Thou shalt love thy neighbour as thyself.' Auger had even raised the interesting question why no independent commandment to love ourselves was given in Scripture. His answer was that there was no need, since it is the only commandment that will always be obeyed punctiliously.<sup>131</sup> Nor for any Jesuit, beginning with St Ignatius, was any serviceable motive to be rejected simply because it was not inherently noble. In any case, as Suárez pungently remarked in passing: 'Laws are more frequently imposed in order to repress vices, than to promote zeal for virtue.'<sup>132</sup>

To take another example: the inhabitants of newly reformed territories were inhibited from practising their former heresies and compelled to participate in Catholic services by threats of draconian punishment, or

<sup>129</sup> Valentia, *De rebus fidei*, 'De Contritione ex Penarum timore concepta liber unus', pp. 643–5 (a 'book' of three pages). Cf. Suárez, *De legibus*, 1.19.2: 'Many are the righteous who have been moved by fear of punishment to avoid sins.'

<sup>130</sup> Molina, *De iustitia et iure*, tract. III, disp. 9, s. 2 (p. 44).

<sup>131</sup> Auger, *Catechismus*, pp. 121–2. <sup>132</sup> Suárez, *De legibus*, 1.19.7.

hopes of benefits of the most tangible kind, for example excellent schooling for their children gratis, or the occupancy or retention of public offices of honour and profit. Their conformity would evidently at first be merely coerced and hypocritical. But there are worse evils than hypocrisy, and the Church must think in terms not merely of this generation, but of the ages to come. By parity of reasoning, considerable indulgence was shown to Catholics complying with pernicious laws of the heretics, in order to safeguard a Catholic presence and a ruling cohort for better times.<sup>133</sup>

#### THE RATIONALE OF PUNISHMENT

In short, punishment was an essential instrument of government, but if it actually needed to be employed rather than merely threatened, damage to the *communitas* had already been done. In that sense, punishment was inevitably too late and a *faute de mieux*, as it was in the Society's educational practice, at least by the standards of the time and the intention of the Founder. But Jesuit theologians in fact excluded none of the rationales of punishment current then (or for that matter now). These licensed varying degrees of severity and punitiveness in the use of coercion.

If punishment were understood solely as deterrent, all that was ruled out would be punishment of such severity as was likely to make it unenforceable, or counterproductive, as when the criminal has nothing to lose by further and more serious crimes. But enforceability is entirely contingent upon the coercive resources at a government's disposal, and Jesuit writers on statecraft were deeply involved in considering how to improve the command over resources of at any rate godly and orthodox princes, albeit not with a view to enabling them to punish more severely.<sup>134</sup> And the poorest prince could afford the expense of executioners; they could even be engaged on a piecework basis, so to say. As for severity perhaps proving counterproductive, Jesuits certainly recognised the possibility: it was for example a commonplace that cruelty in princes makes them hated by their subjects, which must be avoided at all costs.<sup>135</sup> But there was little force in the argument that if, for example, the death-penalty were freely used, criminals would have nothing to lose by additional and worse crimes; a calculating criminal

<sup>133</sup> Catholic practice was (and is) to issue peremptory and draconian general imperatives to the faithful at large, but to deal with individual cases with circumspection and even indulgence.

<sup>134</sup> Botero's techniques of statecraft aimed at incapacitating subversive elements in the population, as well as the prince's political opponents and competitors, thus making recourse to punishments *less* necessary.

<sup>135</sup> Mariana, *De rege*, bk III, ch. 15, p. 331.

could be made to realise that there were more nightmarish punishments to fear than a simple hanging or decapitation. Failures of past punishment to deter might be taken equally as an argument for greater severity, and not lesser as Thomas More thought.<sup>136</sup> There was rarely any mention of the danger of creating martyrs, of which Luther had warned in *On Secular Authority*.<sup>137</sup> The Duke of Alva's exemplary severities towards Dutch heretical rebels seem to have provoked no Jesuit objections at the time.<sup>138</sup> And actually inflicting punishment, not merely threatening it, also had an obvious deterrent rationale: deterrence can only work if the threat at least occasionally becomes a reality.

But Jesuit thinking about punishment was no more unconditionally consequentialist than Jesuit moral theology generally. Punishment is a matter of justice and desert. It is logically impossible, as well as morally indefensible, to 'punish' an innocent person, for whatever is done to him (or her) cannot be 'punishment'. As Becanus put it: 'Strictly speaking, punishment (*poena*) means some evil which is inflicted on account of guilt',<sup>139</sup> and is merited only for some crime, and (in all but the rarest cases) on conviction after a trial according to due form. Jesuits were as legalistic about due process<sup>140</sup> as everyone else at the time, even reasoners of state in most cases.

Therefore it cannot be just that an innocent man should be killed, even to save the whole commonwealth (*pro salute totius reipublicae*).<sup>141</sup> Equally, princes, judges and magistrates have no unfettered discretion to decide penalties solely by reference to their likely efficacy as deterrents. Where the law specifies a penalty, that and no other is just. Again sins, and therefore

<sup>136</sup> More, *Utopia*, esp. pp. 21–4.

<sup>137</sup> Persons in his *Treatise of Three Conversions* did, however, argue that it had been inexpedient in Marian times to burn so many heretics; see Holmes, *Conscience and Casuistry*, pp. 212–13.

<sup>138</sup> The criticisms in Scribani's *Veredicus Belgicus*, apart from being decades after the event, seem to have owed more to Belgic sentiment than to theological objections. Cf. Bireley, *The Counter-Reformation Prince*, pp. 164–5, 183–4.

<sup>139</sup> Becanus, *Summa theologiae Scholasticae*, pt II, tract III, qu. VII, p. 655. Lessius (*De iustitia et iure*, bk II, ch. IV, dub. 10, s. 18) merely remarks that only God's *dominium* includes the right to kill even the innocent at will (*pro arbitrio*), whereas the *Respublica* may not do so. Molina, *De iustitia et iure*, pt II, tract III, disp. 5 (vol. IV, p. 27E): 'to take away a person's life without any guilt on his part is an intrinsic evil against the fifth commandment of the Decalogue'.

<sup>140</sup> One of Persons's principal complaints about proceedings against Catholic priests in England was that the accused were denied the right to counsel, contrary to the laws of every other country, and that trial was by a jury 'commonlie . . . of unlearned men', gullible, easily led and suborned; *An Answer to the Fifth part of Reportes* (1606), Epistle Dedicatory, s. 54; see also ch. I, ss. 23–4 (pp. 14–15). Lessius, *De iustitia et iure* (bk II, ch. 29, ss. 77–84, pp. 341–3), argued that a judge who has certain (but private) knowledge that someone legally found guilty is innocent, cannot condemn him to any irreversible punishments, because the *respublica* is not *dominus* over the lives and bodies of its subjects (s. 84). But when the question is only of a pecuniary penalty, or exile, or deprivation of office of benefits', the judge may observe nothing but due process (*servare iudiciorum ordinem*).

<sup>141</sup> John II: 50. Molina, *De iustitia et iure*, tract. III, disp. 10, s. I.



crimes, do not all have the same source: some motives are more culpable than others: the momentary heat of passion, or weakness, say, as compared to deliberate wickedness. Some sinners are from the human point of view beyond correction, others are sinners merely because of the temptations to which their occupation or status subjects them, or because of their age – we have already noted Valentia's frosty view of the young.<sup>142</sup> Punishment should take account of all these considerations, aggravations, and mitigations. Any confessor, and indeed any casuist, spiritual director, or devotional writer was required to be familiar with all the dimensions of sin and kinds of sinners, in order to reach a just verdict as judge in the 'court of conscience', and to prescribe suitable medicines as 'doctor of souls', to use Regnault's descriptions of the confessor's role. 'Let the confessor beware of striking terror into the heart of a person who should rather be consoled; and in the same way he should not use clemency towards a person who ought to be reprimanded sharply.'<sup>143</sup> So too the secular judge: Azor quoted Cicero (he was always quoting someone) to the effect that penalties should be not merely commensurate with the gravity of the sin, but also specifically adapted to the character of the sinner. Thus sins of pride or ambition should be punished by loss of status and by humiliating punishments; greed should be punished by fines, and so forth.<sup>144</sup>

But as Becanus says, a penalty must always 'meet two conditions. One is that it must not be inhuman and cruel. The other is that it must not exceed the crime or the guilt.' And he cited Aquinas (2a-2ae, 159 art. 2) to the effect that 'cruelty' means inflicting more punishment than is deserved, or in an unusual (*inusitato*) manner. But this was not much of a constraint. Even Becanus, whom we have seen not to be disposed to cruelty, expressly denied that strangulation, starvation, whipping, and mutilation are cruel or inhuman punishments.<sup>145</sup> Jesuits saw nothing in principle to object to in hanging as a punishment for theft; on the contrary they often used it as an unproblematic illustration of condign punishment.<sup>146</sup> And they expressly denied that natural law or the divine law in the New Testament specified the punishment for specific crimes; the penalties laid down in the Old Testament were now abrogated.<sup>147</sup> Thus legislators and judges had considerable discretion in determining what punishment fits which crime.

<sup>142</sup> Valentia, *Commentarii*, disp. vii, qu. v, punctum 3 (p. 856).

<sup>143</sup> Regnault, *De Prudentia et ceteris in Confessario requisitis*, pp. 1, 8.

<sup>144</sup> Azor, *Institutiones morales*, vol. 1, bk v, ch. 5 (p. 580B).

<sup>145</sup> Becanus, *Summa theologiae scholasticae*, pt II, tract. III, ch. vii, qu. 8 (pp. 679–81).

<sup>146</sup> E.g. Becanus, *ibid.*, on Aquinas, 2a-2ae, qu. 64, art. 2.

<sup>147</sup> Molina, *De iustitia et iure*, tract. II, disp. 6, s. 4.

In those days the Society was remarkable for numbering among its members both prominent supporters of witch-hunting in its vilest forms, most notoriously Martin Delrio (and seconding him theologically, at least up to a point, Gregorio de Valentia, Jakob Gretser and Leonard Lessius), and also some of its most heroic opponents, notably Friedrich von Spee (who was also an exceptional poet, which was somewhat less rare *in illo tempore*), with Adam Tanner and Paul Laymann for his theological seconds. The witchfinders' opponents in the Society did not deny that there were witches, but objected to the use of torture as the way to find them out; as confessors to 'witches' they knew them to be innocent.<sup>148</sup> But Jesuits did not object to judicial torture being used under specified circumstances.<sup>149</sup> And since they regarded the use of the death-penalty in all its appalling varieties as legitimate, lesser penalties were even less problematic. Indeed, relatively light fines or fixed penalties were not even unequivocally to be classed as punishments at all, but rather as a sort of licence-fee.<sup>150</sup>

Punishment was thus both a matter of deterrence, but also a matter of justice, since certain acts and omissions deserve to be punished. It was also retributive, avenging injuries (that is injustices, violations of right) done either to private individuals or to the commonwealth; the terminology of revenge, avenging, vindication was quite customary. This again intimated a need for proportionality between crime and punishment, and the *lex talionis* (an eye for an eye) functioned here as it had been intended in the Old Testament, that is as a limitation on what might be exacted in retribution: *no more* than an eye for an eye, the point being to put an end to vendettas. In the same way, the exclusive right of the commonwealth to inflict punishment was argued for in terms of the greater disinterestedness and freedom from passion of public punishment.<sup>151</sup> Despite the language of 'vengeance' and 'revenge', Lessius dismissed out of hand revenge prompted by the desire 'that the person who has harmed you should suffer'.<sup>152</sup> On the other hand, the entitlement of *commonwealths* to avenge injuries done to themselves and their subjects was undoubted. As Molina put it: 'Each commonwealth must be self-sufficient, able to defend itself and its members by means of guiltless self-defence (*cum moderamine inculpatae tutelae*), but

<sup>148</sup> See Spee, *Cautio criminalis*, published anonymously in 1631; Lessius, *De iustitia et iure*, bk II, ch. XLIV; and generally Behringer, *Witchcraft Persecutions in Bavaria*, esp. pp. 123–4, 206, 218–23, 245–6, 262–5.

<sup>149</sup> It was justified as an instrument of investigation where strong or *semi-plena* evidence of guilt already existed, and not as a punishment; e.g. Lessius, *De iustitia et iure*, II, ch. 29, dub. XVII.

<sup>150</sup> Rose, *Cases of Conscience*, pp. 66–7. <sup>151</sup> Molina, *De iustitia et iure*, tract. II, disp. 22, p. 106A–B.

<sup>152</sup> Lessius, *De iustitia et iure*, bk II, ch. XLVII, dub. IV, s. 21: *vindicatio*, or *ultio* 'is returning evil for evil, penal evil for culpable evil'.

also to avenge (*vindicandas*) and punish injustices done to itself and its members, when other commonwealths are negligent in offering adequate reparation, and to punish those subject to itself who have inflicted such injustices.<sup>153</sup>

The last, but by no means least purpose of punishment was restitution, the reinstatement of something like the *status quo* before the crime/sin had been committed. Some limit to the severity of punishment was again implied here, since this purpose of punishment is restorative. But merely confiscating what had been unlawfully obtained or its equivalent would not be a punishment at all; what 'surplus' (so to say) was appropriate as punishment was again undefined.

These interpretations of the ends of punishment thus set neither clear nor restrictive guidelines for rulers and judges. Equally, the appeal to the prince which might overturn the verdict of any lesser judge or court introduced a further element of what might be regarded either as randomness, or as due recognition that *summum ius* is *summa iniuria*. The prince as the 'living law', that is, as a human being, might be moved by considerations of clemency, but equally by reasons of state or the need for exemplary punishments. Lessius exhorted to clemency and gentleness (*mansuetudo, suavitas*):

It is fitting, in inflicting evils and punishments, not to use one's authority to the limit, but to remit something, and to punish less than is deserved, just as in rewarding it is fitting to reward even above what is merited, so that one's benign bearing adds something to the reward, and takes away something from the punishment. For punishments are an evil, and not part of God's original design (*praeter Dei primaeval institutionem*) . . . And conversely, rewards are a good, and part of God's first institution and intention.<sup>154</sup>

#### THE DEATH-PENALTY AND THE FIFTH COMMANDMENT

All this of course raised the question of the Fifth Commandment, a crux for evangelicals and Catholics alike, and dealt with by both in much the same way.<sup>155</sup> But Jesuits standardly found an additional antagonist in Duns Scotus, on account of his argument that the Fifth Commandment prohibited all killing, except where there was some express divine permission

<sup>153</sup> Molina, *De iustitia et iure*, tract. III, disp. v, s. 4.

<sup>154</sup> Lessius, *De iustitia et iure*, bk IV, ch. IV, ss. 36–44; his example of cruelty and indeed sadism (*feritas*) was the way heretics treated Catholic priests (s. 43).

<sup>155</sup> Luther's *On Secular Authority* was paradigmatic for evangelicals. Bellarmine admitted that here at any rate the 'heretics' and the orthodox were on the same side; *De laicis*, ch. 2, p. 314.

in Scripture, God's will being the ultimate source of all justice for Scotus. And the refutation was routine; indeed it was simply the justification of secular authority generally, although (unlike Locke) Jesuits did not regard the right to inflict the death-penalty as *the* distinguishing characteristic of civil authority, but merely as one of them.<sup>156</sup> The standard answer, in the words of Paul Laymann<sup>157</sup> was:

The commonwealth or the magistrate has the right to expose subjects to the danger of death . . . In addition, [the commonwealth] has the right to punish them by death, if their offences . . . deserve it, and the good of the commonwealth demands it . . . [Laymann then cited *2a-2ae*, qu. 64, art. 2, and inevitably Romans 13, and I Peter 2]. The second reason is that ever since human beings first joined in social life, natural reason established by God has taught them that the preservation of society requires that the community, or the prince as its head, should have the right to punish individuals who offend against the Commonwealth, even by death if that proves necessary . . . The corollary is that the Fifth Commandment, which is both natural and divine [i.e. a rule of both natural and divine law], *Thou shalt not kill*, only prohibits wrongful (*illicita*) killing, that is the killing of innocent men, or even of the guilty, but by one's own private authority, except in the case of legitimate self-defence.

The only interesting variation in these accounts (perhaps a straw in the wind) is that Becanus explicitly acknowledged that punishment involved a conflict of *rights*: 'the community has the right to kill malefactors, and this right outweighs (*est praestantius quam*) the private right which each malefactor has to save his own life'.<sup>158</sup>

The Jesuit discussion of capital punishment, and of corporal punishment too, inevitably brought back into play the correspondence or analogy between the human body and the body politic. As W. H. Greenleaf explained long ago, a 'correspondence' or 'similitude' such as this was not a bare metaphor or analogy. Rather it proclaimed an *identity* of structure or ordering principles. A body politic resembles any human or organic body, or for that matter any collectivity or (according to Fitzherbert<sup>159</sup>) any

<sup>156</sup> Laymann, *Theologia moralis*, bk I, tract. IV, ch. 5, s. 9, ranked highest the '*potestas* of waging war, making laws binding on all, calling General Councils or Assemblies [i.e. General Councils of the Church or Estates General etc of kingdoms or empires], cognizance of all causes and disputes without right of appeal; also the authority to coin money, to impose taxes and tributes etc. and all those rights called *regalia*'; the right to 'punish evil-doers by death, mutilation or perpetual imprisonment' he reckoned as only 'the second degree' of *imperium*. Contrast Locke, *Second Treatise*, s. 3: 'Political power . . . I take to be a right of making laws with penalty of death, and consequently all less penalties.'

<sup>157</sup> Laymann *Theologia moralis*, bk III, tract. III, pt III, ch. 2: De homicidio, quod publica autoritate fit (pp. 205–6), assertio II, citing Molina, *De iustitia et iure*, tract. III, disp. 5, s. 5.

<sup>158</sup> Becanus, *Summa theologiae scholasticae*, tract. III, pt II, qu. III, IIa conclusio (p. 244).

<sup>159</sup> E.g. *First Part of a Treatise*, ch. 6.2.

complex whole, in being composed of potentially centrifugal parts, which must in some way be held together in order for the whole to preserve itself. It could therefore be logically inferred that the excision of corrupt and putrid members of the body politic was as legitimate as a surgical amputation, and even to invoke the medical authority Galen, just as it had been appropriate to cite him in respect of the 'treatment' of heresy in the ecclesial body.<sup>160</sup> But as we shall see later, the correspondence between the human and the political body was in some respects imperfect. As Molina noted, the 'members' of the body politic are independent 'substances', persons with their own principle of movement and their own good. And since self-love is natural, it is legitimate for individuals to seek to preserve themselves and their own liberty and integrity. Therefore the commonwealth only has the right to deprive them of their lives when there is sufficient guilt on their part, for only in that case is it wholly expedient and necessary that it should have this *potestas*.<sup>161</sup>

<sup>160</sup> E.g. Laymann, *Theologia moralis*, bk III, tract. III, pt III, ch. 2 (p. 206); Bellarmine, *De laicis*, ch. 21 (p. 341).

<sup>161</sup> Molina, *De iustitia et iure*, tract. III, disp. v (pp. 27C, 28A): 'membra et partes reipublicae ad totam rempublicam, et membra et partes corporis humani ad totum corpus . . . non omnino eodem modo se habent. Etenim membra reipublicae sunt supposita [i.e. substances] ac personae inter se distinctae, per seque subsistentes, capaces singulae per se iniuriae ac iniustitiae, quae unicuique earum fiat in particulari'. This is almost verbatim from Soto (cited Brett, *Liberty, Right and Nature*, p. 161, n. 116).

*Limited government, compacts, and  
states of nature*

THE 'MEDIATE' DERIVATION OF *PRINCIPATUS*

The account we have been considering explained and legitimated political authority as such. But it did not explain how any specific regime, government, dynasty, or prince can acquire legitimate authority. It was axiomatic to the Society and its enemies that legitimate authority ultimately comes from God. The issue between them was *how* it descends from this transcendent source to mundane office-holders, and whether, and if so how, the limits which legitimate political authority must respect might be enforced.

It was common polemical practice among its enemies to impute to the Society three doctrines which, they claimed, undermined secular authority: the 'mediate' derivation of political authority via 'the people', tyrannicide, and the *potestas indirecta* of the papacy. The first of these bore on the legitimation of specific regimes, the second and third (which will be considered in subsequent chapters) on possible ways of enforcing limits on regimes and rulers that exceeded their authority, or had none to begin with. In the fevered imagination of some anti-Jesuits, these doctrines formed part of a deep Jesuit strategy of furthering the cause of papal hegemony, Spanish policy, or (in even more conspiratorial vein) the Jesuit project of world domination, or any combination of these objectives. The doctrines were in fact unrelated, they were Jesuit doctrines only in the sense that all Jesuits accepted at least the first (but then so did any number of non-Jesuits), and the image of the monolithic Society with a single political strategy, especially one of subverting political authorities, was a fantasy. Even heretical rulers who did not impose intolerable burdens on their Catholic subjects had nothing to fear from the Society. The implication of these doctrines was that legitimate political authority is limited authority. But even the most extreme 'absolutists' acknowledged that. Some notable Jesuit political theorists endorsed institutions and actions capable of forcing even kings to respect these limits, including tyrannicide and the *potestas indirecta*. But

the Society never had any official view on these matters, and eventually forbade discussion of both doctrines.

The Society's theologians and polemicists consistently taught that secular authority as such was *iure divino* and *iure naturae*, but the regime, institutions, and personnel that constituted a specific secular authority were *iure humano*. The kings of France, Spain, or England, the Republic of Venice or the Roman emperor, say, did not derive their authority from God directly, but mediately via 'the people' or commonwealth. By contrast ecclesiastical authority was *iure divino*, bestowed directly or immediately by God on the papal office and its incumbent, and thence on lesser ecclesiastical superiors. Partisans of the Divine Right of Kings (or the Divine Right of the Republic of Venice) represented this distinction as a ploy or stratagem, designed to subordinate secular rulers to popes.<sup>1</sup> Jesuits, and the Dominicans from whom they here took their patterns, freely acknowledged that the distinction exalted ecclesiastical (and specifically papal) authority, and emphasised its superiority in its own sphere to secular rulers.<sup>2</sup> Láinez explicitly said so: 'In terms of its efficient cause, ecclesiastical *potestas* excels [civil or secular *potestas*], because although both are from God, ecclesiastical authority is so in a higher way, because it is immediately from Christ.'<sup>3</sup> The mediate derivation of princely authority, however, in no way entailed its subordination to papal authority. In fact it had no bearing on the matter. For one thing, if princely authority is derived from the people or the commonwealth, it is evidently not derived from the papacy. Conversely, as Tanner pointed out, even if princes did receive their authority immediately from God, it would not follow that it was *not* restricted by the authority of the papacy.<sup>4</sup> That depended on what authority God had assigned to each, and not on how office-holders had derived it.

The distinction between the 'mediate' and 'immediate' derivations of authority was impeccably traditional. Vitoria and Soto, its proximate source for Jesuits, had employed it *inter alia* to reconcile the discrepancy between their predilection for monarchy and various authoritative sources which

<sup>1</sup> Filmer, *Patriarcha*, p. 5: 'Late writers have taken too much upon trust from the subtle schoolmen, who to be sure to thrust down the king below the pope, thought it the safest course to advance the people above the king, that so the papal power may more easily take the place of the regal'; Sommerville's gloss that Filmer meant *medieval* scholastics does not fit Filmer's context. See also Bouwsma, *Venice and the Defence of Republican Liberty*, pp. 432–3.

<sup>2</sup> Becanus, e.g. *Manuale*, bk v, ch. 19; repeated in *Duellum de primatu regis* (Opuscula, vol. III.6), ch. 1; to the same effect: *Controversia Anglicana*, 2nd edn, bk I, ch. 2 etc.

<sup>3</sup> *Disputationes Tridentinae*, p. 60 (ss. 43–4); p. 62 (s. 45); see also Becanus, *Manuale* (1623), bk v, ch. 19 (p. 491) on the superior dignity of *ecclesiastica potestas*.

<sup>4</sup> Tanner, *Defensionis ecclesiasticae libertatis libri duo*, 1607, bk II, ch. 1 (p. 211): *ingens discrimen* in their respective derivations.

invoked the authority of 'the people' or the *communitas*.<sup>5</sup> Jesuits too needed to be able to do this. Given the somewhat technical character of that issue, there was, however, no pressing reason to introduce the distinction in mirrors of princes,<sup>6</sup> and the innumerable editions of the catechisms of Canisius, Bellarmine, Loarte, Ripaldi, and all the rest refer to nothing except the God-given authority of princes.

Jesuits, like the prudent and virtuous generally *circa* 1600, thought the case for monarchy overwhelming. But this pro-monarchical consensus invariably made allowances for the European traditions of representation, limited and mixed government, popular consent, and respect for ancient law and custom. It was also widely acknowledged that some species of the monarchical genus were intolerable; Bodin approved only 'royal monarchy'.<sup>7</sup> Even the texts of Roman law, the best support for the authority of the *princeps legibus solutus*, announced that the Roman emperors derived their authority from the Roman people. And the idea of a *mutua obligatio* between kings and peoples featured conspicuously in both Huguenot and Ligue propaganda,<sup>8</sup> because as it stood it was undeniable.

Kings and peoples (or their representatives) could not both be the direct recipients of the same *potestas* from God. Their monarchical predilections notwithstanding, there were overwhelming reasons why Jesuits should regard 'the people' or commonwealths rather than kings as the direct and original beneficiaries of the divine grant of *potestas politica*. For one thing, all polities necessarily had a 'people', but some undeniably legitimate polities had no kings. And even in monarchies, there were laws which defined the very identity of a commonwealth, and which nevertheless could not be regarded as themselves the creation of monarchs like ordinary laws, namely the *leges regiae*, now coming to be designated as 'fundamental laws', though hardly ever by Jesuits. One distinctive feature of such laws was that they could not be altered unilaterally by kings. This alone made it necessary

<sup>5</sup> Vitoria's *Relectio de postestate civili* (1528) had to deal both with arguments on behalf of the commonwealth and 'the people', some of which (paraphrased from the *Comunero* Revolt of 1520–1; cf. p. 19, fn. 42, on 1.8, s. 11) even asserted that only popular government is compatible with natural and Christian liberty, and arguments in favour of the naturalness and divine authority of monarchy. His reconciliation (p. 16) was that 'the power of the sovereign clearly comes immediately from God himself, even though kings are created by the commonwealth. In other words, the commonwealth does not transfer its *potestas*, but simply its own *auctoritas*' (p. 16), whatever that may mean.

<sup>6</sup> Bellarmine's *De officio Principis Christiani*, Scribani's *Politicus christianus*, and Ribadeneira's *Principes Christianus* do not even allude to it.

<sup>7</sup> Bodin, *Six Livres de la Republique*, bk 11, ch. 3. English exponents of Bodin such as Filmer and Charles Merbury simply echoed his sentiments, and (in the latter case) the term as well.

<sup>8</sup> The same authors, pamphlets, and motifs were also employed in the Dutch Revolt; van Gelderen, *The Political Thought of the Dutch Revolt*, ch. 4.



to postulate for them some author other than the *princeps legibus solutus*. Indeed, legitimate kings owed their office to such laws. They included the laws governing the succession, and it took a bold man not averse to eliciting a predictably hostile response (such as Hobbes) to assert that a king was entitled to alter the succession. Again, even Bodin denied that kings had the right to introduce new taxes without consent. Nor were kings entitled to alienate the royal domain, for they were merely its usufructuaries and administrators. These 'fundamental laws' were positive, municipal laws (the 'ancient laws' of England or France, say) and not natural or divine laws. And since on the Jesuits' view, all laws must have an author, only the *respublica* or 'the people' *could* be their author.

The synthesising interpretation of secular authority *as such* as immediately from God, but of any particular regime as authorised by the commonwealth, here came into its own. It required no abatement of monarchical enthusiasms; it did not subvert any government with even the most modest claims to legitimacy; it demanded no suspension of disbelief in the face of the realities of the world or history; and it could accommodate most current ways of speaking and thinking, such as *salus populi*, interest, reason of state, covenant, fundamental law, and the *vinculum iuris*.

#### THE DERIVATION OF *POTESTAS POLITICA*

The distinction and its implications are most clearly exhibited in Molina's *De iustitia et iure*, in the context of his account of 'the origin of lay and civil *potestas*'.<sup>9</sup> That 'origin' (i.e. reason why such a thing rightly exists) was the continuing and inescapable need of sinful humanity for mutual aid, peace, security, and justice. Providing these was also the 'end' of political *potestas*; and so its 'end' and its 'origin' are one and the same. Civil authority and the *perfecta respublica* therefore come into existence simultaneously, *ex natura rei* (p. 105). Only Adam and Eve before the Fall did not need civil authority (p. 104C–D).

But Molina thought that this argument demonstrated only that *potestas* is naturally and divinely located in the *respublica* as a whole, in the 'whole body' (disp. xxiii, p. 106C). The question which therefore arose for him, as for scholastics generally, was how to account for the legitimacy of particular regimes, and for the authority of those who held political office in them (p. 106A). Molina answered in the conventional Thomist manner that

<sup>9</sup> Tract. II, disp. xii; for *ortus*, see chapter title, also pp. 101C, 105, 107B; for the context, see pp. 208–14 above.

legitimate princes and regimes (*regimina iusta*) have their authority ‘conceded’<sup>10</sup> to them by some act or decision (*arbitrium*) of the commonwealth. He also spoke of ‘the people’ (*populus*) or the *respublica* ‘choosing’ rulers or forms of government, making their own decision about it (*eligerunt; pro arbitratu Respublica sibi elegerit*, disp. xxiv, p. 114C), and of the *ortus* of any civil government as an ‘institution’, ‘creation’ or ‘establishment’. As was usual in such accounts, he did not normally distinguish between establishing an office, and conferring an established office on some individual or group,<sup>11</sup> although he implied the distinction in passing (p. 107A: ‘praescripta . . . eligendi forma’), and it was presupposed by laws of succession in monarchies.

Molina, furthermore, followed Vitoria in referring to unspecified ‘men’ (*homines*) ‘uniting themselves’ or ‘coming together’, ‘coalescing out of various parts’ into a commonwealth (*adunatio, ad integrandum in unum reipublicae corpus conveniunt*, pp. 105A, 106A). Here he seemed to be attempting to explain not the institution of regimes for already existing civil societies, but rather the establishment of civil societies in the first place. But he had no reason to pursue the matter because, like Vitoria and Soto, he explicitly denied that the source of political authority was to be found in pre-civil individuals or groups.<sup>12</sup> He had even less reason to concern himself with any *un-social* human condition temporally or logically prior to civil society (like Hobbes’s ‘condition of mere nature’), because ‘the nature of things’ and ‘nature itself’ impel all mankind to sociability (p. 105A).

In Molina’s and the other accounts that we have considered in the previous chapter, *potestas politica* and its legitimation are time-less, so to say, or at least are located in soteriological time only. Crucially, however, any *specific* regime (and *a fortiori* dynasty) had to have a starting-point in historical time. Regimes could be instituted in various ways (‘regia potestas multis modis *institui* potest’ (pp. 107A–B, 115A–B)). But there must be *some* such ‘institution’, and Molina spoke of it in the past tense; for example, laws of succession *were* established to regulate the succession ‘in futuris’ (p. 115A–B). So far from treating ‘concession’ or ‘delegation’ of authority as merely theoretical constructs, he asserted that the extent of any prince’s *potestas* depended on the decision of the commonwealth ‘at the first creation of

<sup>10</sup> *Concedere*: to make over something to someone in some way. This was Molina’s usual term, e.g. pp. 107A–C, 108A–B.

<sup>11</sup> ‘Lumen ipsius naturae docet, in republicae arbitrium esse positum, committere alicui, vel alicuius, regimen et potestatem supra se ipsam, prout voluerit, expedireque iudicaverit’ (p. 106D). Note the use of subjunctive, conditional past tenses to refer to the transfer.

<sup>12</sup> See above, pp. 206–7.

the kingdom' (*prout a republica in prima regni creatione fuerit constitutum*, p. 107B). The terms and conditions of the initial instituting act are to be inferred (*conjiendum est*, p. 107C) from custom and practice. This would make evident, for example, 'whether the people, at the first creation of the kingly authority, conceded the power of making laws to kings on condition that they had the approbation of the people, or not' (p. 107D). Again implying some historical instituting act, Molina also asserted that once the commonwealth had instituted a monarchical regime, it could not unilaterally diminish the scope of the rights of kings subsequently, although it might extend and increase it (p. 107C). But a king could not unilaterally increase his *potestas* beyond its original limits either (pp. 107C, 108B). In doubtful cases the presumption must be that princes had illegitimately extended the *potestas* originally granted to them, rather than that 'the people' or 'the subjects' had voluntarily surrendered more of their authority to princes than was necessary (p. 107D). Furthermore, in conceding its authority the commonwealth must be deemed to have retained certain rights, and if the concession for some reason lapsed (presumably with the expiry of a dynasty or the collapse of a regime), the *potestas* reverted to the commonwealth. It always remained 'as it were *habituale* in the commonwealth' (disp. xxiv, p. 115A–B).<sup>13</sup> It was not in the least Molina's or any other Jesuit's intention to make the tenure of princes and regimes precarious. All the same, the constitutive act which any legitimate regime presupposed seemed to imply that any individual's tenure of political office was conditional on observing the legal and institutional *limits* stipulated in the original constitution.

Molina, however, also followed Vitoria in arguing that the *respublica*, or the 'people', is *moraliter* (that is, in practice) incapable of exercising its God-given authority, and therefore *needs* (again *moraliter*) to transfer it to someone who is.<sup>14</sup> Neither he nor anyone else seems to have felt any need to explain why an as yet formless commonwealth was capable of the complex 'act' of instituting a regime, and yet was incapable of other authoritative acts of legislating and governing. The idea of 'the people' as naturally anarchic

<sup>13</sup> This qualifies Tuck's claim that Molina allowed the 'complete subordination of individuals . . . to a sovereign'; *Natural Rights Theories*, p. 63.

<sup>14</sup> Disp. xxiii, p. 106C: 'Quoniam verum respublica secundum se totam exercere non potest potestatem hanc in suas partes, esset enim operosum, moraliterque impossibile, ad singulos huius potestatis actus exigere, expectareque consensum singulorum de republica, difficile re admodum tanta hominum multitudo in idem placitum convenirent'; same point in disp. xxvi, p. 114A. This was common ground: cf. Bellarmine, *De laicis*, ch. vi (p. 317): 'respublica non potest per seipsam exercere hanc potestatem', and Suárez, cited below. For Vitoria, see Vitoria, *Political Writings*, ed. Pagden and Lawrance, p. 14, n. 32: the commonwealth 'cannot itself frame laws, propose policies, judge disputes, punish transgressors . . . and so it must necessarily entrust all this business to a single man' (qu. 1.5, s. 8).

and chaotic in its acephalous state no doubt explained the latter, but it is difficult to see why it did not also rule out the former. At any rate, the political incapacity of the people collectively ruled out any idea that they could replace rulers or regimes at will.

The source of the authority of particular regimes and rulers, then, had to be located in an ostensibly historical past. This did not square with the cynical conventional wisdom (to which we referred earlier) about the origin of regimes ordinarily being conquest, violence or usurpation, or patriarchy. There was also never any conclusive documentation of the 'first creation'. But the constitutive act, or succession of acts, could not be treated as merely a hypothesis either, for that would be to abandon the legitimacy and sanction derivable only from a (putatively) real, not hypothetical past.<sup>15</sup> The intentions and arrangements of the act's authors could of course be inferred, and were regularly inferred, from custom and practice and the law as it stood, and from 'documents' whose authority was acknowledged by kings themselves, notably coronation oaths, pacifications, capitulations, *joyeuses entrées*, charters, etc. But all these, like historical documentation, were vulnerable to conflicting interpretations.

Jesuits and their intended audiences no doubt venerated antiquity *per se*, thought old laws were likely to be good laws, and were not pedantic about anachronism. All the same, they certainly did not regard antiquity as by itself the ultimate legitimation for institutions, customs, or laws. For it was always possible to ask what made any past act authoritative, including the past act of instituting a commonwealth or a law, and for any custom there must have been a time when it was not a custom. The infinite regress that would open up here by referring to a still older past could only be stopped by taking the issue out of time altogether, or by selecting some privileged past moment as the *terminus a quo* of authority. Usually both strategies were adopted simultaneously: the privileged time of authorisation was the point in time at which a particular polity participated most directly in what was inherently and always authoritative. So for example, if what made the originating act authoritative was that it exhibited wisdom, virtue, or prudence, the privileged time of authorisation was when wisdom, virtue, or prudence was at its high point. Thus all the Huguenot and Ligue productions conflated legitimations from first principles with their supposed historical adoption or discovery, thanks to the postulated 'wisdom of our ancestors'.<sup>16</sup>

<sup>15</sup> M. P. Thompson has shown that even for Locke, the historicity of the original contract was still an important consideration; see 'Significant Silences in Locke's *Two Treatises*'.

<sup>16</sup> E.g. the *Vindiciae Contra Tyrannos*, the *Tocsin*, the *Discours Politique*, and especially Hotman's *Franco-Gallia*, on which see Skinner, *Foundations*, II, pp. 324–38.

## CONTRACTS AND STATES OF NATURE

The idea of a historical originating act presupposes a state of affairs preceding the act, and students schooled in contractarian accounts of political authority from Hobbes to Rawls are bound to regard the features of that 'original condition' as decisive for establishing the terms and conditions of the originating act. But neither Molina nor his scholastic predecessors ever depicted that state or even gave it a name,<sup>17</sup> and most Jesuits never mentioned any pre-civil condition. And no one at that time, scholastic or humanist, thought that 'state of nature' was the appropriate concept for the pre-governmental (or in some cases pre-contractual) condition.<sup>18</sup> The hypothesis of men *in puris naturalibus*, the *status legis naturae*, or even a *status naturae* or *conditio naturae/naturalis* hardly ever occurred in this context, and did not function like Hobbes's or Locke's 'state of nature' when it did, as we shall see. Commentators have supposed, groundlessly, that the pre-governmental condition was considered to be 'natural' as opposed to 'civil', whereas it was invariably thought of as a social and in some sense civil condition, when it was thought of at all. This anachronism has seduced commentators into another: the groundless supposition that the pre-governmental condition was regarded as a hypothesis. But its hypothetical character was still equivocal (to put it no stronger) even in Locke.<sup>19</sup>

By the time the Jesuits were writing, moreover, 'mediate' authorisation was often equated with authorisation via some agreement, covenant, compact, etc., especially by Huguenot polemicists – the Ligue rarely used contractual vocabulary.<sup>20</sup> The only purpose in using such a vocabulary to describe the relationship between rulers and ruled was to emphasise that the

<sup>17</sup> Thus, correctly, Lewy, *Constitutionalism and Statecraft*, p. 38: 'The subject of the condition of mankind before the existence of civil society was barely mentioned by the scholastics.' 'Before' should perhaps be 'independently of'. He might have added that Huguenots never said much about it either, *pace* Skinner.

<sup>18</sup> *Pace* Salmon's otherwise admirable account: 'Catholic Resistance Theory', pp. 224–5, 227, 240; but see his quite correct qualifying comments, pp. 227–8, 237, and Quentin Skinner (*Foundations*, II, esp. pp. 158ff) and his interpretation of the meaning of *status naturae* in Molina. The difficulty in Skinner's attributing to the 'Thomists' a concept which they in most cases never used, is of course how one identifies concepts as being the same, or equivalent.

<sup>19</sup> Locke's account of the 'state of nature' is indeed unhistorical and jural (Dunn, *The Political Theory of John Locke*, pp. 101–2), but his claim that 'government is everywhere antecedent to records' must be intended to explain the absence of *historical* evidence. Dunn also exaggerates the unambiguity of Locke's concept of 'origins'. His account of Filmer as a kind of Colonel Blimp is a parody.

<sup>20</sup> Compare the anonymous *Articles pour proposer aux estatz et faire passer en loy fondamentale du Royaume*, 1588, and *Dialogue d'entre le Mabeustre e le Manant*, 1594, with *Dialogue du Royaume*, 1589, where *mutuel devoir* (e.g. p. 126) is used interchangeably for *traitez et conditions* (e.g. pp. 93, 95).

tenure of kings and magistrates was conditional.<sup>21</sup> What usually happened was a conceptual short-circuit<sup>22</sup> from the general idea of the ruler-ruled relationship as *mutua obligatio* to the particular kind of *mutua obligatio* that results from a pact, covenant etc.<sup>23</sup> Logically, of course, a relationship of mutual obligation need not be a contractual one: for example the relationship between parents and children, priests and their parishioners, or a pope and the Church.

Contractual elements and metaphors did not feature in most Jesuit accounts of political *potestas*. Its nature and limits could be explicated without them. Molina nowhere described the act(s) which instituted a regime, or the installation of a particular incumbent in the kingly office, as a contract. Gabriel Vazquez explicitly rejected the claim (of authors he did not name) that the obligation of rulers to obey their own laws 'could have no other source except the ancient convention made between princes and the kingdom (*ex conventione antiqua principum facta cum regno; ex conventione et contractu*)' (s. 4). He replied that 'there is no way of proving what these authors assert to be universally true, namely that kings and princes could not be bound to obey their own laws for any other reason. They would be bound by some laws without any such "conventio"' (ch. 2, ss. 1, 11). Moreover, no genuine king is to be found who is liable to lawful punishment, which suggests that no such *pactio* ever occurred (s. 14).<sup>24</sup>

In sum, mediate authorisation did not entail a contractual account of the authorisation of governments; contractual accounts did not entail any concept of a state of nature; and states of nature did not feature in this context at all. Persons freely deployed contractual metaphors, but said nothing about any pre-contractual condition, let alone any 'state of nature'. Mariana did say a great deal about the pre-civil condition, but did not use any contractual vocabulary. And Suárez, who made contract central to his account of legitimate authority, and even of civil society, and who had various highly developed concepts of 'states of nature', did not bring 'state of nature' and 'contract' together.

<sup>21</sup> Hobbes recalled this, presumably inadvertently, in his remark: 'The opinion that any Monarch receiveth his Power by Covenant, that is to say on Condition . . .' (*Leviathan*, ch. xviii, p. 123).

<sup>22</sup> For this short-circuit, see for example George Buchanan's *De iure regni apud Scotos* and Jean Boucher's *De iusta reipublicae Christianae . . . auctoritate*, cited Salmon, 'Catholic Resistance Theory', pp. 227–8: in each case the solitary reference to *pactio mutua* occurs immediately after the more usual *mutua obligatio*; Boucher's use of *pactio* (like Persons's) may have been prompted by the fact that he was speaking of coronation oaths, sometimes read as a mystical marriage (and *ergo* a contract) between king and kingdom.

<sup>23</sup> Thus Calvin, *Institutio*, iv.20.29, has *mutuae vices, mutua officia*, but no mention of any contract.

<sup>24</sup> Vazquez, *Commentarii et Disputationes in Primam Secundae S. Thomae*, 1606, vol. II, disp. CLXVII, ch. 1. Suárez had already referred to *pactum vel conventio*, etc. in his 1601 lectures (CHP, vol. xv, pp. 289, 298).

## ROBERT PERSONS'S 'AGREEMENT AND CONVENTION'

No late sixteenth-century English polemical piece created a stir comparable to Persons's *Conference*; it was still thought worth republishing in 1679, and Locke had a copy. Persons was conversant with the *Publizistik* of the Huguenots and at least some of the Ligueurs<sup>25</sup> and was closely involved in both the French religious wars and the disputes about Henri of Navarre's succession, which at the time of writing the *Conference*<sup>26</sup> were still unresolved (I, pp. 36, 239). With the *Conference*, he was stirring the waters of English polemic subsequent to the defeat of the Invincible Armada, and therefore of his hopes for a Catholic restoration in England by force of arms. His argument was that once the direct line from Henry VII expired with the already old and ailing Elizabeth, there would be nine or ten, perhaps a dozen claimants with an equally good or equally dubious title to the English crown. Persons was urging that, since the law was now in effect incapable of settling the question of the succession,<sup>27</sup> it would be not only irreligious but also wildly imprudent and contrary to all 'pollicy' and 'reason of state' for the various factions in England to back any claimant except one of their own religion (I, pp. 217–18, 219). Under the circumstances, English political divisions were his best hope for the political future of English Catholicism.

He did not need a contractual theory, or any theory at all, for his more narrowly polemical argument. His case depended on reason of state, and on claims about the 'particular constitution' (p. 14) of 'England' (*sic*), the 'particular lawes prescribed . . . by the commonwealth [regarding a king's] government, authority and succession' (p. 28), and the practice and custom immemorially observed in England in relation to the succession.<sup>28</sup> His slightly earlier *Newes from Spayne and Holland* (1593)<sup>29</sup> had indeed discussed 'English affaires' exclusively in terms of 'pollicy and reason' (p. 27<sup>r</sup>), 'considerations of state' (p. 21<sup>v</sup>), the English laws of succession and the genealogy of claimants to the throne. However, the *Conference* was a much more ambitious work. Unlike the *Newes*, it firmly set both its exegesis of English law and genealogy (which occupied part II) and considerations

<sup>25</sup> His *Treatise tending to Mitigation* (1607) cited Buchanan's *De iure regni apud Scotos*, Bèze's *Du Droit des magistrats*, the *Vindiciae* (attributed to Bèze), Knox, Goodman, etc., many Catholic polemicists (including his own writings), and Jesuit and other 'school-devines' by the handful. His familiarity with 'Rossaeus', *De justa reipublicae Christianae autoritate* has already been mentioned.

<sup>26</sup> The 'Epistle dedicatorie' is from 'Amsterdame this last of December, 1593'; 'Amsterdame' is spurious. All references below are to part I except where indicated.

<sup>27</sup> Not that 'the titles at this day of al the princes in Christendome' were any more unambiguous; *Conference*, I, p. 34.

<sup>28</sup> The 'ground of our common lawes consisteth principally and almost only, about this point of the crowne, in custome' (*Conference*, II, p. 93).

<sup>29</sup> See pp. 124–5 above.

of reason of state in the context of theoretical principles. Of its two relatively self-contained but mutually reinforcing parts,<sup>30</sup> part I, which Persons obliquely (Preface, pp. B4<sup>v</sup>, B5<sup>v</sup>) identified as having much greater importance, is an argument from first principles: 'the very first ende and purpose of institution of common wealthes, and magistrates' (p. 2).

The *Conference* avoided giving needless offence to the exclusively English and predominantly Protestant audience it envisaged.<sup>31</sup> It was therefore resolutely non-denominational in the authorities it cited: Roman law, Greek and Roman philosophers (especially Aristotle's 'Pollitiques', said 'perhaps' to excel both Plato and Cicero, the latter also much cited), historians, Scripture, the experience and practice of all nations including the New World, Africa, and Asia, and commentators on the municipal laws of many European countries, especially France and Spain. By a curious irony, the Jesuit Persons reproduced the scholastic account of political authority without citing a single scholastic, whereas the very similar account of the Anglican Richard Hooker in his *Laws of Ecclesiastical Polity* (part of it published in the same year) cited the 'schoolmen' at every turn.<sup>32</sup>

According to Persons, then, government, authority, and magistracy as such are natural, that is, required by human nature (part I, ch. 1), and therefore also approved by God (p. 18). But God has not authorised any particular form or 'fassion' of government, still less any individual ruler or dynasty. Otherwise all polities now in the world would be illegitimate, for all had undergone revolutions and alterations of forms at some time (pp. 31, 34–5). Rather, 'it is left unto every nation or countrey to chuse that forme of government which they like best' (p. 9); 'nation or countrey' soon becomes 'commonwealth' (p. 12). And the commonwealth is also free 'to change [the form of government] uppon reasonable causes', and to 'limit government with what lawes and conditions she pleases' (p. 13).

Kingship is the most perfect form of government (p. 21). But 'a king is a man as others be', and therefore it is necessary to assign laws and councils, like the Parliament in England and France, etc.,

<sup>30</sup> Part I concludes with 'Finis' and an elegant emblem; part II has its own (unpaginated) Preface, and then begins again at p. 1, concluding with another 'Finis', but without an emblem; the type-face seems to be the same for both parts.

<sup>31</sup> His Latin version of part of it was never published (P. Holmes, *Resistance and Compromise*, pp. 152ff). He referred at length to Common Law, but avoided all derogatory comments; compare *An Answer to the Fifth Parte of Reportes* (= ERL 245), 1606, pp. 11–14, and his *Memoriall*, cited in Clancy, *Papist Pamphleteers*, p. 114.

<sup>32</sup> Mystifyingly, no Jesuit ever cited even Hooker's brilliant anti-Puritan *Preface* to his *Laws*, although his patrons Whitgift and Bancroft were cited frequently and with relish; Contzen also cited Hooker's disciple Saravia.



all to temper somewhat the absolut forme of Monarchy, whose danger is by reason of his sole authority, to fal into tyranny, as Aristotle wisely noteth . . . : which is the cause that we have few or no simple monarchies now in the world, especially among Christians, but al are mixt lightly with divers pointes of the other two formes of goverment also . . . , al which limitations of the Princes absolute authority, as you see, do come from the commonwealth, as having authority above their Princes for their restraint to the good of the realme (pp. 25ff).

Commonwealths, moreover, retain the authority not only to prevent undesirables from succeeding (p. 32), but also to dispossess actual incumbents, and to change the form of government, as is proved by practice, and by God's (presumed) concurrence with what was done (pp. 32–6). Persons produced Israelite and Roman examples as evidence of the lawfulness of chastising kings, before referring to the famous deposition of the French King Childeric by Pope Zacharias, at the request of the nobility and clergy of France (ch. 3), and of various other French kings by the Estates. He also used numerous Spanish and English examples of depositions which had figured in the *Droit des magistrats*, the *Vindiciae*, the *Franco-Gallia* and the *De legitima reipublicae christianae auctoritate*. He curtly dismissed the unwelcome implications of the head–body analogy for the consequences of removing heads: 'seeing that a body civil may have divers heades, by succession, and is not bound ever to one, as a body natural is'. The body politic may 'cure and cut off' its head without destroying itself (pp. 38, 72).

Persons had, however, to meet a threat to his argument from the French Divine Right of Kings theorist Pierre Belloy,<sup>33</sup> an early Catholic recruit to that doctrine which was now employed in the cause of Henri of Navarre's succession. Belloy asserted that there was a 'natural' successor to any throne, and that his 'natural' subjects' duty was to obey their 'natural prince'; they therefore had no right to choose who should rule them, or to impose terms or conditions on him. Persons treated the whole argument as 'abject' flattery of princes (pp. 35, 66), but also as absurd (pp. 12–14, and ch. vi). Nature makes no man a king (pp. 14, 36). Persons found particularly helpful one egregious passage where Belloy insisted on the 'natural' successor's right to the throne even if he was an imbecile, a monster of depravity, or was known to seek the destruction of the commonwealth (pp. 122–3), and another which made the subjects' property dependent on the prince's grace and favour (pp. 67–8). But even if Belloy's argument were theoretically

<sup>33</sup> Or else William Rainold's discussion of Belloy in his pseud. 'G. Guilelmo Rossaeus', *De iusta reipublicae Christianae auctoritate*, (1590, republ. 1592), a work in which Persons may well also have had a hand.

impeccable, it would still be irrelevant to the English situation, where the 'natural heir' was unknown.

Belloy himself, 'and some other of his opinion', had acknowledged (presumably on the *lex regia* model) that 'albeit by nature the common wealth have authority over the Prince, to chuse and appoynt him, at the beginning . . . , yet having once made him, and given up al their authority unto him, he is now no more subject to ther correction, or restraynt, but remayneth absolute of himselfe without respect of any but only to God alone'.<sup>34</sup> Persons countered by asserting, first, that this would be against the 'very institution of a commonwealth', its 'end and butte, and [that] of al royal authority' which is justice (p. 66), or more precisely justice, piety, or care of religion, and 'chivalry', that is, defence and security (p. 203). Second: 'al Princes living in Christianity at this day', whose succession derives from persons installed by commonwealths in place of previous, bad rulers, would be 'intruders and no lawful princes'. And third, the idea that subjects are merely usufructuaries of their private property, for 'al temporalities are properly the Princes', is against the 'very first principle and foundation of our civil law' (p. 67, citing *Institutes*, II, tit. 2) as well as canon law and the practice of the kings of England, France, and Spain, for example with respect to the voting of taxes (p. 69, misnumbered as 66). Such an interpretation of the property of subjects destroys the distinction between the subject of a king and a slave, or even an ox or ass (p. 68). In sum, 'all law both natural, national, and positive, doth teach us, that Princes are subject to law and order, and that the commonwealth which gave them ther authority for the common good of al, may also restrayne and take the same away agayne, if they abuse it to the common evel' (p. 72).

The power and authority which the Prince hath from the common wealth is in very truth not absolute, but *potestas vicaria or deligata* [*sic*], as we Civilians [sc. Roman lawyers] cal it, that is to say, a power delegate, or power by comission from the commonwealth, which is given with such restrictions, cautels, and conditions, yea with such playne exceptions, promises, and othes [oaths] of both parties (I mean betwene the king and common wealth at the day of his admission or coronation), as if the same be not kept, but wilfully broken on either part, then is the other not bounde to observe his promise either. (p. 73)

At this point, Persons slipped into contractual vocabulary: 'For that in al bargaines, agreements and contracts, wher one parte is bound mutually and reciprocally to the other, by oath, vow, or condition, there, if one side go from his promise, the other standeth not obliged to performe his' (p. 73),

<sup>34</sup> Cited *Conference*, p. 64, marg.: *Apologie Catholique*, pt 2, paragraph 9, and *Apologia pro rege*, ch. 9

as is evident from 'al law both of nature and nations' (pp. 73–4). But what was crucial for him was not the contractual character of kingship, but the conditionality of the tenure of the kingly office, and he quickly reverted to princely 'oaths and promisses, which they made at their first entrance, that they would rule and governe justly' (pp. 75–7). Coronation oaths (I, ch. 5) were the most striking evidence that 'not nature, but the election and consent of the people had made their first Princes from the beginning of the world' (p. 82). And 'in all good and wel ordered commonwealthes, where matters pass by reason, conscience, wisdom and consultation, and especially since Christian religion hath prevailed . . . , this point of mutual and reciprocal othes between Princes and Subjects, at the day of their coronation and admission . . . have [*sic*] bin much more established, made clear and put in ure [*sic*]' (pp. 83–4). Since coronation oaths closely resembled a contract or pact, they once again suggested the contract metaphor to Persons: 'And this forme of agreement and convention, between the common wealth and their Christian head or king, hath bin reduced to a more sacred and religious kind of union and concorde . . . , the astipulation and promises made on both sides . . . ' (p. 84). From the practice and forms observed in coronations throughout Europe (pp. 86–119), 'it is most evident . . . that this agreement, bargayne and contract between the king and his commonwealth, at his first admission, is as certayne and firme . . . as any contract or [*sic*: of?] marriage in this world can be, when it is solemnized' (p. 119).

Persons subsequently mentioned contract only once more, in passing (p. 217). In sum, although he used contractual vocabulary at several points, much more often he confined himself to terms connoting no more than *mutua obligatio*. The sole advantage of the contractual metaphor for his argument was that it suggested that non-performance on the one side freed the other side from its obligations, which is not the case with all relationships of mutual obligation. Apart from that, the metaphor intimated no new lines of thought, except the unwelcome one that a contract etc. postulates the equality of the contractors, whereas Persons's point was precisely the *inferiority* of princes *vis-à-vis* commonwealths.

Given the Jesuits' habitual privileging of the 'judge of controversies' *topos*, it could, however, hardly escape Persons's attention that his interpretation of princely authority as conditional raised the question of the appropriate arbitrator or judge in disputes about whether the conditions had been respected (p. 199). His answer was that the commonwealth is itself the judge, and he persistently attributed past exclusions of kings, dynastic changes, etc., to the respective commonwealths, nations or peoples (e.g. p. 81). *Philopater* had envisaged the Pope as a possible arbiter of such controversies, albeit with no

great conviction, but Persons eschewed any such reference in the published version of the *Conference*.<sup>35</sup> But as regards the succession in France or England, the decision which claimant to support must, according to Persons, be made by each 'particular man' (pp. 201, 216). He based this claim on a general principle which seems never to have been used by any other Catholic *in this context*, namely the inviolable duty of each *individual* to follow his or her own conscience, even if that conscience is an erroneous one. The first end of the commonwealth, and the first duty of any Christian, is to uphold the worship of God (pp. 202–9). And only the individual's conscience can judge which religion the state should uphold (pp. 217–19). Individuals are as duty-bound to resist the succession of someone they consider a heretic or infidel, as that of an enemy of the commonwealth, or an incompetent, regardless of the laws of succession (pp. 214–16). Since the argument was explicitly in terms of the claims of the individual conscience, irrespective of whether it was rightly informed or erring (p. 214), it would equally be the duty of *Protestants* to resist the succession of any *Catholic* claimant. Persons seemed unconcerned that this doctrine, if carried to its logical conclusion, made political allegiance a matter of *individual* choice. Ordinarily individuals had no right to an independent judgement about successions (pp. 33–4), or to query settled titles and authorities (p. 81). But even here Persons added the proviso: provided the wrongfulness of a succession or of some act of the prince was not unambiguously clear (pp. 199–200). He did not say who was to judge. For England the outcome, which Persons's interlocutor predicted with every show of aversion, would inevitably be some form of armed conflict, which would eventually be resolved by some composition or agreement (II, pp. 257–9, 261).

What Persons (like every other user of contractual metaphors) had in mind was therefore plainly not some agreement between un- or pre-civil individuals or groups first contemplating associating in a commonwealth, but simply the terms on which factions in an existing commonwealth<sup>36</sup> could be reconciled. Despite his frequent references to the 'origin' or 'beginning', or 'very beginning', or 'first age' of commonwealths, and to the 'instituting' etc. of monarchies and other forms of regime, he had no need to investigate any 'pre-covenant' condition, since the terms on which the only

<sup>35</sup> The Latin translation of the *Conference* also cast the Pope in this role; Holmes, *Resistance and Compromise*, pp. 153–4.

<sup>36</sup> Contractarians could therefore persistently and illogically refer to contracts between 'kingdoms' (or 'the people') and 'kings'. Persons, *Conference*, recognised the point in passing: e.g. pp. 76, 82, 119, where it is kings 'at their first admission', p. 212, or the 'heir apparent' that takes the oath. See my 'Fundamental Laws and the Constitution' in Schnur, *Die Rolle der Juristen*.

'contractors' that concerned him would settle were all sufficiently known. He alluded to such a condition only once, in a conjecture closely paralleling Molina's: 'It is not likely that any people would ever yeald to put their lives, goodes, and liberties in the handes of another, without some promise and assurance of justice and equity' (p. 82).

#### MARIANA'S 'BEGINNINGS' OF CIVIL SOCIETY

Mariana's *On Kings and their Education*<sup>37</sup> was famous, or notorious, throughout Europe; if the second (Mainz, 1605) edition was unauthorised (which is unlikely, since it was expurgated at one crucial point), this is merely further evidence of the interest it aroused.<sup>38</sup> The features of Mariana's account that warrant our attention here are that he discoursed at much greater length than any Jesuit before him on the pre-civil condition and that he did not leave obscure how the commonwealth could *act* to vindicate its rights and how the supremacy of its laws might be vindicated: his attitude to tyrannicide will be considered in chapter 14.

Mariana's account of the pre-civil condition appeared in the very first chapter of the book, ostensibly devoted to demonstrating that 'man is by nature a social animal'. He began with the assertion that 'in the beginning, men wandered about solitary (*solivagi*), without any settled habitation, in the manner of wild beasts',<sup>39</sup> their sole concerns being to sustain life and to procreate and bring up children (bk I, ch. 1, pp. 12–13). They lived in families and acknowledged no laws and no superior, but even so 'each family was prompted by natural instinct and impulse to yield greatest honour' to the old (p. 13). Strictly speaking, they were therefore neither *solivagi*, nor did they live in the manner of wild beasts. With the (unexplained) growth of population, the descendants acquired something like the character of a people, albeit crude and formless, with families dispersing after the death

<sup>37</sup> *De rege et regis institutione*; all references are to the 1605 edition, cited by book, chapter, and page. *Institutio* may be a deliberate play on words: education, but also institution, as with Calvin's *Institutio*; see my *The Christian Polity of John Calvin*, p. 20.

<sup>38</sup> The *De rege* was in a consciously difficult and elegant Latin, even though it was commissioned for the future Philip III by Philip II, for both of whom Mariana's masterly Spanish would have been more accessible.

<sup>39</sup> 'Solivagi initio homines incertis sedibus ferarum ritu pererrabant'. Bellarmine (*De laicis*, ch. 5, p. 317) attributed this view (rightly) to Cicero, *De inventione*, bk I and others. It had also been rejected by Vitoria, but was occasionally used for ornament, for example by Aeneas Sylvius Piccolomini, Mario Salamonio, and Andreas Alciato. I have been unable to determine whether Mariana was familiar with the sources cited in Brett, *Liberty, Right and Nature*, on the humanist ethnography of the *ius gentium primaevum/secundarium*, especially Johannes Boemus, cited pp. 170–1, 185, or the work of Fernando Vázquez, both of which Mariana's account resembles.

of the father or grandfather (curiously described as their 'governor', *rector*), to live in separate huts or hamlets (*mapalium*). How such a kaleidoscope resembles a 'people' is opaque.<sup>40</sup> At any rate, their condition was peaceful, and they had no grave anxieties. For they were content with the fruit of the trees, animal skins for covering, sleeping under leafy trees, and diverting themselves with rustic feasts, games with their equals, and familiar conversation; conversely there was at that time no deceit, lies, division into more and less powerful, no ambition, no difference in power, no clamour of war, and no 'rabid and raging greed to interfere with the benefits bestowed by God' (pp. 13–14). In effect, this was a Golden Age (although Mariana did not use the term), whose happiness would have rivalled that of the gods (p. 13).

But in an abrupt and unexplained change of direction, Mariana then dilated upon how nature has left human individuals uniquely ill-equipped, as compared to other animals, to provide the very necessities of life for themselves, let alone the conveniences. Men naturally desire 'society', and friendship, virtue, the good life, and humanity are impossible without it. He illustrated these points, rather like Lessius and the loaf of bread, with an extended disquisition on the interdependence of the various arts and crafts and occupations, including those of merchant and agriculturalist (pp. 14–15), all of which take time and association to perfect.

This 'adequately demonstrates' (p. 15) that human beings naturally need the help of others. But contrary to his Golden Age story, Mariana now dwelt on the threats to men not only from wild animals, which abounded before the earth was cultivated, but more importantly from other human beings. Robbery and slaughter flourished with impunity, and even blood-relations did not abstain from such outrages. Each individual in this condition of things relied greatly on his own strength, the way ferocious solitary animals do, living in fear of some and terrorising others (p. 16). Individuals, or perhaps some of them, now banded together in associations to invade their neighbours, pillaging and even killing them if they resisted: 'a wretched condition of things' (p. 16). But Mariana also represented the origin of *societas* in the less powerful associating to protect themselves from the more powerful who oppressed them, just as weaker animals congregate

<sup>40</sup> Ferraro, *Tradizione e ragione*, pp. 101–6. Skinner stresses the Stoic, naturalistic, and radical character of Mariana's account (*Foundations* II, pp. 345–7); for reasons given below, I cannot agree with some parts of his account. In his *Discours des grandes defeutes . . . en la forme de gouvernement des Jesuites*, p. 105, Mariana used the standard Aristotelian account of growth from families to villages to cities, and the concomitant change from *domestique* to *politique* government, which ought to be a *monarchie bien temperée* (p. 99), to argue that the same change ought to have accompanied the growth of the Society.

to protect themselves against lions, panthers, and bears (p. 16). He then reverted to the need for co-operation and mutual assistance, rather than protection (pp. 16–17). But this theme was not sustained either. He rapidly returned to the conception of the commonwealth and government as a device to repress the boundless malice (*exaggerata malitia*, p. 18) of men towards one another, and coerce them into civility and virtuous conduct by means of superiors, laws, and increasingly savage punishments, rather than as an association to protect itself from external and domestic oppressors. He then appropriated the conventional Aristotelian account, according to which laws are needed to protect subjects against their superiors (or kings, p. 18) rather than each other, as something learnt from experience after the introduction of government. Kings (pp. 18–19) had at first been chosen for their superior virtue and had been trusted to use their discretion.<sup>41</sup> But as their lust for power and glory and their propensity to tyrannical conduct grew (p. 19), laws were devised to constrain them. At this point Mariana made the first attempt to locate these events in some past more determinate than ‘beginnings’: both sacred and profane histories assure us that there had been many kings in small tracts of territory, before greed, the desire for glory and also revenge for injustices done to them, led them to conquer free peoples and to subjugate other kings and establish empires, as Ninus, Cyrus, Alexander, and Caesar did. ‘This was the beginning and such was the progress of royal *potestas*’ (p. 19). This dismissive comment prefaced Mariana’s discussion of the merits and defects of the monarchical form of government, which occupied the rest of chapter 2, and hereditary monarchy (ch. 3).

However, according to Mariana, there was no basis here for reproaching God or Nature for having left man in such a helpless condition. On the contrary, this helplessness and vulnerability of the individual was a providential design to drive man into sociability, civil society, and the friendship, virtue, and happiness that civil life alone makes possible (p. 17). He repeated the point in the introductory paragraph to chapter II (p. 18).<sup>42</sup>

<sup>41</sup> I.ii, p. 18: ‘Adiuncta est [i.e. to the establishment of *societas*] regia potestas quasi multitudinis custos, uno praelato de quo magna erat suscepta animis opinio probitatis et prudentiae. Quae nullo principali apparatu terrebat, nullis initio legibus septa erat.’

<sup>42</sup> ‘Sic ex multarum rerum indigentia, ex metu et conscientia fragilitatis, iura humanitatis (per quam homines sumus) et civilis societas, qua bene beateque vivitur, nata sunt’ (p. 16); ‘Ita ex imbecillitate societas inter homines divinum bonum, humanitas legesque sanctissimae natae sunt’ (p. 17); ‘Magnum ergo atque admirabilem rationem habent, quae praepostere constituta esse videbantur. Ex imbecillitate et indigentia hominum civilis societas nata est, qua nihil est neque usu salutaris, neque iucundius ad voluptatem’ (p. 18). Mariana’s iteration of this point does not square with Ferraro’s claim that it was merely a gesture in the direction of orthodoxy (*Tradizione e ragione*, p. 115).

Mariana's account of the pre-civil condition and the transition to civil societies and government seems to be simply a bricolage of various motifs and sources. Although commentators have not remarked the fact, it was in part a reworking of a passage in Machiavelli's *Discorsi* bk 1, ch. 2, which it echoes even verbally, but Mariana collated Machiavelli's story (which itself alluded to the passage from Cicero's *De inventione*) with some Golden Age myth from Virgil's *Georgics*,<sup>43</sup> and with an altogether different provenance for civil society in the helplessness and viciousness of humanity drawn from St Thomas's *De regimine principum*, itself an attempt to reconcile Augustine and Aristotle. Like Machiavelli's exercise in rhetorical historiography, Mariana's account was utterly insouciant about evidence about 'origins'. Despite the past-tense (usually imperfect indicative, sometimes subjunctive) formulation, Mariana seems to have given no thought to the historical location of this past. There is nothing to warrant Ferraro's description of it as a 'formally hypothetical thesis on the origin of human society' (p. 115). And it cannot be called a 'state of nature' hypothesis. His only label for the condition was 'beginning' (p. 12), and he did not describe it as 'natural', since it was in some obvious ways *not* natural for human beings, who attain humanity and its rights,<sup>44</sup> and thus their 'nature', only in 'civil society'. Nor did Mariana anywhere describe it as a condition in which men enjoy natural rights or natural liberty. Like humanists<sup>45</sup> generally, he did not think much could be learnt about civil society, justice, rights or freedom from any pre- or extra-civil laws or rights, since *humanitas* came only with *civitas*.

Yet the reason why Mariana needed *some* account of 'beginnings', even if not this one, is readily intelligible. His whole conception of legitimate government relied entirely on custom, antiquity, the ways of our ancestors, and the need to resist change and innovation. But there must have been a time when there were no customs and no venerated ancestors, and therefore Mariana had to hypothesise a 'beginning', when men were guided by something *other* than antiquity, custom, and resistance to change and innovation. Mariana's solution was shift from the authority of custom to the authority of the wisdom and prudence of our ancestors, at some privileged (but not further identified) 'beginning'. He may also have been using the Golden Age as a way of indicting current civil society for its inequality and tyranny, as Ferraro suggests (pp. 101–2), but it appears to have no relevance to men in civil society, and it played no part in the rest of Mariana's

<sup>43</sup> Identification of the lines quoted by Mariana (p. 13) by Ferrara, p. 102, fn. 31.

<sup>44</sup> 'Iura humanitatis (per quam homines sumus) et civilis societas, qua bene beateque vivitur' (p. 16). 'Iura humanitatis' might mean rights or laws.

<sup>45</sup> Tuck, *Natural Rights Theories*, ch. 2, esp. p. 33.



account. He did contrast the Golden Age with the multiplication of laws of increasing complexity, and the consequent opportunities for contention and pettifoggery, 'so that our laws have become no less burdensome to us than our vices' (p. 19). This was also his recurrent complaint about the government of his own Order.<sup>46</sup> But it hardly needed the myth of a Golden Age to sustain a hostility to the multiplication of laws or lawyers.

Furthermore, although he gave a much fuller account of some pre-civil condition than anyone else (which is not saying much), the logic of his argument was not that of later explanations of authority based on a state of nature and/or covenant. There is only one place where Mariana may have drawn an inference about the limits to civil authority from the pre-civil condition. He says that the authority of rulers derives from citizens, and it is not likely that all the citizens would have despoiled themselves voluntarily of their authority, and transferred it to another unconditionally. This would have been imprudent and unnecessary (p. 71). But Mariana was merely restating Molina. It was the experience of civil society, and not the pre-civil state, which established the need for the moral and legal limitations on rulers.

Mariana only once described the emergence from the pre-civil condition by a term from the contract-family, namely *foedus* (p. 16). Those suffering or threatened by oppression by the more powerful 'began to bind themselves with each other by a *mutual treaty of association*, and to look to some particular individual outstanding for his justice and good faith'.<sup>47</sup> A subsequent reference to this initial act no longer even mentions a 'treaty', merely 'entry into *societas*' (p. 20).<sup>48</sup> This does not refer to the *solivagi* legend, since it is explicitly said to occur when men already belong to associations larger than the natural family (p. 16).<sup>49</sup> Furthermore, although this 'treaty' apparently establishes civil society as such, Mariana made no distinction between this act and the institution of a form of government. He claimed that it was likely that monarchy was the *original* form of government, and that other forms were devised later (p. 20). And like other scholastic, Jesuit, and Monarchomach thinkers, he represented *hereditary* monarchy as later than monarchy as such.<sup>50</sup> Given his characteristic disposition to equate

<sup>46</sup> Lewy, *Constitutionalism and Statecraft*, ch. viii.

<sup>47</sup> 'mutuo se cum aliis societatis foedere constringere . . . coeperunt' (my italics).

<sup>48</sup> 'uti antea dictum est, multitudinem initio ab iis oppressam qui maiores opes [wealth, or resources] habebant, *societate cum aliis inita*' (my italics). The earlier account (p. 16) had mentioned neither multitudes nor *opes*, only *potiores*.

<sup>49</sup> 'praesertim cum aliis inita societate' for purposes of aggression; *societas* here means an association of some kind.

<sup>50</sup> Thus the 'Gothic *imperium*' in Spain was originally elective (p. 29), as was Rome, and 'haereditariam successionem tempus invexit' (p. 29); in time, all monarchies have become hereditary (p. 30).

change with degeneration, he was bound to regard it with suspicion.<sup>51</sup> Like all innovations it proved dangerous, as Aristotle and experience showed (pp. 32–3), but it was not necessarily an abuse; what was important was that there should be fixed rules (p. 35) and that the commonwealth should retain the ultimate freedom to exclude or remove its rulers. And in one place, he made a curious remark, not I think to be found in the other discussions of monarchy.<sup>52</sup> He asserted that those originally instituting the commonwealth and government, whom he oddly describes as ‘the first men’ (*primi homines*), chose this form not merely on account of its familiarity (from households), but because being closer in time to the less degenerate first generations, they were in a better position to understand the true ‘nature of things’ (p. 20). Whatever exactly this meant, the fact that he produced this additional argument in favour of the kingly form of regime is clear evidence that he shared the monarchical predilections of both the Society and contemporaries generally.

His other arguments for monarchy (ch. 2, summarised at the beginning of ch. 3, pp. 27–8) were absolutely standard, and scholastic even in form, with considerations and authorities marshalled *pro et contra*. He repeatedly remarked on the strength of the arguments both for and against monarchy (e.g. p. 25). This cannot surprise us, in view of what he said about the likely abuses of kingship in both *On Kings* and his *Discourse on the Grave Defects in the Government of the Society of Jesus* which, *more Jesuitico*, systematically elided discussion of civil government and government of the Society. He wrote off the advocates of absolute monarchy as courtiers flattering princes (e.g. pp. 61,<sup>53</sup> 81). Of courts and courtiers he had – in best humanist fashion – nothing good to say, distinguishing them as ‘satellites’ from the respectable and necessary function of ‘counsellor’ (bk II.II). The conclusion, already anticipated in the title of the chapter on forms of government (bk I.2, p. 18), is that ‘it is better that one person should be at the head of the commonwealth rather than several’, where circumstances and the customs of the people permit it, but only if monarchy is moderate or limited.<sup>54</sup>

<sup>51</sup> E.g. bk I.ii, p. 24: ‘et est insitum natura, ut assuetis stare homines malint, nisi quae usus manifeste arguit, neque periculo vacabat patria instituta movere’; iii, p. 28: ‘Debet quidem vir prudens meminisse temporum et reipublicae in qua natus est, neque novarum rerum studio incitari . . . atque cogitare, vix imperia et respublicas nisi in peius mutari.’

<sup>52</sup> See above, pp. 37–42.

<sup>53</sup> ‘Sit Principi persuasum totius reipublicae maiorem, quam ipsius unius auctoritatem esse: neque pessimis hominibus credat diversum affirmantibus gratificandi studio: quae magna perniciēs est.’

<sup>54</sup> E.g. I.3, p. 23: ‘Constricto legibus principatu nihil est melius.’ With forms of government as in many other matters, what is intrinsically most excellent and elegant is not on that account universally suitable, given the varying customs and institutions (*instituta*) of different peoples (p. 25).

Mariana's princely tutee<sup>55</sup> was to learn from this the limits of his authority as well as his power (1.6, p. 61). The source (*ortus*) of the royal *potestas* is a grant or concession (*concedentibus*) from the superior authority of the commonwealth.<sup>56</sup> And no such grant is ever unconditional or irrevocable.<sup>57</sup> The laws established to restrain rulers subsequently became customs, and therefore ultimately rested on the authority of the commonwealth, the people, or the citizens.<sup>58</sup> As regards laws and institutions concerning religion, it is the customary authority of the Church that is relevant. Mariana declined to resolve the question whether the commonwealth has the *right* to surrender its power wholly and without exception to a prince; the point was immaterial,<sup>59</sup> since it would have been imprudent for the commonwealth to do so and rash for the prince to accept it: free men would emerge as slaves and princes as tyrants (p. 74). And he cautiously noted that even the pope's government was held 'by men of great erudition and prudence' to be subject to decisions of General Councils where matters of faith and morals are concerned (p. 74). For him, the government of the Society of Jesus by an absolute head, not subject to a general council like the other orders, was the gravest defect in that government, and a signal warning that men should follow the established ways and ancestral customs.<sup>60</sup>

This account faced the inescapable difficulty that in a monarchy, the king *must* in some respects be *legibus solutus*: otherwise the identification of the kingly form collapses; and as a matter of practice, something corresponding to 'sovereignty' over at least certain categories of law was universally acknowledged. Mariana summed up the problem under the heading (bk 1.8): 'Which is greater: the *potestas* of the Commonwealth or that of the King?' His answer was (ch. 9): 'The Prince is not *solutus legibus*', and identified some laws which the king may not alter unilaterally, chief among

<sup>55</sup> Philip III had succeeded his father when the book was first published.

<sup>56</sup> Pp. 57, 68–9; on p. 68 the *ortus* is said to be the 'citizens' conceding *potestas* to the first kings; Mariana uses *potestas* and *auctoritas* interchangeably; he sometimes varies these term with *impertum* or *maiestas*.

<sup>57</sup> Here Mariana contrasted Aragon with other provinces of Spain; the Justicia of Aragon, so beloved of monarchomachs, naturally made his appearance; bk 1.viii, p. 69.

<sup>58</sup> Mariana used these terms interchangeably; e.g.: *sine populi voluntate* (p. 38); *populo dissentiente* (p. 70); *populis volentibus* (p. 57), *regia potestas a civibus . . . iis concedentibus* (p. 68); *universus populus* or *virii primarii* (p. 80) etc. Ordinarily he simply refers to the *respublica*.

<sup>59</sup> On p. 72 he first seemed to allow that no one could deny that the *respublica* has this power; but slightly later on the same page he attributed this argument to those 'who want to increase royal power, and do not allow it to be confined within any limits', in other words courtiers and flatterers. The appeal to the wisdom and prudence of ancestors made it unnecessary to decide the matter (p. 75).

<sup>60</sup> *Discours des grands défauts*, ch. 1 (pp. 15–16); ch. 11 (p. 24); ch. x (pp. 98–9).

them being laws relating to taxation, to the succession, and to religion.<sup>61</sup> Such laws of the commonwealth<sup>62</sup> are not alterable 'without the will of the people' (*sine populi voluntate*, p. 38; he was referring specifically to alterations in the succession) or 'common consent' (p. 26). He expressly denied that the prince is subject only to the 'prescriptive' (or 'directive') and not the 'coercive' force of such laws: he is subject to both (p. 84). Conversely there are laws and functions in respect of which the prince is 'absolute', or at least immune from punishment, for example sumptuary laws or laws relating to the bearing of arms; equally, there can be no appeal to the commonwealth against the prince's judicial decisions.<sup>63</sup> The context for the distinction between laws which bind a king and those which do not was provided by the rhetorical *topos* of the antithesis between the king and the tyrant, and not by any jurisprudential distinction between *leges publicae* (or *leges regiae*) and other kinds of law. Nor did he refer to 'fundamental laws', by then a Ligue commonplace, even though he fully endorsed the Ligue's cause and was *au fait* with its activities. And natural rights of citizens played no part in the distinction. To attribute 'constitutionalism' to him (or for that matter to anyone else in this period) seems to me another anachronism.

The only moderately distinctive aspect of Mariana's condemnation of tyranny was his repeated reference to tyrants preventing meetings of citizens (e.g. bk 1.5, p. 50; ch. 6, p. 60; ch. 8, pp. 72–3). But he was careful to point out that not every law is inscribed on tablets of bronze; not every misdeed of rulers is ground for deposition, let alone assassination; not every custom is forever irrevocable; not all innovations are pernicious; and inspiring fear in at least some subjects is the *sine qua non* of ruling. Conversely the cruelty of princes has often been caused by the people's own unsubmitiveness (p. 56). And it cannot be unconditionally true that the prince is *singulis maior, universis minor* (pp. 71, 72–3). What distinguishes kings from tyrants is whether a ruler respects custom. Thus what custom allows kings to do unilaterally, they may do (p. 72). But custom for Mariana was *not* tradition (a term he curiously never used in his political writings), or the will and wisdom of the people disclosed over time. For him, political wisdom and prudence in institutions and customs (as opposed to individuals and *artes*)

<sup>61</sup> E.g. bk 1.3, p. 39: 'leges successionis mutare non eius sed reipublicae sit, quae imperium dedit eis legibus constrictum'; 1.8, p. 70: 'experimento comprobatur in Hispania, vectigalia imperare Regem non posse populo dissentiente . . . idem de legum sanctione iudicium esto: quae . . . tunc instituuntur cum promulgantur, firmantur, cum moribus utentium approbantur'; bk 1.10: 'the prince must decree nothing concerning religion'.

<sup>62</sup> E.g. bk 1.ix, p. 80: 'praesertim cum plures leges non a Principe latae sunt, sed universae reipublicae voluntate constitutae: cuius maior auctoritas iubendi vetantique est eius imperium quam Principis'.

<sup>63</sup> Bk 1.8, pp. 70, 71, 73; 1.9, pp. 82–3.

are to be attributed to a pre-eminent set of ancestors, and not the passage of time. Improvements are to be achieved by a return to principles (that is, beginnings), in the best humanist fashion (e.g. p. 75).

Mariana repeatedly admitted that it was no easy matter to subordinate a king to laws, vested as he was in some sense with supremacy within the kingdom.<sup>64</sup> The attempt to do so might produce a worse situation than the one to be remedied. He of course did not spurn such assistance as education and exhortation might afford in moderating the conduct of kings. *On Kings and their Education* was itself devoted precisely to that task. But he was hardly likely to overestimate their efficacy, given the acuteness of his reflections about motives and incentives to virtuous conduct<sup>65</sup> (the Jesuit speciality). Education was hard put to it to render a prince immune to the temptations of power and the flattery of courtiers. Even the salutary fear of assassination had in the past failed to restrain princes, and so had hope of glory.<sup>66</sup> The prevention of tyranny had therefore to rely on more robust supports. 'The *auctoritas* of the commonwealth is meaningless (*inanis*) without *vires* [power, resources]' (1.8, p. 73). And 'laws are in vain, unless they are upheld by fear of a greater power' (*potestatis*) (ch. 9, p. 82). More precisely (which Mariana rarely was), the commonwealth needs its own agencies independent of the King's will and capable of imposing restraints upon it. The *universus populus*, taken literally, could only act in a popular commonwealth, a direct democracy, and there was nothing to be said for the behaviour of the crowd (p. 83). Mariana, precisely like the Monarchomachs, saw the solution in the assembly of the kingdom (*regni conventus*, p. 87 or *publicus conventus*, p. 59), the will of the leading men (*proceres*) and the consent of the people (p. 75): 'the whole commonwealth, or those who act on its behalf, chief men chosen from all the orders, who come together in one place and one sentiment' (p. 70). He insisted (pp. 75–7) that this assembly should include bishops and priests, of considerable power and wealth, to give it not only moral authority but also the requisite independence. The fact that the Cortez and assemblies of estates almost everywhere were becoming ever more marginalised did not suggest to him that they might be inherently ill-equipped to bear this role. He also dreamt of contemporary equivalents for Spartan ephors and Roman tribunes. All this without a word about any 'contract' between the commonwealth and

<sup>64</sup> 1.viii, p. 70: 'rebus gerendis supremam et maximam auctoritatem habere'; p. 73: 'supremam in regno iis rebus omnibus, quae more gentis, instituto, ac certa lege Principis arbitrio sunt permissae', such as declaring and conducting war, administering justice, appointing magistrates of all kinds.

<sup>65</sup> See above, pp. 113–14. <sup>66</sup> See above, *De rege*, 1.viii, pp. 74–7.

the prince, not even when he invoked coronation oaths as necessary for conferring *iura imperandi* (p. 57).

The Estates, which ordinarily operated only to advise and consent, should begin (like the Church dealing with sinners) by warning the king to mend his ways. If the king then 'spat out' the medicine offered to him and proved incorrigible, the assembly could pass sentence of deposition on the King, even if this meant declaring war against him and his cronies (pp. 59–60). It is only if this quasi-judicial procedure was made impossible that the question of tyrannicide arose. This will be considered later. The only point to be noted here is that for Mariana, tyrannicide is morally the execution of an actual or virtual judicial verdict of the commonwealth.

#### SUÁREZ AND CONTRACT

It seems that with Suárez a new page was turned. Both the notion of a contract and a relevant concept of a 'state of nature' were prominent in his political theory. And if the works of Mariana and *a fortiori* of Persons could be disavowed by the Society,<sup>67</sup> Suárez was acknowledged as the Society's foremost theologian and metaphysician, its *stupor mundi*.<sup>68</sup>

Suárez's account of *potestas*<sup>69</sup> was explicitly designed to harmonise the received Thomist accounts, especially those of Vitoria, Soto, Navarrus, Molina, Vazquez, Azor, and Bellarmine, the authors he cited most frequently. Like them, he dismissed any attempt to derive the authority of the commonwealth or the prince from any rights or powers of individuals. They have no relevant powers or rights, and cannot bestow or delegate what they do not have.<sup>70</sup> Instead, Suárez in the familiar manner derived both *civilis potestas* and *principatus* from God ultimately, but via Nature. They are natural in the sense that they follow *ex natura rei*, once the condition of sin is 'presupposed'. Suárez was emphatic that *potestas* was not a special or separate creation, but 'co-natural' with society.<sup>71</sup>

<sup>67</sup> The leading French Jesuit Louis Richeôme denounced *De rege* to Aquaviva in the year of its publication as prejudicial to the Society in France, and in 1606 Provincial congregations in Paris and Lyons formally expressed their disapproval of it. Aquaviva replied that he had already demanded corrections. This was long before *De rege* had become a *cause célèbre*. It was later placed on the papal Index. Mariana made only one correction and no retraction; Fouquieray, *Histoire de la Compagnie de Jésus en France*, vol. III, p. 254.

<sup>68</sup> Nor were publishers deterred from profitable ventures by a Jesuit provenance. Lessius, Molina, and Suárez continued to be published in Venice in and after 1606; all Suárez's works were also published in France almost simultaneously with their original publication in Spain and Portugal; there was even a London edition of the *De legibus* in 1679; see Sommervogel, *Bibliothèque, ad locum*.

<sup>69</sup> See pp. 201–2, 208. <sup>70</sup> E.g. *Defensio fidei Catholicae*, III.5.12.

<sup>71</sup> E.g. *ibid.*, III.2.3, 5; *De legibus*, III.3.5; *De opere sex dierum*, v.7.13.

But whereas civil *potestas* is co-natural with any *societas perfecta*, particular regimes or forms of *principatus* are not. No individual or group within a 'perfect association' has any better claim to exercise political *potestas* than anyone else.<sup>72</sup> But since it must be located somewhere, it must be in the community as a whole.<sup>73</sup> If any specific individual or group is to exercise it legitimately, it must be in virtue of some authorisation by the commonwealth as a whole. He described the process in various ways: authority is said to 'emanate' or 'result' from the 'people' or 'community' or *respublica*, as a choice (*electio*), '*donatio*', '*translatio*', 'creation' 'first' or 'original' 'institution' (*prima* or *primateva institutio*); alternatively men are said to 'deprive themselves' of, 'alienate', or 'give away' (*alienatio*, *largitio*) a *potestas* or liberty they (collectively) had. He quite often referred to 'consent', 'institution' or *voluntas populi* (or *reipublicae*) as the source of political *potestas*, without mentioning *pactum* or *conventio*. 'Consent' seems to be the generic notion, and it may well have suggested the notion of a *pactum* of some kind to Suárez (e.g. *Defensio fidei*, III.2.12). But consent may not take the form of a contract: it may be tacit, emerging gradually over time without any specific event. This was his explanation of a usurper's successors becoming accepted and thus legitimate, and how the fatherhood of Adam was converted into his principate;<sup>74</sup> it is also how he explained the consent involved in the *ius gentium*. Much more frequently, however, Suárez reinterpreted his previous references to consent, transfer, etc. as if they had meant or implied *pactum* all along.<sup>75</sup> He often invoked a *pactum* or *conventio* without explanation as the unproblematic source of royal authority;<sup>76</sup> in one paragraph in the *Defence of the Catholic Faith* (VI.6.11), he did so three times. It is not clear whether he thought there was a *pactum* or *conventio* in every legitimate polity, or only in every monarchy; normally his concern was with *principatus*, and he spoke of such *pacta* etc. as being *inter regem et regnum*. In the *Laws* (III.19.6) he distinguished between kingdoms like Aragon, where there was such a *pactum*, and absolute monarchies.

<sup>72</sup> E.g. *De legibus*, I.5.19; III.2.6; III.4.5; III.9.4; III.25.10; V.17.3; VII.13.14–18; *Defensio fidei*, III.1.8; III.2.10–12, 17, 19–20; III.3.2–4; VI.4.15; VI.6.11; *De opere sex dierum*, V.7.3, 13, 14.

<sup>73</sup> E.g. *De legibus*, III.2.4; 3.6; 4.1; *Defensio fidei*, III.2.7–109.

<sup>74</sup> *De legibus*, III.2.3 and 4; *De opere sex dierum*, V.7.14; *Defensio fidei*, III.2.20.

<sup>75</sup> Thus the *humana voluntas et institutio*, *voluntarius consensus*, *eligit*, *prima institutio*, and *translatio* in *Defensio fidei*, III.2.10, 13, 14, and 19 become 'per modum pacti quo populus in principem transtulit . . . et princeps acceptavit' in III.2.12 and 13. He treated *pactum*, *foedus*, *contractus* or *quasi-contractus*, *conventio*, or *conventio vel pactum* as interchangeable with each other and with *consensus*; e.g. *Defensio fidei*, II.2.10; *De legibus*, I.6.19, III.2.6, III.3.6, 7, and 10, III.4.4 and 5, V.17.5; *De opere sex dierum*, V.7.3, 13, 14.

<sup>76</sup> E.g. *De legibus*, III.4.5, III.9.4, V.17.3; *Defensio fidei*, III.2.12, IV.3.14, VI.4.15.

His use of contractual terms was deliberate and reflective. It served no polemical purpose, and like the distinction between *potestas* as such and particular regimes, it appears both in his polemical *Defence of the Catholic Faith* and in his non-polemical works, notably the *On Laws* and *The Work of Six Days*, and in his unpublished lectures. As we have seen, his favoured authorities (here especially Molina) did not employ them.<sup>77</sup> A Monarchomach provenance would have counted against them, even if he knew of it.<sup>78</sup> Suárez was also implicitly rejecting the views of Vazquez, of whom he ordinarily took considerable notice.

Contract in Suárez's thought was integral to an extremely careful account of the nature of the commonwealth, which went well beyond the commonplaces of 'body', 'members', 'head', *societas perfecta*, and 'common good'. Thus, a commonwealth is not a mere *multitudo* (*On Laws*, I.6.19). Numbers of persons or their *physical* proximity merely make an accidental aggregate ('aggregatum per accidens', *The Work of Six Days*, v.7.3), a 'confused collection or multitude without order and union of the members in one body' (*On Laws*, III.3.6), a crude agglomeration ('rudi, ut sic dicam, collectione vel aggregato', III.3.1) or heap (*De opere sex dierum*, v.7.3). And although a commonwealth must have a 'head', this need no more be a single person than the commonwealth is literally a body.<sup>79</sup> The commonwealth is a 'mystical or political community, a congregation which is one in a moral sense, by a special conjunction' (I.6.18), and its defining characteristics are a certain *unio* and *ordo*; there cannot be unity without order, or order without unity (*De opere sex dierum*, v.7.3). The only satisfactory interpretation of this 'moral' union, order, or bond (*morale vinculum*, *On Laws*, I.6.19) is as consent, or a union of wills. A commonwealth is a multitude of men who 'congregate [or: are associated] in one body by a distinct will or common consent and the bond of one society, in order to help one another with a view to (*in ordine ad*) one political end. In this way they constitute one mystical body, which can be said to be one, morally speaking; it consequently requires a head' (*On Laws*, III.2.4). The appended inference is noteworthy.

<sup>77</sup> Azor, *Institutiones morales*, in two throw-away lines did refer to the 'mutuo societatis foedere et vinculo' (vol. 1, p. 550), and to laws as 'a kind of *conventio* and *pactio*' (p. 612) between rulers and subjects. But Suárez did not cite these lines, although he mentioned Azor not infrequently.

<sup>78</sup> He did not cite Mariana's *De rege*; the 1614 *Declaration du Parlement* (20 June, text in CHP XVIII, doc. xxii) linked it with his *Defensio fidei* in a common condemnation.

<sup>79</sup> *Defensio fidei*, III.1.5: 'Intelligendum vero etiam hoc [i.e. the need for *principatus*, and hierarchy amongst superiors, if there is more than one] est de uno principe, non quoad personam propriam, sed quoad potestatem, et consequenter quoad personam aut veram aut mysticam seu . . . sive illa in una naturali persona, sive in uno consilio seu congregatione plurium tanquam in una persona ficta.' This very important passage seems to have no parallel in *De legibus*.



As we found earlier, Suárez's authorities had referred to men congregating, associating, or coming together into one society, and so did he (*The Work of Six Days*, v.7.14). But unlike them, he took 'congregating' seriously. He argued that 'before men are gathered (*congregantur*) into one body politic there is no political *potestas*, either in the individuals or in the crude collection or aggregate' (*On Laws*, III.3.1), and that 'political power does not begin until several families begin to be gathered together into one *communitatem perfectam*' (III.2.3, III.3.6). His explanation of the coming into being of commonwealths was the familiar Aristotelian one, only now interpreted *not* as a natural process of growth, but as an artefact of will and consent. He attached great significance to the distinction between the *natural* and inevitable simultaneous emergence of generic political *potestas* and a *communitas perfecta*, and the institution of a monarchical or other political regime as the product of *will*, that is, human decision and choice (*Defence of the Faith*, III.3.6). The individuals who come to be associated in a commonwealth are clearly not Mariana's or for that matter Hobbes's *solivagi* (not that Mariana or Hobbes meant that literally), but heads of families, the elemental form of human existence.<sup>80</sup> Fathers, however, are 'naturally' free and equal by definition, since they are equally fathers, and therefore only a *pactus vel conventio* between them can establish a legitimate association (*On Laws*, III.2.3).

Suárez's contract and consent therefore referred not merely to the 'transfer' to some regime of the *potestas* of an already existing community, but also to the coming into existence of the political community itself. However, he seems nowhere to have signalled that there are two distinguishable compacts, or consents here, but systematically ran them together. Thus he first explained the bond that constitutes the unity of a commonwealth as 'some *ius*', echoing Cicero's *vinculum iuris* (*On Laws*, I.6.20). But *ius* must obviously be reinforced by superiority and *potestas directiva* in every condition of the human race (*The Work of Six Days*, v.7), and by *potestas coerciva* in every post-lapsarian condition. Suárez therefore insisted on the existence of some kind of common power as a defining feature of the *communitas*.<sup>81</sup> 'Without political governance and people being subordinated to it, no body politic can be said to exist in any intelligible sense . . . ; it is

<sup>80</sup> *De legibus*, III.2.3. In *Defensio fidei*, III.2.19, and *De opere sex dierum*, v.7.14, he explicitly allowed an Aristotelian process of natural growth of the self-sufficient community. Adam's patriarchy would have imperceptibly merged with his principate, without any explicit pact, but a pact-like relationship intervenes *de iure* even if not *de facto*: 'magis ipso uso et interpretative voluntate, quam expresso pacto, vel electivo'.

<sup>81</sup> *De legibus*, I.6.19: 'ad aliquem finem et sub aliquo capite'; cf. also III.2.4: 'unum corpus mysticum, quod moraliter dici potest per se unum; illudque consequenter indiget uno capite' [my italics].

repugnant to natural reason that there should be a human association (*congregationem humanam*) united as a body politic, which nevertheless lacks some common power, which the individuals (*singuli*) in the community are obliged to obey.' 'Indeed, the unity of the body politic arises *in great part* from subjection to the same *regimen* and to the same common, superior *potestas*' (*On Laws*, III.2.4, my italics). Associating, contracting, and voluntarily subordinating oneself to authority are completely elided in *The Work of Six Days* (v.7.3): 'There is no moral unity without some political union, and such a union is not brought about without some express or tacit pact of mutual assistance, or some subordination of individual families and persons to some superior or governor.'

Suárez was evidently equating the idea of the *societas perfecta* as essentially a 'moral union' of wills with idea of a *societas* constituted by some more or less formal pact. Contract was integral to the Roman Law concept of a *societas*, and it was part of the self-understanding of the *Societas Iesu*. The intellectual transition from a private society to a civil or political society was always an easy one to make, and Suárez made it himself in his *Treatise on Virtue and the Religious State* and his *Treatise on the Religious Order of the Society of Jesus*. In both he referred to the 'contract out of which the bond between the member of a religious order and the order arises'.<sup>82</sup> He recalled the Roman law origins of *societas*, which referred to military, business, and mercantile associations (I.I.IO). And in Book III of the *Treatise on . . . the Society of Jesus*, Suárez made a highly significant general assertion which completely identified private association (in this instance, a religious order) and civil association: 'Where there is no mutual contract of giving and receiving, there cannot be that *true moral union which constitutes one body politic*, and makes [someone] a true and permanent member of it' (III.I. p. 107, my italics). He then said that 'justice in this as in any contract requires the equality of contractors', and somewhat later he referred to the 'quasi-contract of the Society (*quasi-contractus Societatis*)' as 'voluntary on both sides', and as requiring full and willing consent.

Here, then, the idea of the 'moral' unity of *any* true 'political body' is explained as a 'mutual contract' (an emphatic pleonasm). We have already attributed<sup>83</sup> an 'individualistic' character to the Jesuit idea of the moral

<sup>82</sup> *Tractatus de religione Societatis Iesu* (1626), bk II, ch. 6. In his *Opus de virtute et statu religionis*, Pars secunda: De statu perfectionis et religionis (published posthumously in 1623), 1625 edition, vol. III, bk II, ch. IV (p. 83), he explained that 'ad proprium vinculum religiosi status, quando [a religious] in communitate assumitur . . . necessaria est peculiaris obligatio humana per modum pacti reciproci, quo et ipse religioni se donat et obligatur religioni, et religio eius traditionem acceptat'. He remarked that he had only found Azpilcueta expressly referring to this 'reciprocal obligation' (p. 83).

<sup>83</sup> See above, p. 32.

and religious life. The individual is a moral agent exercising independent choices, including a choice of his or her manner of life, and by consequence the associations to which he or she was to belong. This emphasis on the individual, at least the *paterfamilias*, as *sui iuris* had been brought to the forefront of Suárez's attention by the confrontation with a patriarchalist account of political authority.<sup>84</sup> In formulating his objections he was *pari passu* led to invoke the 'natural liberty' and equality of human beings, as another way of stating the same point. Since previous accounts of *potestas* and its transfer (even intermittently contractual ones like Persons's and Mariana's) had taken the existence of the people or *communitas* for granted, the idea of the natural liberty and/or equality of human beings had not been brought within the conceptual orbit of the *potestas* account, even when it was construed contractually. But in the context of a postulated *coetus* of free and equal heads of families, a pact or some form of voluntary consent was the only conceivable way of incorporating.

Suárez was able to handle with ease a purely technical difficulty to which his account gave rise. He noted a seeming contradiction between his assertion that no form of government is dictated by natural and divine law, and his claim that the *primaeval* and original form of government is democracy. From this it might be inferred that democracy is itself immediately and divinely instituted (*Defence of the Faith*, III.2.8). On the principle that an original constitution binds all succeeding generations,<sup>85</sup> all other forms would be illegitimate. Suárez replied with an attractive distinction (III.2.7–9): whereas aristocracy and monarchy cannot be introduced without some *positive* act of institution, democracy in the sense of the primordial manner of governance of a commonwealth is merely the *absence* any such positive institution. The community's freedom, however, is not restricted, because the 'negative', un-instituted democracy of the *primaeval* community no more demands perpetuation than does original freedom and equality or the primitive community of goods. Thus, 'original' democracy did not compromise either the legitimacy of monarchy or the soundness of Suárez's theory.

#### TIME AND COMPACT

Suárez's argument did not demonstrate that the hypothesis of an original contractual incorporation of *patresfamiliae* was plausible, especially as an historical event. And in at least one place he abandoned this 'act-' or

<sup>84</sup> See pp. 199–202.

<sup>85</sup> *Defensio fidei*, III.2.14, 18–19; *De legibus*, III.4.1.

'instituting'-based account altogether. In *The Defence of the Catholic Faith* (III.2.19), distinguishing between various ways of understanding the 'free consent' (*voluntarium consensum*) of the people, he said that it might be 'bestowed little by little, and successively, as the people increases, as for example with the growth of the family of Adam or Abraham, who were first obeyed as parent or *paterfamilias*; afterwards, as the people grew, this subjection would continue and consent extend to obeying him also as king. In this way *regia potestas* and *communitas perfecta* can begin simultaneously.'

Suárez's anxiousness to move his discussion from the formless *potestas* of an uninstituted democracy to a settled *principatus* with clear lines of command is understandable. On this account, the community or the people holds *potestas* just long enough to delegate it. The only advantage of this otherwise peculiar idea was that it avoided an infinite regress. Alternative 'origins' in force, just war, or hereditary succession (*De legibus*, III.4.3) could not be the origin of legitimate authority, for each of these *presupposed* the existence of at least one ruler with lawful authority. Patriarchal authority and the transfer of individual rights could not ground it either, for reasons given earlier. The primordial *potestas* vested in the commonwealth was a *terminus a quo*<sup>86</sup> which avoided the infinite regress. But an infinite regress might be temporal or logical. As we have repeatedly seen, the temporal starting-point of a particular regime or dynasty was not decisive for its present legitimacy, since (tacit) consent can legitimate what began as violence or usurpation. But Suárez had to avoid an infinite *logical* regress, where the regime presupposes the *communitas*, and the *communitas* presupposes the regime, *ad infinitum*. This regress could be stopped by giving to the community a *logical* priority and independence. But that would make the *potestas* of the commonwealth part of its essence or identity. If so, how could the commonwealth irrevocably alienate its *potestas* to a regime? Unlike Mariana, alienability was precisely what Suárez wanted to establish, for the sake of strict hierarchy and super- and sub-ordination. However, he could not on his own principles argue that *every* community was obliged to alienate its authority irrevocably. Whether any community had done so therefore became both decisive for the current authority of any regime, and also a matter of fact.

Suárez's predilection for 'absolute' monarchy thus demanded that every actual monarchy be supposed to have a determinate temporal, or primordial starting-point, or something analogous. That there was or must be

<sup>86</sup> *De legibus*, III.4.2: 'quia haec potestas ex natura rei est immediate in communitate. Ergo ut iuste incipiat esse in aliqua persona . . .' (my italics); III.4.3: 'quia non praeceditur in infinitum'.

supposed to have been some such *primaeva* contract or institution, Suárez did not at all doubt, any more than Molina did. He frequently and unambiguously refers to such a *past* event or transaction: 'the ancient (*antiqua*) convention or pact' (*On Laws*, v.17.3); 'the transfer of power at the creation of his principate' (III.9.20; *Defensio fidei*, III.2.12, III.3.4, II.2.11); the 'first transfer or convention', 'that first pact (*foedus*)', 'the original (*primaeva*) institution of the kingdom' (*On Laws*, VI.5.15, *Defensio fidei*, VI.6.11). He also dealt with arguments about which terms and conditions could or could not have formed part of the original contract (e.g. *Defensio fidei*, VI.4.14; *On Laws*, III.35.10). The fact that there was no record of the time and terms of such an original institutive act did not matter to Suárez any more than to any of the others: custom is the authoritative record of it. He therefore both represented the founding pact as a real past event, and at the same time eliminated irresolvable questions about its terms and conditions, since they are specified entirely by *current* custom and practice. But what makes custom and practice authoritative is the fact that it draws on the commonwealth's authoritative past. And no *communitas perfecta* could be supposed to have existed from eternity. Thus his own understanding of the commonwealth made its past part of the essence of the commonwealth, but his definitions did not refer to it.

Like all who wrote like this, Suárez was of course not much interested in a hypothetical contract to establish a hypothetically legitimate *respublica*, but rather in the relationship between actual kings and kingdoms.<sup>87</sup> His own argument however required him to demonstrate that 'absolute' kingship was not ruled out by the terms and conditions of any *possible* original contract. And here Suárez relied on a curious feature of some interpretations of natural liberty and right. As we have seen, Jesuit theologians generally had argued that unlike some rights that the individual derives from Nature or God, liberty is in some respects alienable, since it in some ways participates in the nature of the strongest right, namely *dominium*. An individual may even sell him- or herself into at least some kinds of slavery. By parity of reasoning, so Suárez argued, a community, as a *persona ficta*, can also 'alienate' or limit its own freedom by imposing obligations on itself (*Defensio fidei*, III.2.11, III.3.2–4; *On Laws*, III.3.7, III.4.6). And one stringent set of self-imposed obligations would be the institution of a *principatus* in which further institutionalised consent to legislation, adjudication, and command

<sup>87</sup> There were examples of real contracts between kings and commonwealths, e.g. between the Cortez of Castille and the King of Spain about taxation: 'escritura y contrato', 'contrato hecho entre mi y el dicho reino [sc. Castille]'; text in CHP xvii, pp. 543, 545; note also 'ciertos pactos y condiciones' (p. 543) where conditionality and contract are elided.

is no longer necessary. Whether a particular community *has* submitted in this way is to be inferred from custom.

Now even on Suárez's own terms this argument was not impeccable. Even if individuals *stando in iure naturali*<sup>88</sup> may alienate their own liberty, it would only follow that a community can do the same if it is in this respect precisely analogous to an individual. But Suárez had himself stressed that a *communitas* is not literally but *moraliter unus*, a *persona ficta*, a 'mystical' body. Its liberty might therefore *not* be alienable, or alternatively alienable only if each member of the community consents. Suárez did not explore this point.<sup>89</sup> And even if a community does have the right to institute a monarchy unbound by institutional restraints, this would not be a contract or pact, but rather a one-way 'transfer', 'alienation' or 'donation', terms Suárez sometimes employed in this connection, and therefore not a *pactum* (e.g. *On Laws*, III.4.II; *Defensio fidei*, III.3.4). He had not explained why any community in its right mind would do such a thing, and Mariana and Persons had denied it.

Suárez's tender solicitude for the rights of princes and for subjects obedient to them seems here to have produced an incoherence. Defending Bellarmine against James I/VI's charge of teaching rebellion, he was obliged to consider Bellarmine's argument that in the delegation of authority to rulers by communities there is always an explicit or implicit reserved clause, a retention *in habitu* of certain powers.<sup>90</sup> According to Suárez, Bellarmine had certainly not argued that the people can exercise this residual power at will, or as often as it pleases (*ad quoscumque actus pro libito, et quoties velit exercendos*, italics in original), but only 'in certain cases . . . defined by the conditions of the prior contract', or in accordance with the demands of

<sup>88</sup> *De legibus*, III.4.1; or 'stando in pura natura' (*De legibus*, III.II.2,5,7); the same expression occurs in Molina, *De iustitia et iure* (I, disp. xxxiii, p. 146D). *Stando* is the participle for *status*, and thus simply means 'in the state of natural law/nature only'.

<sup>89</sup> He did not in this connection use the argument that Tuck (*Natural Rights Theories*, pp. 49, 53–4) imputes to him.

<sup>90</sup> *Defensio fidei*, III.3.1ff. Bellarmine first mentioned the point in his *Recognitio librorum omnium*, 1608, commenting (pp. 57–8) that in *De laicis* he had merely said that 'political power in kings and princes is not immediately from God, but mediated by human counsel and consent, a view which was such a commonplace that he [sc. Bellarmine] had not bothered to confirm it by any argument'. However, it had since been claimed that the power of kings was no less immediately from God than the Pope's, and so he felt compelled to amplify, citing especially Soto, and Azpilcueta, who had said bluntly that 'the people never transfers its power so unconditionally, that it does not retain it potentially (*in habitu*) and possibly actually (*actu*)'. James had fastened on this point. In *Apologia Roberti* . . . Bellarmine (1609; 1610 edition, pp. 237–8), Bellarmine added that both he and Azpilcueta had been referring to 'the first beginnings of kingdoms (*de primordiis Regnorum*) . . . [when] peoples were free to create for themselves either magistrates with limited authority and tenure of office, or kings with absolute authority and in perpetuity'. Once they had done the latter, they no longer had *imperium* over magistrates and kings, but rather vice versa.

natural justice. Just pacts and conventions must be honoured. And there must be ancient and assured records or immemorial custom to support claims about the contents of such a prior contract (*Defensio fidei*, III.3.3–4). However, on Suárez's own account there remained a right of self-defence against tyranny, 'for the community has never deprived itself of this' (*Defensio fidei*, III.3.3). Despite Suárez's claims about the possibility of an unconditional transfer of *potestas*, an irreducible sovereignty therefore *did* remain with the community. It was pointless for him to say in the next section that 'an absolute donation [*donatio absoluta*, i.e. unconditional gift], once validly made, cannot be revoked' (s. 4), since a commonwealth could not legitimately make such an 'absolute donation'.

The conditionality of transfers of popular *potestas* reappeared when he asserted the right of deposing an incorrigible tyrant, 'both because by natural law force may be repelled by force, and because what is necessary for the commonwealth's own preservation is always exempted (*exceptus*) in that first compact in which the commonwealth has transferred its power to the king' (*Defensio fidei*, VI.4.1). This residual and unalienated (presumably because inalienable) right is to be exercised by the whole commonwealth, which, as he was careful to explain, means 'the public and common decision [*consilio*] of the citizens and chief men'.<sup>91</sup> This institutional structure, necessary in order to uphold that right, was now reintroduced as if it had remained in existence all along. He then (VI.4.16–17) involved the papacy in the matter, where Christian commonwealths were concerned.

In the end, then, Suárez (*Defensio fidei*, VI.4.14, 17–19) could not resist Mariana's logic that the public assembly of the commonwealth is the appropriate agent for disciplining kings, and that tyrannicide was the *ultima ratio*.<sup>92</sup> For the Society's enemies, this and Suárez's introducing the papal deposing power disclosed the real Jesuit project.

#### SUÁREZ AND THE STATE OF NATURE

Since the necessity, content, scope, and limits of *civilis potestas* could be inferred either from human nature in general or from natural right and natural law, Suárez had as little need to consider any logically or historically prior a-civil condition as any other Jesuit (or Thomist).<sup>93</sup> At most, they might consider three conditions in which natural law and nothing else was

<sup>91</sup> To the same effect, *Defensio fidei*, VI.6.11–13; later editions changed *consilio* (counsel) to *concilio* (council), which I think is what Suárez always meant.

<sup>92</sup> See above, pp. 244–6.

<sup>93</sup> Pace Tuck, *Natural Rights Theories*, ch. 2, and Skinner, *Foundations*, vol. II, pp. 155–65.

operative: the 'original' community of property, the right of self-defence, and the natural liberty and equality of all human beings, but none of these was necessarily either an a-civil or pre-civil condition. There was however a Thomist concept which was potentially relevant for thinking about an a-civil condition: the 'condition of nature', 'state of nature', 'condition of human nature', or some variant. But the concept was familiar only to theologians, and refinements of it do not seem to antedate Cajetan and Soto by much; at any rate Suárez cited no earlier author using any such expressions.<sup>94</sup> The *locus classicus* was Aquinas's *1a-2ae*, qu. 109 (On Grace), especially arts. 11 to 14, where Aquinas refers to two *status humanae naturae*: the condition of human nature in its moral and intellectual wholeness (*status naturae integrae*, or *status innocentiae*) and the state of corrupted human nature (*status naturae corruptaellapsae*). These are respectively the condition of Adam and Eve in the Garden of Eden before the Fall, and the condition of the entire human race apart from Christ and the Virgin Mary subsequently.

*Status naturae* is not, I think, found in Aquinas; and Soto had distinguished four *status homini* and Cajetan five, but the *status naturae* was not among them. On occasion the term 'condition (or state) of nature' or 'natural condition' was, however, used to refer to a condition in which human beings are subject to the laws of nature and no others, as when Becanus distinguished the natural condition (*status naturae*) between Adam's fall and the Mosaic law from the *status* of the Mosaic law, from Moses until Christ, and the *status gratiae*, from Christ until the end of the world'.<sup>95</sup> Obviously Becanus's 'natural' condition designated an actual and civil condition of the human race, not a hypothetical or pre-civil one.<sup>96</sup> A more common use

<sup>94</sup> Aquinas's terms and distinctions became scholastic commonplaces; e.g. Molina, *De iustitia et iure*, vol. 1, pp. 90, 92, 94, 97, 102; Busaeus, *De statibus hominum*, pp. 160ff; Bellarmine, *De laicis*, ch. vii (p. 318). Variants first appeared in this connection: e.g. Lessius, *De iustitia et iure*, II, ch. 4, s. 54: 'in statu naturae integrae nulla futura fuerit servitus', which is 'contra primaevali naturae conditionem'; Vazquez, *Commentarii ac disputationes*, vol. II, disp. 185, ch. 12, s. 59, citing Cajetan on the 'status in quibus natura humana potest considerari', including 'status secundum puram naturam'; Salas, *Tractatus de legibus*, p. 112: 'in naturali hominis conditione'; p. 149: 'in statu purae naturae'. Suárez (*De gratia*, p. 179) says that 'modern theologians' distinguish between a 'statum pure naturalium' (or 'status purae naturae', e.g. p. 186) from a 'status naturae integrae' and a 'status naturae lapsae'.

<sup>95</sup> *De pontifice Veteris Testamenti*, in *Opuscula*, vol. III, VII (p. 362); the distinction also occurs in Lessius, *De iustitia et iure*, II, ch. 41.1. Molina, *De iustitia et iure*, tract. II, disp. XXI, pp. 97–6, had spoken of three 'status Ecclesiae universalis: legis . . . naturae, legis scriptae, et legis gratiae'. Pace Tuck, the *status legis naturae* is not a state of nature, but the state of civil society before the introduction of divine positive laws.

<sup>96</sup> Suárez, *De gratia, Opera omnia*, vol. VII, I, ch. 1.2: 'haec divisio est de statibus, quos in diversis temporibus de facto habuit humana natura' (my italics). Similarly, Busaeus (*De statibus hominum*, p. 299) contrasts *status naturae* with 'in puris naturalibus, as the School terms it', which never existed, whereas the *status naturae* is the actual condition of mankind between the Fall and the Mosaic Law (p. 300).



simply passed from the idea that human beings are by nature free, equal, and social, to the description of freedom, equality, or sociability as the 'natural condition', or sometimes '*stando in pura natura*'. Thus Salas refers to the '*naturalis hominis conditio, qui est animal sociabile*', and Becanus says that 'all men are equal in the *natural condition (naturae conditio)*',<sup>97</sup> and referred to the 'first condition of things, in which men were free by natural law'. Lessius, Becanus's source, said that 'servitude is against the primeval condition of nature (*primaevam naturae conditionem*)' or against 'nature as originally constituted (*primam naturae constitutionem*)'. He equated this with the *status innocentiae*.<sup>98</sup>

References to the *status innocentiae* were extremely common. It looks at first sight an unpromising starting-point for reflection about the human condition, since Scripture said little about it, and what it did say concerned a condition which was barely 'social'. But we observed earlier that Suárez devoted a substantial part of *The Work of Six Days* to elaborating its characteristics, and he was not alone in thinking that all kinds of inferential, hypothetical reasonings about it were possible: the condition is what *would have existed* but for the sin of our first parents. Not the least of these inferences was that human beings would have been social, but without *potestas coerciva* or servitude.<sup>99</sup> The distinction between the 'natural' state of innocence and the fallen state was ordinarily used to reconcile common property and the natural freedom and equality of mankind with the institutions of private property, sub-ordination and servitude.

But an even more ingenious hypothesis was possible. Suárez in his *On Grace* started out from conceptual common ground, because the topic of grace was the context for Aquinas's hypothesis of man *in puris naturalibus*, and it was commenting on him that led Caietan, Soto, and Durandus to refine his concepts.<sup>100</sup> Here the 'state of nature' served as a tool for exploring the consequences and operations of *grace*, as superadded to and perfecting 'nature'. The question was which aspects of the human condition depended on God operating only by secondary or ordinary ('natural') causes, and which depended on the extraordinary operations and assistance of divine grace. And one way of exploring this was to consider what human nature and the human condition *would be* like if God had *not* set a supernatural end

<sup>97</sup> Becanus, *Summa theologiae scholasticae*, pt II, p. 61; the first part of this quotation is verbatim from Lessius, *De iustitia et iure*, II, ch. 4.54.

<sup>98</sup> Lessius, *De iustitia et iure*, II, ch. 4.54–5, ch. 5.3. <sup>99</sup> See generally.

<sup>100</sup> Caietan, *Commentarii*, printed as marginalia which often drowned Aquinas's text in his *In D. Thomae Aquinatis primam secundae et secundam secundae summae theologiae*, 1570, p. 246–r; Soto, *De natura et gratia*, in his *In epistolas divi Pauli ad Romanos commentarii; eiusdem de natura et gratia*, 1550, Pref. p. 3, for the four *status*; in bk II, ch. I, p. 86, he refers to *pura nudaque natura*. Durandus is discussed by Suárez in *De gratia*, ch. 2.1–2 (p. 186).

for human beings, and had *not* established a Church or issued revelations concerning either his nature, or the worship pleasing to him, or divine laws to supplement what reason alone reveals about what is right, or (most important of all) if God did not continue to pour out his grace to assist human beings. Without some way of answering these questions it seemed impossible to give an account of salvation and redemption which did not convict God of injustice. The standard Tridentine view was that there could be no account of the co-operation between supernatural grace and individual effort which gave the latter its due weight and incentives, unless it was known what individuals were capable of by their own efforts, doing 'what is in them'. The postulate of the 'natural condition' was one way of finding out.

This condition of man without the operation of grace was called 'the condition of pure nature' (*status pure naturalium*, *status purae naturae*); the term 'pure' (like Hobbes's 'mere nature') here meant 'with nothing added', i.e. nature (the operation of second causes) and nothing else.<sup>101</sup> Thus Becanus says in one place: 'If man had been created by God in a condition of pure nature [*in statu purae naturae*], and only for a natural end (which could have been the case), there would have been no supernatural or ecclesiastical power'.<sup>102</sup> The point of his bracketed comment was that this condition was not logically impossible or inconceivable: there could be a fully human nature, in the sense of beings recognisable in all respects as human, without any supernatural end.

As so often, Becanus was here borrowing, this time from Suárez's *On Grace*.<sup>103</sup> Suárez had made entirely clear that 'what modern theologians called the condition of pure nature, although it has not in fact existed, nevertheless it can be thought of as possible'. But of much more direct relevance to his political thought was his exploration of the equally hypothetical *status innocentiae* in *The Work of Six Days*. Here he was trying to discover, as far as might be, what the condition of the human race would have been if Adam and Eve had not sinned. He could not describe this state of innocence as a condition of 'pure nature', given his own distinction in *On Grace*, and yet it is a condition governed by natural law. The foremost of the neo-scholastics thus had a very explicit concept of a 'state of pure nature', but it was not one

<sup>101</sup> Suárez, *De gratia*, ch. 1.3 (p. 179): 'nihil habeat naturae superadditum'.

<sup>102</sup> *Duellum* (in *Opuscula*, vol. III, p. 267); same words in *Manuale*, p. 491; in both cases the distinction is with the 'state of grace'.

<sup>103</sup> The book was ready for publication by 1614 (parts of it had been ready by 1607), but Rome refused permission to publish pts I and III until 1619, and pt II (*De Auxiliis*) until thirty years later; Fouquieray, *Histoire de la Compagnie de Jésus en France*, vol. II, pp. 226–33, 378.

relevant to discovering the pre- or extra-civil condition of the human race, or the parameters set by natural law alone for legitimate civil authority. On the other hand, the *status innocentiae* was relevant to that task, although for most purposes it was unnecessary. His politically relevant conclusion (already described) was that there would have been politics, government, law and super- and sub-ordination even in that condition, since none of these imply any disorder or defect.<sup>104</sup> But apart from incidental advantages of this approach, and the fascinating conjectures to which it gave rise,<sup>105</sup> it could clearly do nothing which an account of the fallen condition would not do better, for the latter would not have to be based on conjectures, however reliable.

Thus theories about various conditions of human nature were not necessary in order to explain the relationship between natural law and positive law, or to operate an account of the polity to which natural law was integral. For these purposes, the critical issue was the relationship between natural and positive law, not the relationship between nature and grace. And equally, what mattered here was not any hypothetical condition of nature or innocence, but an actual (and now 'natural') condition of sin and weakness, which was known without conjectures. Nevertheless, it may even have been Suárez's work that suggested to others (notably Grotius and Hobbes) the amalgamation of the contract and state of nature *topoi*. The fact that Suárez discussed states of nature in the context of *grace* may explain how some political writers became aware of his ideas on the matter: grace was the most absorbing intellectual topic of the period for Catholics and Protestants alike.

#### CONCLUSION

In sum, Jesuits found it difficult to resist the implication of their conceptual equipment that not only was legitimate political authority morally limited, but that at least *in extremis* these limits were enforceable on its holders by the community or its agents. The point was even more inescapable if the relationship between political office-holders and the people was construed contractually. But although Suárez's authority for later Jesuits was

<sup>104</sup> See pp. 195, 197, 208–9.

<sup>105</sup> For example: generation would have been sexual, but without intemperance (v.1.10, v.3.2); human beings would have been vegetarians, not even consuming eggs, or bread, wine or anything requiring labour (v.6); they would have been unequal in knowledge and experience (v.7.7); they would not have been idle, although it is difficult to say what they would have done, since most human activities are responses to necessities or evils which would not have existed. But the human frame cannot bear perpetual contemplation (v.7.19).

enormous, the *pactum*-motif in his thought did not survive into later Jesuit treatments of the topic. It was insecurely located, and was irredeemably associated with what, in most places, became a thoroughly unrespectable hostility to absolute monarchy. Pallid references to consent (in its tacit form) were all that was needful, and the sort of monarchy that most Jesuits wanted to legitimate was a monarchy without institutional limitations on its authority. Bellarmine, who said much the same as Suárez without ever mentioning any pact, would serve much better. Even Becanus's notorious *Controversia Anglicana*<sup>106</sup> left the reference implicit:

Between kings and their subjects there is a certain mutual promise and obligation. For the subjects promise their Kings obedience in what is licit and honourable; and for their part (*vicissim*) Kings promise their subjects good faith, protection and governance, to the extent that they are able . . . If Kings therefore do not show the fidelity that justice requires of them (*iure obligantur*), they deserve that subjects should not show fidelity to them either, according to the saying: whoever breaks faith, let faith be broken with them.

In his later *Scholastic Theology*, the only reference to any covenant was something he had transcribed from a passage in Vazquez.<sup>107</sup> The entire vocabulary had by then become entangled in the controversy over tyrannicide and the papal power in temporal matters, including the deposing power, all of them now highly unpalatable to the Society in the wake of the assassination of its benefactor and spiritual son, Henri IV, in 1610, which we will consider later.

<sup>106</sup> *Controversia Anglicana*, first publ. 1612 (pp. 150–1 in 2nd expanded 1613 edn); the Sorbonne's condemnation cited this paragraph among others; see *Summa actorum facultatis theologiae Parisienae contra librum inscriptum controversia Anglicana* . . . , 1613, p. 14.

<sup>107</sup> *Summa theologiae scholasticae*, pt II, tractatus de legibus, qu. 12, pp. 633–5. The discussion of tyrannicide was equally cautious, *Theologia Scholastica* (1632), pt II, de Homicidio, qu. IV, pp. 245–6.

## *The theory of law*

In Jesuit political theory, then, legitimate government was limited government. Even those Jesuits who had no political reasons for wishing to see those limits take institutional form found it difficult to resist the conclusion that they must be enforceable at least as a last resort. But this should not be allowed to create the impression that the Society was an order of constitutionalists *avant la lettre*. On the contrary, the Society's constitutive beliefs about order made it difficult to distinguish between just resistance to lawful authority and insubordination, or to conceive of legal means by which rulers might be restrained. Our account of the structure of the Society itself and of its understanding of the Church made this evident enough. It is equally apparent in its conception of law.

Jesuits certainly could never have conceived of a well-ordered polity, or indeed a well-ordered *communitas* or *societas* or *ordo* of any kind, which was altogether devoid of laws.<sup>1</sup> The Society's own manner of government generated *constitutiones*, *regulae communes*, *instructiones*, house-rules, etc., *ad infinitum*.<sup>2</sup> Nevertheless, everything that we have said about the Society demonstrates that for Jesuits, what constituted and maintained polities and associations was not laws but *principatus*,<sup>3</sup> in other words permanent and reliable relationships of command and obedience. Indeed, the

<sup>1</sup> Torres (Turrianus), *Adversus Magdeburgenses Centuriatores* (1572), in passing (ch. 28, p. 121): 'the author who wrote most elegantly of civil laws [sc. Plato] was right to say that there is nowhere to be found a polity (*civitatem*) which lacks law'. For Bellarmine (*De laicis*, ch. 10, pp. 321–2), government could be simply by the prince's *arbitrium*, and many kingdoms long antedated their first lawgiver, but he nevertheless concluded that laws are 'necessary'.

<sup>2</sup> Mariana (*Discours des grands defauts*, ch. XIX, p. 186) complained about the 'unbridled number of laws in the Society'; for similar complaints by Bobadilla, one of the founders, see O'Malley, *First Jesuits*, pp. 335, 338–40.

<sup>3</sup> Bellarmine's discussion of *potestas* and *politicus magistratus* in *De laicis* rapidly becomes a discussion of *principatus*: cf. ch. 1 with chs. 3 and 4. Suárez's *Defensio fidei Catholicae* headed his discussion *principatus politicus*; this was also his generic term in *De legibus*. He of course noted that *principatus politicus* might be located 'in una naturali persona', or in a council or assembly 'tanquam in una persona ficta' (III.I.5). *De legibus*, III.I.4 and 6–7, makes the same transition from *potestas* to *gubernator*.

preoccupations of princes at this time, emblemised by reason of state, usually revolved around the conduct of foreign policy, the maintenance of their own power and authority, and domestic or imperial administration. But the *de legibus* and *de iustitia et iure* commentary-format which the curriculum imposed on Jesuit theologians marginalised these dimensions of *principatus*, and subsumed government under law and law-making.

#### THE 'DEFINITION' OF LAW

It was a scholastic rule of method that 'in every disputation . . . what the thing is which the disputation is about should first be defined',<sup>4</sup> for the definition was to serve as 'a first principle and foundation common to everyone'.<sup>5</sup> Defining proceeded in two stages. The first stage was to demarcate a subject-matter to be explored, by inventorying the various senses in which a term designating it was used in authoritative sources and common usage. Etymologies might or might not be helpful here. With *lex* and *ius*, the etymologies were both disputed and very interesting. *Ius* could be etymologically related either to *iustum* (just) or *iussum* (commanded), which precisely mirrored a central debate about the nature of law; and *lex* could be derived from *ligare* (to bind), from *legere* (to read), or from *eligere* (to choose, select); displays of erudition like giving not only the Greek, but also the Hebrew (and even Chaldean) equivalents and adducing a range of texts in which the terms figured, were *comme il faut*.<sup>6</sup>

This was the preliminary to the point of defining, namely deciding which of these usages was correct, true or right.<sup>7</sup> Jesuits did not usually clarify the criteria for such a decision, but then impenetrable confusions also surrounded for example Bodin's Ramist definitional procedure,<sup>8</sup> or even Hobbes's. Their premise, however, was that words (*nomina*) have received usages (*acceptationes*) susceptible of definitions (*definitiones*, *descriptiones*). But words refer to things (*res*), and usages and definitions are correct in so far as they capture the essence (*essentia*, *ratio*, *natura*) of the thing to which they refer. Nominalist critiques of such a view of definitions had made little impression. Even the most sophisticated theologians distinguished

<sup>4</sup> Piatti, *De bono status religiosi*, ch. 2, p. 22: 'ut id de quo disputatur, primum omnium definiatur quod sit'.

<sup>5</sup> Suárez, *De legibus*, I.12.2.

<sup>6</sup> E.g. Salas, *Tractatus de legibus in Primam Secundae S. Thomae*, disp. 1, ss. 1–3.

<sup>7</sup> The most famous Jesuit text on logic of the time, Fonseca's *Institutionum dialecticarum libri octo* (1575), bk v ch. 1 (p. 185) defines definition (!) as: 'oratio quae essentiam aliquam naturamve declarat', but then acknowledged that definitions can be of words (*nomen*), things (*res*), or in terms of causes.

<sup>8</sup> Cf. Ong, *Ramism and the Decay of Dialogue*, for a sparkling account of Ramist methodology.

between 'proper' and 'metaphorical' senses of law, which presupposed that there is a 'natural kind', law, of which some things called 'laws' are instances and others not; and that some forms of words correctly identify it whereas others do not.

To illustrate: Valentia, who hardly lacked epistemological and methodological sophistication, seemed to say the he was merely choosing from the various received usages (*acceptationes*) of the word (*nomen*) *lex* the one which was relevant to the task in hand.<sup>9</sup> But his heading for this whole topic (*quaestio*) was: 'Of the nature (*ratio*) of laws in general'. And in the next chapter, headed 'What law *proprie* is', he described his purpose as being 'to clarify more precisely the nature of law, according to the received usage of the word (*iuxta eam vocabuli acceptationem*)' (p. 795D). This nicely ran together essentialist and common usage definitions. He now dismissed some extant definitions (*descriptiones* or *definitiones*) as too broad, too narrow, or insufficiently specific, by reference to 'what law is, properly speaking' (*lex proprie dicta* (p. 796C)), and said of the definition he settled on that 'it equally fits (*aeque conveniat*) all laws properly so called, and only them', unlike the other candidates. This was in fact untrue: it did not fit natural law. Suárez was even more guarded in what he said about definitional essences. He too suggested that a preliminary survey of linguistic usage of *lex* and *ius* must look for what is *common* to all these usages.<sup>10</sup> But they might have in common that they had all appeared on the pages of books printed since 1450, etc., and Suárez's concern was with the *ratio* of laws, their nature, as he said in the same paragraph.

For *ius* and *lex* there was a positive thicket of instances, as well as authoritative definitions and discussions in philosophers, theologians, jurists, etc. In all these, *lex* and *ius* were normally treated as interchangeable:<sup>11</sup> the academic study of law was *ius* (*droit*, *Recht*) or *iurisprudentia*,<sup>12</sup> and received usage referred indifferently to either *ius naturale* or *lex naturalis*, and *ius positivum* or *lex positiva*. But unlike *lex*, *ius* was etymologically incapable of being permanently cut adrift from the generic notion of 'what is right' (also termed *honestum* or *fas*). *Ius* had also long ago acquired the sense

<sup>9</sup> *Commentarii Theologici*, vol. II: disputatio Septima generalis de Legibus, qu. 1., pt. 2, p. 795. For the same claim, Lessius, *De iustitia et iure*, II.2, s. 7: 'Ex his patet, hanc iuris acceptationem maxime servire nostro proposito, quia tota Iustitiae ratio [i.e. nature] ex ea oritur.'

<sup>10</sup> *De legibus*, bk 1, introductory paragraph: 'In hoc primo libro . . . solum de generali ratione legis disputabimus . . . licet in hoc libro ea tractanda sint quae omnibus legibus fuerint *communia*, abstrahendo quoad fieri possit ab his, quae singulis speciebus sunt propria' (my italics).

<sup>11</sup> E.g. Salas, *De legibus*, I, IX, 57; Vazquez, *Commentariorum ac Disputationum*, vol. IV, disp. CL, ch. I, section 2 and last section; Suárez, *De legibus*, I.2.II, but see also I.2.8, 10 for some qualifications.

<sup>12</sup> Extremely useful citations, with translations, in Maclean, *Interpretation and Meaning in the Renaissance*, pp. 22–4.

of a personal entitlement, 'faculty', a liberty, a 'subjective' right, and this sense could not be rendered by *lex*. Some Jesuits thought this the principal sense of *ius*;<sup>13</sup> others ignored it altogether or treated it as derivative.<sup>14</sup> The idea of a subjective right was, however, easily derivable from the chronologically (and ethically) primary sense of *ius* as 'what is right', or law as the source of rights. As Lessius put it: 'There are as many kinds of rights (*iurium*) as there are kinds of law (*legum*) which bestow rights'.<sup>15</sup>

The authoritative sources, however, also offered a range of instances of *lex* and *ius* which did nothing to facilitate discerning its essential nature. Thus St Paul had memorably spoken of carnal urges warring within him as collectively a *lex*;<sup>16</sup> theologians referred to them as *lex fomitis*. Such usages were commonly dismissed as metaphorical.<sup>17</sup> But there remained a plethora of less manageable referents of *lex*. Roman law in an imperishable sentence declared law generally to be authoritative will: what the prince has determined has the force of law (*quod principi placuit, habet legis vigorem*).<sup>18</sup> Again, grammar and the various arts and occupations had their rules (*regulae*, but also called *leges*).<sup>19</sup> So did religious orders: the *Rules of St Benedict*, or the famous *Lex Carthusiana de abstinentia ab carnibus*, forbidding the eating of meat, and interesting because it raised the problem of what Carthusians might do in dire necessity.<sup>20</sup> The Society of Jesus's own main rules were called *Constitutiones*, but this was merely one of many variant terms for *leges*, such as *institutiones*, *statuta*, *praecepta*, *canones*. There was canon law, comprising the *decreta* of General (or Ecumenical) Councils of the Church and the papal edicts collected as the *Decretum Gratiani*, plus various authoritative *extravagantes* and *glossae*. Salas illustrated the nature of law by referring to the 'ecclesiastical laws' specifying compulsory religious

<sup>13</sup> E.g. Lessius, *De iustitia et Iure*, II.2, dubium 1; Molina, *De iustitia et iure*, tract. II, disp. I (p. 24), cited above, ch. 9; see Tuck, *Natural Rights Theories*, p. 52.

<sup>14</sup> Valentia (*Commentarii*, vol. III, disp. 5<sup>a</sup> generalis, qu. 1, pt I (p. 965D)) noted this meaning of *ius*, but regarded 'what is right or just' as the 'original (*primaeva*) and most proper meaning of the term (*ius*)'. In his *In Summam Theologiae Enarratio*, vol. II, Toledo did not note this sense (*significatio*) of *ius* (p. 238), but used it in that sense all the same (e.g. p. 105).

<sup>15</sup> Lessius, *De iustitia et iure*, II.2, ss. 2–3.

<sup>16</sup> Romans 7: 23: 'Video autem aliam legem in membris meis, repugnantem legi mentis meae, et captivantem me in lege peccati'.

<sup>17</sup> Valentia, *Commentarii*, disp. 7<sup>a</sup> generalis, qu. 1, pt I (p. 794A): 'acceptioes minus propriae'; for Suárez, see fn. 28.

<sup>18</sup> *Codex of Justinian*, I.xiv.4; cited for example by Suárez, *De legibus*, II.35.5, and Azor, *Institutiones morales*, vol. I, bk v, p. 615.

<sup>19</sup> Aquinas mentioned *leges grammaticae* and *leges mercaturae* (commerce), so everyone else did. No one at all seems to have mentioned the rules of *games*, which in our time have proved such a fertile source of inspiration for philosophers.

<sup>20</sup> Vazquez, *Commentarii*, disp. CLXII.



observances (popular examples were the laws commanding abstinence from meat on Fridays and the Lenten Fast).<sup>21</sup> As common speech and lawyers used the term, law meant statute law, customary or 'ancient' law (Roman law was in many places customary law), royal edicts, grants of privileges,<sup>22</sup> monopolies, as well as various royal concessions, pacifications, etc. Furthermore, Roman law and jurisprudence distinguished between public and private law, but the distinction seems to have played no part in scholastic jurisprudence.<sup>23</sup> Scholastics and juriconsults had also to accommodate, somehow, the Roman law concept of the *ius gentium*. The French religious wars had recently thrown up the term 'fundamental laws', whose character and status were obscure; even Hobbes still pretended that the term was merely political cant, needing his gloss in order to amount to anything.<sup>24</sup> Again, there were laws constituting institutions (offices) or specifying procedures or jurisdictions; there were laws which merely set out scales of penalties (so-called *leges poenales*); there were moral rules, pre-eminently natural law, all to be linked in some way to the *praecepta* of the Decalogue.

Mere induction could not extract an 'essence' of law from all these referents. These 'laws' were not even all imperatives (commands or prohibitions), although all Jesuit theologians made this *the* defining feature of law. As was occasionally noted, some laws merely specified conditions to be met if actions which themselves are optional are to count as legally valid;<sup>25</sup> others again were merely permissive, e.g. those revoking previous prohibitions.<sup>26</sup> Conversely, many imperatives to do or desist were not laws: good advice, counsels of perfection, 'doctor's orders', exhortations and requests, pleas, appeals. In the sources it was even a matter for dispute whether *ius* or *lex* applied only to rational creatures, or whether like the *lex aeterna* it could extend to all beings whatever, and especially to animals.<sup>27</sup>

<sup>21</sup> *De legibus*, disp. 1, ix, 54; this despite the fact that unlike all the other Jesuit theologians he regarded ecclesiastical *constitutiones et canones* as laws only in a less strict sense.

<sup>22</sup> The Codex of Justinian contained at least two 'laws' which were in fact grants of privileges to named individuals; Suárez devoted many paragraphs to showing why certain privileges might properly be called laws, e.g. *De legibus*, 1.6.15 and 1.7.6, II–12; 1.14.8–9.

<sup>23</sup> Neither Suárez nor Valentia mentioned the distinction; Molina did, and so did Possevino (*Bibliotheca selecta*, vol. II, bk XII, *de Iurisprudencia*, p. 41 (1593 ed.)), but it played no part in their analysis. For the importance of *ius publicum* from the late sixteenth century in Protestant and Reformed universities, see Stolleis, *Staat und Staatsräson*, esp. chs. 8 and 9.

<sup>24</sup> *Leviathan*, ch. 26, pp. 199–200.

<sup>25</sup> Suárez, *De legibus*, 1.1.8, following Salas's comment (*De legibus*, disp. 1.4.14) that: 'It is not however necessary [for something to be] a law that it obliges to an act; it is enough for it to oblige to a manner of acting [*modum*], as sometimes we are not obliged to pray, but to do so attentively if we do pray. Nevertheless every law obliges to something.'

<sup>26</sup> Salas, *De Legibus*, denied that 'permissive' laws were *proprie* laws, unless they were construed as prohibitions to magistrates, forbidding them to punish certain actions.

<sup>27</sup> See Brett, *Liberty, Right and Nature*, esp. chs. 2 and 3.

Escape from this thicket to the sunny uplands of a compelling definition was clearly only possible for someone who already knew what law was prior to any definition. Only such a person was in a position to select some senses of 'law' as focal, correct and 'proper', others as marginal, derivative, metaphorical, or loose.<sup>28</sup> Thus Valentia's definition of the nature or whatness (*ratio et quidditas*) of law, drawing on a whole sheaf of ancient and more recent sources, and itself one of the definitions that Suárez had before him when he in turn composed his own, was: 'Law is a rightful ordinance of practical reason, sufficiently declared and laid down by one who has charge of a community, by force of which some manner [of conduct] whether as to things or to actions must of necessity be observed.'<sup>29</sup> Salas's 'brief definition' was that 'law is a rule (*praeceptum*) imposed on a community, carrying a perpetual obligation, unless it is revoked'. Molina defined it as 'a command or precept, permanently made and promulgated by a power supreme in the commonwealth in this respect, for . . . all without distinction, or for those who, in virtue of their condition, place, time, and other circumstances, are to observe it, and which has been accepted when [sc. in so far as] it requires acceptance in order to have [legal] force'.<sup>30</sup> Suárez claimed that there was nothing to object to in Aquinas's definition (*Ia-IIae*, 90, 4, resp.), indulgently reinterpreted: 'an ordinance of reason for the common good promulgated by one who has care of the community'. But he thought it might 'perhaps' be abbreviated to: 'a general precept (*commune praeceptum*), just and stable, and sufficiently promulgated'.<sup>31</sup>

For all their variations, these definitions disclose a shared understanding of law which itself points back to various bed-rock beliefs of the Society. Their paradigm of law was 'positive' law, law laid down by someone with *potestas*. Other rules were regarded as 'not-quite' laws, laws *secundum quid*. Vazquez for example said that 'the *nomen* "lex" is not as suitable for natural

<sup>28</sup> E.g. Suárez (*De legibus*, 1.3.8) and Salas (who cited Vazquez) regarded the *lex aeterna* governing inanimate things and animals as metaphorically *lex*; only an intelligent being is *capax legis*. For Valentia it was a true and proper law, but only because of his ambiguous expression that law is something which 'must of necessity' be obeyed (disp. vi, qu. i, pt. ii, p. 796D).

<sup>29</sup> Valentia, *Commentarii*, disp. 7<sup>a</sup> generalis (p. 797.11D).

<sup>30</sup> Molina, *De iustitia et iure*, tract. v (= 1611 edn vi, pp. 278–8), disp. 46, s. 46: 'Lex est imperium seu praeceptum a suprema ad id potestate in republica permanenter lata ac promulgata, non uni aut alteri, sed omnibus, aut simpliciter, aut ad quos id pro eorum conditione, loco, tempore, ac aliis circumstantiis, servare spectat, et acceptata, quando, ut vim habeat, acceptatione indiget.'

<sup>31</sup> Cited Suárez, *De legibus*, 1.12.3; 12.5. For a fuller definition see 1.11.73, p. 29: 'lex est praeceptum communitati impositum perpetuo obligans, nisi revocetur. Nec oportet addere, in bonum commune, quia si non conducere communi bono, non obligaret communitatem.'

as for positive law . . . [Natural law] ought rather to be called *ius*, because it is the rule of what is just and unjust.<sup>32</sup>

Laws in the proper sense, then, were firstly rules (Aquinas's *regulae et mensurae*) or norms. The 'rules' of the various arts (unlike, say, Paul's *lex fomitis*) qualified as laws to that extent, but they fell at the next conceptual hurdle. For laws imposed both a moral duty to do or to forbear, and a liability to the punishment which violations *deserve*. But, since there are morally binding rules which are not laws, an essential refinement was that laws are rules which are 'general' in character and relate to communities of some kind. This 'generality' of law (its being addressed to a community rather than to determinate individuals) always remained extremely problematic.<sup>33</sup> Some laws, properly described as such, applied only to named categories of persons, for example New Christians,<sup>34</sup> inhabitants of particular locations, persons of a certain standing, status (e.g. married persons, parents, or clerics), or holders of certain public offices. But it was thought possible to cover both the morally obligatory and also the general character of 'true' law by referring to the end or purpose all laws, even those applying only to particular categories of persons, must have in view: namely the good of the community as a whole.

A further essential feature of laws was that they must in some way be made known to those whom they 'bind'. All obligations presuppose that it is possible to fulfil them, but with an unknowable law or command it is not.<sup>35</sup> Jesuits here had to accommodate eternal and natural law, which were not literally 'promulgated'. Nevertheless, it was clear that publication in some sense was absolutely necessary and intrinsic to the nature of laws.<sup>36</sup>

Laws 'properly so called', then, are generically *praecepta*. This is etymologically a term for a maxim, rule, injunction, instruction, or teaching, and was therefore not nearly strong enough to convey the meaning that Jesuits intended, but it could not be abandoned because *praecepta* was the received term for the Ten Commandments. But more peremptory terms like *mandata* or *decreta* were substituted; Valentia explicitly preferred the latter term over Aquinas's *ordinatio*, which seems imperative enough.<sup>37</sup> Mandate,

<sup>32</sup> *Commentarii*, disp. 1. iii, 26.

<sup>33</sup> Rousseau still had difficulties in explaining in what sense the General Will is general.

<sup>34</sup> Suárez thought the Spanish laws to this effect unproblematic both as to content, and as to their status as laws (*De legibus*, I.6.24).

<sup>35</sup> Salas, *De legibus*, I, x, pp. 69–70.

<sup>36</sup> Suárez, *De legibus*, III.16.1–4.

<sup>37</sup> Valentia, *Commentarii*, disp. 7<sup>a</sup> generalis, p. 796B; Suárez thought *ordinatio* unobjectionable, but had interpreted it in such a way as to make it indistinguishable from a *mandatum* or *decretum*; *De legibus*, I.12.5.

decree, ordinance in turn entailed another defining feature of law in all these accounts, namely that it must emanate from a competent authority. For most purposes, Jesuits regarded it as a perfectly adequate definition of law to say that it was the command of a superior to an inferior. But then even Bodin's definition of law was: 'the rightful (*droit*) command of him or them that have [*sic*] all power over others', and Hobbes's many years later was not much different.<sup>38</sup> The equation of law and command was so habitual both with Jesuits and their most prominent adversaries that a distinction was usually unnecessary. If, like Suárez, they did distinguish,<sup>39</sup> it was because philosophical precision demanded it.

In sum: laws in the fullest and most proper sense are rules imposing a moral obligation to do or to forebear, decreed by a competent agency, imposed on the whole or part of a self-sufficient community, and directed to its common good. That this adequately captured the nature of law was not in doubt, but various features called for elaboration and justification.

#### LAWS AND MORAL OBLIGATION

In the first place, it was reckoned part of the nature of law, and not merely a desirable attribute, that it must conform to what is right. As Laymann and Forer summarised the commonplace: 'Every law must be just, useful to the commonwealth, compatible with religion and, lastly, it must confine itself within the limits of the legislator's authority (*potestas*).'<sup>40</sup> *Ius*, what is just or right, is prior to *lex*. The reasoning here was that there cannot be a right to command what is morally wrong (or forbid what is morally obligatory, prohibitions and commands being regarded as entirely convertible<sup>41</sup>). Nor can there be a duty to obey such a command. It is the property of law properly so-called to impose a moral obligation. But bad 'law' cannot do so. It is therefore not law at all,<sup>42</sup> or at best merely law *secundum quid*.

<sup>38</sup> Bodin, *Six livres de la République*, bk 1, ch. 10, p. 216; Hobbes, *Leviathan*, ch. 26 (p. 183). The scholastic provenance of Hobbes's definition is plain from its very wording.

<sup>39</sup> Suárez, *De legibus*, 1.10.12: 'A prince can make laws, but he can also command without making laws. And there is no better way of making the distinction between these two ways of commanding than by [reference] to the perpetuity of laws.' In 1.10.13 he distinguished between a *personale mandatum* and a law in the same way.

<sup>40</sup> *Pacis compositio*, unnumbered Preface; this ultimately goes back to Aquinas, *1a-2ae*, 95, 3 resp.

<sup>41</sup> Suárez, *De legibus*, 1.15.1: 'prohibere nihil aliud est quam praecipere ut aliquid non fiat, sicut e contrario praecipit est quaedam prohibitio, nam qui praecipit audire missam vetat ne omitat'. Note the illustrative example.

<sup>42</sup> The most careful statement of the position is again Suárez, especially *De legibus* 1.9, esp. ss. 2, 4, 11, 12 and III.21; also III.12 and I.14.1-3.

This presupposed that laws do in fact 'bind the conscience'. But that needed a formal demonstration, not only because it was a theoretical issue of outstanding importance, but also because Catholics claimed that the heretics denied it. The latter was pure polemic. Despite some unguarded remarks (the favourite citation was Calvin, *Institution of Christian Religion*, bk iv, ch. x), no orthodox Reformer in fact denied that morally unobjectionable laws bound consciences, since they were covered by Romans 13. Contzen acknowledged that at least some Protestants admitted that law obliged in conscience.<sup>43</sup> A more genuine difficulty for Jesuits was that the capacity of rulers (whether ecclesiastical or civil) to impose laws which obliged on pain of mortal sin had been denied by Nicholas of Cusa (Kuës) and by Jean Gerson, who was wrongly credited with the authorship of Ignatius's favourite devotional reading, *The Imitation of Christ*. Luther had repeatedly cited Gerson, but neither Gerson nor Cusa could count as a heretic. A refutation of Gerson was thus routine; the most subtle strategy was that of Vazquez, who tried to bring him back on-side by showing that he had in fact been entirely orthodox on this point.<sup>44</sup>

'Morally obligatory' was in effect a tautology, since no obligation apart from moral obligation was ever considered. Any moral philosopher, theologian or casuist of course knew that there is a distinction between moral laws and 'political' laws; the latter might permit what moral laws forbade, for example heresy, prostitution, or usury, or forbid what was otherwise morally licit. But such distinctions then dissolved because the equation of legal and moral obligation was, so it seemed, the only way of taking laws seriously.<sup>45</sup> Jesuits, like their contemporaries generally, did not usually distinguish between sin and crime anyway, and called any offence against laws a sin (*peccatum*).<sup>46</sup>

#### OBLIGATORY IN VIRTUE OF CONTENT?

What is it, then, that makes law morally obligatory? Jesuits (and their Dominican masters) saw two polar alternatives. Laws might be obligatory

<sup>43</sup> *Politicorum libri decem*, v.7.15.

<sup>44</sup> *Commentarii*, disp. cliv and clviii; for both Gerson and Vazquez see the excellent study by L. Verecke, *Conscience morale et loi humaine*. Salas (*De legibus*, disp. i.xi) and Suárez (*De legibus*, iii.21.9) both denied that Gerson was entirely salvageable.

<sup>45</sup> I have found the reasoning explicated only by Suárez, *De legibus*, iii.21.8: 'governance (*gubernatio*) without the power to compel is inefficacious and easily held in contempt. But compulsion without the power to oblige in conscience is either morally impossible, because just compulsion presupposes guilt . . . or it is certainly inadequate, because by this means it would be impossible to support the commonwealth in many cases where it is necessary.'

<sup>46</sup> E.g. Suárez, *De legibus*, i.13.2-3, 6-7, citing Aristotle and Aquinas.

in virtue of either their content or their source. Unguarded expressions may suggest that they thought laws obliged simply in virtue of their content, as the legal expressions of duties already existing under natural or divine law. In *Ia-IIae*, 95, 2 resp. and 96, 4 resp., Aquinas himself acknowledged only two possible contents for positive laws: just contents deriving from natural law, and thus (it seems) already binding, and unjust ones disqualifying the 'law' in question from the status of law. In a piece of reasoning universally borrowed by Jesuit theologians he made it clear that positive laws are not simply the natural laws themselves (for these are first principles of practical reasoning), but are either *conclusiones* from such principles, or *determinationes*, decisions giving determinate substance and specificity to the very general moral rules of natural law. He however added, somewhat obscurely, that laws arrived at by *determinatio* 'have their force (*vigorem*) from human law alone'. Nevertheless, 'every humanly-created law has the character of law precisely to the extent that it is derived from natural law', and what is more, this 'derivation' was by a process which either is, or can be reconstructed as, a practical *sylogism*. The difference between laws *per modum conclusionis* and those *per modum determinationis* is merely that the syllogism in the former case is tighter than in the latter. This idea of positive law as having something of the same certainty as the conclusion of a syllogism was obviously attractive to Jesuit theologians.

All the same, *positive* law necessarily adds something to the law of God or natural law. Valentia and Salas no more emphasised this point than Aquinas had done.<sup>47</sup> But Bellarmine made it explicitly,<sup>48</sup> with the interesting and subsequently much-used examples of laws banning the bearing of arms and the exporting of specie, both otherwise morally permissible acts. Vazquez, too, said expressly that laws deriving from natural law *per modum determinationis* do not oblige because of their natural law content, but 'because the law of nature decrees that the commands (*praecepta*) of superiors are to be obeyed'. And 'not everything that is commanded by positive law must be right in such a way as to be [already] obligatory *before it is commanded*'.<sup>49</sup> Suárez, too, emphasised that the content of positive law

<sup>47</sup> Valentia, *Commentarii*, disp. 7<sup>a</sup> generalis, qu. 5, pt 2: (p. 849C): e.g. 'thieves should be hanged' is not a *conclusio* but a *determinatio* of *ius civile*, giving a particular 'form' to the natural-law principle that 'malefactors should receive a just punishment' (p. 850D). He weakened the distinction by adding that 'I cannot persuade myself that St Thomas intended to deny that the particular propositions of civil law too are also truly deduced by syllogism from the principles of natural law', reconstructing the 'hanging thieves' examples accordingly (p. 851A). To much the same effect Salas, *De legibus*, disp. vi, s. 2 and disp. x.

<sup>48</sup> *De laicis*, ch. xi (p. 322).

<sup>49</sup> *Commentarii*, disp. CLIV, ch. 3, para. 15, my italics.

might be matters which were morally indifferent *per se*.<sup>50</sup> He also observed that the law of nature prohibited stealing, but neither forbade nor enjoined private property. And yet, once the laws established private property, there was a moral duty to respect them.<sup>51</sup> Again, divine and natural law command us to obey our superiors, but do not themselves either designate individuals as superiors, or demand any particular form of government. However, once monarchy (say) is established, there is a duty to obey the prince.<sup>52</sup>

#### OBLIGATORY IN VIRTUE OF ENDS?

But if the morally obligatory character of law could not be stringently derived from its natural or divine law content,<sup>53</sup> the obvious alternative would seem to be that it was their *end* (their purpose or objective) that made them so. Normally what was held to explain their moral force was their being ordered towards the common good. But this did not meet all objections either. Differences of opinion about whether a law is indeed adapted to the common good are always possible. The world did not need to wait for Hobbes to recognise that to make the obligation to obey laws depend on individual judgements about their conformity with right reason and prudence would raise insuperable difficulties about *whose* right reason and prudence was to be decisive. The Jesuits had always insisted that it was precisely the variability of private opinions that made it imperative to have a *iudex controversiarum* to define religious doctrine. The same logic applied to laws.

Thus Salas wrote characteristically that

in case of doubt, the presumption must be in favour of the Superior, and he is to be obeyed when there is no overwhelming reason to the contrary, for if subjects were allowed to refuse obedience to their Superiors whenever there was any sort of reasonable doubt, they would often refuse it, whereas the Superior neither can nor always must make manifest to the subject the reasons warranting his commands. The consequence would be great disorder and confusion in common concerns.<sup>54</sup>

<sup>50</sup> *De legibus*, III.21.9–10.

<sup>51</sup> Suárez, *De legibus*, II.14; III.41; the earlier and definitive discussion is Molina, *De iustitia et iure*, tract. II, disp. 20 (see below).

<sup>52</sup> Suárez, *De legibus*, III.4.1.

<sup>53</sup> Suárez, *De legibus*, III.21.10; the *ius gentium* also fell well short of being logically entailed by the law of nature (*De legibus*, II.17). See also Vazquez, in Suárez, *De legibus* (Pereña edn), vol. II, Appendix v (p. 242).

<sup>54</sup> Salas, *De legibus*, disp. I, S. IX, paras. 58 and 59.

Suárez summed up:

In the judgement of all the learned, the injustice of a law must be morally certain [sc. : before it ceases to oblige], for if there is doubt, the presumption must be in favour of the legislator, because he has the greater [literally: higher, *altius*] right; also because he is governed by deeper (*altiori*) counsels, and may have general reasons of which his subjects are ignorant; and finally, because otherwise subjects would assume to themselves an excessive licence in not obeying laws. For laws can hardly be so [unambiguously] just, that they could not be called in question by someone or other for plausible reasons.<sup>55</sup>

Outside theology text-books, the authority of laws was always considered in the context of the duty and virtue of obedience, especially in connection with Romans I 3, and with the Fourth Commandment, which was understood to include not only the duties of children to their parents but the duty of all inferiors to *obey* their superiors.<sup>56</sup> And given the Jesuits' view of the virtue of obedience and the vice of heresy, they were hardly likely to afford much indulgence to 'private judgement'.<sup>57</sup> Indeed the point was so obvious that Valentia could use it as a *reductio ad absurdum* of the argument for the adequacy of Scripture alone: 'How could a commonwealth survive, in which political causes would be judged by laws alone, and if every private person whatever, even a criminal, . . . had no duty to submit until he had persuaded himself that the decision in the case accorded with the verdict of the laws. Would there ever be any end to controversies in such a commonwealth?'<sup>58</sup> The first question a subject should ask of any law or command was therefore *not*: does it have an acceptable content? but rather: does it emanate from some competent agency?

This would suggest that it was not the natural or divine law content, or the end, but rather the *source* of a law that made it morally obligatory. It was thought of the essence of law that it be declared, laid down, decreed, enunciated, commanded, or ordained<sup>59</sup> by some competent authority, a *potestas*. Or more precisely, if one follows Bellarmine, it is not the essence of laws that springs from authority but their existence: in so far as something

<sup>55</sup> Ibid., I.9.II; see also III.30.5: 'quando non manifeste apparet temeritas in lege, praesumendum est pro iustitia eius, quia semper ius superioris praefertur.'

<sup>56</sup> As one for all: Busaeus, *De statibus hominum* (p. 184): 'Primum officium (laicorum subditorum) est ut debitam obedientiam et reverentiam praestent suis Principibus et Magistratibus'; see sources cited in chapter 3 above.

<sup>57</sup> But even the Jesuits' special vow of obedience *sicut cadaver* still called for many agonised and tortuous pages about wrongful commands: e.g. Suárez, *De religione Societatis Iesu*, bk IV; Bellarmine, *Tractatus de obedientia* (in Le Bachelet edn, pp. 377–85).

<sup>58</sup> Valentia, *Analysis* (Rocaberti edn), p. 75.

<sup>59</sup> The fullest discussion is Suárez, *De legibus*, III.15.8–10, where all these terms are said to be acceptable.



is law, it has obligatory force, but it is authority that brings law into existence.<sup>60</sup>

#### OBLIGATORY IN VIRTUE OF THEIR SOURCE?

But Jesuit theologians and philosophers could no more be satisfied with a definition of law which ignored its content than with one which ignored its source. Laws which violate divine positive law or natural law, for example laws enforcing heretical practice and profession, or permitting cannibalism, human sacrifice, adultery, polyandry, piracy, duels, etc., are not merely bad laws, but not laws at all. Again, if it was solely their origin in divine will that prohibited such practices, this would imply that God could equally have made cannibalism, false witness, adultery or, even more absurdly, blasphemy and impiety permissible or even obligatory. Thomists on the contrary had always insisted that natural law would continue to be the same and obligatory even if (what was impious to affirm) there were no God.<sup>61</sup> Alternatively, as Bellarmine put it: 'If, *per impossibile*, there was a [valid] law which was not from God, it would still oblige in conscience (*ad culpam*), just as if, *per impossibile*, there were a human being not made by God, he would still be rational.'<sup>62</sup>

Again, if the obligation to obey civil and ecclesiastical laws depended solely on their *source*, then disorder would be reintroduced into the very heart of civil and ecclesiastical life, whereas the purpose of laws was to eliminate disorder. The laws necessary for any human order must be made, interpreted and enforced by a determinate human agency. Lower authorities can be overruled by higher ones. But there must be a point at which the apex of the ladder of authority is reached. At that apex there must be decision, will, and *imperium*. This commanding will might be disordered, arbitrary, or tyrannical, and thus itself a source of *disorder*.

Thus whichever way Jesuits considered the matter, the only satisfactory answer to the question whether, as the time-honoured tag put it, *ius quia iussum*, or *ius quia iustum* (is something law because it has been commanded, or because it is inherently just?) was inevitably: *both source and content* are equally essential to the nature and obligatory force of law. This was not evidence of lack of speculative clarity, which Jesuit theologians had in abundance; rather, anything else was simply not theoretically viable.

<sup>60</sup> *De Romano Pontifice*, bk IV, ch. 16. Possevino's *Bibliotheca Selecta* (1607, bk XIII, p. 98) singled out this point for emphasis.

<sup>61</sup> See p. 122 above. <sup>62</sup> *De laicis*, ch. XI (p. 323).

## LAW AS WILL AND COMMAND

Nevertheless, an interpretation of law as demanding both a right content and a rightful source in order to be truly law was inherently unstable. Whenever it came under pressure, as it was bound to do, it was preordained to collapse in a voluntarist direction. Like all their contemporaries, Jesuits were already all too disposed to personalise authority and the commonwealth, or state, in the sense of equating government with relations of superiors and inferiors, and with *principatus* or princely rule. This was not at odds with experience or current vernaculars, and conventional legislative formulae did include reference to a prince's 'will and pleasure', his *beneplacitum: sic veult le Roy*; and legislating was (and is still) spoken of as an 'act'. And the Jesuits' vocabulary rendered such personalisation endemic.

The fact that a 'prince' *qua* legislator and ruler is not a natural person was of course understood well enough in the abstract. There was for example a legal maxim to the effect that the 'will' of the prince is always to be supposed to be the common good or equity, which could not be postulated of a natural person. And the 'will' of a prince that is relevant to the authority of laws is not the 'will and pleasure' of some natural individual, as legislative forms and the ambiguous term *arbitrium* might suggest.<sup>63</sup> But all this was pushed into the background by the *principatus*-paradigm, as it would not have been if the paradigm had been government by an assembly.<sup>64</sup> Tending in the same direction was the overwhelming inertial power of the Roman law tradition to obscure the difference between a command of a person occupying the princely office, and the 'will' of a 'prince': *quod principi placuit habet legis vigorem*. Roman law even construed the prince's submission to laws as a matter of moral decency, grace, having appropriate sentiments, endorsing a *digna vox* (an opinion worthy of a prince),<sup>65</sup> all of which can only be predicated of natural persons.

Jesuits (like Bodin) were thus prompted to marginalise or ignore distinctions of which they were perfectly well aware. If law had not been identified as at least in part will and command, there would have been no difficulty (as there was) about distinguishing between a law and a prince's command

<sup>63</sup> It might mean 'judgement' rather than 'will and pleasure', as Vazquez noted (*Commentarius*, disp. CL, ch. 4, s. 22): 'quin imo ait Augustinus arbitria principum [*sic*] antiquitus pro lege fuisse, nomine arbitrii non tam voluntatem et placitum principum, quam iudicium rectum intelligere videtur.'

<sup>64</sup> Suárez remarks that the power of law to bind the ruler is unquestionable in the case of members of the supreme legislative assembly, once they revert to being private citizens (*De legibus*, III.35.1 and 7). Just as clearly, Vazquez, *Commentarius*, disp. CLXVI, ch. 1, 1: 'Praesens . . . difficultas [i.e. about the subjection of the prince to his own laws] solum locum habet in unico principe legislatore.' This was plainly a qualitative difference between a republic and a monarchy.

<sup>65</sup> This was the routine counterweight to 'quod principi placuit'; e.g. Azor, *Institutiones morales*, vol. 1, bk v, ch. II, p. 616; Valentia, *Commentarii*, disp. VI, qu. v, pt 4, p. 860; Suárez, *De legibus*, 3.35.5.

to his valet or, for that matter, his dog. And again, the most authoritative laws of all, the *leges regiae* constituting the public order and institutions of a commonwealth or kingdom, which were quintessentially custom, would not have been conceptually problematic,<sup>66</sup> had custom not been treated as an anomalous and imperfect form of law, needing some princely act of will and command to give it properly legal form and obligatory character.

What was central to the Jesuits' whole discussion was the concept of law itself, and not simply legislating, as an *act*. Categorically, 'law is the act of a superior'.<sup>67</sup> The account of this 'act' was modelled on a highly idealised and rationalistic version of what a fully rational act looks like, to which concrete episodes of law-making would conform more or less. The act in question is not a discrete action like throwing a stone, but a complex series of actions, considered as one *actus* in virtue of their common 'ordering' towards an envisaged outcome. For Suárez, who most fully spelt out what the others assumed, the best way of explaining the components of this act was to consider the 'sequence or order' (*seriem seu ordinem*) of acts that go into making a law (*De legibus*, 1.4.3), both the 'acts in the mind of the legislator' and the 'external' acts and signs whereby those acts are manifested to the legislator's subjects (1.4; III.20).

Construed in this way, what could be said of any rational human act could equally well be said of law and legislating. Thus all the faculties and attributes of the soul (will, memory, understanding, decision, judgement, intention, deliberation, vice, virtue, prudence) are all properly applied to the 'act' of the legislator. This language itself loaded the interpretation of law in the direction of a 'command' or voluntaristic theory of law.

#### LAW AS THE 'ACT' OF THE PRINCE

The 'order or series', the ideal logical-temporal sequence that Suárez invoked as constituting the 'act' of legislating, may be analysed like any 'act' into: actor, intention, deliberation, decision, and execution.

<sup>66</sup> Contzen had a higher regard for customary laws than most other Jesuits, no doubt in part because he saw the 'constitutional' laws of the Holy Roman Empire as essentially customary. In *Politicorum Libri X*, bk v.5.5, he denied that an unconditional right to make new laws or abrogate old ones is a necessary part of supreme *jurisdictio*, since there are many laws which kings promise to observe and preserve at their coronation; in v.20.9 he cited Grégoire de Toulouse on 'leges quae stabilierunt Principatum' as unbreakable, expressly mentioning the Salic law as 'fundamentalis'.

<sup>67</sup> Suárez, *De legibus*, 3.31.8: *actus superioris*, but *actus* was universally used: e.g. Salas, *De legibus*, I, v, 16; Valentia, *Commentarii*, disp. 7<sup>a</sup> generalis, qu. 2, pt 2 (p. 798A–B): *actio, actus voluntatis*; Vazquez, *Commentarius*, disp. CL, law as *opus rationis* (or 'voluntas'), equated in paras. 9, 19 and 27 with *actus*. Aquinas had not referred to laws as *actus* in *1a-IIae*, but as a *regula aut mensura*, a *dictamen* or a *praeceptum*.

(1) The 'act' of legislating obviously postulates an actor. Most naturally this would be an individual, and this is how Jesuits normally wrote and thought. However, it might be a collectivity of some kind; the acts of a collectivity can however only be a 'single' act by some ritual, representation, or symbolism, whereby the unity of a natural person is attributed to a fictitious, or mystical 'body'.

(2) The 'act' of legislating also postulates 'intention' (*intentio* or *mens*), because 'every moral act depends essentially on the intention' (Suárez, *On Laws*, III.20.3). The requisite intention must be to promote the common good, since *principatus* cannot be intelligibly specified in any other way.<sup>68</sup> But since governing justly and for the common good may also be done in many other ways, legislating postulates the more specific intention of ordaining a rule. And since rules are of various kinds, an even more specific 'intention' is required, namely an intention to impose a morally obligatory rule.

(3) The next stage or component is deliberation, or more generally 'reason'. Law is a rational act, and therefore demands deliberation or the engagement of the understanding (*intellectus*). 'Reason' here means practical reason, the faculty which allots to possible ends their just place in a hierarchy, chooses the greatest good or, in an imperfect world, the least evil, and selects apt means towards that end. This as we have seen calls for prudence: 'law in the proper sense is a *dictamen* or ordinance of practical reason', to quote Valentia's definition, echoing Aquinas.<sup>69</sup> And since no single individual is likely to have all the accomplishments needed for legislating, deliberation will also involve *consultation* and advice (*consilium*).

(4) Thereafter, there must be a decision, determination, or conclusion. This is the 'will' (*voluntas*, *arbitrium*) component of law. If any 'conclusions' have been reached in the process so far, they are merely intellectual conclusions about what is prudent and just. What is required now is an *arbitrium*, a decision to act. This again is described as an 'intention', but this time it is an intention both to make a law, and morally to oblige subjects to obey it; Suárez at one point even distinguished these as 'two wills or intentions' (*On Laws*, III.20.4), but then reverted to saying that they are 'one and the same, or one includes the other, at least implicitly' (*On Laws*, III.20.5, referring back to I.4.8).

(5) The final stage in the sequence is the communication of the command (*imperium*, *ordinatio*, etc.) to those subject to it, otherwise they cannot have any obligation (Suárez, *On Laws*, I.4.2). At this stage therefore

<sup>68</sup> See ch. 12.      <sup>69</sup> *Commentarii*, qu. 5<sup>a</sup> generalis, pt I, p. 847A.

'action' becomes external *agere*. There must be 'signs' or outward expressions of the legislator's 'mind' or 'intention'. What counts as such signs or expressions depends on conventions. Salas emphatically endorsed Gabriel Biel's interpretation of law as 'neither an act of intellect nor an act of will of the legislator, but rather as the written or other sign by which a legislator expresses right reason and the will to put his subjects under an obligation'.<sup>70</sup> On Suárez's account, all the previous parts of the legislative process (apart from consulting others) had been literally a mental act, but only because he had conflated the person of the prince and the *persona* of the *princeps*, and because he was thinking of legislating as essentially a princely (not a collective) activity; on any other assumption, the earlier parts of the legislative process would be no more 'internal' or 'mental' than the later.

It was evidently at least arguable that yet another stage might be necessary in legislating, namely the assent of those who were to obey.<sup>71</sup> But the uniform answer was that whereas the other stages are unconditionally necessary, consent, approbation, or ratification by the subjects is not. Both lawful command and the virtue of obedience presuppose a due order of superiority and inferiority. Where that exists, the consent of the subjects is logically redundant: they are already duty-bound to obey, and therefore would have no right to withhold consent.<sup>72</sup> Where *de iure* some communal assent to laws is required, it is because some community is itself the legislator or part of it, and those consenting are not subjects, but part of the collective 'prince'. Some Jesuits favoured such an arrangement; most did not.<sup>73</sup> Its principal drawback was that it compromised the unequivocal and stringent character of the duty of obedience, most perfectly realised in a monarchy. However, some sort of institutionalised consent might be expedient, since mere 'tacit' consent (or acquiescence) might not be enough to ensure that laws would be obeyed, especially when

<sup>70</sup> Salas, *De legibus*, disp. 1, section v, 20. He then had difficulties with natural laws, which had no legislator, for they would oblige even without God's will that they should oblige (s. 23, citing Vazquez, disp. CL, ch. iii, 23).

<sup>71</sup> Suárez, *De legibus*, III.19. More cautiously Becanus, *Summa theologia scholasticae*, pt II, tract. III: de legibus, ch. 6, qu. 8.

<sup>72</sup> Suárez, *De legibus*, I.II.7: 'Si autem [lex] pendeat ex acceptatione subditorum, iam non tam ipsa obligaret, quam ipsi subditi voluntarie se submitterent legi'; Valentia, *Commentarii*, disp. 7<sup>a</sup> generalis, qu. II, pt 5, p. 868, also noted the point: 'Nam hoc ipso, quod superior praecipit subditis, ut legem exequantur, obligat eos ad recipiendum illum: Ergo legis obligatio non pendet ab acceptatione subditi.' But he thought the consensus of theologians and jurisconsults was that there needed to be at least 'tacit' acceptance.

<sup>73</sup> Suárez, *De legibus*, I.II.7: where acceptance by the people was required, it was because of the 'imperfect power of the prince', or because of his benignity in not insisting on his 'absolute power'.

they went against custom. Custom could on occasion override positive law.<sup>74</sup>

#### THE VOLUNTARIST COLLAPSE

Of all these components of the *actus* of law, those attributable to *intellectus* or reason alone can at most propose good advice, and therefore cannot account for its obligatory character. And since every positive law always adds *something* to natural and divine law, the latter cannot themselves explain the obligation it imposes on the subject either. Moreover, subjects can be morally obliged even though they do not understand the legislator's intention. The only possible component of the legislative 'act' which could yield such an obligation had therefore to be something connected with the 'will' of the legislator.<sup>75</sup> And the only possible way such a manifested will (that is, a command) could impose a moral obligation, was if a relationship of superiority (*dominium, potestas, imperium*, etc.) and inferiority or subjection already existed between those commanding and those commanded. The Holy Roman Emperor's manifested legislative will has no moral force to oblige a Frenchman. It was therefore not laws which explained or justified *potestas*; rather laws *presupposed* it.<sup>76</sup>

It is this conceptual framework alone which explains why it was not only reasonable but necessary to ask whether law was essentially an 'act' of (the prince's) reason or of (his) will; or why Suárez and the others thought it necessary to impute to legislators an 'intention' or will to oblige,<sup>77</sup> in Suárez's words, 'an efficacious will to oblige' (I.15.1) 'on the part of the person who has *potestas*' (I.10.12); or why they thought it necessary to construe political obligation as the moral and voluntary effect of the act of will of the *Princeps* (III.15.8), etc.

Law construed as an *actus* therefore assimilated law to any other command, and conflated the person and the *persona* of the prince. However, on this interpretation the identity of law itself immediately became problematic again. Although a law was by definition a rule of some kind, that was not enough to distinguish it from a command. A 'rule' might simply be a 'standing order', an economical way of issuing a direct command to many persons to perform certain specific acts on definite occasions, possibly *ad infinitum* (e.g. the rules of a college or even a large household about the

<sup>74</sup> Valentia, *Commentarii*, p. 869.    <sup>75</sup> Suárez, *De legibus*, I.5.16.

<sup>76</sup> I.8.3: 'praeceptum ut tale . . . postulare aliquam superiorem potestatem'.

<sup>77</sup> III.20.3; or Molina, *De iustitia et iure*, tract. I, disp. IV, p. 9B-C.

performance of recurrent tasks, hours of rising, mealtimes, retiring, prayers, etc). Jesuits were more than willing to count rules of this kind as laws; Suárez often recurred to the example of fasting during Lent to illustrate some feature of law in the proper sense.<sup>78</sup> But this could not serve as a universal account of law, because not all or even most laws were generalised commands demanding specific performances from identifiable individuals. A distinction therefore needed to be made between commands which were laws and other kinds of commands.

The distinction set out by Vazquez and adopted by Suárez was that law is distinctive among commands in that it is perpetual and stable.<sup>79</sup> This was of course true of the laws Jesuits thought of as model-instances, and was intrinsically plausible. But the *plena potestas* that marked out the sovereign (*supremus*) prince had, since the Middle Ages, been understood to entail that such a prince is neither bound by any acts of his predecessors, nor capable of binding his successors. On Suárez's own account, therefore, the perpetuity and stability of laws could only be a contingent and circumstantial one. The authoritative will which made anything a law, whether expressly (by legislating) or permissively (by allowing the laws of predecessors to continue in force) was that of the *current* incumbent of *principatus*. The only 'perpetuity' Suárez could therefore attribute to laws was a 'negative' perpetuity, in other words the absence of any express or implied time-limit, and the presumption that the validity of 'genuine' laws does not expire with the prince who made it (*On Laws*, I.10, 1, 7, and 15). The 'perpetuity' of laws thus amounted to no more than perpetuity until further notice. And all the reasons Suárez gave for thinking of laws as inherently or 'morally' stable and perpetual were not compelling conceptual considerations, but practical benefits that redound to the commonwealth from having unchanging laws, and its need for such stability.<sup>80</sup> But that need was evidently in any individual case a matter of prudence and judgement, and *principatus* had been instituted precisely to make such judgements. The identification of law therefore collapsed again.

<sup>78</sup> E.g. *De legibus*, I.17.7 (fasting), III.12.8–9 (fasting and sumptuary laws); also the *Lex Carthusiana*, e.g. Salas, *De legibus*, disp. XI, s. 2.

<sup>79</sup> Vazquez, *Commentarius*, disp. CLIII, ch. 1, 35: 'Praeceptum autem differt a lege, quia lex manet post mortem ferentis'; he evidently did not think this enough, since he added: 'lex etiam commune mandatum est, hoc est, plures comprehendens: praeceptum autem simplex potest esse singulare'; for difficulties about the postulated generality of laws cf. Suárez, *De legibus*, I.10.7–15.

<sup>80</sup> I.10.7, 15: detriments to the commonwealth from 'daily' changes, the right government of commonwealths demands stable and permanent laws, etc.

All the same, this conception of law as simply one of the instruments of ruling, essentially a ruler's command, which was effectively the standard interpretation of law throughout the Society, conformed exactly to the overwhelming significance for the commonwealth that Jesuits attributed to *principatus*. Its 'presumption' in favour of princes allowed princes considerable freedom of action and scope for prudence, and gave little leeway to rebellious subjects. It, however, presupposed an understanding of the common good, which must now be explored.



## *The common good and individual rights*

As we have repeatedly seen, it was beyond contention for Jesuits that the end and justification of government, law, and policy was the common good (or the common *felicitas*, *beatitudo*, *utilitas*, all impeccably Aristotelian and Thomist synonyms). All the same, no Jesuit thinker seems to have submitted the concept to separate and sustained investigation. This was no doubt partly at least for the banal reason that ‘what is the common good?’ was not a standard *quaestio* in the Thomist corpus.<sup>1</sup> The concept had, however, raised perplexing issues for scholastics since at least the thirteenth century. The common good unquestionably had precedence over the individual good; Aristotle had even described it as ‘more divine’. But Augustinians and Thomists alike acknowledged that there was a natural and legitimate self-love and self-preference, and it could not be denied that the two might conflict, at least in appearance. What no Jesuit seems to have been prepared to concede, however, was that there could be genuine conflicts where right was equally on the side of the public and of private individuals. Moreover, there had from medieval times been a not fully articulated tension between two quite different conceptions of the polity, and therefore of the common good: was the polity to be understood as providing merely the background conditions of peace and civility for individual flourishing, or as some kind of common enterprise (a school of virtue, say) to which all subjects must be compulsorily recruited?<sup>2</sup> But because of the dispersion of comments on the topic, such issues continued to remain largely latent and unresolved.

<sup>1</sup> The Dominican Remigio de’ Girolami’s monograph *De bono communi* (1301), apparently the only work of its kind, remained unknown and unpublished. For the most authoritative exploration of his and other scholastic discussions of the common good see Kempshall, *The Common Good in Late Medieval Political Thought*.

<sup>2</sup> In Oakeshott’s terms, the former is *societas*, the latter *universitas*, though the distinction seems not to be medieval; in Hayek’s terms the two ideal types are *cosmos* and *taxis*. The analogous distinction Kempshall has found in medieval literature is between *bonum commune* and *communis utilitas*, or virtue and *pax et tranquillitas*.

Thus Suárez's careful definition of the common good seemed to assign it a narrow scope:

The natural *felicitas* of a self-sufficient community is that . . . individuals, as members of it, should be able to live in that *felicitas*, that is, in peace and justice, with such a sufficiency of worldly goods as the preservation and convenience of bodily life demands; and with such probity of morals as is necessary for external peace and happiness and the fitting preservation of human nature.

As ever circumspect, he explained that *felicitas* here did not mean the 'natural happiness of particular individuals', but their well-being as members of such a community, irrespective of their happiness or misery in their other roles and *personae*.<sup>3</sup>

As with every other thing in the Thomist universe, the first end of the commonwealth is its own conservation, *securitas* or *salus*<sup>4</sup> ('safety', 'well-being', 'health', 'welfare'), its ability 'to fend off all enemies, whether internal or external', as Bellarmine put it.<sup>5</sup> 'Peace', *tranquillitas* or *quies/quietus*, or more precisely 'external', 'temporal', 'secular' peace, referred more specifically to domestic good order.<sup>6</sup> Such terms had an obvious resonance in those troubled times. As Auger remarked, 'war is one of the sharpest rods that God ever takes in his hand', and 'civil wars, seditions and rebellions where religion is mixed up with the state are the most cruel and dangerous of all'.<sup>7</sup> The idea that to be willing to submit to all manner of restrictions and burdens in exchange for a modicum of security against such perils was somehow distinctively bourgeois<sup>8</sup> is preposterous.

The common good naturally also included justice, or more narrowly 'political', 'external' or 'temporal' justice.<sup>9</sup> The conventional distinction was between 'distributive' justice, relating to the allocation of burdens and punishments, as well as of rewards, offices, and emoluments of all kinds, and 'commutative' justice, meaning relationships and conduct

<sup>3</sup> *De legibus*, III.11.7.

<sup>4</sup> *Salus populi suprema lex* was already a cliché; see *passim* Hotman, *Franco-Gallia*, and Bodin, *Six Livres de la République*.

<sup>5</sup> Bellarmine, *De laicis*, ch. XIV (p. 327).

<sup>6</sup> E.g. Molina, *De iustitia et iure*, tract. II, disp. XXXI (p. 104C): 'ut pax, securitas et iustitia conservetur'; Becanus, *Quaestiones miscellaneae*, p. 109: 'ad finem naturalem, nempe ad quietem et pacem reipublicae conservandam'; Tanner, *Defensio ecclesiasticae libertatis*, p. 322: 'publicam felicitatem et tranquillitatem . . . , pace et tranquillitate mundana', etc.

<sup>7</sup> Auger, *Le Pedagogue d'Armes*, pp. 6<sup>v</sup> and ch. 2, chapter-heading.

<sup>8</sup> Herrfried Münkler in his valuable *Im Namen des Staates* (p. 189) writes, alas: 'Diese den Anforderungen des bürgerlichen Individuums entsprechende Ordnung ist der Staat, der als Machtstaat Ruhe, Ordnung, Frieden, Besitz und Sicherheit des Lebens gewährleisten soll.'

<sup>9</sup> Contzen, *Politicorum libri decem*, v.4.5, equates *bonum publicum* with *concordia, felicitas, iustitia*; II.6.1 has: 'duo esse fundamenta politicae societatis: iustitiam et religionem'.

involving mutual obligations and/or rights, especially contractual or quasi-contractual relations.<sup>10</sup> Jesuits, like early-modern absolutists generally, also regularly invoked the prince's role as the poor man's friend.<sup>11</sup>

No one was likely to deny that survival of the polity, peace, and justice were essential components of the common good. But for Jesuits it plainly also connoted something more ambitious. Contzen's own description of the common good was expansive: 'the end of the commonwealth is the highest good, the public good, the *beatitudo* of all together and each individually'. This civic, human *beatitudo* encompasses not only every civic and religious virtue, and 'divine *beatitudo*, towards which the human tends', but also 'external order, peace, or leadership in war, an abundance of riches and an outpouring of provisions. Since individuals are not self-sufficient, they collaborate (*conspirant*) in order to live upright, peaceable, easy, and wealthy lives.'<sup>12</sup> He followed Aquinas (and Aristotle) in claiming that the relationship between citizens that the well-being (*salus*) of the commonwealth required was one of *amicitia*; 'I mean a friendship given gratis, not a venal one where each is the calculating spectator of his own interest (*sui commodi callida spectatrix*)'.<sup>13</sup>

The common good here encompassed the moral improvement of the subjects. In part for this reason, Jesuits fully approved of sumptuary laws,<sup>14</sup> which attempted detailed regulation of the attire, ornamentation, and consumption permitted to persons of different social statuses.<sup>15</sup> They also approved of: the control of publications of all kinds, price-fixing (at least for staples), the regulation of imports and exports, the encouragement of agriculture and trade, including promoting immigration by useful craftsmen,

<sup>10</sup> Molina, *De iustitia et iure*, tract. II, De iustitia commutativa circa bona externa.

<sup>11</sup> Azor, *Institutiones morales*, vol. 1, bk v, ch. 1, pp. 550–1: 'to defend the commonwealth against its enemies and the weaker against the power of the rich'. Contzen, *Politicorum libri decem*, 1.21.13 (p. 43), says monarchs normally provide justice because they profit by so doing and not because of their virtue.

<sup>12</sup> *Politicorum libri decem*, II.2.7 (misnumbered as 4).

<sup>13</sup> Ibid., II.11.1. See also Azor, *Institutiones morales*, vol. 1, ch. v.5 (pp. 579C–580A).

<sup>14</sup> Contzen, *Politicorum libri decem*, e.g. VIII.14. Bireley, *The Counter-Reformation Prince*, pp. 151, 155, rightly comments on Contzen's 'puritan streak', but I see no difference here between Contzen and Suárez, who also (*De legibus*, III.12.9) says that 'civil laws may also command (*praecipere*) moderation in external expenses [*externis sumptibus*, presumably conspicuous expenditure], pleasures, in luxuriousness of clothing and excessively lavish display in houses and servants'. See also *De legibus*, III.11.7, cited Bireley, *The Counter-Reformation Prince*, p. 35, n.45.

<sup>15</sup> Lessius complained about women and young fops (*molliculi iuvenes*, 'to be counted as women') spending hours ornamenting themselves, and ostentation and excess of every kind; these were not, however, *per se* mortal sins, and he also made generous exceptions for activities designed to adapt external appearance to status, or to entice to matrimony or performance of marital 'duty'; *De iustitia et iure*, bk IV, ch. IV, dub. XIV.

even heretical ones,<sup>16</sup> the policing of witchcraft, of sexual morals, of mothers breast-feeding,<sup>17</sup> and of the conduct of fathers with regard to excesses in punishing, the provision of education, public munificence, charitable enterprises, the regulation of banking and the provision of public institutions for lending (so-called *montes pietatis*), and the enforcement of laws against usury. Where Jesuits exercised secular rule themselves, namely in the Paraguayan Reductions, they created a moral police and order of the most regimented kind. It is, however, problematic whether this is to be imputed to the distinctive characteristics and circumstances of the Guaranis, or to Jesuit ideas of good order here attaining unimpeded expression, or both.<sup>18</sup>

Moreover, Jesuits habitually included the advancement of true religion among the purposes of the commonwealth. Taken out of context, there is no more perfect epitome of that most uncompromising of Oakeshott's *universitates*, the theocracy, than Bellarmine's assertion that the end of government should be a union (*coniunctio*) of the citizens 'principally located in this: that they should all think the same thing, want the same thing, and pursue the same thing'.<sup>19</sup> Indeed, much of the enmity that the Society aroused was due precisely to its unflinching insistence that the secular commonwealth of Christians under certain circumstances becomes an instrument for the supernatural ends of the Church, whose custodian is the Vicar of Christ. Fitzherbert casually asserted that 'the Commonwealth itself, with all her inferiour societies, are [*sic*] naturally subordinate and subject to the religious and Ecclesiasticall society, that is to say the Church, tending there to, as to the supreme and most perfect society on earth'.<sup>20</sup> His expression was unusually blunt, but no Jesuit denied that the secular commonwealth was in some respects the 'secular arm of the Church'.

<sup>16</sup> See Bireley, *The Counter-Reformation Prince*, p. 179, for Lessius and Scribani.

<sup>17</sup> Contzen, *Politicorum libri decem*, IV.32–6, advocated legally compelling mothers able to do so to breast-feed, as both good for the babies and pleasing to God. Yet he also deplored the currently excessive numbers of laws (V.12).

<sup>18</sup> The Guaranis had lived 'en montes, sienas, y valles, en escondidos arroyas, en tres quatro o seis casas solas, separados a legua dos tres y mas unos de otros', and naked what is more (Ruiz de Montoya, *Conquista Espiritual*, pp. 1<sup>v</sup>, 6<sup>v</sup>); in other words they were 'barbaras ferasque nationes' (*Litterae annuae Provinciae Paraguaiae Societatis Jesu*, for 1626 and 1627, pp. 33, 40), as well as pagans. They therefore needed to be 'reduced' to 'la vida politica y humana' (Ruiz), and 'ad humanitatem Christique suave iugum' (*Litterae annuae*, p. 33). And as innocent and helpless victims of Spanish and Portuguese barbarities, they needed protection. In all respects they were a special case. However, Ruiz described what the Fathers of the Society had established as a 'jardin de flores del cielo, y una nueva y primitiva Iglesia' (*Conquista Espiritual*, Preface). See generally Armani, *Città di Dio e Città del Sole*, esp. chs. 2–3.

<sup>19</sup> Bellarmine, *De Romano Pontifice*, 1.2 (p. 313): 'ut idem sentiant, idem velint, idem sequantur omnes'. But Santarelli's *Tractatus de haeresi, schismate . . . et de potestate summi Pontificis* and Azor's unconstructed high papalism came close.

<sup>20</sup> Fitzherbert, *A Supplement*, s. 70. See the similar remark in *The Reply*, p. 98.

Thus Jesuits could not affirm without qualification that the secular commonwealth aims merely at a this-worldly *felicitas*. This indeed was one of their principal objections to the *politiques*. But neither could they construe the commonwealth as *simply* a means to higher, spiritual purposes. Merely temporal good order, civil peace, and secular justice were independently valuable benefits. There was also an important methodological consideration. As we saw, philosophical and theological definitions were required to conform to both ordinary and authoritative usage. General propositions about the *respublica* as such (and therefore the common good as such) had therefore to be able to encompass a positively encyclopaedic range of polities of every age, every continent, and every civil religion, and could not include anything specific to Christian or Catholic commonwealths. As Bellarmine himself pointed out, even if there were no recognition of the true Church or of spiritual purposes (as was in fact the case with most of the human race), there would still be true commonwealths.<sup>21</sup> And the Jesuits' predilection for a polity which regulated its subjects' lives in great detail might not reflect any optimistic assessment of the polity as an engine for moral and religious improvement, but merely a nervousness about the fragility of political order.

So for the most part, they treated with extreme respect whatever was established, however defective it might be *sub specie aeternitatis*. Sweeping assertions about the common good were qualified the moment distinctions of rank and status were at issue. The requirement that laws and commands must be directed to the common good was *never* understood to preclude differentiations according to status or 'degree'.<sup>22</sup> Laws that did not apply to aristocrats, or applied exclusively to them, were no more objectionable than laws which addressed the specific circumstances of widows, orphans, distressed artisans, merchants,<sup>23</sup> or the poor. The Society took it absolutely for granted that everyone should comport themselves in accordance with their station, and defined vices such as ambition, pride,

<sup>21</sup> *De Romano Pontifice*, bk v, ch. 6 (p. 531): 'At potestas politica non est solum propter ecclesiasticam, nam etsi ecclesiasticam non esset, adhuc politica esset, ut patet in infidelibus, ubi est vera potestas temporalis et politica.'

<sup>22</sup> For example Contzen, *Politicoꝝ libri decem*, v.18: 'Privilegia concedenda, sed meritis et moderate.' Standard theological discussions are Vazquez, *Commentarius in primam secundae*, disp. CLI, ch. 1, s. 3; Salas, *Tractatus de legibus*, disp. 1.8.48; Suárez, *De legibus*, 1.6.6–14; cf. also 1.6.24. Lessius even made allowances for the aristocratic custom of duelling, condemned unequivocally by princes, popes and councils time out of mind, most recently at Trent; *De iustitia et iure*, bk II, ch. 9, ss. 47–9, 83–4.

<sup>23</sup> Molina, *De iustitia et iure*, tract. II, disp. 668, s. 1, considered taxes bearing particularly heavily on merchants to finance measures against piracy as entirely justified by the criterion of *aequalitas et commensuratio*, since merchants were the principal direct beneficiaries.

luxury, gluttony, or vanity as an *excess* beyond the norm for persons in that station.<sup>24</sup>

Again, distributive justice demanded that superiors allocate offices, privileges, rewards, and also burdens exclusively in accordance with desert or merit, not birth.<sup>25</sup> Contzen's version of this philosophical commonplace stands out only because of its elegant neologisms: 'I am well aware that no Appiety or Lentulity is to be preferred over virtue, and that nobility is virtue, nothing more, nothing less.' All the same, he devoted an entire chapter to the theme that 'Defence of the nobility makes a prince powerful', in view of the martial virtues which noble birth and upbringing inculcated and the danger to a prince when nothing stood between him and the common people.<sup>26</sup> He noted that nobles were hated in disturbed and perishing commonwealths, whereas they enjoyed *dignitas* in all well-ordered ones. He even reproduced chapter 4 of Machiavelli's *Prince* in its entirety, since its theme of the difficulty invaders would have in retaining control of a kingdom with a powerful nobility, however easy it might be to invade it, was grist to his mill (s. 4, eighth point). He then of course qualified, as Mariana and humanists generally did:<sup>27</sup> it was not the whole of the nobility that deserved favour, but only its uncorrupted part. He (not implausibly) invoked the authority of Cicero and Seneca for the view that promotion of new men to the nobility was of outstanding usefulness to the commonwealth; all ancient noble families had once been new (s. 5).

In the Society itself, intended to be exemplary in this as in all other respects, those of outstanding talents were advanced irrespective of considerations like nationality, patronage, or social standing. Nevertheless, it was easy to find functional reasons for preferring those of good family. The Society's ingrained policy of seeking the favour of the great, enshrined in the *Constitutions* themselves, was obviously facilitated if Jesuits called on

<sup>24</sup> Fitzherbert, *The Second Part of a Treatise*, chs. 24.18 and 22; ch. 37.14. Azor, *Institutiones morales*, pt 1, bk III, ch. XII (p. 451) defines pride, vainglory, and ambition as 'immoderate' desires or appetites for honour, praise, and power and office respectively.

<sup>25</sup> E.g. Lessius, *De iustitia et iure*, bk II, ch. 32, s. 1: when 'in distribuendo spectatur aliqua conditio personae, nihil ad distributionem faciens, ob quam indignior praefertur digniori', this is *acceptatio*, a mortal sin according to the 'communis sententia Doctorum' (s. 13). Lessius was, however, fairly lax about preferment of the rich and the sale of offices when other things were equal (ss. 9–10, and dub. IV). Cf. Contzen, *Politicorum libri decem*, VII.7; also chs. 8, II, 16.

<sup>26</sup> Contzen, *ibid.*, VII.20.2; the Appii and Lentuli were Roman patrician clans.

<sup>27</sup> He cited Mariana's *De rege*, 'bk IV.4' (in fact bk 3, ch. 4): 'In my view, the Prince should uphold the nobility, and allow something to posterity for the eximious merits of their ancestors, but only if the descendants themselves add habits, industry and virtue like those of their ancestors to the splendour of their birth.'

to deal with the great were of appropriate social standing. Conversely, one argument for excluding those of New Christian ancestry from its Hispanic provinces was the damage to the Society's standing if it came to be regarded as a haven for such social undesirables. Moreover, the Society accommodated itself easily to prevailing social sentiment.<sup>28</sup>

But perhaps the most severe constraint on any ambitious schemes for the public good was just how little devotion to the common good could be expected from subjects, either as a matter of fact or of right. For Jesuit moralists, the subjects' pre-eminent concern with their private good was not evidence of moral depravity. On the contrary, as we have repeatedly seen, to love oneself was a natural instinct implanted by God and even a duty.<sup>29</sup> Care for oneself also encompassed a concern for those whose well-being we regard as inseparable from our own. This legitimate self-love qualified even important civil obligations: for example, only the most heinous crime would require a son to denounce his father, a wife her husband, or vice versa.<sup>30</sup> Laws, furthermore, must be 'morally' possible (a much more stringent criterion than other sorts of possibility), and must be accommodated to the subjects' natures, characters, and customs. All Jesuit moral theologians repeated the standard scholastic doctrine that laws must not demand any extraordinary degree of virtue,<sup>31</sup> except in extreme circumstances where even Hobbes managed to smuggle in such a demand.<sup>32</sup>

Jesuit theologians were therefore visibly uncomfortable with the question St Thomas (*1a-2ae*, 92.1) had bequeathed to his disciples: 'Whether the effect of law is to make men (or citizens) good?' He had answered affirmatively. Salas's discussion of this question, which is the fullest and most circumspect,<sup>33</sup> acknowledged many reasons why moral goodness cannot be the 'effect' of law as such: laws can be satisfied by ill-intentioned and merely 'external' compliance, they do not forbid every kind of evil, they cannot

<sup>28</sup> *Limpeza* was also favoured for other, even less savoury reasons; see Lewy, *Constitutionalism and Statecraft*, pp. 118–20; Donnelly, 'Antonio Possevino and Jesuits of Jewish Ancestry', pp. 3–11; and especially Alden, *The Making of an Enterprise*, ch. 11.

<sup>29</sup> Lessius, *De iustitia et iure*, II, ch. IX, s. 20, refers to it as a 'command' (*praeceptum*); similarly Salas, *De legibus*, disp. xv, s.vii.85: 'quia quisque naturale praecepto tenetur conservare propriam vitam, si commode potest . . . Nec mirum, quod ex naturali amore ad id tenetur' (my italics). For legitimate self-preference, or self-love, in scholastic moral philosophy, see Kempshall, *The Common Good in Late Medieval Thought*, *passim*, index entries *love* and *ordo caritatis*.

<sup>30</sup> E.g. Guivvara, *Compendium Manualis Navarri*, p. 69: 'Whoever accuses their parents of any crime, unless it be heresy, or treachery to the king or commonwealth, sins mortally'; see also Lessius, *De iustitia et iure*, bk. II, ch. 31, s. 16: 'Nemo potest cogi ad testificandum contra sanguine iunctum'.

<sup>31</sup> Salas, *De legibus*, disp. I, sect. IX (pp. 55–6): 'leges humanae debent esse possibiles et suaves'.

<sup>32</sup> All should hazard their lives when the very existence of the commonwealth is threatened, *Leviathan*, ch. 21, p. 152.

<sup>33</sup> *De legibus*, disp. II, sect. I.

impose motives, etc. But conceding all this (ss. 2, 3, 6–8), he still felt able to assert that

law not only makes men good by way of the moral goodness of obedience (which would be impossible without law), but it also makes men good in terms of the moral goodness of all the other virtues relating to will or sensual appetite. For it not only proposes objects to these virtues (as simple teaching and advice does), but also impels, compels, coerces and obliges to them, and sometimes promises a reward . . . And although law does not oblige us to do external acts of mercy or justice from motives of mercy or justice, nevertheless when a man recognises that he should do such acts on account of the obligation imposed on him, he will easily add the motives of those virtues, and thus he will do internal acts, by which he gains those virtues or their augmentation, . . . and once they have been gained or increased, he will more easily act in this way thereafter and will be rendered better day by day [s. 3, brackets in the original].

For Aquinas and his Jesuit disciples, virtue was a habit, and anything which served to cultivate moral habits was to that extent good. Once virtuous habits of acting had been established, right intentions would follow in due course.

In the same vein, Valentia<sup>34</sup> carefully added the usual caveats and the qualification that the ‘effect of laws is to make men good, *in so far as they have it in them*’ (my italics). This, he said, was what Aquinas ‘should be understood’ to be saying in *1a-IIae*, 92.1; in other words, he wished Aquinas had expressed himself in some other way.<sup>35</sup> Suárez, equally cautiously, reformulated Aquinas’s question as being about the ‘*intended effect*’ of law (my italics). He too admitted the force of the objections to the idea that law either had or could have the effect of rendering men virtuous. Nevertheless, he described law as enlightening (*illuminativa*), in that it teaches subjects moral duties of which they might otherwise have remained in ignorance. Moreover, laws are *motiva* and *impulsiva* (*On Laws*, I.4.7); they ‘direct subjects to do this or that, in this or that manner, at such and such a time or occasion’ (III.20.4). And they direct subjects toward the common good (I.4.6), a more meritorious end than the *bonum particulare* which is their ordinary concern. Contzen, as a teacher of *doctrina civilis*, warned that law must be accommodated to the different characters of different peoples: Asiatics, for example, cannot bear liberty; Italians flourish in a moderate liberty. Judging what is required calls for a great and almost god-like (*divina*) prudence on the part of the legislator. For all that, the law should not be a ‘Lesbian rule’, accommodating itself to the vices which it should be counteracting. And rulers should not listen to the *politici*, who would have the

<sup>34</sup> Valentia, *Commentarii*, disp. 7<sup>a</sup> generalis, qu. v, pt 2 (p. 856).

<sup>35</sup> Ibid., qu. II, pt 2 (p. 804C–D).



law aiming only at creating good citizens, not good men. For 'those whose morals are bad are also bad citizens'.<sup>36</sup> They would be, given the Jesuit conception of the well-ordered polity.

Civil society, then, was certainly not an association of individuals with individual rights to which government must accommodate itself. On the contrary, if there was any accommodating to be done, it was by subjects, not rulers. Bellarmine summarised the Society's constitutive beliefs:

If human nature demands life in association, it certainly also requires rule and a governor, for it is impossible for a multitude to survive for any length of time, unless there be someone to hold it together, and whose business it is to look after the common good . . . Hence Proverbs 11 [14]: 'Unless there is a ruler, the people will perish'. Furthermore, a society is an ordered multitude. A confused and dispersed multitude is not called a society. And what is order, but some continuum of superiors and inferiors?<sup>37</sup>

Jesuits were of course familiar with the concept of individuals as bearers of rights, including natural rights. But rights-talk simply did not function here as it did in the Levellers or Locke, or to some extent even in Hobbes. And the rules of political rhetoric of the time by no means allowed rights to 'trump' duties whenever the rights-card was played. For Jesuits even natural rights were not pre-civil private possessions which individuals might trade for various civil commodities, or criteria by which the legitimacy of any civil polity might be gauged. Rather, they were subject to limitation, forfeiture, abridgement, or alienation for the sake of the common good. The only rights or freedoms which Jesuits expressly allowed to prevail over the rights of rulers were the *libertates* or *iura Ecclesiae*,<sup>38</sup> and the rights of communities, not individuals.

Thus Contzen acknowledged that human beings are tenacious of their liberty, and indeed are born free and equal, and naturally flee and abhor servitude. He thought liberty was something most easily achieved in democracies, unlike equality which ran against the nature of political things even there. But for him the most important thing to say about liberty was that

<sup>36</sup> *Politicorum libri decem*, v.6, chapter heading: 'finem legis esse facere viros et cives pariter bonos'; and s. 3.

<sup>37</sup> *De laicis*, ch. v (p. 317). Contzen, *Politicorum libri decem*, 1.3.4 described society as an 'order of those who command and those who obey commands (*ordo imperantium atque parentum imperio*)'; he cited James VI/I approvingly and at length for his condemnations of the Puritan aspiration to 'equality (*paritas*) the mother of confusion'; *ibid.*, Preface to Ferdinand II, p. 5-v.

<sup>38</sup> Jesuit theological works were always equipped with copious indexes, but the entry under *ius* normally consisted largely of cross-references to *lex*. The only entry under *libertas* in the enormous index to Francisco Toledo's *Summa Casuum Conscientiae* (extended edition of 1619) is '*libertas*, Ecclesiastica in quo consistat'.

it does *not* mean doing as one pleases; in its true sense, it means being able to do what the law allows, and is thus no less attainable in monarchies than in any other form of government.<sup>39</sup> He commended modern monarchies for not being 'absolute', and connected this with natural liberty at least once.<sup>40</sup> But despite the length of his book, liberty merited no separate chapter. He had no use for the language of 'subjective' rights; everything he needed to say could be said by referring to duties of rulers, to what is permissible for subjects to do, or to what they are not bound to do or obey.<sup>41</sup>

#### THE RIGHT TO SELF-DEFENCE

Even so, there were circumstances in which the natural rights of individuals *could* be exercised in defiance of law or the commands of rulers. The only natural right which Jesuit theologians regarded as entirely uncontentious was the right of self-defence or self-preservation, to repel force with force.<sup>42</sup> Jesuits normally did not even attempt to ground it, presumably because it had been treated as axiomatic both in Roman law and in scholastic casuistry. Becanus simply presupposed it in explaining why 'Thou shalt not kill' could not be taken *verbatim*: 'otherwise it would not be permitted under natural law to repel force with force and to kill an unjust aggressor'.<sup>43</sup> Molina merely said that 'by natural right (*iure naturale*) it is licit for everyone to defend himself and what is his' (or 'his own life', 'his own person').<sup>44</sup> This

<sup>39</sup> Contzen, *Politicorum libri decem*, 1.21.5; 1.19.2: 'et libertatem quidem facile obtinet populus, equalitatem difficillime'; liberty consists 'non ut vivas pro arbitrio, sisque omnino tua in potestate, sed ut vivas iuxta leges'; v.8.6: 'nec obstat libertati legum custodia; sed fons est libertatis: malitia est velle sibi permitti, quod leges vetent'.

<sup>40</sup> 1.21.5: 'Natura liberi omnes sunt, servitutis nomen clades induxit, ideo respublica in qua nulla libertas est, naturae contraria est'.

<sup>41</sup> VIII.7.4: 'Non enim aliud conferre *tenentur* subditi [in the way of taxes], quam quod honestae sustentationi et Reipublicae praesidio satis est' (my italics); Vazquez, who (e.g. *Commentarius*, disp. CLXXIV, ch. 2.12) spoke of a culprit 'using his right' (*quod reus utitur iure suo*), ordinarily simply used words like *potest* (e.g. ss.1, 3, 5, 10) or *licet* (e.g. ss.1, 4).

<sup>42</sup> Thus Keller, *Tyrannicidium*, p. 16: 'das jeglichen zugellon (*sic*)/gewalt mit gewalt zu begegnen'; Azor, *Institutiones morales*, vol. II, bk II, ch. 1 (p. 131C) uses this right to illustrate *ius naturae*: 'e.g. vim vi repellere, seipsum unumque defendere'; same point, this time described as 'lex naturae', in vol. I, bk V ch. 1, p. 553: 'vim vi repellere, seipsum tueri, sibi salutaria quaerere'.

<sup>43</sup> Becanus, *Summa Theologiae Scholasticae*, pt II (vol. III: *De iustitia et iure*) on Aquinas, qu. LXIV, qu. II (p. 245): 'alioqui stando praecise in iure naturali non liceret vim vi repellere, et iniustum invasorem interficere, quod falsum est'; p. 243: 'quislibet . . . habet ius conservandi suam vitam et utendi suis potentiis'.

<sup>44</sup> Molina, *De iustitia et iure*, e.g. tract III, disp. 6, s.1: 'Unicuique iure naturale est licitum, se suaque defendere'; disp. II, s. 1: 'unicuique naturali iure competit, defensio suae propriae vitae'. Equally categorical and without explanation, Bellarmine, *De laicis*, ch. 15.

right was sometimes described as a duty, but the terms *potest* (one may) or *licet* (it is permitted) were much more common.<sup>45</sup> But then any natural right could equally well be described either as a *ius naturae*, or as what *lex naturae* requires or permits. If it was Jesuit theologians that Hobbes was accusing of confusing the two, his charge was baseless.<sup>46</sup>

The scope assigned to this right was as generous as it had been in the medieval sources. It encompassed the defence not only of one's life, but also of one's bodily integrity, and 'external goods' if there was no other means to keep them, or recover them subsequently. And if it was permissible to kill to protect one's goods or money, it was evidently permissible to kill for things of greater moment, such as one's honour or chastity.<sup>47</sup> One is also entitled, and (except at the risk of one's life) obliged, to defend the lives, goods, chastity, or honour of others, if they are the victims of unjust aggression or 'invasion' (a common term).<sup>48</sup> The right is all the stronger in the case of blood-relatives or friends. And individuals may also resist enslavement, or perpetual incarceration, or judicial torture.<sup>49</sup>

What measures were legitimate in defending oneself and the innocent depended on the gravity of the threat, and on whether alternative forms of defence or redress were available. Thus it was not permissible to use more force than was necessary,<sup>50</sup> or any force at all where a legal remedy was available, or flight was possible. But an *invasor* might justly be killed when no other option existed and the magnitude of the threat warranted it. Molina was quite explicit that it was the potential victim's *fear* that was the criterion.<sup>51</sup> The right of self-defence extended to killing thieves, because, as Lessius put it, 'temporal goods are necessary for the preservation of life . . . or to be more accurate, not precisely for living, but also that we may live suitably and decently',<sup>52</sup> or because, as Molina argued, threats to one's

<sup>45</sup> E.g. Vazquez, *Commentarius*, vol. II, disp. CLXII, ch. 5, s. 20: 'praeceptum quo quisque tenetur, ut propriam vitam servet'; Lessius, *De iustitia et iure*, bk II, ch. XI, s. 35: 'Quisque tenetur suam vitam conservare et tueri'; Suárez, *De legibus*, III.30.11: 'in praecepto conservationis vitae', etc.

<sup>46</sup> *Leviathan*, ch. XIV (p. 84).

<sup>47</sup> Lessius, *De iustitia et iure*, bk. II, ch. IX, dub. XII–XIII.

<sup>48</sup> Lessius, *ibid.*, dub. VIII, s. 41: 'Fas est occidere iniustum invasorem, ob defensionem vitae suae et integritatis membrorum, cum moderatione inculpatae tutelae'; dub.12: 'pro defensione pudicitiae et honoris'; Molina, *De iustitia et iure*, disp. 16, for the right to kill an unjust aggressor in defence of 'external goods'.

<sup>49</sup> Cf. pp. 220, 294–5.

<sup>50</sup> The favoured phrase here was 'cum moderamine inculpatae tutelae'. Lessius (*De iustitia et iure*, bk II, ch. IX, dub. VIII, p. 84) explains the expression as meaning: 'in defending yourself, you may not use greater force than is necessary to prevent injustice [or injury, *iniuriam*], otherwise it is not defence, but vengeance (*ultio*)'.

<sup>51</sup> Molina, *De iustitia et iure*, tract. III, disp. II.

<sup>52</sup> Lessius, *De iustitia et iure*, bk II, ch. IX, s. 67.

goods usually involved a risk to one's own person.<sup>53</sup> It even encompassed pre-emptive killing<sup>54</sup> and private persons killing tyrants, a point to be considered in more detail later.

Moreover (or perhaps this was the same point put another way), the right of self-defence overrode certain obligations. Thus, following St Thomas, it was described as being in accordance with the 'order of charity' (or love, *ordo caritatis*) that one may put one's own life before that of another, and that no one is obliged to defend another if it entails the risk of serious harm.<sup>55</sup> Lessius perhaps made more of this than any of the others, but the principle was common to all.<sup>56</sup> So Molina, following Soto, regarded as excessively harsh the doctrine that a soldier fighting in a war he himself considers unjustified may not kill in self-defence, and argued that 'according to the order of charity, he may prefer his own life to that of another'.<sup>57</sup> Self-preservation did not sanction outright lying even to save one's own life or that of an innocent person, or to escape torture.<sup>58</sup> But in less public utterances Jesuit casuistry even allowed a degree of dishonesty and concealment of true religion.<sup>59</sup> Lessius, moreover, argued that it was licit to admit crimes one had not in fact committed, in order to escape torture or to save a friend or parent from such a fate. This was to sanction lying, which he unlike the others did not think a *malum in se*, despite the fact that judicial process habitually involved swearing an oath. Lamentably, Jesuit moralists like almost everyone else took it for granted that torture was a legitimate part of the ordinary judicial process,<sup>60</sup> as it had been in Roman law. All that was contentious was which tortures might be used or threatened, under which conditions, and what degree of pain might legitimately

<sup>53</sup> Molina, *De iustitia et iure*, tract. III, disp. 16.

<sup>54</sup> Tanner, *Disputationes theologicae*, vol. II, disp. III, s. 85 (p. 626) 'Potest quisque suae aut alterius innocentis vitae, vel castitatis defendendi causa, etiam praeveniendi, scelus machinantem, si opus sit, cum moderamine inculpatae tutelae, invasorem iniustum occidere . . . Idem de honoris, bonorumque temporalium defensione iudicamus, si et in utroque genere res magni momenti sit, et ablata recuperari alia ratione vix possit.' See also Vazquez, *Commentarius*, vol. II, disp. CLX.

<sup>55</sup> Lessius, *De iustitia et iure*, II, ch. 9, s. 10: 'Nemo tamen tenetur tueri vitam hominis privati, cum probabili periculo vitae suae, etsi iure possit, si velit. Ratio est: . . . possum enim vitam meam diligere prae vita cuiusvis alterius privati, quamvis esset valde laudibile'.

<sup>56</sup> Valentia, *Commentarii Theologici*, disp. III<sup>a</sup> generalis, qu. IV, De ordine charitatis, pt 1–4.

<sup>57</sup> Molina, *De iustitia et iure*, tract. III, disp. XV, s. 4, also disp. XII, s. 1; he allowed the same right of self-defence even to an adulterer or adulteress caught *in flagrante* and threatened with death by the cuckold (disp. VII, s. 2), or a thief caught by a householder (disp. XV, s. 1), for in neither case was there a right to kill the culprit.

<sup>58</sup> Molina, *De iustitia et iure*, tract. IV, disp. XXXVII, s. 14.

<sup>59</sup> Holmes, *Resistance and Compromise*, pp. 100–8.

<sup>60</sup> Spee, *Cautio criminalis*, qu. 29, however, called for its abolition in the interrogation of those suspected of witchcraft.

be inflicted.<sup>61</sup> Casuistry had therefore to make what allowances it could for individuals in such a desperate situation. It was also generally conceded that persons awaiting trial on charges carrying a penalty of perpetual imprisonment, capital punishment, mutilation, or slavery, or awaiting the execution of such sentences, might seek to escape, whether they were guilty or not,<sup>62</sup> because 'no one can be obliged in conscience by a command to remain in such circumstances, with such harm hanging over him, for such an obligation would be too difficult, inhuman, and in some sense beyond what human beings are capable of doing'.<sup>63</sup> It was not clear whether one was entitled to assist others to escape, especially if they were innocent; on a tutiorist argument (following the most common theological opinion) it seemed not, but on a probabilist argument (which regarded as justifiable what some reputable authority allowed), that too would be justified.<sup>64</sup>

Again, although it was not the safest or most common opinion amongst the learned, Lessius also followed the Jesuit casuist Emmanuel Sa in thinking it *non improbabile* that it was not a mortal sin to deny some crime one had in fact committed when charged with it in a court of law, especially in a capital case. He argued that

as long as there is some hope of escaping punishment, . . . the precept that one must confess to one's crime seems excessively difficult, and insufficiently accommodated to human weakness. For there is hardly to be found one in a hundred who does not deny his crime. And for precepts [*praecepta*] to be obligatory, they must be in conformity with the condition of human beings; the same is also true of laws. Secondly, human law cannot have an obligation which implies danger of death, unless the gravity of the matter demands it.<sup>65</sup>

He even permitted *amphibologia* or mental reservation in the court-room. And again, although individuals are not the *domini* of their own life and

<sup>61</sup> Standard topics included: what *prima facie* evidence justified torture; exemptions (those too young – under fourteen! – or too old, pregnant women, the sick, noblemen except for the *crimen maiestatis*); frequency and methods of interrogation under torture – Molina held that the cruelty of torture must not surpass the cruelty of the punishments if the crime were proved (not much of a restriction). See Lessius, *De iustitia et iure*, II, ch. xxix, dub. 17.

<sup>62</sup> E.g. Valentia, *Commentarii*, disp. V<sup>a</sup>, Qu. XII, pt 4.

<sup>63</sup> Lessius, *De iustitia et iure*, bk II, ch. xxxi, s. 33, citing Aquinas in support; s. 39 extended the same licence to seeking to escape from perpetual imprisonment, or the galleys, or servitude, but not temporary incarceration. See also Vazquez, *Commentarius*, vol. II, disp. CLXXIV, ch. 1.10: 'Placet sententia Soti . . . qui affirmat, neminem damnatum ad mortem per sententiam spoliari posse beneficio fugiendi e carcere et per sententiam simul condemnari ad non fugiendum.'

<sup>64</sup> Vazquez, *Commentarius*, vol. II, ch. III, esp. s. 25, argued that if the *principalis actio*, namely escaping, was no sin, then actions accessory to it were no sin either.

<sup>65</sup> Lessius, *De iustitia et iure*, II, ch. 31, dub. III s. 16.

members, they may injure or risk both in order to defend their life, for example risking death by jumping to escape a fire, or cutting off a foot to escape from Turkish galleys.<sup>66</sup>

The natural right of self-defence, therefore, made permissible a wide range of actions normally prohibited; the right extended even to clerics.<sup>67</sup> And therefore whereas the prince or the commonwealth was fully entitled to imprison suspects, interrogate them under torture (provided there was *prima facie* evidence of guilt), punish criminals and compel witnesses to testify in court, his rights were not matched by any corresponding duty of compliance on the part of private individuals when their self-preservation was involved. The refusal of Jesuits to acknowledge this conflict between the natural right of individuals and the authority of the commonwealth indicates once again how little individual rights, construed as limitations on the authority of governors, featured in their thought. As Suárez formulated the overall situation: 'Granted that a human being also has a right over his life (*ius in vitam suam*), the commonwealth has a greater right (*maius ius*) over it. For as Aristotle says, the citizen belongs more to the commonwealth than to himself.'<sup>68</sup> Here he was for once being somewhat incautious. For as Valentia argued, 'the freedom of the citizen, like his life, is hardly at all subject to the ordinary law and *dominium* of the commonwealth, to which the other goods of fortune are subject. For ordinarily no one either can be, or is, subject to deprivation of his liberty by the commonwealth unless there is some culpability on his part.'<sup>69</sup>

#### PROPERTY AND THE *IUS GENTIUM*

The only part of the vast topic of *dominium*, the generic heading for scholastic treatments of property,<sup>70</sup> that can be dealt with here is the extent to which property rights of subjects could be asserted against rulers and governments. According to the conventional Thomist view, property was not a natural right.<sup>71</sup> Nevertheless it was clearly *ius* and a *right*. Indeed *dominium* and *ius* could even be defined identically.<sup>72</sup> Why theologians

<sup>66</sup> Molina, *De iustitia et iure*, tract. II, disp. x.2; cf. IX.2, for man not being *dominus* of his own body.

<sup>67</sup> Lessius, *De iustitia et iure*, II, ch. IX, s. 72. <sup>68</sup> *De legibus*, III.30.5.

<sup>69</sup> Valentia, *Commentarii*, vol. II, disp. III, qu. 16, pt 3 (p. 981D).

<sup>70</sup> The definitive work on *dominium* in all its senses is now Annabel Brett's *Liberty, Right and Nature*.

<sup>71</sup> E.g. Valentia, *Commentarii*, vol. II, disp. V, qu. 10, pt 2 (p. 1352A).

<sup>72</sup> According to Valentia (*ibid.*, pt I, p. 1339C) *dominium* is 'the *facultas* which someone has for taking [*usurpandi*, not a particularly felicitous word] a thing for his own benefit, independently of the will of anyone else, for whatever use the law allows'; Lessius preferred '*potestas* or *ius* of governing or disposing over something as one's own' (*De iustitia et iure*, II, ch. 3, dub. 1.1 and 2, italics in original); Molina (*De iustitia et iure*, II, disp. III, pp. 31–3) treated *dominium* as simply the fullest kind of *ius*.

were so confident that private property was not a natural right is unclear to me. As Filmer pointed out, the *potestas* they conceded without hesitation to fathers, and *a fortiori* patriarchs, entailed some natural right of property in families.<sup>73</sup> Molina allowed patriarchal authority as one of the ways in which the 'division of things' (*divisio rerum/dominium*, i.e. the assignment of distinct properties) could legitimately come about, and did come about with both the *Urpatriarch* Adam and with Noah.<sup>74</sup> Patriarchs or the communities they ruled could only legitimately divide up what they already owned. But neither the Jesuits nor their predecessors considered this intermediate possibility between *individual* property and universal *communitas rerum*.

Nor, in this context, did any of the Jesuit theologians (except Suárez, as we shall see) explore the presuppositions of the commonplace that occupancy of a *res nullius* established a property by natural right, or the New Testament's 'the labourer is worthy of [i.e. deserves] his wage',<sup>75</sup> or St Paul's 'If any would not work, neither should he eat' (II Thess. 3: 10), or the orthodox doctrine that only God enjoys absolutely unfettered *dominium* over the world and everything in it, in virtue of having created it.<sup>76</sup> Presumably creating (making) something therefore establishes a natural dominion over it. And certainly a reward for labour, and hence a kind of property, is a natural right, as Lessius and Suárez both elsewhere acknowledged. Nevertheless Valentia's summary of 'ways of acquiring *proprietas* and *proprium dominium*' mentioned only finding, occupying and legitimate transfer'.<sup>77</sup> But under natural law each person was *dominus* of their liberty just as much as of 'other goods of fortune',<sup>78</sup> though not of their life or body,

<sup>73</sup> *Patriarcha*, p. 9; pp. 18–19 on Suárez, *De legibus*, III.ii; he rightly quoted Bellarmine in his own support, pp. 6 and 19; see Bellarmine, *De Romano Pontifice*, bk 1, ch. 2 (pp. 313–14). He twice cited Molina, approvingly (pp. 211–12, 234), but not on the patriarchs.

<sup>74</sup> Molina, *De iustitia et iure*, II, disp. 20.9 (p. 94B); Suárez disagreed: *De opere sex dierum*, v.vii.14.

<sup>75</sup> Luke 10: 7; Matthew 10: 10; 1 Tim. 5: 8; cf. Deut. 24: 14–15. Suárez, *De legibus*, I.ii.5, for 'ius ad stipendium'; equally in passing, Lessius, *De iustitia et iure*, II, ch. 33, dub. 2.13: 'Thus just as the workman is owed his wages by natural right . . .'

<sup>76</sup> E.g. Lessius, *De iustitia et iure*, ch. 3, dub. 1.1: 'Sic Ius quod Deus habet in universam creaturam . . . est dominium Dei, et quidem perfectissimum, cum creatura perfectissime sit eius, utpote ei summe subiecta et obstricta ratione creationis' (my italics).

<sup>77</sup> Valentia, *Commentarii*, vol. II, disp. V, qu. 10, pt 3 (pp. 1353A–1354C).

<sup>78</sup> Molina, *De iustitia et iure*, tract. II, disp. 33.21 (pp. 146D–147C); he cited Exodus 21 and Deut. 15 in support. Lessius, *De iustitia et iure*, II, ch. 5, dub. 4.15, qualified: 'Iure naturae hominem liberum posse suam libertatem vendere vel donare; tamen debet adesse iusta aliqua causa: alioque esset profusio libertatis, quae bonis fortunae et famae est praestantior'; s. 17 (on selling 'offspring not yet emancipated'). The idea that one might sell one's children (*filios*, but presumably also *filias*) in case of extreme need (p. 147D) had the support not only of Roman law but also of the Old Testament. All our authors endorsed positive laws which restricted these rights 'in favour of freedom', as Lessius put it (s. 16).

and might therefore alienate them by selling themselves (and even more odiously, their children) into slavery if the circumstances were sufficiently extreme and the price was right. And all conceded that slavery was permitted by natural law, given sufficient culpability.<sup>79</sup> This implied that the slave-owner had a *ius* over the slave, and the slave had therefore a duty not to escape. Both Lessius and Becanus (but not Valentia or, more hesitantly, Molina) rejected the latter idea as morally absurd.<sup>80</sup>

Despite all this, scholastics agreed that property in external things was not a natural right. Genesis 1: 28–30 was regarded as establishing that God had given the earth to mankind *in common*. Private property was therefore in need of justification. The standard argument ran that in the absence of sin, in the actual or hypothetical ‘state of innocence’, there had been, or would be, no private property. The conditions which necessitate and therefore justify private property were simply not present: according to Molina, there would be neither the limitless procreation which gave rise to want, nor the recalcitrance of the soil which made toil necessary. But the fallen state simultaneously increased the need and weakened the ability, and even more the inclination, to labour on arduous and distasteful tasks, especially for the good of others or the common good.<sup>81</sup>

Valentia summarised the usual Aristotelian reasons supporting the ‘Catholic conclusion that division of things is licit for everyone, even Ecclesiastics and Religious Orders’:

First, in this way things are better produced and conserved. For everyone is more solicitous for their own property . . . When something is common, everyone is anxious to avoid hard work and leaves the care of it to others . . . Secondly, human concerns are dealt with in a more orderly fashion if individuals are charged with attending to their own . . . Finally, this is what is most expedient for conserving the tranquillity of the human condition . . . For conflicts frequently arise between those who possess something in common.<sup>82</sup>

<sup>79</sup> Lessius, *De iustitia et iure*, II, ch. IV, dub. IX.

<sup>80</sup> Molina, *De iustitia et iure*, II, disp. 37.10. But he (ss. 2–3), like Vazquez, approved Covarruvias’s view that, once they had successfully fled back to their own people, slaves had no duty to return, and added that in the case of a war where the justice was not so clearly on one side, an enslaved person may flee wherever he wishes. Here he came close to admitting a conflict of equal rights: ‘quia in eo eventu aequae est conditio captivi ac domini . . . estque bellum iustum formaliter ex utraque parte’. See also Lessius, *De iustitia et iure*, II, ch. 5, s. 24, explicitly contradicting Navarrus: if captured in war, they may flee but not use force; s.18: those unjustly enslaved may flee, using force if necessary; but not if justly sold by their parents (s. 21).

<sup>81</sup> Molina, *De iustitia et iure*, II, disp. 37.10, s. 5.

<sup>82</sup> Valentia, *Commentarii*, vol. II, disp. V, qu. 10, pt 2 (p. 1350A). Molina’s account (*De iustitia et iure*, II, disp. 20.5, p. 90) is very similar (both being equally dependent on Aristotle, *Politics*, bk. 2, ch. 3 and Aquinas, *2a-2ae*, 66, art. 2): if everything were common, all would leave the hard work to others, penury, shortages, and conflicts would result, the stronger would oppress the weaker, and ‘nullus in rebus publicis servaretur ordo, dum singuli se caeteris pares arbitrentur’.



Private appropriation in these circumstances conforms to right reason in being 'necessary', albeit, as theorists were careful to stress, not *unconditionally* necessary. It was obviously not a remedy without drawbacks but, as Soto had pointed out, 'it is enough justification for adopting something as a means, if it is judged to be more expedient and suitable towards the end, even if it does not achieve that end perfectly and fully, and if no other means is available'.<sup>83</sup> But there were associations where private property was unnecessary, especially religious communities, or communities characterised by great mutual charity and forbearance (such as the early Christians in Acts 2: 44 and 4: 32). Moreover, the right of private property lapses in times of 'extreme or almost extreme necessity'.<sup>84</sup> Lessius cited the 'verdict of all the doctors' that in extreme necessity 'all things again become common'; it was even 'probable' that 'grave' necessity was sufficient. He repeatedly said that here each individual has 'retained' his natural rights.<sup>85</sup> Valentia took exception to the common axiom that 'theft is legitimate in extreme necessity'; in these circumstances there was no 'theft'.<sup>86</sup>

This argument, however, seemed to allow human will or decision to abrogate the natural law.<sup>87</sup> It was therefore important to be precise. As Vazquez explained in connection with the exceptions to the natural (and divine) law duty to refrain from killing: 'The way to reason philosophically here is *not* to say that the danger of death prevails over natural [law] obligation . . . Rather, the philosophically right [way to argue] is to say that where the danger of death occurs, some circumstance [presupposed by] the law of nature, which would otherwise oblige, is taken away'.<sup>88</sup> Likewise, after the Fall and the consequent *divisio rerum*, the natural law communality of property ceases to generate obligations, and instead an obligation to respect private property arises.<sup>89</sup>

<sup>83</sup> Cited by Molina, *De iustitia et iure*, II, disp. 20.5, p. 101A.

<sup>84</sup> Ibid., s. 13, 3a conclusio; 4a conclusio: 'But nevertheless temporal goods must be common as to use in time of extreme or almost extreme necessity'. Valentia, *Commentarii* too, extended 'extreme and urgent necessity' to include the threat or danger of 'some extremely grave illness or misery' (p. 1367B). The dictum 'in necessitate sunt omnia communia' is Aquinas, *Ila-Ilae*, 66.7, *sed contra*.

<sup>85</sup> Lessius, *De iustitia et iure*, II, ch. 12, ss. 70-1: 'Many of the learned deny this', but it is *probabile* because the line between 'extreme' and 'truly grave (*valde gravis*)' was impossible to draw precisely; ss. 68-75.

<sup>86</sup> Valentia, *Commentarii*, II, disp. v, qu. 10, pt 5 (p. 1368D).

<sup>87</sup> Molina mentioned this as a serious objection, *De iustitia et iure*, II, disp. 2.2 (p. 90); cf. Valentia, *Commentarii*, II, disp. v, qu. 10, pt. 5 (p. 1367A): 'ius humanum [i.e. positive law] cannot derogate from natural or divine law'.

<sup>88</sup> Vazquez, *Commentarius*, vol. II, disp. CLXI, ch. 2.13; Lessius was equally careful: 'It is not right to say that the law of nature has been abrogated [by the division of things], . . . because a law is not said to have been revoked when it ceases to oblige in some context because of some change in circumstances' (*De iustitia et iure*, II, ch. 5, dub. 2.3).

<sup>89</sup> Molina, *De iustitia et iure*, II, disp. 20.6.

Suárez here was again somewhat ahead of the field. He endorsed the standard doctrine that if there had been no original sin,<sup>90</sup> there would have been no *divisio rerum*, citing Scotus, Soto, and Lessius. Only sin made a juridical division necessary.<sup>91</sup> Suárez then reaffirmed the traditional doctrine, already reiterated by Molina, that natural law does not *command* common ownership: the latter merely exists ‘negatively’, in the absence of any division of things. On the other hand, ‘God seems not to have given any commandment forbidding such a division, because no positive commandment to this effect is to be found, and no natural one can be gathered out of the principles of right reason.’<sup>92</sup> He then, however, re-introduced a distinction which has already featured in the medieval controversy about the poverty of the Franciscans:

Movable goods (*mobilia*) are more subject to division, for by virtue of the fact that they are occupied, or taken, they become the person’s who takes them. For whoever gathers the fruits of a tree to eat, by that same act (*eo ipso*) would acquire a special (*peculiare*) right in them, to use them freely, and they could not be taken from their possessor without injustice. And this right would seem to have been necessary even in the state of innocence.

The point here (denied by the Spiritual Franciscans’ defenders when it was affirmed by Pope John XXII, c. 1300) was that the use of perishables and use-objects (*mobilia*) necessarily excludes others from using them at the same time, or (in the case of foodstuffs) subsequently. Use and property are therefore indistinguishable. ‘But with immovable goods (*immobilia*) a similar division would not be necessary, and it is principally of them that the said authors [sc. Scotus, Soto, and Lessius] are speaking.’ It was true that if someone had worked and sown some land, they ‘could not rightly be deprived of the use of it, and its quasi-possession, for natural reason itself and right order demands it’. First occupancy for cultivation or habitation might also have been introduced by custom, with the same moral effect. This illustration incidentally made clear that it was not merely sitting on a piece of ground (mere *possessio*) or presumably some symbolic act of laying claim to some territory, say South America, but rather working it, labouring

<sup>90</sup> See above, p. 296.

<sup>91</sup> Suárez, *De opere sex dierum*, v.7-17. Cf. *De legibus*, II.xiv.16: ‘nature gave dominion over all things to all in common (*communiter*) and consequently gave to each the *potestas* to use them. But it did not give ownership [of domains? *proprietaem dominiorum*] in the same way.’

<sup>92</sup> Molina, *De iustitia et iure*, II, disp. 19.6 (p. 101D): ‘By *ius naturae* the *divisio rerum* was not prohibited but permitted . . . Even in the state of uncorrupted nature (*in statu naturae integrae*) . . . men could by common consent have done so . . . but it was not necessary’. Common ownership was by natural right *permissive*: Valentia, *Commentarii*, p. 1350B; Suárez, *De legibus*, I.xvi.7, II.xviii.2–5, etc.; based on the *Lia-liae*, 66.3 ad I, although *permissive* is not Aquinas’s term.

on it, that would establish a title. In another connection Lessius had maintained that the original *divisio rerum* did not injure the rights of anyone; other divisions of course might, but the matter was not considered, even by Suárez.<sup>93</sup> But the hypothetical possibility of someone legitimately appropriating a piece of land by labour and the logical necessity of a principle of appropriation for *mobilia* would be of absolutely no practical significance in the state of innocence. It was however of acute practical significance in the fallen condition of mankind.

Although Suárez did not explicitly say so, there were therefore various *natural* property rights. It should have followed that rulers and positive law could not abolish them, but only regulate their exercise, and specify actions at law for their defence or recovery. But Jesuit theologians were obviously not interested in safeguarding *individual* property-rights, at least in this context.<sup>94</sup> Any system or regime of property laws is a creation of positive law, and therefore its justification would be in terms of the *common* good, and not the private good of individuals. Attending to the common good is the business of rulers and law, and what rulers could bestow with a view to the common good, they could also take away with the same good in view. And 'in all doubtful cases, the presumption must always be in favour of superiors'.

#### THE *IUS GENTIUM*

This was not, however, the whole story. For the *divisio rerum* and private property were considered generically institutions of the *ius gentium*, the law of nations.<sup>95</sup> The concept featured in Jesuit writings, as it had featured in Dominican theology courses and increasingly also in the law faculties.<sup>96</sup> It was impossible to discard altogether, not least because of the authority of its sources: the *Digest* (1.1) and *Institutes* (1.2), both cited in Gratian's *Decretum*, the *Etymologies* of Isidore of Seville, and scattered references in Aquinas (*Ia-IIae*, 95.4 ad 1, and *IIa-IIae*, 57.3, 57.4 and 66).<sup>97</sup> It seemed, however, merely to introduce needless complications. All the precepts that

<sup>93</sup> In Locke's account (*Two Treatises*, II.31–3), legitimate appropriation depends on respecting the 'spoilage' and the 'as much and as good left for others' limitations.

<sup>94</sup> Valentia, *Commentarii*, vol. II, disp. V, qu. 10, pt. 1 (p. 1340B).

<sup>95</sup> I retain the traditional term, although Brett's 'right of people' is better; *gentes*, *populi*, and *nationes* were fully interchangeable, and many European terms for *ius gentium* remain innocent of any reference to 'nations' to this day.

<sup>96</sup> For the diffusion of manuscripts of lectures, still extant in vast numbers, see Pereña, CHP, vol. XIV, Estudio Preliminar, xxii–xxxv; he reproduces a relevant lecture of Molina, in Suárez's possession.

<sup>97</sup> Tuck, *Natural Rights Theories*, pp. 34–5.

authorities ascribed to the law of nations could be reassigned to either positive or natural law,<sup>98</sup> and so the concept seemed to fall foul of the principle of Ockham's razor. It was redundant in the context of property, since rulers could legitimately institute the *divisio rerum*, just like any other arrangement for the common good.<sup>99</sup> Moreover, it had become a definitional feature of the *ius gentium* that it was constituted by 'the common consent of peoples' or of 'nations',<sup>100</sup> although the original authorities had not mentioned consent. But we have seen that on the standard Jesuit account consent was *not* necessary in order to make a valid positive law. But *ius gentium* could not be simply part of natural law either, since some of what it prescribed was *not* prescribed by natural law. The only thing that almost all Jesuits were confident about was the worthlessness of the Roman law distinction that *ius naturae* governed all animate creation, humans and animals alike, whereas the *ius gentium* was the part of natural law that governed human beings alone. To Jesuits, the idea that natural law or any other kind of law properly so called could refer to anything except rational agents was simply bizarre,<sup>101</sup> or at best an unfortunate metaphor.

If *ius gentium* was to serve any theoretical purpose, it had therefore to be positive law, albeit of a particularly authoritative kind. This was the verdict of the manuscript and lecture tradition which the Jesuits inherited.<sup>102</sup> Suárez echoed this tradition when he explained that his order of discussion located the *ius gentium* between natural and positive law because it is 'as it were a mean (*quasi medium*) between natural and human law, and very much closer to the former' (*On Laws*, II.7.1).

One explanation for assigning *ius gentium* a distinctive place amongst laws, which Suárez rightly attributed to Soto and other 'modern Thomists',

<sup>98</sup> Some categories, e.g. diplomatic immunity and first occupancy, were problematic.

<sup>99</sup> Molina, *De iustitia et iure*, II, disp. 20.9; Lessius, *De iustitia et iure*, II, ch. 5, dub. 1.1.

<sup>100</sup> Vitoria derived *ius gentium* 'ex communi consensu omnium gentium et nationum' (cited Pereña, CHP, vol. XIV, p. xxv); similarly Soto (*ibid.*, pp. 243, 244); Juan de la Peña (*ibid.*, p. 255); Cano (*ibid.*, p. 249). For Jesuits, e.g. Valentia, *Commentarii*, vol. II, disp. 7<sup>a</sup> generalis, qu. 5, pt 2 (p. 849B): 'quae consensu omnium populorum ideo est suscepta et constituta, quia facili negotio deducitur ex principiis legis naturae, et ita ad omnes nationes pertinet', and p. 850B; Lessius, *De iustitia et iure*, II, ch. v, dub. 3.9: '*Ius gentium* nihil est aliud quam commune hominum iudicium, et gentium consensus: vel est concessio et ius ex communi iudicio et consensu proveniens'; 'apud omnes nationes', etc.

<sup>101</sup> Suárez pointed out that Roman law was not even consistent: *vim vi repellere* was instinctual in all creatures if anything was, and should therefore have been part of *ius naturale*, but Roman law assigned it to the *ius gentium* (*De legibus*, II.xvii.6).

<sup>102</sup> Juan de la Peña, cited in Pereña, CHP, vol. XIV, edition of Suárez, p. 255, referred to its character as 'mixtum quoddam modo ex iure naturali et positivo . . . , et sic tamquam medium sapit'; the same in Cano (p. 248) and F. Rodrigues (p. 310).

perhaps including Valentia,<sup>103</sup> was that although the precepts of the *ius gentium* are intrinsically obligatory, like those of natural law, they are more remote and difficult deductions from the first principles of practical reason which constitute natural law. But for Suárez the remoteness or difficulty of any deductions involved was 'wholly accidental': if the whole chain of reasoning was logically compelling, the conclusions were as much part of natural law as the principles (II.17.8–9). And a variant tried out by Gabriel Vazquez, and endorsed up to a point by Lessius and Molina, did not work either. Vazquez argued that what distinguished *ius gentium* was that its precepts presupposed circumstances which did not apply always and everywhere, and also that it was merely permissive or concessive, not imperative, unlike natural law.<sup>104</sup> So, for example, there was no *obligation* to institute slavery or the *divisio rerum*. Rejecting Vazquez's position (explicitly, for there was no love lost between them), Suárez pointed out that natural laws also only bound where certain 'presuppositions' (*suppositiones*) were met, and that some parts of natural law were also merely permissive: for example, promises once made certainly bind, but it is not obligatory to make them. Conversely, the *ius gentium* was not merely permissive or concessive: it plainly also imposed duties.

This refutation, however, seemed once again to make *ius gentium* a redundant concept. But, operating with a modified version of Isidore's list of contents of the *ius gentium*,<sup>105</sup> Suárez divided it into laws which were part of the domestic law of all commonwealths or most of them,<sup>106</sup> and laws which were 'common' in that they regulated the relationships *between* peoples or commonwealths (*On Laws*, II.19.8). Civil religions, property laws, and laws relating to domestic commerce were instances of the former; the law of war, some aspects of slavery, laws regarding commercial relations and travel, and the inviolability of envoys were examples of the latter. The near-universality of the *ius gentium* clearly also had some bearing on its moral status. Suárez accounted for it by arguing that the needs which the law of

<sup>103</sup> *Commentarii*, vol. II, disp. 7<sup>a</sup> generalis, qu. 5, pt. 2, pp. 849–50; his discussion ended in the lame conclusion (p. 851B) 'that there is no need to engage in anxious debates whether the *ius gentium* is a species of natural or positive law. Because according to the various ways in which it is interpreted . . . it is both.'

<sup>104</sup> Vazquez, *Commentarius*, disp. 157, ch. 3.21, imputing to Aquinas a view which never entered his head, namely that 'the *ius gentium* is what is suitable to a rational nature, considered not absolutely, but with the addition of certain circumstances, namely: living in association and civil society'.

<sup>105</sup> Suárez (*De legibus*, II.18.4) cautiously rejected Isidore's view that first occupancy, *sedium occupatio*, derives from the *ius gentium*: it is '*licita unicuique iure gentium vel potius naturali*' (my italics).

<sup>106</sup> Isidore had written that 'eo iure omnes fere gentes utuntur'. Suárez commented: 'Nor is this little word *fere* [almost] to be passed over casually' (ibid. II. 19.6).

nations met were both obvious and (in the fallen condition of mankind) permanent and universal. He also added an explanation of how even the part of the *ius gentium* that had no legislator could be genuine law. Here the problem was obviously not its 'domestic' part, which was intrinsically civil law (*On Laws*, II.20.7), but laws *inter nationes*, which in Suárez's view most unambiguously deserved the term *ius gentium*.<sup>107</sup> Suárez's solution was that the *ius gentium* was simply customary law, consisting of *mores*, that is, morally binding customs. To that extent it differs from what is so 'by nature' (II.19.6). But

it is easy to see how [laws regulating relations *between* peoples] could have been gradually introduced everywhere, by practice itself and by tradition (*ipsi uso et traditione*), and by people succeeding and imitating each other, and diffusing [such customs in that way], without any special meeting or consent of all peoples at a particular time (*sine speciali conventu vel consensu omnium populorum, uno tempore facto*). For this law is so close to nature and so suited to all nations and the fellowship between them that it would have been almost naturally propagated along with the human race itself, and thus it is not written, because it was laid down by no lawgiver, but prevailed by usage. (II.20.1)

This explained why there would be a *ius* common to peoples in regular contact, and thus, in the course of time, even to peoples with no unmediated contact. Suárez argued further that in respect of these laws, there was a *communitas*, a kind of *respublica*, which bound together all humankind. The *communitates perfectae* are not, it seems, entirely *perfectae* after all: 'although each *civitas perfecta* . . . is in itself a self-sufficient *communitas* . . . , nevertheless each is also in some manner a member of the human community as a whole (*universi*)'.

The human race has some kind of unity, not only as a species, but also (as it were) a political and moral unity, to which the natural precept of mutual love and mercy points, for it extends to all, even foreigners and members of any nation whatever. For these communities are never so self-sufficient as not to require some mutual help, association and communication, whether it be for their improved well-being and benefit (*utilitatem*), or even on account of moral necessity. (II.10.9)

The universal community, like any other, requires rules for its peace and well-being, and the *ius gentium* is those rules. They therefore cannot be unilaterally abrogated, but can only be altered either by universal consent (which is morally impossible), or by the growth of a contrary custom. A section of mankind could, however, adopt its own rules for relationships

<sup>107</sup> Ibid., II.19.8: 'ius quod omnes populi et gentes inter se servare debent . . . videtur mihi propriissime continere ius gentium, re ipsa distinctum a iure civili'.

between its members, provided no damage was done thereby to any third party. The *ius gentium* thus differs from other positive laws in that it is not equally mutable in all its parts (II.20.7–9).

Suárez's account thus demonstrated how the law of nations could be both positive law, and yet of greater authority than other positive laws. It also eliminated an ambiguity in Valentia, Lessius, Molina, Bellarmine, and Vazquez (all of them echoing the Salamancans), according to whom the *divisio rerum*, the establishment of coercive government, and the institution of slavery all demanded the 'consent' of what were vaguely termed 'all' or 'men' or 'mankind'. Filmer argued against Bellarmine and 'Father Suárez' that historically there had never been any such consent and, what is more, that logically any form of *collective* consent would derogate from the (natural) rights of patriarchs and, on the Jesuits' own account, from the natural liberty of individuals. He wrongly supposed that the problem they were trying to deal with was how to reconcile natural rights with civil subjection. But 'consent' did contain an ambiguity which may explain Filmer's misunderstanding. It may mean (a) the formal act of assenting to or accepting a proposal, for example the consent of some assembly to a law; or (b) acquiescence in some practice or arrangement, complying with it and taking its legitimacy for granted. Jesuits acknowledged that a background endorsement of this sort, but certainly not consent in sense (a), was a prerequisite (*de facto* even if not *de iure*) for the authority of any institution. But (c) 'consent' or 'agreement' was also used to mean no more than simply thinking the same, just as several economists or lawyers would be said to 'agree' if (*per impossibile*) they were of the same opinion, or as two independent accounts of an incident may be said to 'agree'. Thus the law of nations, in respect of the *divisio rerum* and many of its most compelling other prescriptions (the immunity of envoys, the free movement of ships, and the rights of trade and travel of innocuous persons etc.<sup>108</sup>), was said to arise from the *communis consensus* of all peoples or *homines*. No one supposed for a moment that the whole human race had at some time convened and 'consented' to some proposal put before it; on the contrary, previously unknown peoples were *expected* to have reached such conclusions independently, and failure to have done so was evidence of barbarism, depravity, or lack of mind (*amentia*, Vitoria's term).

Suárez's account of the diffusion and transmission of the *ius gentium* is clearly in terms of the second and third sense of 'consent', and provides a

<sup>108</sup> Vitoria, *Political Writings*, e.g. pp. 207–8, 264, 278, 281, 283, 318, 321–2, included first occupancy, rights in regard to *res nullius*, rights of captors, rights to citizenship, the right to enslave, the customs of war etc., some of which others thought parts of the law of nature.

mechanism quite independent of formal agreement, least of all of individuals. Given the notorious tendency for people to differ about everything (*On Laws*, II. 19.50), concurrence on any matter across the world was strong *prima facie* evidence of the soundness of that on which all agreed.

A *ius gentium* basis for private property was therefore no more intended to establish or safeguard rights of property of *individuals* against the rights and authority of princes than any other Jesuit acknowledgement of *iura*. On the contrary, Suárez's account imposed the most stringent limits on princes and commonwealths in the part of the *ius gentium* that was least concerned with private individuals and domestic relations. Jesuits readily admitted that the *potestas* of rulers was morally limited by their duty to pursue the common good, and by the requirements of the *ius gentium*. But then the staunchest proponents of absolutism or the Divine Right of Kings also admitted as much.

#### TAXATION

The doctrine of taxation manifested the same unwillingness to compromise the authority of rulers in favour of individual rights. Taxation conceptually entails a clear conflict between the rights of individuals, households, and corporations to their own property, and the commonwealth's claims upon that 'own'. If no property rights were involved, the commonwealth's act would not be taxation but confiscation.<sup>109</sup> And yet our theologians never discussed the issue in terms of a conflict of rights, nor did they adopt the comfortable modern way of obviating the issue by making taxation the product of (vicarious) consent. The topic was instead handled under the heading of 'distributive justice', and the only *potestas* or *ius* explicitly mentioned was the right of rulers to impose taxes.<sup>110</sup>

For taxation to be just, according to the favoured view, there were three requisite conditions: legitimate authority (it is one of the *iura maiestatis*<sup>111</sup>), just cause, and 'proportionality'.<sup>112</sup> Jesuit thinkers contemplated two sorts

<sup>109</sup> Suárez, *De legibus*, v.8.7: 'Taxes do not presuppose any guilt or transgression, even of a civil [sc.: as opposed to moral] kind.'

<sup>110</sup> Suárez's *De legibus* (bk v.14–17); I am using the Coimbra edition of 1612.

<sup>111</sup> E.g. Azor, *Institutiones morales*, vol. II, bk XI, ch. 4 (p. 1216); Molina, *De iustitia et iure*, tract. III, disp. 6, s. 1, and Laymann, *Theologia moralis*, bk I, tract. IV, ch. v.9, include it under *merum imperium*; for Contzen, *Politicorum libri decem*, viii.7.2, it is *ius maiestatis*.

<sup>112</sup> Contzen (*Politicorum libri decem*, viii.7.4 and 18) cited Salas (*De legibus*, xv.x.118). Lessius (*De iustitia et iure*, disp. II, ch. 33, s. 8) more directly cited Salas's own source, the jurist Medina, and also preferred him to Caietanus, who listed five requisite circumstances: agent, end, form, matter, and use.



of just cause: the ruler's salary or stipend as a reward for his sleepless solicitude;<sup>113</sup> and some legitimate public purpose. This again points to the difficulties of the time (especially in absolute monarchies) in making the distinction between the ruler and the state. It was agreed that only public necessity justified taxes. The prince is not *dominus* over the lives and goods (or fortunes) of his subjects,<sup>114</sup> for in that case there would be no difference between subjects and slaves, and 'the people does not exist for the sake of the prince; on the contrary the prince exists for the sake of the people'.<sup>115</sup> Theologians did not agree on what should be done about unnecessary or excessive taxation. Molina insisted on the duty of princes to make restitution in such cases, and even allowed (at least in principle) that subjects might secretly 'compensate' themselves for any harm they suffered in this way.<sup>116</sup> However, for Suárez the King 'is truly the *dominus* [of such revenues], and can disburse them as he pleases without injustice, provided he satisfies his obligation, governing and defending the commonwealth as he is bound to do'.<sup>117</sup>

Excessive taxation could of course ruin a commonwealth. Salas observed that 'it can happen that individual taxes taken by themselves are just, but that all taken together are unjust, because collectively they exceed the moral ability of the subjects to pay . . . and are detrimental to the community'.<sup>118</sup> Mariana remarked that those in Spain who were advising higher taxes 'have not sufficiently pondered the evils into which France has been plunged, especially now that royal taxes have grown enormous, the increases being imposed by the Kings at their pleasure . . . without any consent of their citizens'.<sup>119</sup> For the prince to be well furnished with resources and fitting magnificence required wealthy citizens.<sup>120</sup> And one of the marks of the tyrant was to treat his subjects' property as his own. Among Jesuits, the standard interpretation of I Samuel 8: 10–19 (I Kings 8: 10–19 in the Vulgate), a text already controversial in medieval thought and now becoming a favourite

<sup>113</sup> Suárez, *De legibus*, v.15.2: 'Hanc utilitatem Principis non esse omnino privatam, sed communem, quia ipse est persona publica'; but para. 5: 'propter suos labores et vigilias'. All this seems to be transcribed more or less directly from Salas, *De legibus* (1611), xv.x.119.

<sup>114</sup> Lessius, *De iustitia et iure*, II, ch. IV, dub. x, s. 58.

<sup>115</sup> A medieval commonplace cited for example by Molina, *De iustitia et iure*, tract. II, disp. 667.1: 'Neque enim populus est propter principem, sed e contrario, princeps est propter populum.' It was a favourite of the Huguenot resistance literature; e.g. de Bèze, *Du droit des magistrats*, 1574, ss. 5, 6.

<sup>116</sup> Molina, *De iustitia et iure*, tract. II, disp. 667, ss. 2–4.

<sup>117</sup> Suárez, *De legibus*, v.15.5.

<sup>118</sup> Salas, *De legibus*, xv.x.120.

<sup>119</sup> *De rege*, III, ch. VIII (p. 266); he considered that Spain could not bear high taxes, because of its dryness and barrenness.

<sup>120</sup> Contzen (*Politicorum libri decem*, VIII.10) particularly valued many and wealthy merchants, but did not forget agriculture; Ribadeneira, *Princeps Christianus*, bk II, ch. XI (p. 341): 'Providendum Principi ut regnum abundans sit et dives (rico y abundante), et ut agricolis et mercatoribus foveatur.'

text of the Divine Right of Kings, was that it did not describe the rights of kings conceded by God to the Israelites, who had asked for a king like the nations, but rather that it was a warning to the Israelites (and thus all mankind) about how tyrants would behave.<sup>121</sup> Ribadeneira used his chapter on taxes as one of the main *loci* for his depiction of the tyrant, not forgetting to abuse the *politiques* along the way:

First and foremost, a prince ought to take it for granted that he is not the lord and master (*dominus/señor absoluto*) of the fortunes and goods which his subjects own (*possident*), and that he cannot simply take them when he pleases, as certain *politici* and evil men teach in order to flatter princes, overturn the administration and order of the commonwealth, pervert divine and human laws, and fashion, under the guise of a just prince, a most cruel, execrable and detestable monster.<sup>122</sup>

He made a point also emphasised by Mariana, although it was vigorously denied by other Jesuits:

And indeed, if the *dominatus* [that is, ultimate and full property rights] over the goods and fortunes of the people lay with kings, and only possession and use[rights] belonged to the possessors, there would be no reason for the convocation of the Estates General (*conventus*) of kingdoms . . . to give to kings what are called 'dues', 'subsides', 'free grants', and other similar names, all of them demonstrating plainly that that this kind of duty is done not so much because it is owed, but because the subjects undertake it of their own free will.<sup>123</sup>

Ribadeneira, however, admitted that great expenditures and even 'new taxes, exactions and other burdens' are required by the 'ordinary [*communem*, perhaps "public"] administration of the empire, the defence of religion, or other matters which are imposed on the king by his office'.<sup>124</sup> Even in those days there were few people (and no political thinkers at all) who expected any relief from long-established taxes. As Suárez said in *On Laws* (v.15.1), it was the imposition of *new* taxes that requires a just cause, for 'with old taxes, [just] cause is presumed, even if it is not known'. The period under discussion was egregiously inflationary, although the textbooks did not usually attend to the phenomenon, and increased taxes were at any rate better than debasing the coinage, which moralists considered as simply fraud.

<sup>121</sup> Azor, *Institutiones morales*, II, bk XI, ch. 4 (p. 1215), described this as a favourite text of courtiers, and denied that it referred to a legitimate or just king; also ch. 1 (p. 1099D); Ribadeneira, *Princeps Christianus*, bk II, ch. IX (pp. 326–7 = BAE p. 533); Mariana, *De rege* (1605), bk I, ch. 2 p. 24; Valentia, *Commentarii*, II, disp. v<sup>a</sup> generalis, qu. v, pt II, (p. 1352D): here 'ius non tantum significat legitimam potestatem, sed maxime etiam tyrannidem', citing Vincent of Laurins; Suárez, *Defensio fidei catholicae*, III.3.7–10; Fitzherbert, *An sit utilitas in scelere*, pp. 41, 54. For a medieval treatment, see Aquinas, *De regimine principum*, 2.9.2, 3.11.1, 9.

<sup>122</sup> Ribadeneira, *Princeps Christianus*, bk II, ch. 9 (p. 322).

<sup>123</sup> Ibid., pp. 322–3.

<sup>124</sup> P. 329.

Nevertheless, the operative premise was still, if increasingly precariously, that taxes ought to be a sort of grant-in-aid for some specific purpose ('earmarked' in modern jargon), and that they had to be used only for that purpose ('ring-fenced').<sup>125</sup> According to Suárez,

it is clear that [revenues from taxes imposed for public works] ought to be spent on such works . . . At most, if some real emergency occurs, such revenue might on occasion be diverted to some other work of equal importance to the *communitas regni*, or the public benefit . . . For if a [just] cause is necessary [for levying a tax], then the tax cannot last longer than the cause.

But he was generally permissive as regards *virement* between various legitimate uses of revenues.<sup>126</sup> Jesuits also made allowances for emergencies (*occasione emergentes*). The fact that revenues accruing from some traditional or currently imposed tax did not require to be expended in a particular year by no means demonstrated that such revenues were unnecessary or unjustified.<sup>127</sup> Avarice was certainly a vice in a ruler, but as Contzen represented the matter, it was virtually his duty *qua* ruler to amass resources for contingencies which, however unpredictable, would certainly be costly.<sup>128</sup> The practical question was how this might be done without injustice, without provoking resistance, and without impoverishing the subjects.<sup>129</sup> Contzen devoted a whole chapter to sumptuary laws and their many beneficial consequences, not least their revenue-raising potential. His discussion of taxes was in the book devoted to the 'might [or: power] of the commonwealth', *potentia reipublicae*, not its *potestas*. And although he divided 'might' conventionally (as we have seen) into domestic and external might,

<sup>125</sup> Suárez, *De legibus*, v.15.4.

<sup>126</sup> *Ibid.*, v.15.5–6. Contzen cited Suárez rather perfunctorily on this point, *Politicorum libri decem*, viii.7.18; Molina, *De iustitia et iure*, tract. II, disp. 667.1: 'secunda conditio necessaria: . . . ut imponatur ex iusta causa, neque plus exigatur quam causa postulat, ut cessante causa . . . cesset etiam ipsum tributum'. His lack of confidence in the proposition was revealed by the immediate addition of 'unless perhaps some other cause supervenes'. See also Salas, *De legibus*, xv.x.

<sup>127</sup> Contzen, *Politicorum libri decem*, viii.7.3: 'Vectigalia consueta, mediocria [usual and moderate customs and excise duties], agri publici [crown domains], tributa non sunt dimittenda, quamvis decuplo amplius annis conferant, quam in vias, pontes, magistratus, proemia virorum fortium insumatur. Nam unius belli apparatus plus aufert, quam multorum pax annorum.'

<sup>128</sup> *Ibid.*, viii.6–7; cf. Botero, *Della ragion di stato*, bk viii, ch. 3 (*Delle forze*); after *pro forma* warnings against avarice in ch. 2, much of the rest of this book was devoted to the topic.

<sup>129</sup> Contzen stressed the advantages of accurate accounts (ch. viii.6.2) and good housekeeping (ch. ix.1, princes to be 'boni Oeconomi', although it is more unpopular than liberality), dividing up new taxes into smaller payments (s. 5), payments in kind (s. 8; also 7.3), and keeping a sharp princely eye on tax-collectors, whom he described as 'harpies and [for some reason] swallows, secretly increasing the taxes on the people, and turning the sweat of the people into their own profit', making the prince hated into the bargain (s. 13). Vazquez, *Commentarii*, I, disp. clvi, ch. 5.41, mentioned the danger of popular resistance as one reason for seeking popular consent to laws, even though such consent was not strictly necessary for their validity.

he insisted that the latter could not exist without the former, which in turn was harder to acquire. His comments here, like those of this generation of thinkers generally, in effect reduced Machiavelli to the status of a dreamer, for minimising the importance of money and his general indifference to the topic.<sup>130</sup> No prince could afford to neglect cultivating his moral authority (*auctoritas*), in other words his reputation, for 'a reputation of power . . . is almost as necessary as power itself.'<sup>131</sup> Nevertheless: 'A prince must seek riches' (ch. v, title). Money is the sinews of government (*pecuniam esse nervum imperii*), and riches are as necessary for peace as for war. As for those 'who say that they rely on virtue alone, and deny that gold is to be trusted, their speech is pretty, but fallacious. For it is not virtue in a prince to strip himself of resources and the commonwealth of protection. Gold is not to be trusted but to be used, and in order to use it, you must first have it.' And 'all things obey money'.<sup>132</sup>

Subjects in any case could not derive much comfort from the regularly intoned limitation that 'no tax may justly exceed the cause for which it was imposed', and that 'subjects are not bound to pay more than the decent sustenance of the prince and the protection of the commonwealth requires'.<sup>133</sup> For as Salas said:

mere uncertainty [on the part of citizens] about the cause and the other conditions requisite for a tax to be just is not enough to terminate the obligation to pay the tax. For the knowledge of these things does not pertain to all private persons, and the Prince, who has a universal prudence, can be moved by many just reasons, which may not easily be known by others.<sup>134</sup>

This sentiment was emphatically endorsed by Suárez and Contzen;<sup>135</sup> and even Molina counterbalanced his remarks on the limitations on the prince's right to tax by insisting on the subjects' duty to pay: 'Subjects are bound to help, and to contribute not only their goods but themselves, when the public good and public necessity demand it.'<sup>136</sup>

As for the third requisite in a just tax, proportionality, this meant not only that the level of the tax (presumably in terms of the anticipated returns) had to be proportionate to the 'cause', but also that distributive justice

<sup>130</sup> See Bireley, *The Counter-Reformation Prince*, esp. pp. 64–7, 148–50, 226.

<sup>131</sup> Contzen, *Politicorum libri decem*, VIII.4. 5: 'Famam autem potentiae, quae pene tam necessaria est quam ipsa potentia'.

<sup>132</sup> Ibid., ss. 5–6; also Botero, *Della ragion di stato*, bk. VII, ch. 3 (p. 225), where the maxim is attributed to Vespasian, with a (correct) citation from Dio Cassius.

<sup>133</sup> Contzen, *Politicorum libri decem*, VIII.7.4 <sup>134</sup> Salas, *Tractatus de legibus*, XV.x.120.

<sup>135</sup> Contzen, *Politicorum libri decem* VIII.7. 4, referring to Salas; Suárez, *De legibus*, v.15.4.

<sup>136</sup> Molina, *De iustitia et iure*, II, disp. 667.1 (my italics).

required that the tax imposed should be proportionate to capacity to pay. It was unjust, for example, that a poor man should have to sell what little he had in order to pay a flat-rate tax, whereas a rich man could pay it out of his small change.<sup>137</sup> It had formerly been thought that sales-taxes should not be levied on what the poor needed for their subsistence.<sup>138</sup> It was however characteristic of the time that Lessius was altogether more lenient in this respect. Specifically taking issue with Caietanus, Lessius argued that it depended on the nature and gravity of public 'necessity' whether such taxes could be justified or not.<sup>139</sup> Suárez agreed.<sup>140</sup> Taxes on luxuries were quite unobjectionable; Contzen for example thought that taxes on wines in beer-drinking countries (like Bavaria) and also on sugar and unnecessary spices were admirable, as were taxes on luxuries, especially imported ones. He also commended taxes on usury, adding some particularly odious recommendations (but not prescriptions) about expelling Jews.<sup>141</sup>

Finally, consent here also became an issue. In the matter of raising new taxes, even Bodin's nerve seemed to fail.<sup>142</sup> Having defined sovereignty as the right to impose laws without consent,<sup>143</sup> he nevertheless made the legitimacy of *new* taxes dependent on the consent of the estates even in an absolute monarchy.<sup>144</sup> A share in the taxing power was one of the ancient claims of the Estates General, *Stände*, *Cortez*, Diets, Parliaments, etc., of the old kingdoms of Europe, which the 'absolute' monarchs were marginalising, usually successfully. Contzen's discussion of taxation did not mention the *Stände* at all, and neither did Lessius (a native of the Spanish Netherlands) except in connection with *civitates* where consent of the assembly of all the citizens or their deputies was necessary for new taxes. But this was

<sup>137</sup> E.g. Lessius, *De iustitia et iure*, II, ch. 33, s. 50; Suárez, *De legibus*, v.16.1; Molina, *De iustitia et iure* disp. II, 668.1

<sup>138</sup> Lessius, *De iustitia et iure*, cited Caietanus as the authority for this view. See also Salas, *Tractatus de legibus*, xv.x.120: 'Male audiunt illa tributa, quae imponuntur in rebus ad cibum et potum maxime necessarias, quia inde maxime solent pauperes gravari.'

<sup>139</sup> *Publica necessitas* and the insufficiency of customary revenues might justify it; *De iustitia et iure*, II, ch. 33, s. 51.

<sup>140</sup> Suárez, *De legibus*, III.16.3.

<sup>141</sup> Contzen, *Politicorum libri decem*, VIII.7.11–12; also chs. 7 and 14. Note the rare Latin term for beer: *cerevisia*.

<sup>142</sup> Even though as Franklin (*Jean Bodin*, pp. 86–92) notes, '[t]he French constitutionalist tradition . . . had not put special emphasis on consent to new taxation'.

<sup>143</sup> Jean Bodin, *Six livres de la Republique*, bk. I, ch. VIII (p. 122)

<sup>144</sup> P. 140; Bodin here at least intimated that taxation constituted an interference with private property-rights: 'par ce qu'il n'est en la puissance de Prince du monde, de lever impost à son plaisir sur le peuple, non plus que prendre *le bien d'autrui*' (my italics). He then made the exception 'si la nécessité est urgente'. See Franklin, *Jean Bodin*, cited above, n. 142.

simply a consequence of that form of government, and did not apply to monarchies.<sup>145</sup>

The issue was acute in Spain, and Spanish Jesuits did not agree on the matter. Mariana, always a defender of traditional institutional constraints on monarchs, was unequivocal,<sup>146</sup> and Ribadeneira (as we have seen) also upheld the rights of the *Cortez* and other assemblies. But Suárez, as ever minimising the role of popular consent in legislation, devoted an entire chapter in *On Laws* (v.17) to denying that 'the consent of the subjects is required in order for taxes to be just'. He admitted that there were some (he mentioned no names) who thought that 'the advice and consent of the kingdom' to taxation were 'unconditionally necessary', and noted some Spanish laws to this effect. He referred to the political argument that unless kings were constrained in this way, they would be likely to behave tyrannically. He also recalled the old maxim: 'What affects all, should be approved by all.' But in his view none of this was conclusive against the much stronger general arguments in favour of true monarchy. Consent to legislation of any kind was not required by Roman law, canon law, the authority of the Ancients (*ex auctoribus antiquis*) or by the ancient law of Spain (s. 3), natural law or the *ius gentium*. Whether a ruler's *potestas* is expanded or restricted in morally neutral matters depends on human will and judgement (*arbitrium*), and on the ancient covenant or pact between the King and the kingdom (s. 3). As for natural law,

it is not intrinsically an evil that the power to impose taxes, within the limits of justice, should rest absolutely (*absolute*) with the Prince alone, nor is it against good customs and morals; and conversely, to require the consent of the people is not necessary in terms of justice and equity. And therefore the former is not against natural law, and the latter is not a command of natural law.

The pragmatic argument that the consensual procedure is more appropriate and expedient (*conveniens*) for peoples and kingdoms alike would not be enough to generate an unconditional requirement even it were true; but it is not indisputably true in any case (s. 3). In monarchical regimes, leaving kings unrestricted by the requirement of consent is 'more appropriate and more customary; it accords sufficiently with prudence, justice and the smooth operation (*convenienti*) of government, and the obedience of subjects' (s. 4, my italics). Thus, for Suárez, the undoubted fact that the power to tax was limited by considerations of justice required no departure from what

<sup>145</sup> Lessius, *De iustitia et iure*, II, ch. 33, s. 14 (misnumbered as 15).

<sup>146</sup> *De rege*, bk 1, ch. 5 (1605), p. 57: the people has not transferred to the King the power to impose taxes; also ch. VIII (p. 70).

he (and the Society generally) considered the best form of government, namely a *monarchia perfecta et integra*.

Whatever might be true of the rights of the *respublica* over rulers and office-holders, a matter to be considered in our final chapters, as far as the rights of individuals were concerned, the common good and the authority of rulers as its agents and interpreters preponderated. There were indeed circumstances in which the individual right of self-preservation over-rode the duties of subjects which corresponded to the undoubted rights of their rulers. But to the extent that Jesuit theologians and casuists considered this situation, they acknowledged only the possibility of a higher right overriding a lower one, not the possibility of contradictory but equal rights. As regards the *ius gentium* and all other rights and liberties, the issue did not arise.

*Tyrannicide, the Oath of Allegiance controversy, and  
the assassination of Henri IV*

In view of the Society's over-riding preoccupation with *principatus* and its tender solicitude for princes, it is surprising that Jesuits of all people should have been particularly associated in the political polemic of the time with that most potentially anarchic of all the remedies for tyranny, namely tyrannicide. As we have seen, they hardly needed reminding that one man's tyranny is another's smack of firm government.<sup>1</sup> And in all except the most outrageous cases, their presumption was always in favour of obedience to rulers: *in dubio praesumendum est pro Superiore, et obediendum illi est*.

The main reason Jesuits discussed tyrannicide at all was because, strange as it may seem, it was a perfectly standard topic in text-books on theology and law; it sometimes even figured in cases of conscience. Suárez cited nineteen scholastic sources, theologians, civilians, and canonists, of whom only three were Jesuits (Toledo, Azor, and Molina). Aquinas himself had referred to the matter in at least three places: *De regimine principum*, I, ch. II, 6–10; *2a.2ae*, qu. 64, art. 3, and *Commentary on Sentences* II, dist. 44, qu. 2, art. 2, ad 5. But the scholastic *locus classicus* was Bartolus of Sassoferrato, *Tractatus de Guelphis et Ghibellinis*. Scholars were well aware of opinions favourable to tyrannicide in antiquity, as with Cicero's verdict on Brutus and Cassius slaying Caesar. Some Old Testament episodes arguably endorsed it as well: Ehud eliminating Eglon (Judges 3: 21), and Judith and Holofernes (Judith 13), which remained a popular story, even though Reformers considered the book apocryphal. There were equivocal references to the doctrine in both Thomas More and Calvin.<sup>2</sup> Even Bodin made some comments which Andreas Eudaemon-Ioannes rightly described as more extreme than anything any Jesuit ever said.<sup>3</sup> And, as Jesuit apologists pointed out repeatedly, Jesuit theologians said nothing that had not been said by Cajetan, Soto,

<sup>1</sup> Suárez, *Defensio fidei*, VI.4.4.

<sup>2</sup> More, *Utopia*, pp. 89–90; Calvin, *Institutio*, IV.20.30–1.

<sup>3</sup> *Six Livres de la Republique*, bk II, ch. 5; Eudaemon-Ioannes, *Anti-Cotoni Refutatio*, pp. 6off; for Bodin's position see Quaritsch, *Staat und Souveränität*, pp. 328–33, 370ff.



Castro, and Navarre in their own century. It was precisely because Mariana aroused legitimate suspicions of unconventionality that he was denounced by Provincial Congregations of the French Jesuits.

The large number of references to tyrannicide their enemies found when they eventually trawled the Jesuit corpus for incriminating evidence for the most part demonstrates only that Jesuit theologians and casuists were sufficiently unworldly to regard it as simply another conventional topic. Thus under the heading 'Tyrant' in his frequently reprinted but undistinguished and routine *Confessor's Aphorisms* (1595), Emmanuel Sa wrote as if he were discussing some topic relating to the restitution of ill-gotten goods:

Someone governing tyrannically, but who has acquired his position of authority (*dominium*) justly, cannot be deprived of it without a public judgement: once sentence has been passed however, anyone at all can execute it. He can also be deposed by the people, even if it had sworn him perpetual obedience, if he is unwilling to mend his ways after due warning. And any member of the people may kill someone occupying the office tyrannically [i.e. a usurper], if there is no other remedy; for he is a public enemy.<sup>4</sup>

This cost him a temporary inclusion in the Roman Index of Prohibited Books in 1603; subsequent editions of the *Confessor's Aphorisms* removed the offending item.<sup>5</sup>

#### THE TEXTBOOK DISCUSSIONS

For Jesuits, tyrannicide was technically a difficult doctrine, even before it became politically too hot to handle. *Prima facie*, it was the killing of a superior and a public person by an inferior and private person, which was inherently unjustifiable. The act had therefore to be capable of being re-categorised in some other way by careful distinctions. The first and most conventional of these was between a ruler who held office legitimately but behaved tyrannically, and an invader or usurper.<sup>6</sup> The point here was obviously that, as Lessius put it, an invader or usurper

<sup>4</sup> Sa (or Saa), *Aphorismi confessoriorum* (1595), pp. 517, 611; see also the entry under *Prince*. He cited Aquinas, Soto, Salon, Bañez, Sylvester (Prierias), Toledo, and Pedro de Aragon.

<sup>5</sup> But not the cross-reference (1607, p. 267): 'Hostem publicum an liceat occidere, videre *Tyrannus*'.

<sup>6</sup> The distinction was variously formulated: e.g. Lessius, *De iustitia et iure*, II. ch. IX, ss. 7, 10, 'tyrannus . . . ratione tituli' and 'tyrannus ratione duntaxat administratione'; Toledo, *Summa casuum conscientiae*, bk v, ch. 6, pp. 252–3, 'tyrannus potestate et dominio, qui non habet titulum verum' and 'tyrannus administratione, qui habet verum titulum, sed tyrannice tractat subditos'; Valentia, *Commentarii*, vol. III, disp. 5<sup>a</sup> generalis, qu. 8, pt III (vol. III, p. 1324C–D): 'tyrannus per arrogatam potestatem' and 'tyrannus per pravam legitimae auctoritatis usum', etc.

is not a prince at all . . . Anyone at all may eliminate<sup>7</sup> an iniquitous oppressor of the commonwealth, when there is no other remedy. Just as a private person, if he is unjustly oppressed by someone, may repel force with force, and eliminate an aggressor (*invasor*), when there is no other way of freeing oneself, so the commonwealth, if it is unjustly invaded, may by the agency of any of its members repel force by force.<sup>8</sup>

The situation morally was therefore that no prince was in fact involved. The only restriction on exercising the natural right of *vim vi repellere* was if its use threatened to make the situation worse,<sup>9</sup> a restriction at once prudent and moral, in accordance with the usual consequentialism of Jesuit moral reasoning.

But the far more difficult and – so to speak – normal case of tyranny was that of a legitimate ruler behaving tyrannically. The difficulty was that for a subject to kill his own legitimate superior presupposed a right to judge and punish superiors. The whole point of the argument for the necessity of *principatus* and *civilis potestas* was precisely to substitute an authoritative *arbiter controversiarum* for such private judgements. Salmerón categorically denied any right to *judge*: ‘It is not for private men to judge Princes, whether they rule by right or without right.’<sup>10</sup> Nor did private persons have any authority to *punish* their princes, since that is a right of princes and superiors.<sup>11</sup> It was to obviate these same difficulties that the Huguenots (and Calvin himself) had justified resistance to tyranny by ‘lesser (or popular) magistrates’, but not by *private* persons.<sup>12</sup> All Jesuit theologians and writers, Mariana included, taught that it was never justifiable for a private person to kill his own lawful prince on his own authority. ‘We are commanded’, says Salmerón on the authority of Romans 13, ‘to obey all lords and princes without distinction, even the wayward and difficult ones.’<sup>13</sup> Another apposite and universally cited text was the Council of

<sup>7</sup> Lessius often used the euphemism *e medio tollere*, to do away with; Molina and Mariana used less squeamish terms like *interficere*, kill.

<sup>8</sup> Lessius, *De iustitia et iure*, II, ch. IX, dub. 4.

<sup>9</sup> *Ibid.*, ch. IX.9. This restriction was absolutely standard: e.g. Molina, *De iustitia et iure*, tract. III, disp. VI.2: ‘nisi ex ea interfectione maiora mala reipublicae imminueret’.

<sup>10</sup> Salmerón, *Commentarii, Disp. in Epistolam ad Romanos*, bk II, disp. V, p. 680 col. 2: ‘praemittendum, quod privati non est iudicare de Principibus, utrum iure, vel iniure regnent’. Despite its ambiguity, this seems to mean: private persons are not competent to judge whether their princes are ruling justly or unjustly.

<sup>11</sup> Lessius, *De iustitia et iure*, II, ch. IX, s. 5: ‘non licet interficere peccatores, nisi ob bonum Reipublicae . . . atque procuratio boni publici pertinet ad publicam potestatem, quae est in Principe vel Magistratu: ergo ad solum Principem pertinet, malefactores e medio tollere’.

<sup>12</sup> See Höpfl and Thompson, ‘The History of Contract’, pp. 931–3; Höpfl, *The Christian Polity of Jean Calvin*, pp. 170–1 and fns. 109 and 111, pp. 210, 213, 216.

<sup>13</sup> *Commentarii, disp. in Epistolam ad Romanos*, bk II, disp. IV, p. 681.

Constance's anathema (session 15, *ad finem*) against the proposition that: 'Any tyrant whatever may and should be rightly and meritoriously killed by any vassal or subject of his whatsoever, even by secret ambushes and subtle blandishments or fawning [presumably, to put him off his guard], regardless of any oath or alliances made with him, without waiting for the verdict or command of any judge whatever.'<sup>14</sup> Constance had had in view the doctrine of the Protestants' proto-martyr Hus, and this made its verdict all the more authoritative and relevant to Jesuits. Its condemnation of the proposition that 'any tyrant whatever might be killed' could of course be read as permitting *certain kinds of tyrants* (namely usurpers and invaders) to be killed, but Azor interpreted it as applying to all slaying of tyrants, despite the weight of the authorities he listed.<sup>15</sup> He justified his universal veto *inter alia* by an extreme version of the presumption in favour of superiors: a tyrant lacking title nonetheless holds office *de facto*, and may not be expelled from it before he has been heard and judged. How a verdict was to be reached he did not say, but he had just distinguished between pagan kingdoms, which did have the right to depose kings, and Christian ones, where this right could only be exercised if the pope had been consulted.<sup>16</sup>

Azor's refusal to distinguish between different types of tyrant was singular among Jesuits, and his opinion was dismissed by both Keller and Suárez. However, it was extremely helpful to the Society's apologists that his opinion had never been condemned, unlike Mariana's, given Azor's closeness to the Jesuit High Command.<sup>17</sup> Salmerón's position was much more representative. He interpreted Constance as condemning the killing of a tyrant who, although originally a conqueror, was now in peaceful possession. By contrast, an open 'enemy of the people', without peaceful possession, 'could be eliminated by any private person, but not by private, but by public authority', as a public enemy.<sup>18</sup> Molina was more brusque: a tyrant who is a usurper or invader 'can be justly killed by any member of the commonwealth', unless some greater evil might be expected to

<sup>14</sup> 'Quilibet Tyrannus potest, et debet licite, et meritorie occidi per quemcumque Vassallum suum, et subditum etiam per clancularias insidias et subtiles blanditias vel adulationes non obstante quocumque praestito iuramento seu confederatione factis cum eo non expectata sententia vel mandato iudicis cuiuscumque'; text (including wayward punctuation) from Eudaemon-Ioannes, *Anti-Cotoni Confutatio*, p. 27; it is also quoted e.g. in Salmerón, cited n. 13, p. 681, Lessius, *De iustitia et iure* II, ch. IX, s. 10, and Suárez, *Defensio fidei*, VI.4.3, with slightly more intelligible punctuation.

<sup>15</sup> Azor, *Institutiones morales*, II, bk XI, ch. 4 (p. 1231).

<sup>16</sup> Azor, p. 1230: 'Sit [for: Si] autem sermo fit de Christianorum regibus, non videtur populus id iuris et potestatis habere absolute et simpliciter, inconsulto vel inscio Pontifice Romano'.

<sup>17</sup> Argenti, *Apologeticus*, p. 87, cited Azor as a shining example of Jesuit adherence to Constance and Romans 13.

<sup>18</sup> Salmerón, *Commentarii*, p. 681, col. 1.

result. A tyrant by conduct on the other hand may be deposed, by the commonwealth (or rather its heads) 'passing sentence on him if his excesses and the common good demand it, and punishing him once he is deposed. Before such a sentence has been passed [Molina gave little hint about what procedure he was envisaging], it is wrong for any private person to kill him.'<sup>19</sup> Lessius said much the same at greater length, citing Romans 13, the Council of Constance, and (perhaps most central to his general position) the argument that a legitimate ruler,

even though he governs tyrannically, remains a Superior nonetheless. However, if his excesses become unbearable, and no other remedy remains, he is first to be deposed and declared a [public] enemy by the commonwealth, or the Council of the kingdom, or someone else having authority, so that it would become legitimate to attempt something against his person. For in this way he would cease to be Prince.<sup>20</sup>

'Someone else having authority' may mean the pope, but Lessius did not say so.<sup>21</sup> Toledo, in his *Summary of Cases of Conscience*, for which Suárez was the Society's official censor, was more restrictive. He explained Aquinas's judgement that Brutus did not sin in killing Caesar (p. 652) as meaning that a tyrant 'without a valid title' (such as Caesar), could be licitly killed by any one when there was no other way, and 'when there is likelihood of freedom as a result', otherwise not.<sup>22</sup> But a tyrant 'with a valid title' may *not* be killed at all. Despite the right to kill in self-defence, when the 'aggressor' (*invasor*) is a public person of much value to the commonwealth, the victim of aggression (*invasus*) is *obliged* to allow himself to be killed (p. 655). This was to uphold the Jesuit concern with maintaining the order of superiority and inferiority at almost any cost.

#### MARIANA

Mariana, somewhat unusually, dealt with tyrannicide in what was after all a mirror for princes; but so was Aquinas's (or Ptolemy of Lucca's) *De regimine principum*, which also did so. Inconveniently for those who wanted to saddle the whole Society with Mariana's opinions, Aquaviva had demanded suppression of the most objectionable passages about Henri III's assassination

<sup>19</sup> Molina, *De iustitia et iure*, tract. III, disp. VI.2, p. 32. Valentia (*Commentarii*, vol. III, p. 1324D) even more succinctly said that a ruler using legitimate authority tyrannically cannot be killed by any private individual (*particulari*); this is a judicial act, and therefore belongs to the commonwealth. A tyrant who has merely seized power may be killed by anyone.

<sup>20</sup> Lessius, *De iustitia et iure*, II, ch. IX, s. II. <sup>21</sup> *Ibid.*, s. 8.

<sup>22</sup> Toledo, *Summa casuum conscientiae* (1608 version), pp. 652–3.

as early as 1600, in view of the sensitivity of the Society's position in France,<sup>23</sup> and forbade other Jesuits to defend the book, although with no conspicuous success on either count.<sup>24</sup> Equally inconveniently for anti-Jesuit polemics, Mariana nowhere mentioned the papacy in the quasi-judicial process which he made a prerequisite for a legitimate deposition or killing of a tyrant.

He marshalled the arguments *pro et contra* tyrannicide in an apparently dispassionate manner. He recalled the exemplary patience and submissiveness of the early Christians confronted by tyrannical emperors,<sup>25</sup> the fact that sometimes killing tyrants had merely brought in worse ones, some kings had become oppressive merely because of the rebelliousness of their subjects, and the pernicious effects of habits of insubmissiveness (p. 56). However, he then described this with studied ambiguity as the opinion of those who defend the tyrant's case (p. 57), and set out the argument of 'the defenders of the people' (*populi patroni*, p. 57). The commonwealth's authority is the source of the king's; it has reserved power in respect of the succession and taxation; slayers of tyrants have been held in honour in all ages; opinions so universal are in a way the voice of nature itself (p. 57). Tyrants are a sort of ferocious and inhuman animal;<sup>26</sup> allowing them to violate the defenceless without offering resistance is cowardly; and those prepared to risk their lives in resisting are displaying bravery (p. 58).

Finally, Mariana delivered his own verdict (pp. 58ff), which had long since become obvious. First, theologians are all agreed that slaying usurpers and invaders is legitimate (p. 58). Kings by heredity or the *consensus populi* are to be tolerated as long as possible, but if their persistent violation of right order, their subjects' persons, property, religion, and laws has made them intolerable, there is a proper procedure for correcting them (pp. 59–60). Only after this procedure, involving the action of the public assemblies (i.e. the Estates<sup>27</sup>), may a tyrant be proceeded against, in a sort of defensive war against a 'public enemy' (pp. 59–60). In this chapter Mariana made his notorious comments about the execution of Jacques Clément, the assassin of Henri III; the latter had himself instigated the assassinations of the

<sup>23</sup> The relevant section of this private letter of 24 June 1600 is reproduced in Astrain, *Historia de la Compañía de Jesús*, vol. iv, p. 99.

<sup>24</sup> See Ferraro, *Tradizione e ragione*, p. 205 and n. 68. Aquaviva's edicts of 1610 and 1614 are reproduced in Lewy, *Constitutionalism and Statecraft*, Appendix 1.

<sup>25</sup> Mariana, *De rege*, p. 55; unless otherwise indicated all references are to the 1605 edition.

<sup>26</sup> 'Tyrannum bestiae instar esse ferocis et immanis'; compare Locke's 'savage ravenous beast', *Two Treatises*, II, s. 181.

<sup>27</sup> Krebs's claim that Mariana meant that it was the clergy (*Priester*) who were to judge is gratuitous. Mariana's view that bishops made excellent counsellors for kings and representatives in assemblies is irrelevant in this context (Krebs, *Politische Publizistik der Jesuiten*, pp. 113–14, 118).

Guise Duke and Cardinal.<sup>28</sup> Clément had heard the true doctrine from his *Dominican* teachers, as Mariana was careful to specify (p. 53). The line omitted from the 1605 edition and subsequently was: 'Thus perished Clément, one of the eternal glories of France, as it seemed to very many.'<sup>29</sup> But all editions retained the comment:

There was not unanimity about the monk's deed. Many praised it and judged it worthy of immortality; others notable for prudence and with reputations for learning vituperated it, denying that it was right for anyone to eliminate a king proclaimed by popular consent and anointed with holy oil in due form, no matter how corrupt his morals and whether he had degenerated into a tyrant or not. (pp. 54–5)

Again, the death of Henri III was a 'foul spectacle, memorable for little' (p. 54), but a 'memorable crime',<sup>30</sup> a 'noble monument' to the power of an enraged people (p. 51). Of course kings are not to be changed readily, lest we should rush headlong into even greater evils (p. 59), and popular upheavals must be avoided (p. 62). But when no other avenue remains and the evil is unbearable, blatant, and incorrigible, tyrannicide becomes a legitimate option. There is little danger that people would resort to it too readily. And the fear of it is in any case a 'salutary warning' to princes (p. 61).

In all this, the only position which was in any way singular was that when a legitimate but tyrannous prince made an orderly proceeding impossible by preventing the meetings of the legitimate assemblies of the commonwealth, private men might legitimately kill him (p. 60). And at this point, to counteract the authority of Constance, Mariana urged that the Council was held at a time when there were three pretenders to the papacy, that the doctrine was formulated to bridle the licence of the Hussites, and that this decree had not been ratified by subsequent popes, although Mariana must have known that the doctrinal decisions of the Council had received papal ratification *generatim*.<sup>31</sup> He then discussed legitimate methods of assassination at chapter-length (ch. vii); although overt acts were more heroic and exemplary, covert ones might be more prudent and effective, and antiquity (and Thomas More too, although Mariana did not say so) had

<sup>28</sup> *De rege*, p. 52: after the murder of the Guise (great patrons of the Society), 'in cuius familiae virtute, spes et fortunae Galliae hae tempestate sitae erant', 'magna pars procerum re cum aliis Principibus communicata, tum Gallis tum externis, pro salute patriae, pro religione sumunt arma, undique auxilia conquerunt'.

<sup>29</sup> *De rege*, Toledo, first (1599) edition only, p. 69: 'Sic Clemens periit aeternum Galliae decus, ut plerisque visum est.' 'Plerisque' is ambiguous: it could mean 'almost all'.

<sup>30</sup> *De rege*, p. 53; 'facinus memorabile' is ambiguous; as Mariana would have known, *facinus* usually meant a crime, but was also used neutrally for a 'deed' or 'act'.

<sup>31</sup> *De rege*, p. 62. See Lewy, *Constitutionalism and Statecraft*, p. 74.

celebrated underhand methods of vanquishing tyrants as more economical (pp. 64–5). Although poisoning, for example, risked accidentally poisoning innocent persons, such as food-tasters, an opportunity which carried no such danger might offer itself.

THE OATH OF ALLEGIANCE CONTROVERSY AND  
THE ASSASSINATION OF HENRI IV

Mariana's views aroused no adverse comment at the time of publication in absolutist Spain,<sup>32</sup> England,<sup>33</sup> or France (except from his French confrères), even though the insurrectionary and Machiavellian Jesuit was long since a cliché. But he could not escape unscathed after Henri IV's assassination, which the Society's enemies treated as confirmation of the charges James I/VI as well as the Sorbonne and the Parlement had made against the Jesuits. *De rege* was formally condemned by the Paris Parlement and burned by the public hangman in 1610, and again in 1614 in a verdict which also embraced Suárez's *Defence of the Catholic Faith*, Becanus's *Controversia Anglicana*, Richeôme's *Examen Categorique*, and works by Gretser, Azor, Bonarscius (anagram of Scribanus), Lessius, Vazquez, and Keller, although the inclusion of Coqueau (an Augustinian) and Tiraqueau (a Dominican) made the verdict marginally less blatantly partisan.<sup>34</sup> Bellarmine had already joined this company of the condemned for his *Treatise on the Authority of the Supreme Pontiff in temporal matters . . . against Barclay* (1610).<sup>35</sup> Becanus's *Controversia Anglicana* (1613)<sup>36</sup> enjoyed the distinction of being separately condemned by the Theological Faculty of Paris, placed on the Roman

<sup>32</sup> Bireley, *The Counter-Reformation Prince*, p. 36; by contrast, Mariana's brave indictment of the Spanish crown for debasing the currency (*De moneta mutatione*, incorporated in later editions of *De rege*) earned him detention in prison, and a court-case; see Ferraro, *Tradizione e ragione*, pp. 145–53.

<sup>33</sup> James's *Apology for the Oath of Allegiance* does not mention it, nor was Mariana in the Appellants' rogues-gallery of Jesuits.

<sup>34</sup> Texts of the Edict (in French) in Pereña *et al.* *Estudio Preliminar*, CHP, vol. xviii, Appendix xiii; the text of the Parlement's deliberations is Appendix xii (contemporary Spanish translation seen by Suárez).

<sup>35</sup> *Tractatus de potestate Summi Pontificis . . . adversus Guilielmum Barclaium* (1610), cited below from the 1611 edition.

<sup>36</sup> Becanus, *Controversia Anglicana de potestate Pontificis et Regis*, 'revised and augmented' second edition, 1613, dedicated to Paul V. This book, never translated into English or reproduced in collected editions of Becanus's *Opuscula*, is not to be confused with his other books with similar titles (as it is even by Brodrick, *Bellarmino*, p. 235), notably *Dissidium Anglicanum de Primatu Regis* (1612, translated as *The English Jarre*, same year = ERL 62), *Duellum de Primatu Regio* (1609), *Serenissimi Iacobi Angliae Regis apologiae, et monitoriae praefationis . . . Refutatio* (1609) and other pamphlets, all reprinted in the *Opuscula*, vols. II and III, 1610 and subsequent editions. Becanus maintained a high publishing output by recycling entire sections from previous works.

Index, and repudiated both by the Pope and by Aquaviva.<sup>37</sup> His other works all remained uncensored and sold well, to judge by the number of reprints and translations; but then Becanus was an extremely intelligent controversialist. But Suárez's and Bellarmine's opponents were obliged to admit defeat. It was simply impossible in a country with a Catholic monarchy to condemn the Catholic Church's foremost theologians outright, and the French Court would have none of it, repeatedly quashing *parlementaire* condemnations.<sup>38</sup>

The Oath of Allegiance controversy established internationally, and anti-Jesuit polemics after Henri IV's assassination consolidated, the *canard* that tyrannicide was a specifically Jesuit doctrine, and that it was one (perhaps the preferred) instrument for implementing papal depositions of rulers, an instrument regularly employed and advocated by Jesuits,<sup>39</sup> along with conspiracies and Machiavellian methods generally. The legend both fed and was fed by the stream of increasingly lurid anti-Jesuit libels and conspiracy theories popular in the Holy Roman Empire,<sup>40</sup> and other suspect sources, such as *parlementaires* and the Sorbonne backtracking on an embarrassing past.<sup>41</sup> The most contemptible of the Protestant libels, the imperishable *Historia Jesuiticae Ordinis* by Elias Hasenmüller (Latin, 1593; embellished German version by Polycarp Leiser, 1596), and the possibly even more absurd *Wahrhaftige Neue Zeitung* (1614), confused the issue by treating murder and assassination as private recreations of the Jesuits, like promiscuity, luxury, sodomy, and torture.<sup>42</sup> The Oath of Allegiance controversy focussed instead on Jesuit *teaching*, and the accusations now came from

<sup>37</sup> The Faculty's Censure, with those of the Pope, Aquaviva, and others, was reprinted in full in England by the Latin, Greek, and Hebrew Printer to His Majesty: *Summa actorum facultatis theologiae Parisiensis contra librum inscriptum Controversia Anglicana*, 1613.

<sup>38</sup> Lewy, *Constitutionalism and Statecraft*, pp. 144–9, and Ferraro, *Tradizione e ragione*, ch. 10, who however uncharacteristically fails (pp. 234–5 and elsewhere) to distinguish between the doctrines of deposition and tyrannicide.

<sup>39</sup> See Caraman, *Henry Garnet*, p. 28. A Proclamation of 5 November (!) 1602 distinguished between 'traiterous Jesuits' and their allies, continually plotting invasion and 'even to murder our person', and the Appellants (p. 300). The penal laws against Catholics had been justified in 1591 by the claim that Jesuits and Seminary priests had plotted assassinations; it described them as 'dissolute young men', tutored in 'Schoole pointes of sedition'. See Robert Southwell's devastating reply, *An Humble Supplication* (1600).

<sup>40</sup> Umberto Eco's *Foucault's Pendulum* makes the Knights Templar the acid test of the genuine conspiracy theory, and sure enough: the Appellants W. Clarke, *A reply unto a certain libel . . . by F. Parsons* (1603), pp. 32<sup>r-v</sup> and W. Watson, *A Decacordon of Ten Quodlibetical Questions* (1602), p. 45; Tanner, *Verantwortung* (1618), p. 18, refers to it as a standard comparison.

<sup>41</sup> Although Henri IV's amnesty forbade reference to activities during the Ligue years, this did not inhibit Jesuits outside France, or their opponents within. See Schnur, *Individualismus und Absolutismus*, ch. v. Keller in his *Tyrannicidium* neatly recalled the judicial murder of Father Jean Guignard SJ in 1594, by disavowing any intention of accusing the latter's judges (pp. 9–10, 45).

<sup>42</sup> See Janssen, *Geschichte des deutschen Volkes*, vol. v, pp. 513–35.



a King whose learning (if not his prudence) was widely acknowledged.<sup>43</sup> Moreover, as the son of Mary Queen of Scots, he was manifestly not an irreconcilable enemy of his Catholic subjects, but rather an enemy of Puritans, applauded for it by Jesuits themselves.

Bellarmino and Persons were the first of many to point out that the Oath of Allegiance required subjects to disavow both the papal deposing power and the doctrine of tyrannicide simultaneously, as if the two went hand in hand. James's anonymous *Triplici Nodo, Triplex Cuneus. An Apology of the Oath of Allegiance* (1607) perpetuated the association and also laid both doctrines specifically at the door of the Jesuits. So did the revised version, *Apologia pro iuramento fidelitatis* of 1609, now in James's own name, with a Latin *Prefatio Monitoria*, addressed to the Emperor Rudolph II and the princes of Europe. For the Pope and the Jesuits, the Oath of Allegiance was no merely local difficulty. Although it was regarded as unbecoming for a king to be employed in such work,<sup>44</sup> James's *Apology* and his *Praefatio monitoria* were nicely judged, in that they played on Catholic divisions between Gallicans and Ultramontanes, and between Catholic supporters and opponents of the Papal Interdict against the Most Serene Republic of Venice.

The broader issue of papal supremacy which the controversy about the Oath raised will occupy us in the last chapter. The topic of the Pope as the Anti-Christ, which at the time was apparently just as absorbing, will not occupy us at all. As for the Jesuit-Spanish-Papal conspiracy legend, it defies comprehension. Spain was virtually bankrupt after the *Impresa* catastrophe and Spanish failures in France and the Netherlands. James himself (Treaty of London 1604), Henri IV (Peace of Vervins 1598), and even the United Provinces (Truce of Antwerp, 1609) had reached accommodations with Spain.<sup>45</sup> There was transparently no Spanish or papal involvement in the Gunpowder Plot, though this may have been less evident to James than it was to Robert Cecil.<sup>46</sup> And the Society had no foreign policy. Many prominent Jesuits of course had actively supported Spain, the *Impresa*, and the Ligue, with no support from Aquaviva. But even they soon abandoned all hope. Robert Persons regarded Philip II as an habitual procrastinator and Spain, under the indecisive and lazy Philip III, as a busted flush.

<sup>43</sup> Robert Persons translated and read portions of James's *Basilikon doron* to Pope Clement VIII, who was much moved by it; both regarded the *Trew Lawe of Fre* [*sic*] *Monarchies* as pestilent; see Edwards, *Robert Persons*, pp. 284–6.

<sup>44</sup> Persons's *The Judgement of a Catholicke Englishman*, 1608, para. 1, argued that James could not personally have approved the then anonymous *Apologie*, given the intellectual fatuities and social solecisms it contained.

<sup>45</sup> See Lynch, *The Hispanic World in Crisis and Change*, chs. 1–3, esp. pp. 54–6.

<sup>46</sup> Fraser, *The Gunpowder Plot*, pp. 156–62, 191–5.

The Society certainly did uphold the doctrine of the papal deposing power,<sup>47</sup> even if some of its members thought that the less said about it the better. But it had no collective view on tyrannicide, and there was obviously no logical entailment between the two. Mariana asserted both, but did not mention the papacy in the context of tyrannicide; Azor endorsed the deposing power but not tyrannicide. And it was also soundly Christian to marvel at God's providence in punishing tyrants by the hand of tyrant-slayers, without regarding such killing as justifiable. This perhaps explains the rejoicing imputed to Sixtus V on hearing of the assassination of Henri III, one of the standard 'proofs' that the papacy approved of assassins, or even used them itself.<sup>48</sup> Fitzherbert denied that Henri was a tyrant, but held up his fate as an illustration of tyrannous acts receiving condign punishment.<sup>49</sup> This was no more to approve tyrannicide than glorying in the wondrous consequences of Christ's crucifixion or Adam's *felix culpa* were justifications for Pilate or Adam.

The English government's fear of conspiracies was genuine and well grounded. But despite extravagant assertions to the contrary, it had no evidence that any Jesuit captured or active in England was in any way implicated in any plot, let alone any assassination attempt; even Persons at no time displayed any enthusiasm for the latter course.<sup>50</sup> The best evidence of involvement would have been that Henry Garnet knew of the Gunpowder Plot under the seal of the confessional, but no Catholic would have agreed that Garnet had any duty to reveal that.<sup>51</sup> The charge of teaching and fostering tyrannicide was an inferior surrogate for concrete evidence of active Jesuit complicity, extracting which was a principal object of the prolonged torture of Southwell, Campion, and Walpole and of the Gunpowder Plot conspirators.<sup>52</sup> Convictions for 'treason' which was merely constructive, in the sense that being active as a priest or assisting priests had been *made*

<sup>47</sup> Láinez mentioned it at Trent; see p. 346.

<sup>48</sup> James I/VI, *An Apology for the Oath of Allegiance*, p. 66. Bellarmine (*Matthaei torti responsio*, 1608, p. 71) referred to several witnesses still alive who denied that Sixtus had ever made any such speech; Persons said that he did, but interpreted his utterances as marvelling at the dispensations of providence; *A Discussion of the Answers of M. William Barlowe*, 1612, p. 414.

<sup>49</sup> Fitzherbert, *De infelicitate principis Machiavelliani*, 1610 (but before the death of Henri IV), pp. 71, 74, 76, and chs. XIII–XIII.

<sup>50</sup> Bossy, 'The Heart of Robert Persons', in McGoog, *The Reckon'd Expense*.

<sup>51</sup> Fraser, *The Gunpowder Plot*, pp. 251–2; see A. Eudaemon-Ioannes, *Apologia pro Henrico Garneto*, chs. XIII–XIV.

<sup>52</sup> Fraser, *The Gunpowder Plot*, chs. 12–16; also Caraman, *Henry Garnet*, p. 319, for Garnet striving, via Aquaviva, to obtain papal censures excommunicating all Catholics who engaged in any conspiracy or rising against the state. The Pope ordered the Archpriest (i.e. the head of the Catholic clergy in England) to quash all such attempts, but did not issue the censures.

treason by statute, were not persuasive at home, still less abroad.<sup>53</sup> Indeed they rendered the English government vulnerable to charges of practising outrageous cruelty, and of contravening even its own laws.<sup>54</sup>

The Elizabethan policy of blanket repression and persecution (already modified in the case of the Appellants) had manifestly failed, and James himself was not by disposition a persecutor. The Oath of Allegiance was his chosen instrument for distinguishing between 'civilly obedient Papists' and 'the perverse disciples of the Power Treason', or 'false hearted Traitors', to quote his *Apology* (pp. 46–7). He was forestalled by Paul V's *Breves* and by Bellarmine's *Letter to the Arch-Priest*, which obliged Catholics to choose between their Catholic convictions and taking the Oath, irrespective of their attitudes to papal hegemonic projects and conspiracies. In any event, given the immorality and Machiavellianism which continued to be regarded as characteristic of Jesuits, tendering such an oath was intrinsically illogical: as Jesuit polemicists repeatedly pointed out, Machiavellians prepared to practise treason and assassination would hardly balk at perjury.<sup>55</sup> But James himself in his *Apology* allowed (implicitly) that the Plotters and those like them were actuated by misguided religious zeal, and did not charge them with Machiavellianism. This did not inhibit his defenders from subsequently returning to the popular theme of the Jesuit Machiavellian, with Persons as the paradigm.<sup>56</sup>

The Oath of Allegiance required every English Catholic to 'swear, that I doe from my heart abhorre, detest and abiure, as impious and Hereticall, this damnable doctrine and Position, That Princes which be Excommunicated or deprived by the Pope, may be deposed, or murdered by their subjects, or any other whatsoever'.<sup>57</sup> To the Jesuits it did not matter that, as

<sup>53</sup> Fitzherbert, however, worried that since by that time no English Protestant under forty had ever met a Catholic priest, they might be gulled into thinking 'that Papist, and traytour are but different wordes, that signifie one and the same thing'; *An Apologie of T.F.* (1602), pp. 18<sup>r-v</sup>.

<sup>54</sup> Atrocity narratives were well-established aspects of both martyrology and political controversy. Fitzherbert's *An Apologie of T.F.*, apart from narrating some execrable instances, argued that the use of torture in most cases had been illegal under Roman law, and therefore presumably also under Common Law; he said that without access to the texts, he could not be definite.

<sup>55</sup> 'Matthaeius Tortus' (i.e. Bellarmine), *Responsio*, pp. 17–18; also *Apologia*, 1608, p. 8. Persons, *Judgment*, para. 1, pts 33–5 (pp. 20–2) argued that it was not only pointless and counter-productive, but also immoral to force anyone to swear against their conscience. Both argued that James's security lay in not driving his Catholic subjects to desperation. See also Southwell, *An Humble Supplication*, p. 13.

<sup>56</sup> Examples cited Milward, *Religious Controversies*, p. 145. Watson, *A Decacordon of Quodlibetical Questions*, p. 92, had asked 'Whether Master Nicholas Machiavell or Fr Robert Parsons excelled one the other in pollicy?'; later specimens include James, *The Jesuits Downefall, with the Life of Father Parsons*, 1612 (cited Eguiluz, *Robert Persons 'el architrador'*, pp. 17, 37).

<sup>57</sup> *An Apologie for the Oath of Allegiance*, 'Auctoritate Regia' (published by the Royal Printer, 1607), pp. 10–12; all citations below are from the 1987 facsimile edition of the British Library copy, which

James pointed out, the Oath of Allegiance was nothing like his predecessors' Oath of Supremacy,<sup>58</sup> in that it did not require his Catholic subjects to affirm in express words that the King was Supreme Head or Governor of the Church in England. On a strict reading, it did not even require Catholics to deny that the Pope could legitimately *excommunicate or deprive* a prince, but only that his subjects or others were entitled to murder him as a consequence of excommunication. Until the Pope took a strong line, and in many places thereafter, many Catholics thought that the Oath contained nothing objectionable; indeed French Jesuits, until ordered not to do so by Aquaviva, had been willing to take a very similar oath to Henri IV, before he was even absolved from excommunication.<sup>59</sup>

But for opponents of the Oath, Catholics could not swear to a set of propositions *en bloc* if some of them were heretical. By parity of reasoning, of course, a *refusal* to take the Oath could not be construed as a denial of any particular item contained in the oath. Failure to notice this led to James being taught a humiliating lesson in elementary logic by Robert Persons: James was guilty of 'a simple fallacy . . . which the Logicians do call *a composito ad divisa* . . .'. Persons proposed the clever analogy of a Stoic refusing to swear an oath affirming that 'Plato was a man borne in *Greece*, of an excellent wit, skillfull in the Greeke language, most excellent of all other Philosophers': on James's logic, the Stoic's refusal would mean that he was denying that Plato was a man, a Greek, of excellent intelligence and skilful in the Greek language.<sup>60</sup> The revised edition eliminated this howler, but thereby attenuated the incriminating implications which James had intended to be inferred from a refusal to take the oath.<sup>61</sup>

Conversely, reiterated Jesuit protestations of loyalty and obedience, and outrage at the 'execrable slaughter' of 'The Great Henry' as well as the Gunpowder Plot,<sup>62</sup> counted for nothing with their opponents, since the

has alterations in James's own hand, subsequently incorporated in the 1609 edition. A Latin version of the *Apologie* followed in 1608 (text in Suárez, *Defensio fidei*, viii, Prologue, s. 6); for the 1609 Latin text, including the *Praefatio monitoria*, see Peña *et al.*, CHP, vol. xix, Appendix iii, pp. 289–351.

<sup>58</sup> *An Apologie for the Oath of Allegiance*, pp. 50–1, pts 6, 7, 11; p. 70. Remarkably, Becanus misinterpreted the Oath of Supremacy (reproduced by James in the *Apologie* to mark the contrast) as one of *two* oaths that James required Catholics to swear: *Dissiduum Anglicanum* (*Opuscula*, vol. ii, p. 245); the English translation left this uncorrected: W.P.I (Walpole?), *The English Jarre*, qu. xiii.4, pp. 49–50: 'James bindeth his subjects not with one Oath alone, but with two: to wit, of Supremacy and Allegiance.'

<sup>59</sup> Cited in Juvencius (i.e. Jouveny), *Historia Societatis Jesu*, pt v, vol. ii, p. 45.

<sup>60</sup> Persons, *Judgment*, para. iii.ix (p. 75).

<sup>61</sup> *An Apologie*, p. 49, where James changed 'hee that shall refuse to take this Oath, must of necessitie holde these propositions following' to 'holde *all or some of these* . . .' (my italics).

<sup>62</sup> The French Jesuits were effusive: 'Oh France . . . the pearle of the world, how great is thy losse? . . . Farewell the wonder of Kings . . . , farewell the Father of the commonwealth, the restorer of the State, the second founder and chiefe benefactor of our Society' (Coton, in Owen, *A Letter* (pp. 23–4)).

sole reason why there was a controversy at all was that the limits of Catholic loyalty and obedience were reached when the Pope decreed that they had been reached. Jesuits could not deny that there was a papal power to depose princes. But they took it for granted that in such matters popes would act only *in ordine ad fines spirituales* and according to due process, and that popes were as demonstrably guiltless in the Gunpowder Plot as they were in the assassination of Henri IV and Henri III. There was in any case no comparison between these two, except that neither was a tyrant and both had Jesuit Court-preachers. Nor, according to Bellarmine, had any pope ever stooped to employ assassins, or approved of assassinations.<sup>63</sup> But for Protestants, it was not merely an empirical matter that the pope *would* act arbitrarily (*pro arbitrio*), but virtually a necessary truth. Since he was Anti-Christ, his actions were *necessarily* dictated by corrupt motives and *pro arbitrio*. Even more materially for Jesuits, the Pope had not excommunicated James, and therefore the question of any penalty, let alone the method of its execution, did not arise. Moreover, since James of all people could hardly deny that there were seditious Protestants, why was an oath of allegiance only required of 'Papists'?<sup>64</sup> The cases of papal deposition and tyrannicide envisaged in the Oath of Allegiance were therefore purely and viciously hypothetical, a new version of Elizabeth's 'Bloody Questions' proposed to Catholics in the Tower to secure baseless convictions for 'treason'.

The Society's apologists, who included many of its foremost theologians and polemicists, were therefore faced with a straightforward exercise in forensic oratory. Among the most prominent contributors were the following. Persons replied to James's *Triplici nodo, triplex cuneus* (1607) with his *Judgement of a Catholicke Englishman* (1608). Quickest off the mark in defending the Society against responsibility for Henri IV's murder was Richeôme, with his *Consolation envoyee a la royne, mere du roy* (1610), soon followed by Coton's *Lettre Declaratoire* (1610), which contained the first fairly full list of citations from Jesuit authors on the topic of tyrannicide;<sup>65</sup> the *Anti-Coton* (1611) in reply listed a good many more. Jakob Gretser soon followed with *Basilikon doron* and his *Christianissimorum regum Galliae et Navarrae . . . Apologiae* (both 1610); Thomas Owen translated the latter for

<sup>63</sup> Bellarmine, *Matthaei torti responsio* (1608), pp. 22, 82; *Apologia*, p. 227; *De Potestate Summi Pontificis*, p. 91; Persons said the same: *Judgment*, para III, xxvii (p. 86), s. xxx, (pp. 88–9), and ss. xxxiii–iv. Bellarmine presumably did not know that Gregory XIII had in fact given such approval; Sixtus V repudiated all assassination attempts on Elizabeth (see Edwards, *Robert Persons*, pp. 44, 85, 89, 128); Persons apparently never approved of any assassination.

<sup>64</sup> This was a recurrent criticism from Bellarmine's *Letter to the Archpriest* (1607) and Persons's *Judgment* (1608) onwards.

<sup>65</sup> Owen, *Letter of a Catholike Man*, pp. 8–14.

the English public in 1611. Andreas Eudaemon-Ioannes, who had already published the *Apologia pro H. Garneto* (1610),<sup>66</sup> now followed it up with his *Anti-Cotonis Refutatio* (1611); he added *Parallellus torti*, a refutation of Lancelot Andrewes, in the same year. Richeôme also replied to the *Anti-Coton* somewhat later with his *Examen Categorique du Libelle Anticoton* (1613). Becanus intervened with a string of new works and reprints.<sup>67</sup> Refutation of such charges was also a standard item in the many general defences of the Society.<sup>68</sup>

The most serious charges to be rebutted concerned matters of fact, namely the record of Jesuit teaching on tyrannicide and complicity in particular assassinations. All Jesuit publications paraded the monarchical sentiments of the Society, its devotion to obedience, and its acute consciousness of the debts of gratitude it owed to rulers generally and Henri IV in particular. They rehearsed testimonies to the Society from rulers. Their absolutely favourite text was a speech in favour of the Society made by Henri IV on Christmas Eve 1603, and almost as popular was another by Louis XIII shortly after the assassination of his father.<sup>69</sup> And they turned the tables on Protestants by publishing lists of Protestants who had justified tyrannicide and rebellion, and practised the latter.<sup>70</sup> The most attractive feature of these exchanges is the invective and the detailed knowledge of events displayed by some of the participants; they may have been edifying to contemporaries. The authors freely cited each other and their own earlier work,<sup>71</sup> and much of what they had to say was well rehearsed.

<sup>66</sup> *Ad Actionem Proditoriam Edouardi Coqui Apologia pro Henrico Garneto*, 1610; the licence was from Aquaviva himself.

<sup>67</sup> See above.

<sup>68</sup> E.g. Heiss, *Ad aphorismos doctrinae Jesuitarum . . . Declaratio apologetica* (1609); Gretser, *Vespertilio haereticopoliticus* (1610); G. Argenti, *Apologeticus pro Societate Iesu* (1616), ch. x, p. 87; Contzen, *Disceptatio de Secretis Societatis Iesu* (1617, pp. 55–78) and Tanner, *Apologia contra Monita Privata*, and *Apologia pro Societate Iesu ex Boemia Regno proscripta* (1618), translated as *Verantwortung Deren von der Societät Jesu* (1618), esp. chs. 3 and 7.

<sup>69</sup> Published together as *Christianorum Galliae et Navarrae Regum Henrici IV et Ludovici XIII Apologiae* by Gretser, 1610, and in an English translation, with an extremely succinct and able statement of the Jesuit case, as *The Apologies of the Most Christian Kinges of France and Navarre, Henry IIIII and Lewis XIII . . . for the Fathers of the Society of Iesus* (1611; = ERL 48). Henri IV's speech first appeared in Possevino, *Aparatus Sacer*; it was quoted in full by Eudaemon-Ioannes, *Confutatio anti-Cotoni*, pp. 13–17 and repeatedly by Becanus: e.g. *Quaestiones miscellaneae*, in 1609, before Henri's assassination (*Opuscula*, II, pp. 127–32, full version). Krebs's description of it as a forgery (p. 64) is asinine; Duhr, *Jesuiten-Fabeln*, ch. 21, pp. 460–5.

<sup>70</sup> E.g. Persons, *A Treatise Tending to Mitigation*, 1607, pp. 38–47, 113–37, 164–5; Owen, *A Letter*, pp. 37–42, and *Copie of a Letter*, pp. 64–5; Keller, *Tyrannicidium*, pp. 51–77; Becanus, *Privilegia Calvinistarum*, 12th Privilege (*Opuscula*, vol. III); Gretser, *Basilikon doron*, 1610 (in *Opera omnia*, vol. VII), ch. VII, esp. pp. 53–5, ch. XV, p. 105.

<sup>71</sup> Sometimes to the extent of producing the same garbled names: the *Arthurius* of Keller's *Tyrannicidium* (p. 54) and Owen, *Copie of a Letter* (p. 64) is Althusius; *Kermann* in Keller (p. 72), and Owen (p. 64) is Keckermann.

Jakob Keller's *Tyrannicide*<sup>72</sup> will serve our purposes best. Its subtitle, 'Addressed to all Electors and Princes adhering to the Augsburg Confession', signalled an additional objective of driving a wedge between Calvinists and Lutherans, which Keller evidently forgot, for he attacked Luther himself in unmeasured terms, and his followers as fomenters of revolt.<sup>73</sup> Keller's strategy, like that of his fellow-polemicists, was three-pronged: (1) to dissociate the Society from the more extreme doctrines of tyrannicide, and entirely from its practice; (2) to assert the complete identity between the official teaching of the Society and that of the Catholic Church; and (3) to transfer to his opponents, especially Calvinists, the odium of sedition and rebellion. He touched more lightly on the other parts of the common cause.

Pursuing the first objective, Keller began by asking sarcastically how many more times the Jesuits' detractors would claim that Stapleton, Allen, and the authors of *De iusta abdicatione Henrici III* and *Apologia Ioannis Castelli* were Jesuits (pp. 10, 83–4).<sup>74</sup> But his main point here was to distance the Society as much as possible from Mariana. Mariana could not simply be disowned, and it was not the Jesuits' way to hang their own out to dry. After an accurate and full summary of Mariana's position,<sup>75</sup> stressing his view that tyrannicide was the very last resort, Keller correctly quoted him as saying that '*in his opinion*' tyrannicide by a private person was justified 'when all other roads are blocked' (p. 30). He continued: '[Mariana] is right to say *in his opinion*, for I have not found any other Jesuit saying that this is permissible in the case of an otherwise legitimate prince' (p. 30, italics in the original<sup>76</sup>). He had already devoted a chapter to the exposition of the others (pp. 13–26). The only problem with Mariana's position was that he permitted such killing without insisting that a sentence *declaratoria* should have come first; Keller remarked that this had also been Luther's opinion about the killing of popes, kings, and emperors; he cited the Jena

<sup>72</sup> *Tyrannicidium Oder Lehre von dem Tyrannenmordt* (1611), also published in Latin in the same year, here cited from the German version.

<sup>73</sup> 'The Sixth Question: What the Lutherans think about Regicide'; see also p. 104. 'Regicide' (*Königsmordt*) and 'Königs und Fürstenmordt' for Calvinists (5th question) were deliberate; for Catholics and Jesuits, Keller spoke exclusively of 'tyrannicide'.

<sup>74</sup> The source seems to be Heiss, *Ad aphorismos . . . Declaratio apogetica*, p. 31; for the same points Persons, *Treatise tending to Mitigation*, p. 67, Owen, *Copie of a Letter*, p. 27, and Argenti, *Apologeticus*, pp. 80–1.

<sup>75</sup> 'Die dritte Frag', pp. 27–33.

<sup>76</sup> Both Heiss (*Ad aphorismos . . . responsio*) and Gretser (*Vespertilio*) simultaneously isolated and defended Mariana in the same way; both are cited by Eudaemon-Ioannes, *Confutatio anti-Cotoni*, pp. 31–2, 34–5. Cf. Coton: 'What prejudice can the particular opinion of one Mariana bring to the reputation of a whole Order?' (Owen, *A Letter*, p. 14). Owen himself (p. 29) asserted that Mariana had merely put the case for and against, stated his own view, and submitted himself 'to other men's better judgment'.

edition of Luther's *Werke* in support (p. 31). In an interesting comment, Keller explained that the approval of Aquaviva and the Visitor, Hojeda, did not mean that they had read Mariana's book: 'They have neither time nor leisure, and in such cases trust those who are properly to be trusted, in virtue of their expertise' (p. 31). The Society's censors were only required to certify that the book contained nothing openly contrary to the known truth; the Royal Censor had also approved it and the book had never been queried even in Spain (p. 32).

So far from handing Mariana over to the Society's enemies as a sacrificial victim, therefore, Keller claimed that Mariana was being attacked only 'for the coat he wears, and for the badge of the name of Jesus' (pp. 31–2). Writing for a German public, Keller eschewed profuse expressions of lament and outrage about Henri IV's assassination, and concentrated on the absurdity of the accusation of Jesuit complicity, commenting laconically that 'the Jesuits had good reason to wish the late King a long life, and to pray to God for it'.<sup>77</sup> He then (inevitably) cited Henri's 1603 speech in defence of the Society to support his next point, that 'no Jesuit has ever taught, or learnt [from the Society] a single word, in any book, or school, or Church, or pulpit, or confessional, in any private speech or conversation, about the killing of a king or prince'. By tyrants, Jesuit authors meant the likes of Attila the Hun (5th Question, p. 44), or Tamburlaine (p. 25). The Jesuits, as the King himself acknowledged, had nothing to do with Chastel or Barrière ('*Parerius*') any more than with Ravailac (the assassin of Henri IV), not even as their lecturers; in any case, 'what a student (*Discipel*) does, is not to be imputed to his teacher (*Praeceptor*)' (pp. 44–6). As for the legend of the 'armed Jesuits' in England: 'No Jesuit has ever supported [or represented? *vertretten*] a traitor or murderer' (pp. 46–7). He then referred to Eudaemon-Ioannes's *Apology for Henry Garnet*, to show that Garnet had opposed Catesby's plans in the confessional; he also included an attack on Coke, the Society's hated persecutor,<sup>78</sup> inevitably with a pun on his name: 'Der Englische Koch' and 'his ill-salted *action*' (p. 16).

<sup>77</sup> M.C.P. (M. Walpole), *A Briefe Admonition to all English Catholikes*, 1610, p. 89: 'this whole Society had in this great Prince lost not only a King, but also a father and a protectour; so that (as F. Cotton [*sic*] writeth) this great blow and losse was as particuler to them, as it was common and generall to all'.

<sup>78</sup> Eudaemon-Ioannes, *Apologia pro Henrico Garneto*, e.g. p. 12: 'a man of shameless arrogance, an accomplished master of lying and calumny, not unlearned in the municipal laws of England but without any other knowledge of solid letters . . . who by his volubility of speech in deceiving, and a wonderful cunning in slandering the innocent has risen to enormous wealth and high office'; he returned to the attack in his *Anti-Cotoni confutatio*.



Apart from routine celebrations of Catholicism and vilification of the likes of Luther, Calvin, and Bèze (pp. 98–115), Keller devoted most attention to the actual doctrine of the Society and that of Calvinists and Lutherans. In respect of the former, the *Tyrannicidium* contained nothing remarkable, apart from the astonishing range of citations of Jesuits and non-Jesuits. He accused his opponents of confusing kings and tyrants, whereas a tyrant can be a prince, count, lord, nobleman, burgomaster, indeed a ‘domestic tyrant’ (p. 13). His tactic was to define candidacy for tyrannicide so narrowly that hardly any European ruler would qualify, by using the traditional distinction. Thus there is first ‘the kind of tyrant who, using the might of an army, without title or right or authority (*Fug*), contrary to all known and public justice, invests a *respublica* or land, invades it, overruns it, lays it waste, slays its people or expels them, and conducts himself in the most flagrantly evil manner. Characters like that can be eradicated and killed by anyone at all’, for ‘it is the right of everyone to answer force with force’ (pp. 13, 16). He cited Aquinas, Caietanus, Pedro de Aragon, Salo, Soto, Covarruvias, Peter of Navarre, Sylvester, Rodriguez, Bañez, ‘the eximious Jurist Pierre Grégoire’, one of Keller’s favourites (pp. 13, 41), Francisco Vazquez, Lipsius, and then the Jesuits Valentia, Lessius, Molina, Sa, Salmerón, and Toledo, and commented that he only knew two recent authors who denied this doctrine, namely Azpilcueta and Azor (pp. 14–16). He noted that Covarruvias and others regarded the methods employed (including poison) as a matter of indifference: ‘If these were Jesuits, you would be bellowing “Murder!” in every street’ (p. 18). As for the other kind of tyrants, ‘because they are rightful rulers and merely rule tyrannically, they are in no way to be killed, either by their subjects or by foreigners. And on this doctrine all Catholics, Jesuits and non-Jesuits alike, speak with the same words and in the same sense’ (pp. 19–20). He had already twice mentioned Constance (pp. 16, 20).

The basis (*Hauptursach*) of the true doctrine is that ‘a prince or lord, however evil his conduct, is nevertheless a superior, and no subject has received authority over him, otherwise he would not be a superior. The greater such a person is, the more reverence is due to him, because the more he stands in place of God’ (p. 20). But what if such a ruler conducts himself so tyrannically that the whole community risks destruction? Here opinions are divided. Some – he mentioned Bañez, the Jesuits’ inveterate Dominican opponent – allowed the whole community or *respublica* (a word he left untranslated) to act, others counselled patience as the only remedy; the latter was the sounder position, and the one which Keller attributed to Aquinas. At most, the Estates (*Landständt*) could proceed, but always according to the *processus iuris*. All this has been the doctrine of the schools

for several hundred years (p. 22). As for the objection about the Fifth Commandment, Keller offered his opponents some elementary education: 'Come along, let us go to school for a while, and philosophise about this commandment, because I fear that if we were to dispute in the theological manner, I would ruin your stomach', the implication being that theology was an academic discipline beyond their modest intellectual capacities.

Keller then provided instances of many Calvinists and Lutherans, as well as the heresiarchs themselves, defending both regicide and rebellion. He began with Bodin, describing him as a notable and slippery enemy,<sup>79</sup> and citing him to the effect that with tyrants who have a just title but no superior, subjects can do nothing, but foreigners can, either openly or secretly: 'If Mariana had written that, he would not be safe anywhere' (p. 53). Keller noted Bodin's description of the constitution of the Holy Roman Empire, which was guaranteed to give offence to good Germans (pp. 53–4). After that, he cited Zwingli (p. 56), Calvin (on Daniel, ch. 6), the *Vindiciae* (p. 57), Buchanan (pp. 60, 66), Bèze, Knox, Goodman (pp. 63–4), Melancthon (p. 69), Luther with extensive chapter-and-verse quotations to demonstrate his change of view, including some of Luther's more unspeakable ragings against the papacy in his later years (pp. 74–7); this was ground already well trodden by Ernhoffer and Vetter. He invoked King James himself about Puritans (p. 60); and attributed an assassination attempt to Calvin, Bèze, and Spifane (p. 62).

Keller had thus executed the polemical task which confronted the Society, minimising the applicability of the doctrine of tyrannicide without denying it altogether, demonstrating that governments and princes of even the most barely tolerable kind had nothing to fear from it, and saddling the proponents of 'absolute' monarchy with a difficulty which they never satisfactorily resolved: what remedy was there when a ruler becomes a monster?

#### SUÁREZ'S DEFENCE OF THE CATHOLIC FAITH

By the time Suárez published his *Defence of the Catholic Faith*, the polemical backwash of Henri IV's assassination, the pamphlet war over the Oath of Allegiance and the controversy over the Venetian Interdict had merged, although tyrannicide became the central issue only in 1610 when the Sorbonne and the Paris Parlement absurdly laid Henri IV's assassination at

<sup>79</sup> The German version refers to him as a 'Calvinist', and a 'haelsschleichenen Huguenotten', whereas the Latin version merely as having a great reputation with the Calvinists; pp. 51, 53, 54. Extensive Bodin quotations, with animadversions on his religion, also in Eudaemon-Ionnes, *Anti-Cotoni confutatio*, pp. 60–3, 76.

the Jesuits' door. Leaving the defence of the Society to others, Suárez treated tyrannicide as simply an issue of theory and doctrine, calling for dispassionate exposition, exegesis and clarification. Aquaviva's 1610 ban obviously did not apply to him, since he was writing on the instructions of Paul V himself. It had been widely ignored in any case, for example by Becanus.

Suárez offered a characteristically magisterial survey of the controverted questions. He himself had nowhere else mentioned tyrannicide, and Bellarmine (whom he was defending) had mentioned it merely to repudiate it.<sup>80</sup> But Suárez now took on the task of separating the doctrines of tyrannicide and the papal deposing power, and examining what might be said of both. He began by demonstrating that the doctrine of tyrannicide was the school's conventional teaching.<sup>81</sup> He then made the familiar distinction between the two types of tyrant, which 'all modern authors understand', and interpreted the Council of Constance's teaching as being directed only against *indiscriminate* justifications of tyrannicide. It did, however, explicitly condemn the killing of tyrants to whom subjects were bound by oath or pact, even if they were tyrants by title: one of Suárez's iterated fixed points was: *pacta, praesertim iurata, servanda esse* (ss. 3, 9). Other conditions were: that no less cruel method than tyrannicide was available (s. 8); that tyrannicide would not result in greater evils to the commonwealth, for 'no evil is justified without hope of a greater good, and it is liberation from tyranny alone which justifies the tyrant's death';<sup>82</sup> and (inevitably) that the injustice and tyranny must be manifest: 'in doubtful cases the person in possession has the stronger claim (*in dubio melior sit eius conditio qui possidet*)' (s. 8).

Suárez's ground for the distinction between the two kinds of tyrants was that punishing is an act of superiority and jurisdiction, which private persons do not have even over murderers, thieves, and assassins who are private persons; much less are they entitled to lay hands on princes, otherwise no ruler would enjoy any security against their ever-querulous subjects (s. 4). He explicitly dismissed the argument of Azpilcueta and Azor that Constance<sup>83</sup> had banned all tyrannicide; the text would not bear such an

<sup>80</sup> *Letter to the ArchPriest*, reprinted in *Matthaei torti responsio*, p. 35; see also pp. 70–1 on Sixtus V; p. 82, *per sicarios* (by assassins); *Apologia*, p. 227.

<sup>81</sup> *Defensio fidei Catholicae*, vi.4.1–2; all section references are to this chapter, well-entitled by Pereña as: 'Verdadera doctrina sobre el tiranicidio.'

<sup>82</sup> S.9: '... quia fit malum sine spe maioris boni et quia tunc revera non defenditur respublica, nec liberatur a tyrannide, quo solo titulo illa mors honestatur'. *Honestatur* here invokes the maxim 'honestat finis medium' ('the end justifies the means'), but not of course *any* means; see Dühr, *Jesuiten-fabeln*, ch. 14.

<sup>83</sup> In all editions Constance became 'Lateran' half-way through this section; see CHP, vol. xix, fn. 115; the Council of Lateran was presumably on Suárez's mind because it was an authority for the deposing power.

interpretation (ss. 10–11). But if a private person is to be entitled to kill a tyrant, it must be in self-defence. A tyrant who uses unjustified force can be resisted by force, for ‘by natural law, each is given the authority by God to defend himself and his country, and any innocent person as well’ (s. 12). Suárez noted that this seemed to empty the distinction between the two kinds of tyrants of significance, since both use unjustified force, and both may therefore be resisted by anyone *titulo defensionis*. And yet, the distinction remains significant: provided a tyrant who has a just title is not actually waging unjust war on his commonwealth (‘quamdiu non movet actuale bellum iniustum contra rempublicam sibi subditam’; the expression seems obscure), there is no justification in terms of self-defence against him. If he does act thus, there is indeed no difference between him and a tyrant that lacks any title (s. 13).

In effect, therefore, a tyrant in the proper sense is always one who uses unjustified force against the commonwealth (‘semper actu infert vim reipublicae’), and the commonwealth is always ‘waging an actual or virtual war against him’, in self-defence. Unless it declares the contrary, the commonwealth is therefore always to be deemed to wish to be defended by each of its subjects, or indeed by foreigners, and if there is no other way, the tyrant may be killed by any subject or by foreigners exercising the God-given right of defending the innocent. Every subject acting in this way has therefore been tacitly assigned *publica potestas* (s. 13). Suárez had not restricted the scope of *vim vi repellere* to self-defence, but rather had extended it to defending oneself, *one’s country, and the innocent*. He therefore did not, strictly speaking, need to transform every opponent of a tyrant into an *ad hoc* public person. Excluding private ventures by private persons was evidently crucial to him.

Constance condemned only the killing of tyrants ‘*without waiting for the verdict or command of any judge whatsoever*’, to quote the words of the anathema (s. 14, Suárez’s italics). It follows that when some authoritative verdict or command *has* been given by a competent ‘judge’, the tyrant no longer retains his *titulus* as lawful king, and may therefore be proceeded against as a tyrant of the first sort, that is, by anyone. Here Suárez gave the example of a heretical king, but added in carefully chosen words that although by reason of heresy the king in some sense (*aliquo modo*) is automatically deprived of his *dominium* and the possession (*proprietas*) of his kingdom, he is entitled to continue to remain in possession and to administer it, until he is condemned by a declaratory sentence, according to canon law. Thereupon he can be treated as unconditionally a tyrant and therefore can be killed by any private man (s. 14). And although the King of England

does not wish to hear it, a sentence of deposition and deprivation *can* be passed against a king (s. 15).

The grand question however was: who has authority to pass such sentences (s. 15)? And here (as we have already seen) Suárez declared that both the commonwealth itself and the Pope have the right to do so, but in different ways. For the commonwealth has the final right to defend itself by expelling or deposing a king by way of the common council (or decision) of the citizens and nobles, when no other means remains, because of the right to meet force with force, and because of the reserved clause or implicit exception in the original compact (*foedus*) between the commonwealth and the King.<sup>84</sup> He then discussed the papal deposing power, especially with respect to heretical kings, for the rest of the chapter (4.15–22) and two more chapters (chs. 5–6), which we consider later. Our only concern here is with tyrannicide as a means of executing a pope's or commonwealth's sentence on a tyrant. And although both of them are competent to pass such a sentence and to authorise agents to carry it out, Suárez echoed the sentiments and not infrequently the very words of Azor, in distinguishing between the commonwealth or kingdom in terms of its intrinsic nature (*ex sola rei natura spectatum*), as it once existed among the gentiles and now among the pagans, and the commonwealth as it now exists in Christian kingdoms.<sup>85</sup> The former has the right to defend itself and to depose a tyrannical king. So do Christian kingdoms, 'but in this respect, they have a certain dependence on, and sub-ordination to, the Supreme Pontiff' (s. 17). The *potestas* of the Pope here is a matter both of right and of political and moral expediency, for its exercise serves to minimise 'the moral dangers and perdition to souls which ordinarily occur in popular upheavals, and in order to avoid sedition and unjustified rebellions' (s. 17). Suárez referred to the constant practice of the Church, and to the *locus classicus*, the deposition of Childeric by Pope Zacharias which he had already cited earlier (III.23.14–15).

James was therefore quite right in attributing to Jesuits like Suárez a belief both in the papal deposing power, and in tyrannicide as one (albeit extreme) means of carrying it out, and rebellion and foreign intervention (such as the Armada, presumably) as the more regular (and controllable) means; Suárez said nothing about conspiracies. He now elucidated with extreme care the very restricted extent to which he was endorsing tyrannicide. In particular, his argument throughout was characterised by the acute concern with correct procedure and due process which was also typical of Jesuits

<sup>84</sup> See above, pp. 254–7.

<sup>85</sup> *Regna; respublicae* here drop out of sight, as they invariably do in discussions of tyrannicide.

generally, as we have seen. Like Bellarmine and Becanus, Suárez took the trouble to signal that James's references to the Pope's *mera potestas*, and to his authority to act *pro arbitrio* or *ad libitum* were all ambiguous.<sup>86</sup> If these were understood to refer to his ultimate authority, they correctly described the papacy's authority, but they certainly did not mean that the Pope was entitled to do as he pleased, disregarding due process and considerations of just cause (III. 6.21). Due process here meant that a papal condemnation of some act or law did not automatically entail excommunication of the ruler who was responsible, until and unless a formal declaratory sentence by the papal court had been passed, in which case the rule *audi alteram partem* must be complied with. James had complained that he had been condemned unheard, but Suárez (like Bellarmine, Persons, and Becanus) commented that only the Oath of Allegiance, a public document, had been condemned. James himself had not even been threatened with condemnation, let alone sentenced (ch. 7.11, 13), and thus Paul V's papal Briefs in no way resembled *Regnans*, despite James's complaint in his *Apology* (ch. 7.13). Even a sentence of excommunication does not entail deposition, or freeing subjects from their subjection or oath of allegiance: fixing a penalty is the prerogative of the relevant prince or superior, and suspension might well be judged more appropriate than deposition (ch. 6.13, 16). The principal purpose of excommunication, as of all ecclesiastical sentences and penalties, is not to punish, but to protect the innocent and recall the errant to their senses. And no indiscriminate right of tyrannicide follows even a sentence of deposition in due form. It is for the judge who has the authority to condemn (in this case, the Pope or the commonwealth) to designate both the penalty and the agent who is to execute the sentence, 'for prudence and a proper procedure (*iustus modus*) are always necessary', especially in view of the dangers inherent in coercing the person of a prince or king (ss. 18–19). Where no other agent to execute the sentence is specified, the proper agent is the culprit's successor, if Catholic, otherwise the *communitas regni*; the Pope may however authorise other kings to invade such a kingdom (s. 19).

Nevertheless, this did not alter the truth of James's contention that Jesuits did claim that a pope *could* authorise a king's subjects at large to kill him, once he had been declared deposed after due process. Suárez did in fact acknowledge this just twice: in s. 15, as already explained; and again when he cited Soto: 'Thus Soto is right to say that a king who is a tyrant solely in virtue of his manner of governing may not be killed by anyone, but *once*

<sup>86</sup> *Apologie for the Oath of Allegiance*, pp. 49–50.

sentence has been passed, anyone at all can be made the agent of its execution'.<sup>87</sup> On Suárez's own argument, there is no difference between a *tyrannus in titulo et usurpatione* and a *tyrannus in regimine*, once the latter has been declared deposed. However, he may continue in peaceful *de facto* occupation of his kingship, without waging war on the commonwealth. And Suárez had specifically denied the justifiability of tyrannicide in that case (ch. 4.5 and 13). If he reckoned the persecution of English and Irish Catholics as 'waging war on the commonwealth', he did not say so, although he devoted an entire chapter to their plight (ch. 11). But then he never described James as a tyrant, or denied him the title of king, even *Rex serenissimus* (see 'Conclusio et peroratio', ss. 2, 3).

#### THE UPSHOT

In Suárez's work, then, the Jesuits' opponents had the explicit link between tyrannicide and the deposing power that they needed<sup>88</sup> but had not got from Mariana, Bellarmine (who justified the deposing power *in extenso*<sup>89</sup> but said nothing about tyrannicide), or Persons. Aquaviva's reaffirmation in 1614 of the ban imposed in 1610 on discussions of tyrannicide made no difference: the books were and remained in print, even if after the Santarelli episode in 1625 the Pope forbade all discussion of the deposing power. He had already ordered the suppression of Lessius's contribution to the Oath of Allegiance controversy.<sup>90</sup> Neither doctrine was formally banned.

Tyrannicide subsequently disappears from the standard texts on moral theology: there is for example no mention of it in Becanus's *Scholastic Theology* or Paul Laymann's *Moral Theology*; others merely say that 'a tyrant *quoad modum* cannot justifiably be killed by a private man'.<sup>91</sup> In the treatises for kings and statesmen of Karel Scribani (*Politicus Religiosus*) and Adam Contzen (*Politicorum libri decem*), there is of course no mention of it. But by that time the legend of the Jesuit as assassin, conspirator, and friend of regicides was fully established. The most intelligent and cleverly

<sup>87</sup> *Defensio fidei*, VI.4.18, citing Soto, *De iustitia et iure*, bk v, qu. 1, art. 3, Suárez's italics; Soto here did not mention a *papal* 'sentence'.

<sup>88</sup> Mousnier, *L'assassinat d'Henri IV*, pp. 244–5, for the response of James I/VI and the Parlement.

<sup>89</sup> Bellarmine, *Matthei Torti responsio*, p. 18, merely says: 'Odi parricidia, execror conspirationes'; his *Apologia*, *Tractatus de Potestate Summi Pontificis*, and *Responsio Cardinalis Bellarmini ad duos libros* (1606; German translation, 1607), did not mention it at all.

<sup>90</sup> Lessius wrote at the command of Aquaviva; the book was in print by 1610, but Aquaviva and the Pope very reluctantly agreed to its suppression in view of Henri's assassination. A copy has survived; see Sull, *Leonard Lessius*, p. 228.

<sup>91</sup> Tanner, *Disputationes theologicae*, vol. II, disp. III, p. 625; Becanus, *Summa theologiae scholasticae*, pt II (vol. III, 1632), p. 245.

conceived version of the legend, which despite its German provenance contains none of the more obvious anti-Jesuit fantasies, was the anonymous *Mysteria Patrum Jesuitarum*.<sup>92</sup> Set out in the form of questions from a Jesuit student and answers from a Professed Father of the Society, and entirely in Latin, it consists largely of direct quotations, fully identified by edition, chapter, and verse, including original editions where (as with Mariana and Sa) later editions had been amended, and a commentary from the 'Professed Father' which was at any rate consistent with the texts cited; for deposition and tyrannicide its principal authorities were Mariana and Suárez. One of its more palpable hits was that the much-trumpeted distinction between the two kinds of tyrant dissolved in the one case in which the charge of tyranny mattered to Jesuits, namely that of a heretical ruler sufficiently obnoxious to warrant excommunication.

Notwithstanding Suárez's and his fellow-Jesuits' visible discomfort with the doctrine of tyrannicide, despite the fact that saddling them specifically with it was a transparent polemical ploy, and even though the doctrine was demonstrably not an essential part of Jesuit political thinking, the doctrine could not be completely disavowed. It was not heterodox; it licensed nothing which was not morally acceptable; and it was perfectly coherent with the Jesuits' interpretation of both the nature and limits of *civilis potestas*, which we considered earlier, and the *potestas indirecta* of the papacy to which I now turn.

<sup>92</sup> *Mysteria Patrum Jesuitarum, in quibus agitur de Ignatii Loyolae ortu et apotheosi; de Societatis dogmatibus circa obedientiam caecam, circa Papae potestatem in regum et principum personas et status, fidem servandam*, etc. (2nd edn, 1633); see pp. 122–72 for deposition and tyrannicide.



*The papal potestas indirecta*

Once the doctrine of tyrannicide had become an embarrassment to important sections of the Society, it could be side-lined or suppressed without any grave loss. And it was. But upholding *some* generic papal authority to intervene in the affairs of secular rulers and commonwealths was another matter. Most of the leading spokesmen of the Society in this period regarded its defence as a war *pro aris et focis*. Circumstances were, however, unpropitious.

THE 'TERRITORIALISATION' OF THE CHURCH AND  
THE SOCIETY OF JESUS

The first decades of the seventeenth century in Europe were a period of Catholic resurgence and self-confidence. The Catholic Church had not only stopped the advance of the Protestant Reformation, but was actively pushing it back in France, the Holy Roman Empire, and Eastern Europe. In the Holy Roman Empire the more aggressively Counter-Reformation princes and their theologians were increasingly able to interpret the Peace of Augsburg in a highly restrictive sense unfavourable to Protestants.<sup>1</sup> The churches of the Reformation were visibly on the defensive, especially in view of their mutual denominational hostilities and the divisions over grace and predestination which in the United Provinces in particular proved politically intractable. The Catholic renaissance was, however, not only or even principally the ascendancy of *political* Catholicism. On the contrary, the period saw an efflorescence of spirituality ('devotion'), not least in France, as well as a sustained effort at domestic 'mission'. This is to say nothing of the scale of Catholic missionary endeavours in South, Central, and increasingly also North America, as well as Africa, India, China, Japan,

<sup>1</sup> Emblematic here are Laymann and Forer's *Pacis compositio*, and Contzen's *De Pace Germaniae*, continuing in the direct line the work of Andreas Erstenberger's *Autonomia* of 1586.

and the Pacific. To discuss the Baroque in this context would be appropriate but beyond my capacity.

In all this the Society of Jesus had a pre-eminent part. But if Jesuits had hoped for a concert between Catholic princes and the papacy at the head of a revitalised Church as the two arms of a Catholic *reconquista*, they were destined to be gravely disappointed. For it was now churches in which princes had a leading role that were instrumental in this Catholic resurgence and advance. And Catholic princes, however zealous, were princes nonetheless. As far as their foreign policy was concerned, reason of state ruled supreme. Within a few years considerations of state turned out to mean, as Contzen complained in some vituperative pamphlets directed at Richelieu,<sup>2</sup> that German Catholic princes could not even count on Catholic France's benevolent neutrality, let alone its active support, against German Protestant princes and estates or Gustavus Adolphus. And as to religious renewal, that like charity began at home. If it remained there without passing beyond the borders, that was not necessarily a *faute de mieux*. Many Catholic princes took extremely seriously their duty to promote the religious unity and, as far as possible, the devoutness of their subjects.<sup>3</sup> But they acknowledged no comparably unambiguous duty to extend Catholic religion to their heretical neighbours,<sup>4</sup> still less did they acknowledge any obligation to act in concert with other Catholic states or to conduct a propapal foreign policy. And far from leaving the Church to manage its own affairs independently, the constant and direct involvement of a Catholic prince in the government, staffing, and administration of the Church in his territory was taken for granted. As regards the right of ecclesiastical patronage,<sup>5</sup> for example, Auger had decades earlier remarked in passing that a prince's duty was to 'make good and holy use of the rights he has to nominate persons to ecclesiastical benefices',<sup>6</sup> without suggesting for a moment that these rights themselves were questionable. The Church was in effect being parcelled up administratively, so that ecclesiastical jurisdictions coincided with the territories which princes were everywhere seeking to demarcate into defined 'sovereignties'.

<sup>2</sup> Contzen, *Mysteria politica* (1624) and *Admonitio ad Ludovicum XIII* (1625); both were translated into French, to the embarrassment of French Jesuits.

<sup>3</sup> E.g. Maximilian of Bavaria, the first Bavarian Elector (*Kurfürst*), for whom see R. Birely, *Adam Contzen, passim*.

<sup>4</sup> Contzen even excluded a right of princes to intervene in neighbouring territories to protect religious minorities; see Birely, *The Counter-Reformation Prince*, p. 153.

<sup>5</sup> E.g. Lessius, *De iustitia et iure*, II, ch. 34 on the *ius patronatus*. Lessius assumed that lay foundations and endowments almost automatically carried the right to present to benefices. Trent impugned only the misuse of the *ius patronatus*, not the *ius* itself.

<sup>6</sup> *Le pedagogue d'armes*, p. 44<sup>r</sup>.

This process was sanctioned by long-established practice, and therefore at least permissively by the papacy itself, even when it was not expressly covered by pragmatic sanctions.<sup>7</sup> It had been unintentionally encouraged both by the papacy and by the Society of Jesus itself, when they had enlisted the services of princes in the defence and spiritual renewal of Catholicism. It ordinarily involved no challenge to the papal *magisterium* in faith and doctrine. Even when popes chafed under what they regarded as secular encroachments, *raison d'église* (to use Costello's elegant expression) might inhibit them from too energetic resistance, as it inhibited Clement VIII in his dealings with the Serenissima.<sup>8</sup> In the day-to-day relationship between the Church and Catholic commonwealths, it was now the bishops, court confessors and preachers, clerical assemblies and heads of religious orders of a 'state' that represented the Church before the secular authorities. Undoubtedly the papacy was involved at many points, but it was coming to resemble a friendly foreign power, or a notional overlord whose claims to supremacy could no longer be pressed too aggressively. Administratively, it was not only Gallican France, but every Catholic commonwealth that was coming to resemble the Christian polities of the reformation.

The Society of Jesus itself was not exempt from this process of territorialisation. Its sympathies, organisation, teaching, publications, and martyrology<sup>9</sup> remained resolutely supranational. The staff of its foreign missions continued to be cosmopolitan in composition, as did the Roman headquarters of the Society<sup>10</sup> and the Roman College. But its provinces came increasingly to be composed of subjects of their respective princes. What might count as a 'natural' subject or 'national' of a country of course remained highly ambiguous in the Holy Roman Empire. The Batavian Jesuit Becanus (Verbeek, or Van der Beck), the Lorrainer Vervaux, and the Luxembourgish Wilhelm Lamormain all served as confessors to Holy Roman Emperors. But the Society could not be regarded as firmly established in Bohemia, Hungary, or Poland until it was composed principally of natives of those territories. French, Spanish, Portuguese, and other rulers

<sup>7</sup> Azor, *Institutiones morales*, vol. 1, bk v, ch. 12 (p. 627), typically made all this a matter of papal concessions: 'Illud etiam nemo negat, quicquid iuris et potestatis habent laici in rebus spiritualibus, habere concessu seu privilegio et beneficio Ecclesiae', e.g. *iuspatronatus*; cf. p. 653 for 'pragmatic sanctions', i.e. authoritative legitimations of a state of affairs or mere practice.

<sup>8</sup> See Benzoni, 'I "teologi minori" del'Interdetto', *Archivio Veneto*, 1970, pp. 33–4.

<sup>9</sup> A fine example is Conrad Vetter's translation of Campion's *Rationes Decem*, with an account of his death and a commentary: *Der Lutherischen/ Calvinischen/ und anderen Sectischen Predicanten Schraeckengast* ['spectre at the feast'], 1599.

<sup>10</sup> Aquaviva (General, 1581–1615) was a Neapolitan, and therefore a subject of the King of Spain, and there was a German and a Spanish General before the end of the seventeenth century. A misleading impression is created by the length of the Italian Vitelleschi's generalate (1615–45).

had long since insisted on Jesuit superiors who were their own subjects, and resented releasing their more prominent Jesuits for service in foreign parts. The Society's mission of active engagement in the world reinforced the 'naturalisation' of the Society, since the world with which it engaged was increasingly one of sovereigns.<sup>11</sup>

Most Jesuits in fact endorsed the political integration of churches and their clergy into their respective commonwealths, even though it marginalised the papacy. The *quid pro quo* was that the Society everywhere had influential friends and supporters amongst princes and elites, even in Venice and in Gallican France. Under the circumstances, this was the best approximation to the ideal of co-operation between the Church and polity as mutually supporting and 'mutually subordinated' to each other, as Molina put it.<sup>12</sup> Coton's rendering of the ideal was that 'L'Estat soustient la Religion et la Religion maintient l'Estat'; and Contzen's *bon mot* had a bearing far beyond the Holy Roman Empire: 'The Empire is no less in the Church than the Church is in the Empire.'<sup>13</sup>

#### ECCLESIASTICAL IMMUNITY

'Territorialisation' was obviously incompatible with the more intransigent papalist claims to ecclesiastical immunity or 'liberty'. But the reality was that the political and legal position of the clergy in Catholic countries had been regulated by custom and practice (in many cases since time out of mind), overwhelmingly to the advantage of princes. The Church had only been able to sustain immunities by frequent concessions. In particular, it was accepted practice that the Church would 'release' criminous clerics to the secular arm for condign punishment. When Paul V insisted on clerical immunity in the case of two priests prosecuted by the Republic of Venice, its apologists – all clerics – were fully justified in pointing to

<sup>11</sup> Alden, *The Making of an Enterprise*, esp. ch. 4, and pp. 229–30, 267–9.

<sup>12</sup> *De iustitia et iure*, tract. II, disp. XXIX, p. 132A; 'Ecclesia Christi . . . et quaecumque alia Respublica saecularia . . . non sunt duae diversae Respublicae . . . sed sunt adinvicem subordinatae, ita ut una in alia includatur.' Salmerón, *Commentarii In S. Pauli epistolas*, p. 681, spoke of 'mutual service', but not for long: 'Et videtur [St Paul] innuere duas potestates, et duo regna, id est terrenum, et spirituale, ita ut invicem sibi servant: nimirum ut secularis potestas subserviat spirituali, et spiritualis perficiat secularem.'

<sup>13</sup> Coton, *Institution Catholique*, Preface, p. c-ii; Contzen, *De Pace Germaniae libri duo*, pt II, ch. 4, p. 36: 'Imperium Romanum non minus est in Ecclesia quam Ecclesia in Imperio'; he explicated (p. 440): 'Est enim Imperii Romani constitutio [n.b. an early use of the term in this sense], ea iurium et iurisdictionum permistio, quae Ecclesiastici et Politici status summam concordiam exigent . . . et pacem civilem atque Ecclesiasticam inseparabili nexu et societate.' Reproduced in *Politicorum libri decem*, IX.18.4.

three centuries of precedents for Venice's actions.<sup>14</sup> And where 'interests of state' were involved, clerical immunities went out of the window. After Jean Chastel's assassination attempt on Henri IV, two Jesuits were arrested, tortured, and executed for complicity; the 'evidence' against them was some speculative private writings found among Père Guignard's papers, which were in fact covered by the indemnity and oblivion guaranteed at Henri IV's accession.<sup>15</sup> No one dared even mention clerical immunity. Equally, theology and custom both recognised the clergy's *moral* duty to contribute to the defence and well-being of their respective commonwealths. The precise legal position of ecclesiastical property was everywhere the product of negotiations between the secular and spiritual authorities. However, all Catholic princes rulers had prescriptive, concessive, or *de facto* rights over ecclesiastical property and positions, especially the already mentioned rights of patronage, as well as the right to tax ecclesiastical property with the consent of the clerical estates, or of whoever functioned as the clergy's representatives. Jesuits were by no means always hostile to the exercise of such rights, for example when Maximilian of Bavaria diverted to the Society of Jesus ecclesiastical property formerly belonging to other orders that had been recovered from Protestants.

Jesuit theologians were flexible and accommodating over ecclesiastical immunities as regarded practice, but not over the principles involved. But as Adam Tanner admitted during the Venetian Controversy, theologians generally and Jesuit theologians among themselves disagreed whether these immunities were a matter of divine right or human concession;<sup>16</sup> the sub-text of the disagreement was as ever that to identify the source of a right, immunity, or privilege was also to say who could revoke or override it. The traditional reconciliation between the *Libertas ecclesiae* and its actual subjection was to admit the *moral* subjection of clerics to the *vis directiva* of law, while denying any subjection to its *vis coerciva*.<sup>17</sup> As far as principles were concerned, this was as much as Azor and Bellarmine 'conceded'; in other words, they conceded no more than was undeniable. So, according to Bellarmine, 'ecclesiastics are only bound as far as being directed is

<sup>14</sup> E.g. P. Pauli [Sarpi] *Ordinis Servorum, Considerationes* (1606), in M. Goldast, *Monarchiae Sacri Romani Imperii*, 1613, pp. 297ff; pp. 286–7, citing laws of 1333 and 1337.

<sup>15</sup> See Schnur, *Die französischen Juristen*, p. 61.

<sup>16</sup> Tanner, *Defensio ecclesiasticae libertatis*, bk 1, ch. xvi, pp. 160–1. He argued (chs. xvi–xviii) that clerical exemptions and immunity were at least part of the *ius gentium* if not of natural law; however (bk II, ch. xii) the Church was always ready to help commonwealths in genuine difficulty. Gretser, *Considerationes ad theologos Venetos*, pp. 452, 454, noted (citing Saravia) that Protestants had latterly become less enthusiastic about financial subjection to their princes.

<sup>17</sup> Suárez, *Defensio fidei*, IV.16.13; cf. *De legibus*, III.34.

concerned (*quantum ad directionem*), not as to coercion (*ad vim*), in other words by the force (*vi*) of reason not of positive law (*legis*).<sup>18</sup> A law fixing the just price of corn, for example, binds ecclesiastics 'because they are bound to buy and sell at the just price, and in that place reason dictates that [the legally fixed price] is the just price'.<sup>18</sup> Azor of course espoused the most extreme clericalist position, even invoking *In Coena Domini*: 'Generally speaking (*generatim*), civil laws of princes . . . do not bind Clerics, because civil rulers do not have rights and power (*ius et potestatem*) over Clerics and Churches.' If civil laws do bind them, 'it is not because they are civil law (*ius*), but because they are confirmed by natural, divine or canon law'.<sup>19</sup> But political realities even in the Catholic world demanded a more categorical admission of specifically *civil* subjection, and it was not infrequently forthcoming. Molina, for example, noted Vitoria's and Soto's teaching that if the Pope does not punish criminous clerics, the prince may do so, since the self-sufficient secular republic may defend itself against anyone, including ecclesiastics, and concluded that 'since clerics are part of the commonwealth and have the same king or governor as the laity, they are bound to submit to the common laws of the commonwealth in those things which do not conflict with their liberty and exemption'.<sup>20</sup> Contzen blandly avoided the issue by his claim that the Vicar of Christ had conceded a 'free power of reforming' prelates to kings and princes.<sup>21</sup> The immunity of clerics from the criminal law and of clerical property from taxation (on land, income, and on transactions) and regulations regarding, for example, bequests and building permission, were thus more like a privilege of a favoured class than princes complying with a peremptory divine imperative. Suárez admitted as much.<sup>22</sup>

#### THE PAPAL *POTESTAS INDIRECTA* AND THE AUTHORITY OF SECULAR PRINCES

The controversies over the Oath of Allegiance and the Venetian Interdict illustrated how the usual accommodations between popes, or churches, and Catholic princes could come apart at the seams. The Venetian Interdict

<sup>18</sup> *Responsio Cardinalis Bellarmini ad duo libros*, pp. 5<sup>v</sup>–6<sup>r</sup>.

<sup>19</sup> *Institutiones morales*, vol. 1, bk v, chs. xii–xv (passage cited pp. 639–40).

<sup>20</sup> Molina, *De iustitia et iure*, II, disp. xxi, pp. 139D–142B; immunity from taxation was a concession by positive law (p. 141C).

<sup>21</sup> Contzen, *Politicorum libri duo*, II.8.16, citing *De Pace Germaniae*, bk 2, ch. 9: 'If prelates [here specifically bishops] look the other way about one another's faults, . . . the Vicar of Christ concedes to kings and princes a free *potestas* of instituting reforms.'

<sup>22</sup> *Defensio fidei*, IV.3.24.

initially concerned the juridical sub-ordination of its clergy to the Republic, but also encompassed the immunity of ecclesiastical property from taxation and regulation. As the outcome demonstrated, a *modus vivendi* over these issues could be restored, even without either side giving way over principles. But vastly more contentious, divisive, and irresolvable at the level of principle was the issue of the papal authority to depose princes or to prevent their accession, to transfer their authority to others, to annul their laws and, as the expression was, to 'release' subjects from their duty of obedience and fidelity, whether temporarily and partially (as with the Venetian Interdict) or permanently and wholly. The secular authorities in Venice were now claiming the right to disregard a papal interdict, and to order both their clerical and lay subjects to disobey it, and James was claiming a right to the obedience of his Catholic subjects, in each case on the ground that what was in contention was a temporal matter. Both episodes brought to the surface a hostility on the part of many Catholics to such exercises of papal authority that went back to the twelfth century, now articulated in the doctrine of the Divine Hereditary Right of Kings or, in the case of Venice, the Divine Right of Republics. Catholics as well as Protestants were using the deposing power as an odious extreme case which would taint any papal political intervention by association. The issue was plainly factitious, since no exercise of the deposing power was being advocated or even threatened against either James I/IV or Venice (although in fact the papacy would have been perfectly prepared to invade Venice and depose its rulers, had circumstances allowed it). There had indeed been only two or three instances of princes being excommunicated *nominatim* and deprived of their authority in the previous century.

#### THE SOCIETY AND THE *POTESTAS INDIRECTA* IN THEORY, PRACTICE, AND RHETORIC

Jesuits had no interest in unsettling established accommodations between princes and churches. Papal coercion of secular princes was a desperate expedient, to be contemplated only as a last resort.<sup>23</sup> The excommunication and deposition of Elizabeth by *Regnans* had proved an extreme embarrassment and much worse. Jesuits were divided over the wisdom of particular

<sup>23</sup> E.g. Molina, *De iustitia et iure*, II, disp. XXIX (p. 135C): 'Illud merito Victoria et Sotus . . . observant, Supremum Pontificem . . . non statim debere gladium temporalem eximere, nisi in mora esset praesens periculum: sed debere prius uti gladio et potestate spirituali, praecipiendo aliquid, vel simpliciter, vel sub aliqua censura. Via namque ordinarie Supremi Pontificis est usus potestatis spiritualis.'

interventions.<sup>24</sup> And if *all* such interventions invariably gave rise to controversy and dissension even among Catholics, what was the point of insisting on the principle?

The Society's spokesmen, however, felt compelled to continue to assert the papal 'indirect' authority *in temporalibus*. Denying this authority was to deny the character of the Church as the *republica Christiana*. At the beginning of the seventeenth century, moreover, it was not apparent that this was a lost cause. Paul V's exercise of his *potestas in temporalibus* over Lucca and Genoa had been far from unsuccessful.<sup>25</sup> Henri IV had become a pillar of the Catholic Church (and the Society). The Republic of Venice was reconciled with the papacy; the Venetian court-theologians fled back to the arms of Rome even before the Interdict was lifted, or submitted more or less publicly thereafter, or were subsequently discredited by their immoral conduct. Sarpi went on to confirm that the Jesuits had been right all along in deriding his protestations of Catholic orthodoxy.

Jesuit theologians had previously regarded the papal deposing power (and hence all lesser powers) as beyond dispute. Laínez had even used it as a premise for an argument *a fortiori*: if popes could depose princes, how much more obvious was their supremacy over ecclesiastics.<sup>26</sup> *Philopater* described the papal power to depose secular rulers, and to prevent the accession of heretics, as a theologians' commonplace and *de fide*.<sup>27</sup> For Salmerón this power was a simple consequence of the fact that right order in the world requires the sub-ordination of the civil to the spiritual *potestas*.<sup>28</sup> He expected a papal sentence of deposition (for heresy) to be carried out by other princes waging war in the service of the papacy and the Church against the culprit.<sup>29</sup> And Bellarmine's *Reply of Matthaeus Tortus* of 1608 still

<sup>24</sup> E.g. G. Cozzi, 'Gesuiti e politica', *Rivista Storica Italiana*, vol. 75, 1963, pp. 477–537, on the startling activities of Achille Gagliardi SJ and the attitudes of Toledo, as opposed to those of Sixtus V and Aquaviva.

<sup>25</sup> Benzoni, 'I "theologi" minori dell'Interdetto', p. 44, n. 53.

<sup>26</sup> *Disputationes Tridentinae*, Grisar edn, vol. 1, p. 155, s. 119, citing Innocent III's Bull *Venerabilem*, the transfer of the Roman Empire from the Greeks to the Germans, Gelasius, and Zacharias, all established favourites in this context.

<sup>27</sup> Persons, *Philopater*, p. 194, s. 156: 'Hinc etiam infert universa Theologorum ac Iurisconsultorum Ecclesiasticorum schola, (et est certum et de fide)', brackets in original; similarly *Conference*, pp. 48–9, 76.

<sup>28</sup> *Commentarii*, p. 677, col. 2: 'Deposuerunt Romani Pontifices Imperatores, Reges et Principes . . . Mira item Patres de hac potestate excellenti scripserunt.'

<sup>29</sup> *Commentarii*, pp. 253–4. Even more remote from realities was H. Henriquez, *Summa Theologiae Moralis* (1613), pt II, bk 13, ch. 2, (p. 1120), whose language indicates the antiquity of his sources: 'Si vassalorum Dominus sit per sententiam nominatim excommunicatus . . . , eximuntur subditi ab onere quo iuraverunt servire ei ex fidelitate, et a iurisdictione subiectionis.' According to him, a prince excommunicated for heresy or schism could not recover his *iurisdiction* even after absolution.



maintained that 'all [theologians and jurisconsults] agree that the Supreme Pontiff has the right to depose heretical princes, and to free their subjects from their obedience'.<sup>30</sup>

But the power had visibly ceased to be uncontentious, to the extent that it ever was. The Jesuits' Catholic opponents did not deny that the Pope was final arbiter in matters of faith and morals. They did not deny either that this ultimate responsibility for the spiritual welfare (the *salus animarum*) of all Christians demanded that the Church be capable of condemning acts of rulers which endangered the souls of their subjects. But what was now becoming deeply controversial was whether this acknowledged papal authority entailed any 'political' or coercive *potestas*. In 1618 'Roger Widdrington', the Benedictine Thomas Preston, said flatly that 'it is impossible to demonstrate from [the decrees of the Councils of] Lateran or anywhere else that the Supreme Pontiff has the authority to depose sovereign Princes, or to absolve their subjects from their [duty of] temporal fidelity, or to inflict any other civil punishment from divine authority', and that it was neither certain nor an article of faith (*de fide*) that they could do so.<sup>31</sup> And in 1625, when Antonio Santarelli SJ restated the Society's old position (with page-length, fully referenced citations from Jesuit authorities) in his *Treatise on Heresy and Schism . . . and the Authority of the Supreme Pontiff in punishing these Crimes*, he earned himself not only the usual censure from the Theological Faculty of Paris (1626), but also a papal requirement to excise the most aggressive passages. The Superior General Vitelleschi issued an order forbidding all lectures and publications about the power of popes over princes in general, and the deposing power in particular.<sup>32</sup> But of course the authoritative expositions of the doctrine were by then in all the textbooks.

#### THE STRUCTURE OF THE ARGUMENT

When the *potestas indirecta* became a central polemical topic in the first decade of the seventeenth century, its principal defender was Bellarmine himself. He was supported by Suárez, Becanus, and Lessius. They were seconded by Possevino (still contributing virulently to the campaign against

<sup>30</sup> *Matthaei Torti Responsio*, 2nd 1608 edn, pp. 8–9.

<sup>31</sup> Widdrington, *Discussio discussionum decreti Magni Concilii Lateranis, adversus L.L.* [Leonard Lessius] *S. I. Theologum*, Preface, pp. a2<sup>r-v</sup>, s.2, a3<sup>v</sup>, s.4.

<sup>32</sup> Santarelli, *Tractatus de Haeresi, Schismate . . . et de Potestate Summi Pontificis in his delictis puniendis* (1625). The *Censure de la Sacrée Faculté de Théologie*, Paris, 1626, declared that the book, especially chs. 30–1, utterly ruins all 'Polices tant Ecclesiastique que Civile'. See de Mattei, *Il pensiero politico italiano*, vol. 1, pp. 213–16, and Lewy, *Constitutionalism and Statecraft*, pp. 149f.

Venice), Persons,<sup>33</sup> Gretser, and Tanner. Azor (†1603), Valentia (†1603), Vazquez (†1604), Salmerón (†1586), and Molina (†1600) had already gone to their rewards, but had left unambiguous endorsements.

The structure of the argument in the Jesuits' accounts was much the same, since they all drew on each other and some favourite sources, especially Soto. The temporal authority of the papacy was dealt with only after its spiritual authority, and only after ostentatious rejection of a now preposterous doctrine which it cost nothing to abandon, namely that the Pope is by divine right sovereign over the whole world, *princeps mundi*,<sup>34</sup> or at least *princeps orbis Christiani*. Neither claim in fact had by then any significant proponents, although Molina noted without comment that Azpilcueta (still alive when Molina first lectured on the topic at Evora in the 1570s) had asserted it. Another proponent, Cardinal Bozius (William Barclay's *bête noire*), was not an authority for any Jesuit. Among Jesuits only Azor defended some such position, explicitly announcing that in doing so he was rejecting the doctrine normal among scholastic theologians in favour of that of the canon lawyers, in other words the medieval hierocrats.<sup>35</sup> Bellarmine did not cite Azor as an authority on this matter,<sup>36</sup> or any other. Suárez referred to the canonist authorities in the perfect tense.<sup>37</sup>

Molina's discussion can serve as our point of departure, even though its clarity left much to be desired.<sup>38</sup> He began by considering what authority Christ had, as man and as God. As the Imperialist–Papalist and Conciliarist controversies which prefigured this debate had amply demonstrated, this was the critical issue. Christ's vicar or vice-gerent would almost certainly have less authority than Christ, but could not possibly have more. Molina contended that, as man, Christ was neither King of the Jews nor lord of the world. All power was indeed given to him by the Father, 'so that he could have taken and can take all the kingdoms of the world, depose kings, and

<sup>33</sup> These were their last engagements; Possevino died in 1611, Persons in 1610.

<sup>34</sup> Bellarmine, *De Romano Pontifice*, bk v, chs. 2 and 3.

<sup>35</sup> Azor, *Institutiones morales*, vol. II, esp. bk IV, ch. 19: e.g. p. 477: 'veram esse Canonici iuris interpretorum sententiam, Romanum Pontificem habere utramque potestatem, spiritualem et temporalem'; 'Mihi vero non placet modus loquendi quo utuntur Victoria, Sotus, et alii predictis [i.e. Cajetanus, Torquemada, Azpilcueta, etc.], quia insinuare videntur, penes Papam solum esse unam potestatem spiritualement, non temporalem.' See also bk v, ch. 5; bk x, chs. 2, 7, 8; bk XI, ch. 3 (esp. pp. 1212–14), ch. 5 (esp. pp. 1225–9).

<sup>36</sup> He omitted Azor from the long list of authorities representing Tradition which began his *Tractatus de potestate Summi Pontificis . . . adversus G. Barclaium* of 1610.

<sup>37</sup> Suárez, *Defensio fidei Catholicae*, III.5.4: 'Fuit [my italics] itaque quorundam catholicorum, praesertim iurisperitorum sententia.' Some of the *iurisperiti* were of course popes; *fuit* implied that no one of any weight held this doctrine now.

<sup>38</sup> Costello, *The Political Philosophy of Luis de Molina*, p. 93; ch. 5 is highly reliable and contains extensive citations from Molina.

dispose at will (*ad libidinem*) of all temporal things and matters, without any injustice to anyone'.<sup>39</sup> But whatever *potestates* Christ had as the Son of God, the essential point was that he chose not to use them, and therefore no Vicar of Christ could assume them either. Bellarmine was more categorical: the duties<sup>40</sup> of a pope come from those Christ had as a mortal man, not as God or even as an immortal and glorious human being.<sup>41</sup>

The Pope, therefore, is not *princeps mundi*, and no pope has the right to assume, or has ever assumed, the titles or offices of kings or emperors. According to Molina, 'in the ordinary way' (*via ordinaria*<sup>42</sup>) it is not for the Pope to create or depose kings or other lay powers, but rather for commonwealths themselves; nor does the Supreme Pontiff have any authority to adjudicate 'directly' (*directe*) in temporal contentions between princes, or to invalidate their laws (p. 130B); the Pope is not even lord of the temporal goods of the Church, but rather their administrator.<sup>43</sup> Bellarmine provided a similar list of things that the Pope as pope has no authority to do.<sup>44</sup> Suárez and Bellarmine even rejected the more qualified medieval formulation that the Pope was supreme *in habitu* but not *in usu*: roughly, that although the Pope held supreme temporal as well as spiritual authority, he could not use the former without some special cause.<sup>45</sup> Suárez observed characteristically that a power that could not be used was not a power, and if there were such a power in the papacy, then there would be no genuine secular *suprema potestas* at all, contrary to what everyone acknowledged to be the case.<sup>46</sup>

The point of all this was not to flog a dead horse (although perhaps some popes and even some Jesuits needed to be disabused of illusions), but to reassure rulers: 'so that it will be clear that no Christian prince can rightly accuse the Catholic Church or its doctrine of robbing [temporal authority] of its due authority at will'.<sup>47</sup> More important, papal authority had to be reconciled with the theoretical *datum* that the *respublica civilis* is a *communitas perfecta* acknowledging no superior, and that temporal

<sup>39</sup> Molina, *De iustitia et iure*, tract. II, disp. 28, p. 122C.

<sup>40</sup> A Roman euphemism for rights; cf. the 'matrimonial duty'.

<sup>41</sup> *De potestate Summi Pontifici*, bk v, ch. 4 (pp. 527–8). Molina and Bellarmine were both using Juan de Torquemada (I. de Turrecremata), *Summa de potestate papali*, esp. bk 2 (reproduced in Rocaberti, *Bibliotheca maxima Pontificia*, vol. XIII), although Molina leant more on Soto's *Commentarius in 4. Sententiarum*, qu. 2 (Rocaberti edn, vol. x, pp. 137ff).

<sup>42</sup> The term is Soto's (Rocaberti edn, vol. x, p. 142).

<sup>43</sup> Molina, *De iustitia et iure*, II, disp. XXIX (pp. 127B–130B).

<sup>44</sup> *De potestate Summi Pontifici*, bk v, ch. 6, p. 532: 'Papa, ut papa, non potest . . .'

<sup>45</sup> Azor, *Institutiones morales*, II, bk IV, ch. 19 (p. 478) had found it congenial.

<sup>46</sup> *Defensio fidei*, III.5.20; Bellarmine, *De Romano Pontifice*, bk v, ch. 4 (p. 528); both echo Molina, *De iustitia et iure*, II, disp. 28, p. 120B: 'Frustra esset in Christo ea potestas, qua numquam esset usus, potestas namque non est nisi propter actum.'

<sup>47</sup> Suárez, *Defensio fidei*, III.6.1.

and spiritual authority are different in nature and legitimation. But just as it was groundless to assert papal supremacy over the secular world, it was equally groundless to deny that there was *some* papal authority over that world. According to the Jesuits, such a denial was manifest heresy, advanced only by medieval heretics like (especially) Marsiglio of Padua,<sup>48</sup> or modern ones. By contrast, they merely described the other, hieratic extreme as erroneous, presumably because a succession of popes had maintained it. They attempted to extenuate the pronouncements of Innocent III, Gregory VII, Boniface VIII, etc.,<sup>49</sup> as well as papalist theoreticians like Agostino of Ancona, Agostino Trionfo, and Alvaro Pelagio. The most aggressive papalist, Egidio Romano, was rarely mentioned, except of course by Azor.

Jesuits then produced the Golden Mean. In Molina's words: 'between these two extreme doctrines some mediating position must be embraced', which he attributed to Torquemada, Waldensis, Caietanum, Mair, Vitoria, Soto, Pighius, Azpicuelta, and others.<sup>50</sup> The mediating doctrine is that of *potestas indirecta*. The term itself seems to have crept in without anyone noticing. The older term *potestas ex consequenti*, by entailment,<sup>51</sup> was clearer. Barclay exploited an unfortunate connotation of *indirecta*, namely that the Pope had got this power by devious means.

As Molina stated the doctrine:

the spiritual *potestas* of the Supreme Pontiff . . . has joined to it, as it were by entailment (*quasi ex consequenti*<sup>52</sup>), the supreme and most extensive (*amplissimam*) power of temporal jurisdiction (*potestatem iurisdictionis temporalis*) over all princes and others who belong to the Church, precisely to the degree demanded by the supernatural end for which the spiritual *potestas* is ordained. If this supernatural end demands it, the Supreme Pontiff can depose kings, and deprive them of their kingdoms (or kingships: *regnis*). He can also judge between them in temporal matters, invalidate their laws and do among Christians whatever else is judged

<sup>48</sup> Suárez regarded Marsiglio of Padua as the *fons et origo* of all heresy in this area, especially Anglican heresy from Henry VIII onwards; cf. *Defensio fidei*, III.6.3 (where he described Marsiglio [fl. 1324], as having taught about 500 years earlier), 14, 18; III.21.3; III.23.1.

<sup>49</sup> The *loci classici* were *Unam Sanctam*, *Per Venerabilem*, also *Glossa Novit*; see Bellarmine, *De Romano Pontifice*, bk v, chs. 3 (p. 526) and 5 (p. 530); Suárez, *Defensio fidei*, III.5.10; Molina, *De iustitia et iure*, II, disp. XXIX, p. 130C.

<sup>50</sup> Molina, *De iustitia et iure*, II, disp. 29, p. 126C. Torquemada, writing in the 1430s, had already described the doctrine as a 'mean'; he was cited by Soto (Rocaberti edn, vol. x, p. 137): 'Duae sunt e diametro distantes opiniones inter quas media est tamquam Catholica constituenda.' Cf. Bellarmine, *De Romano Pontifice*, bk v, ch. 1 (p. 524): 'Tertia sententia media, et catholicorum communis.'

<sup>51</sup> Barclay, *De Potestate Papae in Principes Christianos*, e.g. p. 93. Suárez used *potestas indirecta* in passing: *Defensio fidei*, III.22.5, IV.4.17.

<sup>52</sup> Torquemada's term in *De potestate papali* (Rocaberti edn, vol. XIII, p. 462): 'licet non habeat [papa] potestatem regulariter, sive directe, ita plenam in temporalibus sicut in spiritualibus: nihilominus etiam habet potestatem in temporalibus ex consequenti'.

necessary to the supernatural end and the common spiritual welfare (*salutem*), not in any way whatsoever, but according to the judgement of the prudent; and to that end he may use compulsion consisting not only of ecclesiastical censures, but also external punishments, and force of arms, in a manner no different to any other prince, although for the most part it is expedient that the Supreme Pontiff should not do such things himself, but have them done by secular princes. And for this reason it is rightly said that the Pope has both swords.<sup>53</sup>

According to Bellarmine's formulation: 'The pontiff as pontiff does not have any temporal authority directly and immediately, but only a spiritual authority; however in virtue of this spiritual authority he does have a certain indirect authority, and that a supreme one, in temporal matters (*indirectam potestatem quamdam, eamque summam, in temporalibus*).'<sup>54</sup> The *potestas* was 'in ordine ad bonum spirituale'.<sup>55</sup> Suárez's version was:

The Supreme Pontiff, by virtue of his spiritual authority or jurisdiction (*ex vi potestatis seu iurisdictionis*), is superior to kings and temporal rulers, so that he may direct them in the exercise of their temporal authority in order to the spiritual end; by reason of this he can command or forbid any such use of this [temporal] authority, demand it or prevent it, to the extent that it is expedient for the spiritual good of the Church.

He explained that this extended to the right to coerce and even to depose princes.<sup>56</sup>

#### THE ARGUMENT FROM SCRIPTURE AND TRADITION

The Church exists as the result of direct providential intervention in secular history and the natural order, and its structure and powers therefore cannot simply be inferred or deduced from the principles of natural order. They must be derived from some positive divine decree or institution, for which the only sources were Scripture or Tradition.<sup>57</sup>

<sup>53</sup> *De iustitia et iure*, II, disp. 29, p. 131C–D.

<sup>54</sup> *De Romano Pontifice*, bk V, ch. 1, p. 524. 'Summa potestas' was the ordinary term for 'sovereignty'. See also *Tractatus de potestate Summi Pontificis*, ch. V, p. 74: 'indirectly it also regards temporal matters, as its secondary object and *per ordinem ad spiritualia, reductive et per necessariam consequentiam, ut sicut dicam*'.

<sup>55</sup> *De Romano Pontifice*, bk V, ch. 6, p. 531.

<sup>56</sup> *Defensio fidei*, III.22.1: 'ad temporalia indirecte extenditur', even to deposing kings (ch. 23).

<sup>57</sup> Suárez, *Defensio fidei*, III.8, throughout; e.g. s. 2: 'Tale ius autoritate divina probandum est', in other words 'sufficiently gathered from revealed principles or at least, supposing the Church established, shown to be more in keeping with divine providence', but with the qualification (III.22.5) that 'the express testimony of Scripture is not necessary in every case; it is enough *si ex scriptis clara et necessaria ratione, vel Patrum traditione et interpretatione colligatur*'.

Jesuit exegesis took it that the familiar proof-texts for the Petrine primacy necessarily also implied the *potestas indirecta*: paradigmatically Matthew 16: 17–19 ('Thou art Peter, and upon this rock . . .', 'the keys of the kingdom of heaven'), Matthew 28: 18 ('all power in heaven and on earth'), also John 2: 13ff; Luke 22: 3; John 20: 23 /Matthew 18: 14. Particularly ingenious was the exegesis of the apparently innocuous John 21: 15–17, *Pasce oves meas* in the Vulgate, and 'Feed my lambs/sheep' in both Douay-Rheims and the AV. As Bellarmine pointed out (citing both the Septuagint Greek and the Hebrew) 'feed' plainly stood for all the acts pertaining to the office of a shepherd, which include directing, governing, defending, and correcting,<sup>58</sup> and therefore the use of coercion. The most difficult text was obviously II Timothy 2: 4 about meddling in secular matters, which was already noted in chapter 3, but John 18: 36, 37 and Luke 12: 14 also needed attention,

Jesuits and Catholics generally might well believe that Scripture unambiguously validated the Petrine primacy. But Catholic controversial theology had hitherto been almost exclusively concerned with vindicating it against Protestants.<sup>59</sup> Those who had now to be convinced or (more likely) refuted, however, included Catholics who acknowledged the papal primacy in faith and morals. The problem was therefore the derivation of a temporal authority from this unquestioned spiritual authority. This had already been a deeply contentious issue in medieval disputes which were not between Catholics and heretics either, except in the view of the partisans.

*Potestas indirecta* and similar expressions are manifestly not scriptural. And Scripture itself could obviously provide no evidence of any papal *exercise* of the *potestas indirecta*. Moreover, given the fundamental Tridentine principle of the complementarity of Scripture and Tradition, Jesuits could not allow the authority of Scripture to stand utterly unsupported by Tradition.<sup>60</sup> But in this context, Tradition plainly spoke with discordant voices. What is more, only the lowliest members of the hierarchy of authorities that composed Tradition made unambiguously for the *potestas indirecta*. In approximate descending order, the hierarchy of authoritativeness was:

<sup>58</sup> Bellarmine, *De Romano Pontifice*, bk 1, ch. 21 (p. 343): 'He who serves (*ministrat*) food to another in some way is not properly said to *pascere*; the term is used for someone who provides and procures food for another, and that is certainly the action of a *praepositus* or governor. Hence the word *pasce* in ordinary speech means not only to provide food but also to lead, lead back (*reduci*), safeguard, be in command of (*praeesse*), rule, chastise.' Bellarmine was also challenging Luther's and Calvin's interpretation of 'feed' as implying service or ministry, not governing and coercion.

<sup>59</sup> This is the exclusive concern of, for example, Geronimo Torres's *Confessio Augustiniana* and Gregoria de Valentia's *Analysis fidei*.

<sup>60</sup> See ch. 2.

the practice of the primitive and early Church; patristic texts or conciliar pronouncements from the first four centuries; the decrees of later General Councils of the Church; the plain doctrine of Aquinas; the consent of scholastic authorities later than Aquinas; papal pronouncements endorsed by some other authority; the practice of past popes, when it had been endorsed by the *consensus fidelium*.

But the primitive and early Church had no *de facto* power over temporal authorities. The attempts of Bellarmine, Baronius, and others to demonstrate a *de iure* authority of the Church over secular princes which in its early stages it was unable to exercise,<sup>61</sup> were inherently problematic: the fact that the early Church had not exercised any such power might equally be taken to demonstrate the degeneracy of the papacy by the time it did use it. Bellarmine persistently returned to this troublesome point in his reply to Barclay.<sup>62</sup> He argued that the use of force was not the first or usual method of the papacy but the last. Therefore nothing could be inferred from the rarity of instances of its use. He had, however, earlier admitted that the Apostles (and therefore by implication their successors) were subject to their secular princes *de iure*, and was embarrassingly obliged to withdraw this in his *Reconsideration of All My Books* of 1608.<sup>63</sup>

The other authorities were no more conclusive. The relative authority of Councils of the Church and popes was notoriously a minefield. St Thomas's doctrine on the matter was acknowledged to be ambiguous, with at least some evidence that he favoured the hierocratic view.<sup>64</sup> Later scholastic proponents of the temporal power were authoritative only for those who needed no convincing. The pronouncements and actions of popes were of least standing, and arguably of no standing at all given the principle that 'no

<sup>61</sup> Bellarmine first made this claim in *De Romano Pontifice*, bk v, ch. 7 (p. 533): 'Quod si Christiani olim non deposuerunt Neronem, et Diocletianum, et Julianum apostatam, ac Valentem arianum, et similes, id fuit quia deerant vires temporales Christianis.' When kings and princes eventually came into the Church, they did so with an express or tacit compact of submission to the Church. He did not elaborate the argument until it was explicitly denied by James and his supporters and Barclay.

<sup>62</sup> *Tractatus de potestate Summi Pontificis*, 1610, especially ch. iv; but also ch. ii, pp. 58–9, ch. xvi, p. 167, ch. xx, pp. 191, 195, 206. Suárez's argument was somewhat different: *Defensio fidei*, iii.29.4: there was no 'usus' of this power for 300 years after Christ's death because 'nulli enim fuerint illis temporibus Christiani Principes aut Imperatores'; pagan emperors did not fall under the Church's authority.

<sup>63</sup> *Recognitio librorum omnium*, pp. 16–17, retracting *De Romano Pontifice*, bk ii, ch. 29. Barclay pointed out that Bellarmine's doctrine had changed from, or was inconsistent with, the position he had adopted in the *Controversies*, and also that of an anonymous author 'whom Bellarmine knew and loved' (Barclay presumably knew that *Franciscus Romulus* was Bellarmine himself) in 1588; G. Barclaius I. C. (i.e. W. Barclay, Jurisconsult), *De potestate Papae* (= ERL 136), pp. 20, 49.

<sup>64</sup> Bellarmine, *De Romano* [or *Summo*] *Pontifice*, bk v, ch. i (p. 525): 'De S. Thoma, quid senserit, non est tam certum.' In ch. 5 (pp. 529–30) he correctly denied Thomas's authorship of the relevant parts of *De Regimine Principum*, and pointed to the consensus of St Thomas's (Dominican) disciples.

one is a lawful witness in their own cause'.<sup>65</sup> Both Suárez and Bellarmine recognised the potentially damaging weakness of their own argument here. Suárez produced some debating points to by-pass the principle. 'In this matter [popes] are not so much witnesses in their own cause, as witnesses in the cause of Christ and the whole universal Church. They are furthermore not so much witnesses as judges in this kind of cause.' But this was to beg the question. He also claimed they were credible in merely human terms, in virtue of their holiness and in some cases martyrdom, which certainly could not be said of the hieratic popes. Elsewhere he added that 'the proclamations of popes in canon law, although they might seem to be given in their own cause, also have very great authority in this, both because of the key of knowledge, . . . and also because they demonstrate the certain and immutable tradition of the Church. For not only modern popes, but those in remote antiquity have testified to this truth.'<sup>66</sup> When Bellarmine cited Boniface VIII's *Unam Sanctam* to support the papal *potestas indirecta*, he replied to the Magdeburgers' objection with the rejoinder that St Bernard had said precisely the same.<sup>67</sup> But in that case *Unam Sanctam* was redundant, except on Bellarmine's premise that the Pope and the Saint between them were part of the *consensus* of the entire Church.<sup>68</sup> But, as Barclay riposted, any such consensus was conspicuous by its absence. Canonists, unquestionably part of the tradition, had asserted a papal *potestas directa*, indeed a papal supremacy over the entire world. And so to Bellarmine's cost had Pope Sixtus V of unlamented recent memory, as Barclay reminded him.<sup>69</sup>

Again, part of the argument for the *potestas indirecta*, and specifically in respect of the deposing power, was the past practice of the Church. Jesuits could not resist referring to the deposition of Childeric by Pope Zacharias,<sup>70</sup>

<sup>65</sup> James I/VI, *An Apologie*, p. 64: '[Bellarmine's *De Summo Pontifice*] bringing in the Popes, that are parties in this cause, to be his witnesses.'

<sup>66</sup> Suárez, *Defensio fidei*, III.16.3; III.7.6. <sup>67</sup> *De Romano Pontifice*, bk v, ch. vii (p. 533).

<sup>68</sup> *De Potestate Summi Pontificis*, after an enormous range of citation of authorities (pp. 6–30), asks (p. 30): 'Quid hic Barclaius diceret? Si haec non est Ecclesiae Catholicae vox, ubi obsecro eam inveniemus?'

<sup>69</sup> W. Barclay, *De potestate Papae*, ch. XIII, p. 101.

<sup>70</sup> One source was Soto (Rocaberti edn, vol. x, p. 137). It is interpreted in 'Franciscus Romulus' (Bellarmine), *Responsio ad . . . Apologiam . . . pro successione Henrici Navarreni in Francorum regnum* (cited Barclay, *De potestate Papae*, pp. 50–1, who devoted ch. xci to the episode); *De Romano Pontifice*, bk v, ch. 8 (p. 535); Molina, *De iustitia et iure*, II, disp. xxix (pp. 125D, 130A); Salmerón, *Commentarii in omnes Epistolas*, vol. XIII, bk I, pt 3, disp. ix (p. 254), bk IV, disp. iv (p. 677); Valentia, *Commentarii*, vol. III, disp. I, qu. 12, pt 2 (p. 501B); Azor, *Institutiones morales*, II, bk x, ch. 4 (pp. 1228, 1230); Tanner, *Defensio Libertatis Ecclesiasticae*, ch. 8, p. 284; Suárez, *Defensio fidei*, III.23.15, VI.4.17; Becanus, *Controversia Anglicana*, ch. 30, p. 40; Persons, *Philopater*, pp. 194–8 and *Conference*, pp. 48–9, 50, 76; Fitzherbert, *De Infelicitate Principis Machiavelliani*, s. 10, p. 37, etc.



and there were other notable instances of the exercise of papal power over kings and emperors.<sup>71</sup> The transfer of the Holy Roman Empire from the Greeks to the Germans was considered an *experimentum crucis*: a denial of the *potestas indirecta* might even impugn the legitimacy of the institutions and offices of the Holy Roman Empire.<sup>72</sup> But Jesuits could hardly ignore the point that past practice, however long-standing, might equally well be an abuse, since in other contexts they were anxious to make it themselves. What is more, any specific papal act could only illustrate a doctrinal point, but could not of itself prove it.

#### THE CHURCH AS *RESPUBLICA PERFECTA*

Tradition and Scripture therefore yielded only ambiguous, inferential warrant for the *potestas indirecta*. But these inferences presupposed what they were meant to prove. Their premise was the Jesuits' constitutive ecclesiological concept of the Church as a *respublica perfecta*, in a perfectly literal sense: the *respublica Christiana* or *societas Christiana*.<sup>73</sup> Inferences from the philosophy of order and from ordinary experience were therefore entirely legitimate. The Jesuits' Catholic opponents challenged only the inferences, not the legitimacy of inferential reasoning as such; Protestants rejected both.<sup>74</sup>

Thus the decisive consideration for all Jesuits, although it was always given second billing below the authority of Scripture as interpreted by Tradition, was that the Church *must* have some (indirect or inferential) authority over secular rulers and commonwealths, because it could not exercise its primary and 'direct' spiritual authority effectively without it. No community can survive unless its common affairs are attended to authoritatively, least of all a community as heterogeneous, dispersed and contention-prone as the universal Church.<sup>75</sup> As Bellarmine formulated it: 'For the unity of faith to be preserved, advice is not enough: what is needed is power (*imperium*).'<sup>76</sup>

<sup>71</sup> See the list in Comitoli, *Trattado apologetico*, pp. 38–9 (partly drawn from Bellarmine).

<sup>72</sup> Tanner, *Commentarii in summam D. Th.*, disp. 1, qu. 4, dub. v, ss. 210–11 (in Rocaberti edn, vol. 1, p. 33).

<sup>73</sup> E.g. Suárez, *Defensio fidei*, III.6.10–11. For this interpretation of the nature of the Church, see ch. 2, pp. 38–52.

<sup>74</sup> See Verron's excellent (though considerably later) examination of the rhetoric of controversial theology: *Methodes de Traiter des Controverses de Religion*, 1638, Première Partie, Première Traité, ch. II, pp. 5–8.

<sup>75</sup> Suárez, *Defensio fidei*, III.8.5; Bellarmine, *De Romano Pontifice*, bk 1, ch. IX (p. 325), invoked the 'Church under siege' motif: 'plures hostes habent Christiani [than the Jews in olden times], qui non solum obsidentur a Turcis, Tartaris, Mauris, Judaeis, aliisque infidelibus, sed etiam versantur inter innumeras sectas haereticorum'.

Secular authority could not do this work, nor had it been assigned to it by Christ.<sup>77</sup> The authority had to be in ecclesiastics, and therefore ultimately in the Pope. And ecclesiastical authority could not be denied the right to use coercion any more than secular rulers could.<sup>78</sup> For, as Molina put it,

Christ would have certainly left his Church inadequately provided for, unless he had left all Christian secular princes, and the rest of the faithful, subordinate and subject to the Supreme Pontiff in this matter, with the fullest authority on the Supreme Pontiff's part to . . . compel them (*coercendos et cogendos*) to do what he judges to be unequivocally necessary to the spiritual end . . . For God and Nature are not lacking in necessities.

'And the *Respublica Ecclesiae* must be no less self-sufficient than any secular *Respublica*'.<sup>79</sup>

This authority was of course not to be used casually.<sup>80</sup>

It is for the Pope to judge whether the welfare of souls necessarily requires that some king be deprived of his kingdom; but he is not to conjure up such a necessity when he pleases (*pro libito*), or to indulge his greed under the colour of necessity. Since this is a matter of gravest consequence, and the necessity must be manifest and demonstrated, popes ordinarily (*ordinarie*) deal with such matters in synods of bishops, or consistories of their most Reverent Eminences, the Cardinals, with reasons given and the consent of the Fathers.<sup>81</sup>

Nevertheless, the papacy must have available to it not only reprimand and excommunication, but also 'graver penalties'.<sup>82</sup> As Suárez commented: 'a directive power without a coercive power is ineffective'.<sup>83</sup> Or even more pointedly: 'In order that this [papal authority] might be feared and preserved, it must have joined to it another *potestas* which is of fact, not of right (*non iuris, sed facti*), if I may so put it: a physical power, which may be termed executive (*executiva*) or military'.<sup>84</sup> We noted elsewhere

<sup>76</sup> Bellarmine, *De Romano Pontifice*, bk 1, p. 327.

<sup>77</sup> Suárez, *Defensio fidei*, III.7.6.

<sup>78</sup> Bellarmine, *De Romano Pontifice*, bk v, ch. viii.

<sup>79</sup> Molina, *De iustitia et iure*, II, disp. 29, p. 132B and p. 135B.

<sup>80</sup> Fitzherbert, *Reply*, pp. 119–20, citing Persons, *Treatise Tending to Mitigation* (p. 25, n. 23), on the canonical requirement for 'just cause, grave and urgent motives, and due forme of proceeding by admonition, prevention, intercession and other like preambles', P. Comitoli, *Trattado apologetico* (ch. 2), p. 26, noted that canonists acknowledged that a sentence of excommunication would be invalid if it was prompted by malice, failed to observe the order prescribed by law, or was manifestly unjust. But in relation to the third condition, he observed that the injustice must be patent and manifest, 'perchio nissun reo deve esser giudice nella causa sua e farsi da se stesso ragione'.

<sup>81</sup> Bellarmine, *De potestate Summi Pontificis*, ch. xii, p. 139.

<sup>82</sup> Suárez, *Defensio fidei*, III.23.17.

<sup>83</sup> *Ibid.*, III.23.2: 'Quia vis directiva sine coactiva inefficax est.'

<sup>84</sup> *Ibid.*, III.22.14.

the Jesuits' caustic view of the likely efficacy of purely spiritual punishments.<sup>85</sup>

Whether the indirect power was being used prudently in any specific instance was obviously debatable. Barclay argued that the Church in its 'primeval or primitive' age had been conspicuously successful in winning souls without this power, whereas using it had had ruinous consequences.<sup>86</sup> Bellarmine denied it. But such a debate could not yield a decisive conclusion, and there could be no guarantee that popes would always use this power prudently. Jesuits therefore made it a question of *authority*, not prudence: the Pope is sole judge of the justice, timing, and methods of intervention.

#### THE HIEROCRATIC COLLAPSE

Any Thomist, and *a fortiori* Jesuit account of the commonwealth, as we have already seen, had to insist that the Church and commonwealths have independent and separate generation, ends, organisations or orders, personnel, jurisdictions, competences, authority, powers, in a word: separate identities.<sup>87</sup> Neither authority exists *merely* for the sake of the other.<sup>88</sup> As Molina put it in a startling formulation: 'Christ as man was not lord of the earth or of temporal things; he took away neither the rights nor dominions of kingdoms or anything else, and did not take them for himself; rather individuals retained their rights and dominions, of kingdoms and everything else, exactly as if Christ had never come into this world.' And what Christ had left unaltered, the Church and the papacy must also leave unaltered.<sup>89</sup> Bellarmine made this into a maxim, which was seized on by Barclay: 'Christianity does not deprive anyone of his right and *dominium*.'<sup>90</sup> Even Azor did not claim that the Church owned both the *potestates* that govern the world, merely (so to speak) sub-letting the temporal *potestas* to princes

<sup>85</sup> E.g. Fitzherbert, *Reply*, pp. 87, 90: since 'there can be no good government of men without chastisement', without the power to chastise even princes, 'the disobedience of absolute Princes to Ecclesiastical censures should be incorrigible and remediless'.

<sup>86</sup> Barclay, *De potestate Papae*, e.g. ch. vii, p. 138 and ch. iii, p. 28, and ch. xxxi, e.g. p. 247.

<sup>87</sup> As one for all Bellarmine, *De Romano Pontifice*, bk v, ch. vi (p. 532): 'Ita prorsus politica potestas habet suos principes, leges, judicia etc. et similiter ecclesiastica suos episcopos, canones, judicia. Illa habet pro fine temporalem pacem, ista salutem aeternam.'

<sup>88</sup> *De Romano Pontifice*, bk. v, ch. vi (p. 531). <sup>89</sup> Molina, *De iustitia et iure*, II, disp. 28, p. 122A.

<sup>90</sup> Barclay, *De potestate Papae*, pp. 127, 129, 195, 267, citing Bellarmine, *De Romano Pontifice*, bk II, ch. 29: 'Lex Christiana neminem privat suo iure et dominio.'

conditionally on their good behaviour.<sup>91</sup> As Bellarmine pointed out, even Agostino of Ancona, Egidio Romano, and Innocent III, despite *Novit, de judiciis*, and *Per Venerabilem*, allowed that there existed a secular power not derived from the papacy.<sup>92</sup>

But in the end Jesuit theologians could not sustain the independent legitimacy of secular and spiritual commonwealths they consistently affirmed. What ultimately made it impossible was their unrejected inheritance of theocratic understandings of the polity, according to which secular authority (at least as held by Christian princes) finds its ultimate legitimation in the service of the Church. Merely 'temporal' ends and the agencies charged with attending to them could not resist subordination to 'spiritual' ends.

The ways of establishing the superiority of spiritual over secular authority had been exhaustively explored centuries earlier. Almost the entire repertory of arguments from the Investiture Controversy and the conflict between Ludwig of Bavaria and Pope John XXII was now recycled. The Conciliarist option was however hardly utilised, except (naturally) by the Venetian official theologians,<sup>93</sup> and even by them with no great conviction. To summarise briefly what was rehearsed at great length. The core of the case was that the ends of spiritual authority are higher and more exigent than those of temporal authority, since they concern eternal as opposed to temporal happiness, the spirit rather than the flesh, the soul not the body, the supernatural rather than the natural. Therefore, as Suárez put it:

both the temporal and the spiritual power, as they exist in the Church, must be conferred and held in such a way as to serve the common good and salvation (*salus*) of the Christian people. Therefore these *potestates* must observe some due order between themselves, for otherwise the peace and unity of the Church could not be preserved. For often temporal interests are contrary to spiritual interests, and therefore there will either be a just war between the two *potestates*, or one must perforce yield to the other, so that all things are rightly ordered. So either the spiritual authority will be subject to the temporal, or vice versa. The former can neither be said nor thought . . . , for all temporal matters must be ordered to the spiritual end.<sup>94</sup>

<sup>91</sup> But he came close: *Institutiones morales*, pt II, bk IV, ch. xix (p. 477), qualified by the assertion that whereas the pope had the spiritual *potestas* 'per se . . . , temporalem vero non quidem proxime per se . . . sed ministerio et opere Imperatorum at aliorum Principum, nisi in certis causis'. Also p. 489: 'in canon law, the pope is said to have both swords absolutely and without qualification (*simpliciter*)'.

<sup>92</sup> *De Romano Pontifice*, bk V, ch. III (p. 526), and ch. V (p. 530).

<sup>93</sup> Bouwsma, *Venice and the Defence of Republican Liberty*, p. 462, notes that Sarpi saw that there was little to be gained by any appeal to a general council, in view of his judgement on Trent.

<sup>94</sup> Suárez, *Defensio fidei*, III.22.7. The third sentence invokes the idea that there can be no conflict in which both parties are in the right.

But if the Church and secular commonwealths were genuinely independent *respublicae*, like France and Spain, and their respective authorities genuinely independent authorities, they *could not* stand in the relationship that Suárez here said was necessary. That was possible and necessary only if the soul and body, spirit and flesh, and higher and lower ends were those of the same 'body'. This is of course what he said: 'as they exist in the Church'. The concept of the Church as the *respublica Christiana* that was being invoked here paid no regard whatever to the political realities which Jesuits in practice took for granted. This was not the Protestants' 'Christian polity', or Hooker's concept of Church and secular commonwealth as the same collectivity viewed under two different aspects. No Jesuit seems to have used *respublica Christiana* in that sense.<sup>95</sup> And contrary to an opinion widespread in the non-specialist literature, *respublica Christiana* had hardly ever meant 'Christendom'. Ordinarily and traditionally it was simply a synonym for 'the Church'<sup>96</sup> as the visible body of Christians united by their common faith and the common headship of the Vicar of Christ. This is why Suárez could assert that both a temporal and a spiritual power exist 'in the Church', or Azor that 'in the Church there are two powers, the spiritual and the temporal', or Bellarmine that 'kings and popes, clerics and laymen do not make two commonwealths, but one, that is one Church';<sup>97</sup> many other Jesuits made analogous statements.<sup>98</sup>

Understood in this way, therefore, the Church is essentially one and indivisible, whereas of commonwealths there is an irreducible plurality. The Church has one end, to whose accomplishment temporal or spiritual authorities contribute according to their distinctive means and kinds. The philosophy of order could not leave such a plurality of collectivities and agencies without a hierarchy, and the Pope was for Jesuits the

<sup>95</sup> Anon. (John Sweet), *Monsig.<sup>r</sup> fate voi, Or A Discovery of the Dalmatian Apostata, M. Antonius de Dominis* . . . , 1617 (= ERL 48), sect. xvi, cited Marc Antonio de Dominis using it prominently, but he himself never did so; cf. pp. 50, 124, 129. Very occasionally the association of terms or the vocabulary of opponents produced the concept: e.g. Suárez, *Defensio fidei*, III.4.19: 'Atque hoc modo etiam respublica christiana tenetur vitare principem infidelem.'

<sup>96</sup> See ch. 3, and cf. for example Canisius, *Catechismus* (1555 Latin) p. 22; Costerus, *Enchiridion*, p. 69; Possevino, *Bibliotheca selecta*, p. 138; Gretser, *De modo agendi*, pp. 53, 69; Becanus, *Opuscula*, vol. 1, p. 126<sup>v</sup>; III, p. 265; Bellarmine, *Controversia generalis III*, ch. 19 (echoed in Barclay, pp. 102, 130, 136, 145); *De potestate Summi Pontificis*, pp. 146, 156, etc.

<sup>97</sup> *De Romano Pontifice*, bk v, ch. vii (p. 533). See chapter 3 above.

<sup>98</sup> E.g. Azor, *Institutiones morales*, vol. II, bk 10, ch. 1 (p. 1047): 'Per civilem potestatem gubernantur homines in iis, quae ad temporalem Ecclesiae pacem, salutem et utilitatem spectant' (my italics); Becanus, *Duellum*, in *Opuscula*, vol. III, ch. 1.2 (p. 265): 'In Respublica Christiana duplex est potestas publica, una temporalis seu politica, altera spiritalis [*sic*], seu Ecclesiastica'; Bellarmine, *De laicis*, ch. 18 (p. 333): 'Potestas temporalis et spiritalis in Ecclesia non sunt res disiunctae et separatae'; Molina, cited above, fn. 12.

only possible hierarchy.<sup>99</sup> Bellarmine summarised unequivocally: 'The civil *potestas* is subject to the spiritual *potestas* when both are parts of the same *respublica Christiana*; and so the spiritual prince can command temporal princes and dispose of temporal matters *in ordine ad bonum spirituale*: for each superior may command his subordinate.'<sup>100</sup> Even a secular commonwealth, he continued, has the right to command another commonwealth not subject to it, to compel it to change its manner of conduct (*administrationem*), and if necessary even to change its prince or regime, when there is no other way of defending itself from injustices. *A fortiori*, the papacy has this right with respect to its subjects.<sup>101</sup> In fact no commonwealth in Europe admitted any such 'right', and the argument was also counter-productive, in that it compared temporal interventions of the papacy in commonwealths to acts of a foreign government. That was precisely how they were regarded by opponents of the *potestas indirecta*, who described it as the papacy using its sickle in another man's field, as the expression was.<sup>102</sup>

On this view, then, the various secular *respublicae* became subordinate provinces of the *respublica Christiana* whenever its head chose to exercise his *summa potestas*. The denial by Bellarmine, Suárez, and the rest that they were assigning to the pope an 'arbitrary' authority over princes<sup>103</sup> was therefore neither here nor there, since there was no institution or agency to which the Pope was accountable. That he had a moral duty to take advice and was answerable to God made him no less 'arbitrary' than any other absolute prince, for so did they.

The subversive implications of this conception of the Church for the independence of the secular commonwealth were ordinarily concealed by the distinction between their respective ends and competences, and between spiritual and temporal matters. Molina at one point showed how the distinction might be made to count in practice: 'Indeed, if it were clear that the Supreme Pontiff was in error, or was commanding something in such a way as to defraud the lay *potestas*, secular princes would not be obliged to

<sup>99</sup> Valentia, *Commentarii*, vol. III, qu. 1, disp. XII, pt 2 (p. 502D–E): proof 'ex ordine quem oportet esse inter utramque potestatem. Nam utraque potestas est unius et eadem corporis Ecclesiae . . . Itaque aliquam necesse est esse subordinationem inter has duas potestates, nec tamen ea potest talis esse, ut Ecclesiastica potestas subiecta sit potestati politicae.'

<sup>100</sup> *De Romano Pontifice*, p. 532.

<sup>101</sup> P. 533, citing *Unam Sanctam* in support, and St Bernard in support of *Unam Sanctam*; cf. above, p. 354.

<sup>102</sup> E.g. Persons, *Judgement*, p. 12, objecting to James's expression [*Apology*, p. 6] 'putting the Popes hooke [i.e. sickle] into another mans harvest'.

<sup>103</sup> See above, p. 336.

obey.<sup>104</sup> Even Azor showed himself solicitous for the rights of kings, magistrates and lay patrons: 'One should act prudently and cautiously, so that nothing is said which might either derogate from ecclesiastical immunity, or take away, infringe or diminish the legitimate powers of princes.' Popes themselves acknowledge that there is no duty to carry out wrongful papal commands. When papal mandates or letters plainly involve, prepare the way for, imply, or seem likely to entail, some violence, injustice, harm, or offence, they may rightly be impeded by the authority of secular princes, who also 'have the right to take cognizance and to examine whether papal letters sent to their provinces are authentic or not . . . and whether they contain anything which detracts from, or takes away, either their rights or those of others, or are harmful in some other way'.<sup>105</sup>

But Azor then made clear that these rights encompassed no more than imposing impediments and delays, pending a final ascertainment of the pope's will and pleasure.<sup>106</sup> Molina, too, was visibly uncomfortable with any right of rulers to resist popes, and summoned the old papalist war-horse, the comparison between the art of the saddle-maker (or bridle-maker) and the art of the rider<sup>107</sup> to explain the relationship between the secular and the spiritual authority. But like Vitoria he recognised the inadequately compelling character of the analogy. For if there were no riders, there could be no bridle- and saddle-makers, whereas secular authority would exist even if there were no supernatural end decreed for mankind, and is legitimate even when no supernatural end is recognised. 'In this sense therefore, the kingly authority<sup>108</sup> in respect of its natural end, viewed as such and in itself, is independent of the Supreme Pontiff, and the latter may not intervene in the government of secular princes, as far as the specific political and natural end of the Republic is concerned.' The tortuous formulation tells its own story, as does its being immediately followed by 'however': 'However, since Christian secular princes can deviate in their government from what the supernatural end of the Church unconditionally (*omnino*) demands, so their government (*regimen*) depends on the Supreme Pontiff.'<sup>109</sup> Bellarmine had even fewer inhibitions. He too described the saddle-maker/rider analogy as not wholly apt, for precisely Molina's reason. The relationship between

<sup>104</sup> Molina, *De iustitia et iure*, II, disp. 29 (p. 136A); a similar concession, but based on the right of self-defence, in Suárez, *Defensio fidei*, IV.4.17.

<sup>105</sup> Azor, *Institutiones morales*, pt 1, bk v, ch. xiii (p. 648). He immediately added the cautionary balancing clause: 'Neither does established custom or law or statute derogate from the Church's immunity.'

<sup>106</sup> Ibid., ch. xiv, p. 653. <sup>107</sup> Molina, *De iustitia et iure*, II, disp. xxix, p. 132A–C, citing Vitoria.

<sup>108</sup> 'Potestas regis', a casual equation of secular authority and kingship typical of Jesuits.

<sup>109</sup> P. 132D.

body and soul (or flesh and spirit: *caro/anima*) was a much more appropriate analogy, since it recognised the independence of the secular commonwealth and the Church. Body and spirit can exist independently, but when they are joined in the same mystical body, the spirit must prevail. And this is precisely the case of a commonwealth of Christians.<sup>110</sup>

In short, princes and secular commonwealths could not be allowed to go their own way.<sup>111</sup> The collapse of the Jesuit doctrine of the independence of the commonwealth whenever 'spiritual ends' and ecclesiastical *potestas* came into play is well illustrated by an incoherence in Molina. He advised commonwealths contemplating the deposition of their rulers to consult the Supreme Pontiff, in order that his moral authority (*authoritatem*) would validate such a decision. This made consulting the Pope a matter of good practice and prudence on the part of commonwealths which had the *independent right* to depose evil rulers. Molina naturally instanced Zacharias's deposition of Childeric, at the request of the 'maior pars optimatum'. But in any such case, the spiritual welfare of the commonwealth was almost inevitably involved, and therefore the Pope was *entitled* to 'interpose his authority' (*interponere suam autoritatem*). Zacharias deposing Childeric therefore reappeared as an example of the papacy's *right* to intervene, whether secular leaders desired such an intervention or not, when the faith of the Church, or the conservation of the common spiritual good, required it.<sup>112</sup> Molina did not draw the obvious inference that the distinction between temporal and spiritual matters would evaporate whenever a pope intervened, simply because he had intervened.

On the Jesuits' account, then, the determination of what was a 'spiritual' matter in the end rested with the papacy. It was as self-evident to Jesuits that the Oath of Allegiance was a spiritual matter as it was to James and his supporters that it was a civil one. The Oath demanded that Catholics deny the *potestas indirecta*. Opponents of Paul V denied that this doctrine was *de fide*; his supporters (not of course by any means only Jesuits) asserted that

<sup>110</sup> *De Romano Pontifice*, bk v, ch. iv, pp. 531–2.

<sup>111</sup> Valentia, *Commentarii*, vol. III, disp. 1, qu. XII, pt 2 (p. 502B), noted that reason of state was involved: 'debet omnis actio potestatis politicae, ut recta et prudentiae consentanea sit, in ulteriorem quoque aliquem finem referri, scilicet in salutem spiritualem animae et aeternam beatitudinem. Ex quo . . . evidenter apparet, quantopere vero aberrant, qui hac aetate censent, ratione status politici fas esse veram fidem atque religionem negligere'; Gretser in his *Considerationes ad theologos Venetos*, 1607 (*Opera omnia*, vol. VII, e.g. bk II, consid. IX) delighted in associating the Venetians' 'Machiavellismos et Marsilianismos' (one of the Venetian theologians rejoiced in the name Marsiglio): '[Capelli] ait politicam gubernationem dirigi at prosperitatem temporalem. Libenter addidisset, *solam*.' See also Tanner, *Defensio ecclesiasticae libertatis*, bk II, ch. XI, p. 319: 'Politice, ut aiunt, loquamur cum politicos.'

<sup>112</sup> *De iustitia et iure*, pp. 129D–130A., p. 134A; p. 130B–C: 'invito etiam Principe seculari'.



it was. In other words: the Pope is not only *arbiter controversiarum* in all matters of faith and morals: he also determines what is a matter of faith and morals.<sup>113</sup> This corresponds precisely to the Bodinian logic of sovereignty: the sovereign judges all, but is to be judged by none. Since any matter disputed between popes and princes *ipso facto* involved an issue of faith or morals, the papacy's capacity to intervene was effectively unrestricted.

It was therefore all very well for Bellarmine, Suárez, Fitzherbert, and others, when dealing with Barclay's objection that the *potestas indirecta* meant that the position of Christian princes was more precarious than that of pagan rulers, to retort that this was not a way of speaking that befitted Christians.<sup>114</sup> On the contrary, it was a perfectly proper and accurate utterance for Christians like Barclay and Catholic supporters of divine right, since they denied that Christianity requires a papacy with such powers. The fact was that the Pope could no more depose pagan and Muslim rulers than he could excommunicate them (since no one who does not belong to the Church can be excommunicated). He did, however, claim the right to depose Christian princes. No wonder that Contzen, with an eye to the susceptibilities of his Bavarian master and the latter's Imperial ally, prudently left the matter undiscussed except at the level of pieties.<sup>115</sup>

The position that had here been reached was even incoherent on Bellarmine's own terms. For to maintain it demanded acknowledging that the existence of the Catholic Church substantially modified the nature of secular *potestas* in a commonwealth of Christians. The essentialist character of Jesuit thinking, however, required that a thing should either be x or not-x. Therefore something either is secular authority or it is not. Christian rulers could not be described as exercising secular authority only *secundum quid*, or not in its *genuinus sensus* or *proprie loquens*. And there was also Bellarmine's own principle (derived as we have seen from Molina) that Christianity deprives no one of their rights, least of all secular rulers. It should therefore make no difference whether rulers and/or subjects were Christians, Muslims or pagans, whereas Jesuits insisted that it did, or should.

Although at any rate Valentia, Bellarmine, and Suárez saw the difficulty, their solutions to it were conspicuously *ad hoc*. Bellarmine at one point attempted to square the circle by arguing that the adoption of Christianity

<sup>113</sup> Suárez, *Defensio fidei*, vi.7-7, gives the Pope the right and duty to judge not only in as clear a matter as the 'perversitas' of the Oath of Allegiance, 'sed etiam si esset res dubia', citing Innocent III's *Per Venerabilem*.

<sup>114</sup> The same point had already been made by Launcelot Andrewes in his *Tortura Torti*, as Becanus noted in his *Refutatio torturae Torti*, paradox vii, Opuscula II, p. 539.

<sup>115</sup> Bireley, *Counter-Reformation Prince*, pp. 142, 152.

by rulers actually changed nothing as regards rulers' rights: they could not complain of losing any right (as Barclay had complained), since they had no rights to lose. Ecclesiastical supremacy and immunity from their jurisdiction always existed *iure divino*, even when they could not be exercised *de facto*. But this was a contentious argument, on which Bellarmine himself had notoriously changed his mind.<sup>116</sup> But he also offered a quite different account. He represented the obligations of rulers under Christianity as resulting from an original contract, whether tacit or express, between princes and the Church at the time of their conversion to Christianity. He went on to argue that once Christianity has been established in a commonwealth, Christian subjects may not tolerate the accession of a heretical king.<sup>117</sup> In effect, therefore, the nature and end of *principatus* and indeed of the commonwealth was now changed. For it now became incumbent on Christian commonwealths and rulers to pursue an end which is *not* that of secular authority and commonwealths as such. The supreme end of the Christian commonwealth is therefore *not* temporal, external, this-worldly, or secular but spiritual, contrary to the carefully wrought distinctions which the Jesuits' own theology and their confrontation with reason of state had necessitated.

Suárez for his part expressly acknowledged in connection with the commonwealth's right to depose its ruler for tyranny that the rights of Christian commonwealths are here more restricted than those of pagans. He may have meant merely that secular authority among Christians is subject to an additional condition, but is not different in character from that of a pagan commonwealth;<sup>118</sup> the commonwealth is after all free to impose what conditions it pleases on its rulers, within reason. But on his own argument, a commonwealth of Christians was not in fact free to dispense with this condition of subjection to the authority of the Church, which was a necessary consequence of such a commonwealth being 'in' the Church. And like Bellarmine and Valentia, he insisted that it is not only the person of Christian princes, but also their *potestas* that is subject to ecclesiastical authority.<sup>119</sup> This must mean that the nature of the *potestas* itself changes where the commonwealth professes Christianity.

<sup>116</sup> E.g. *De potestate Summi Pontificis*, ch. xvi, p. 167; *De Romano Pontifice*, bk v, ch. vii (p. 533).

<sup>117</sup> *De Romano Pontifice*, pp. 533–4. <sup>118</sup> See p. 287.

<sup>119</sup> Suárez, *Defensio fidei*, III.21.2; III.22, chapter heading: 'Reges Christianos non solum quoad personas, sed etiam quoad Regiam potestatem . . . potestati Pontificis subiici'; Valentia, *Commentarii*, vol. III, disp. 1, qu. XII, pt 2 (p. 500B–C): 'Cum [Gregory of Nazianzen] dicit, Principes quoque esse potestati Ecclesiae subiectos . . . non enim solum significare vult, eos esse subiectos Ecclesiasticae potestati ut sunt fideles . . . (hoc enim per se notum erat . . .), sed significat esse etiam subiectos Ecclesiasticae potestati tanquam Principes, atque adeo secundum politicam ipsorum potestatem.'

But this once again undermined the distinction between temporal and spiritual *matters*, and the supremacy of each *potestas* and *respublica* in its own sphere. Barclay therefore had some justification for complaining that 'whatever is taken away from the pope by the denial of a direct *potestas*, is restored to him piece by piece by this oblique and indirect manner of governing'.<sup>120</sup> However, Barclay himself needed the distinction between temporal and spiritual authority, in order to grant the papacy its due pre-eminence within the Church, without making princes and commonwealths politically subject to it. And given that the Venetian state-theologians did not deny outright the spiritual authority of the papacy over the Venetian republic or any other, this was their position too.<sup>121</sup> In other words, Catholic opponents and proponents of the *potestas indirecta* could both endorse the validity of the spiritual/temporal distinction until it was called on to do any work, at which point it became valueless. Hobbes of course had no such problem.

<sup>120</sup> Barclay, *De potestate Papae*, ch. v, p. 43; to the same effect, Hobbes, *Leviathan*, ch. 42, p. 378. Cf. Costello, *The Political Philosophy of Luis de Molina SJ*, p. 94: 'It is ironic that Molina's reasoning on indirect power reached in practice the same conclusions as the rival theory of direct power.'

<sup>121</sup> Bouwsma, *Venice and the Defence of Republican Liberty*, ch. vii.

## Conclusion

By the early seventeenth century, the Society of Jesus had thus come to occupy a most peculiar status in the public world. It had numerous and powerful friends and patrons, but also many bitter and vociferous enemies. The latter comprised not only 'heretics', whose hostility Jesuits could reckon a badge of honour, but also Catholics who in most respects were orthodox enough. The enmity the Society aroused cannot be ascribed principally to its outstanding role in the Counter-Reformation. It derived largely from the actual political engagement of the Society, and the suspicion of some deep political strategy which its enemies discerned in everything that Jesuits did.

This book has attempted to delineate what Jesuits in fact taught and thought about true political doctrine and right political practice. What emerged was of course not a comprehensive political doctrine to which Jesuits were required to subscribe as a condition of membership, as if the Society of Jesus was some particularly doctrinaire political party. Indeed, the embattled state of the Society absolutely precluded an exclusively Jesuit doctrine on anything, and demanded the use of *loci communes* with maximal appeal. As often as not, moreover, Jesuits simply taught what was conventional in their current line of academic work and avoided controversy. All the same, much of what they wrote on politics was not merely contingently related to the activities and beliefs of the Society, and it was rarely merely the expression of some individual Jesuit's point of view. The Society's ideals of uniformity and solidarity, the requirements of collective self-defence, the occasional decisions of superiors general and general congregations, the habit of mutual citation and the working of a common mentality all contributed to an overall homogeneity of thought, even though there was rarely any concertation of efforts. The constitutive beliefs of the Society regarding good order and the righteous life in particular exercised a pervasive regulative function over the political thought of its members. So, despite the variety of genres and contexts of their writings, and their varying degrees

of proximity to or remoteness from immediately practical concerns, we find an identifiable conception of the polity at work.

Thus Jesuits assigned to the commonwealth the custodianship of a common good which encompassed defence, the maintenance of public order, justice in the sense of due process of law for the protection of persons and property and an equality of opportunity heavily qualified by considerations of 'degree', a general concern for the welfare of the subjects, care of their morality, and the protection and advancement of *pietas* and *religio*. The indispensable precondition for all this was relationships of command and obedience, and *principatus* as their key-stone. Jesuits were even prepared, as we have seen, to travel some considerable distance with reason of state, in order to allow princes to safeguard their position.

Stated in such highly general terms, these orienting beliefs were uncontroversial. They were indeed definitive of the political mentality of early modern Europe. Even the conviction that all these 'ends' of the polity were best served by a monarchical and hierarchical order was recognisably a trans-cultural and trans-temporal commonplace, although the reluctance to entertain limitations on the *princeps legibus solutus* was more marked at this time than previously. The Society's enemies were not for the most part proponents of ideals of civic liberty and limited government, to whom such views would be objectionable. On the contrary, they often protested that the teachings of many Jesuits did not insist enough on the rights of princes and the duties of subjects. It was rather the Society's unflinching advocacy of a particularly uncompromising view of papal authority that earned it undying enmity and obloquy. We have seen the pernicious political as well as religious and moral consequences that Jesuits thought heresy and religious division would infallibly produce and their rooted conviction that a judge of controversies was the *sine qua non* of orthodoxy and unity. There was little room in their view of religion for *adiaphora*, matters on which Christians could safely afford to differ, and they were only too likely to regard their opponents as heretics.

It was, however, one of the more liberal academic and polemical conventions of the day that those who are to do battle must know their enemy. It was obvious to the intellectually discerning, regardless of their denominational allegiance or their general attitude to the Society, that the ranks of past and present Jesuits included a very substantial number of writers of considerable and not infrequently outstandinging talents. Both Filmer and Hobbes, for example, took it for granted that they would have to take on Jesuit theologians and controversialists, and that their audiences would be familiar with them. There was good reason for both assumptions. In a

debate in the English Parliament of 1628 it was disputed which side had correctly interpreted Suárez on taxation, and could therefore claim him as an authority. The fact that one of Suárez's works had been burnt by the public executioner in England (as well as in France) by no means compromised his enormous intellectual stature, any more than the fact that Molina's work on grace and predestination was the subject of violent attacks by Dominicans as well as Protestants compromised his. According to Hobbes's admired friend John Selden, 'the Jesuits and the lawyers of France and the Low Country men have engrossed all learning' and 'Popish books teach and inform what we know.'<sup>1</sup>

Jesuit writings thus could not be ignored even when their tendency or content was thought deplorable. But it could not be said that the whole tendency and content of Jesuit theology, casuistry, and devotion *was* deplorable. And if Jesuits drew contentious *political* inferences from what were often agreed premises, these inferences were frequently no less a source of disagreement among Catholics or Protestants themselves than between them. The range of options in various Jesuit works, moreover, made selective appropriation possible. And what was regarded as deeply subversive by some was welcomed by others. Persons's *Conference* was reprinted in England in 1648, 1655, and 1679; Locke had a copy. An edition of Suárez's *De legibus* was published in London in 1679. The more abstract the Jesuit treatment of a topic, the more readily it could be appropriated. Often silently: the idea of intellectual copyright had no place whatever in this context. By parity of reasoning it is often impossible to discern whether an author had borrowed from a specifically Jesuit source, even when his thought exhibits close parallels with Jesuit authors. Hobbes identified only Bellarmine as an opponent upon whom he had meditated, Locke cited no scholastic source apart from Hooker, and no Catholic apart from William Barclay, and Rousseau named only modern natural lawyers. By the seventeenth century, Jesuits were the main but obviously by no means the only representatives of the continuing tradition of scholastic theology, and whether some author had gone to them or directly *ad fontes* is often impossible to say. The boundaries between 'scholastic' and other approaches (notably the 'humanist' approach) to *doctrina civilis* had by then become entirely blurred in any event. Indeed methodical investigation of anything – and by the later sixteenth century 'method' was a watchword – was coming to resemble informal versions of scholasticism. Conversely, when scholastically trained Jesuits wrote mirrors of princes or political *Streitschriften*,

<sup>1</sup> Sommerville, *Politics and Ideology in England 1603–1640*, pp. 77–8, 59, 67.

they as often as not conformed to current canons of rhetoric, whatever the *fons et origo* of their thinking might have been. Mariana and Persons could say much the same as Richard Hooker without citing a single of the scholastic authorities which he delighted in parading. Conversely, if the adherents of the Reformation had once been tempted by an (ostensibly) purely biblical mode of political argument, they had long since abandoned even the pretence. As Quentin Skinner pointed out long ago, Huguenot Monarchomachs not only borrowed from, for example, Bartolus, but even cited him explicitly as an authority.

It is relatively easy to see which of the doctrines and approaches that had prominent Jesuit sponsors were *not* absorbed into the mainstream of academic and polemical discourse. Tyrannicide was one, although its subsequent history is unclear to me; J. S. Mill regarded it as a perfectly arguable doctrine, and all that any Catholic has (to my knowledge) ever deplored about the July 1944 attempt on Hitler's life was that it did not succeed. The papal *potestas indirecta*, without ever being formally rescinded, became one of those doctrines of which the less said the better. Protestants adopted the method and much of the substance of the casuistry (or 'cases of conscience') they so often deplored, but not the doctrine of equivocation. The virtue of prudence, already compromised by Jesuit casuistry, seems to have been submerged by the attractions of the idea that political practice can somehow be deduced or inferred from first principles. Hobbes mentioned prudence only to make derogatory comments about those who claimed it for themselves. Harrington already reduced it to a method, long before the various positivisms of the nineteenth century tried to replace it by 'science'. As for Jesuit reason of state, it seems to have been absorbed into the somewhat sanitised understanding of what is legitimate in the pursuit of 'interests of state' (later 'national interest') that became a commonplace of European political thought.

Paradoxically, what became so much part of the intellectual furniture of European political thought that a specifically Jesuit provenance is often almost impossible to establish conclusively was the least practice-oriented part of Jesuit political thinking, its most unambiguously 'scholastic' part. Thomist and conciliarist theories of *potestas saecularis* (or *imperium, principatus*, etc.) were by then a component of the ordinary university syllabus. Here was an account of the polity which depended little on denominational religious doctrines. In fact, except where the demands of orthodoxy and orthopraxis supervened, it did not depend on revelation at all: in the terminology of the time it was an account of the polity grounded in reason and nature. It was therefore relatively immune to inter-confessional disputes.

In the conceptual equipment of a later age, it was a theory of 'popular sovereignty'. The term is anachronistic, since Jesuits rejected any political initiatives emanating from the people, and only regarded 'the people' as an agent of any kind in virtue of personation or representation; without it a people is merely a multitude, heap, or agglomeration and thus incapable of agency. And one would look in vain in any Jesuit work for any hint of the idea that the will of the people is the will of God, or that the will of the people is an independent criterion of what is right, let alone an over-riding criterion. Equally, in so far as such writings were in Latin, as they often were, 'sovereignty' had to be rendered by terms which made it less distinctively an early modern concept. Nevertheless the idea of 'the people' as the proximate source of all legitimate political authority was here prominently displayed.

The account put forward by Jesuit theologians, and echoed in more informal fashion by Jesuit rhetoricians and polemical writers, occupies an intermediate position between what they inherited from medieval, Parisian, and Salamancan sources, and what became characteristic of 'modern' natural rights thinkers. It is thus all too easily misinterpreted, and I have tried to give a more accurate reading. Like the former and unlike the latter, it was not in any important respect a 'contractarian' account of authority (except in Suárez) and it neither postulated a 'state of nature', nor did it explain the creation of political authority out of rights and authority possessed naturally by pre-civil individuals. And although it spoke freely of natural rights, it by no means made them the criterion for evaluating the legitimacy of a state or government. Moreover, it regarded the commonwealth as equally a civil and a religious collectivity.

According to this account, there is a vital distinction to be made between the explanation and justification of secular authority as such, and of the authority of any particular ruler or regime. The cause, origin, or end of secular authority as such is the necessary requirements of communal life: no human collectivity is viable without some authority and least of all the complex and inherently fissiparous *societas perfecta*, the 'commonwealth'. More precisely, political authority comprises two *potestates*: direction and co-ordination, the *potestas directiva* which does not presuppose sin and vice but merely differences of aptitude and purpose, and the *potestas coerciva*, which does presuppose sin. Both, however, entail relationships of super- and sub-ordination. Jesuits therefore stressed hierarchy: obedience and duties where subjects were concerned, and command and rights when it came to rulers, the presumption in doubtful cases being always in favour of obedience to superiors. Political authority in this generic sense is coeval with civil



society, and is not as such a product of choice, but a presupposition, natural entailment, and categorical imperative of civil life. It is not the product of the surrender by individuals of their natural liberty, because natural liberty is not incompatible with subordination as such, but only with servile subordination, slavery. And it is not the result of a transfer of natural rights by individuals, since they lack the relevant rights which compose political *potestas*, namely the right to fight wars, to legislate, command, adjudicate, punish, and tax: no one can give what they do not have.

However, although there can be no civil society without civil authority, no individual or group is designated by nature or God as its natural owner or holder, and no particular form of regime or order of laws and government is either ordained by God or unconditionally demanded by the natural order of things. Here of course Jesuits 'wobbled' somewhat, since they had little doubt that the monarchical form of government was more original, efficient and more congruent with the natural order than any other. The principle, however, was clear: any legitimate regime or political office, and *a fortiori* any individual's occupancy of a position of authority, is the product not of nature but of convention: these depend on the decision, will, and consent of a civil community. Since political authority does not naturally inhere in any individual or group, it can only be the commonwealth as a whole that is the natural bearer of political *potestas*. But although the commonwealth owns political authority, it cannot itself exercise it; Jesuits could no more conceive of an orderly acephalous community than their medieval sources or their contemporaries. The commonwealth is therefore obliged to transfer or delegate its authority to some regime or office. But it is for the commonwealth itself to decide the terms and conditions of the transfer, and hence the form of government, the determination of who should be office-holders, and the scope of the office-holders' authority. This transfer or delegation was construed in various ways. Some Jesuits described it as a pact, treaty, bargain, or covenant, even an 'original' covenant; others denied that any such covenant had ever taken place. Nor did Jesuits agree about whether the transfer or conveyance of authority to a specific regime could be irrevocable, or how much power a people or community might legitimately surrender. But it was clear that what was involved was a determinate historical act or sequence of actions for every civil society, and that the terms of the conveyance could be read off in every case from the custom and practice of the commonwealth in question. It was also clear that what preceded the establishment of any regime was not some condition of natural liberty, some 'state of nature', but merely an as yet formless community with an already existing but as yet formless authority. Even if Thomists

had thought of any 'state of nature', which they had not, an un- or pre-social condition would be in every respect *unnatural*. The humanist trope of solitary individuals or families living dispersed, nomadic, and anarchic lives until reduced to civility was normally safely insulated from scholastic accounts. On occasion it put in an appearance, without however doing any real work.

This account of the generation of legitimate *potestates* did not cohere particularly well with the Aristotelian generation of the polity out of lesser and imperfect forms of association which Jesuits also endorsed, or with the brute realities of how regimes had actually been established which they freely acknowledged. And it seems to have been only Suárez who saw the generation of civil society itself as presupposing for its legitimacy the voluntary consent or agreement of *individuals*, or at least heads of families, to incorporate themselves in a mystical body. However, consent did not have to take the form of a single collective act: it could be cumulative and successive, over time (as Suárez put it). But once established, the terms of civil association could not be altered unilaterally by either the commonwealth or its ruler(s).

In any order or body, however, the members are only answerable upwards (so to speak) for the performance of their duties, but not downwards or to their equals. Superiors could therefore only be compelled to do their duty by still higher superiors. But in any strict hierarchy there is one office-holder who has no human superior. This could be regarded (as Calvin regarded it) as a decisive objection to strict hierarchy as an ordering principle. Or it could be seen as merely the price to be paid for the superior efficacy of hierarchy in enforcing the duties of all lesser superiors; there being no human arrangement without its flaws and drawbacks. It was pre-ordained that Jesuits would take the latter view, even outside the context of papal monarchy, which was in any event grounded in divine decree and not in pragmatic considerations. For them, equality never produced order, and therefore there was no alternative to a hierarchy terminating in a single hierarch, who could, however, be not a natural but merely, and less effectively, a 'fictitious' head.

All the same, the well-being of the members of any body depends upon the head. Just as a virtuous and prudent prince is a source of benefit to the whole body politic, so a vicious or inept prince can be its poison or undoing. All forms of authority had therefore to be subject to rules of various kinds specifying what rulers or magistrates were to do or refrain from doing. Despotism could thus never be legitimate, since according to the natural order no subject was a slave, that is, simply the animate property

of a *dominus* with unrestricted rights over him or her. The legitimate and natural (or legitimate because natural) *amor sui* of individuals, and the fact that they had rights which rulers were obliged to respect, not least the natural right of self-preservation, and more circumstantial rights to property and due process, precluded servitude except as a punishment. The logic of the Jesuits' fundamental orienting ideas therefore demanded rulers who were as tightly constricted as their subjects by natural, divine and (in a commonwealth of Christians) ecclesiastical laws and, other things being equal, even by civil laws, at least as regarded their directive force. But for Jesuits experience and philosophy alike taught that laws without an agency to enforce them are vapid and ineffectual. How then could laws be enforced upon rulers?

The *politiques* (and paradigmatically Bodin), whom Jesuits affected to regard as dangerous enemies of both true religion and sound political practice, upheld 'sovereignty', which at that time amounted mainly to the case for a monarchy not subject to *institutional* restraints, and for the view of law as essentially the prince's command. But Jesuits too favoured monarchy almost to a man and they, too, interpreted positive law as the will of the ruler. 'Will' did not here mean a prince's arbitrary *sic volo, sic iubeo, stat pro ratione voluntas*, but a declaratory will which binds because of whose will it is, because at some point there must be an end to deliberation, and a decision. A subject's duty was normally to obey, and to presume in favour of the rightness of the ruler's will and command in doubtful cases, and so what was ordinarily decisive was simply the authoritative declaration of princely will. Such a will (whether declared in commands or as positive law) had of course to respect natural law, but the decisive point for Jesuits here was that the terms of natural law were so general that it could not serve as a rule of conduct without more precise specification. Such specification was not a matter of demonstrative logical inference, but demanded authoritative decisions. Much of statecraft, moreover, could not take the form of making laws or adjudicating: it was policy. The prince is therefore necessarily *legibus solutus* in some important respects; he cannot be bound by his own laws, since no one can be bound by their own will.

This account, however, raised a speculative question which was also fraught with potential practical consequences. What could legitimately be done, and by whom, if an incumbent ruler behaved tyrannically, or if there was the prospect of the succession of a tyrant, monster, imbecile, or (in some respects an equally appalling prospect) a heretic? The critical consideration was that logically rulers could not be judged or punished by their subjects, since judging and punishing are the acts of a superior. The commonwealth

was in principle the ruler's superior, but in a true monarchy its superiority could not be given institutional expression. If *summa potestas* was lodged in an assembly representing the whole commonwealth to which the ruler was subject, as Mariana said was the case in Spain, this proved that the regime was not monarchical, whereas true monarchy was the Jesuits' preferred form of government. It was as difficult for them as for Bodin or later Hobbes to envisage how such an assembly and a prince (in any real sense) could be related without creating a source of disorder at the very heart, or rather head, of the polity. An efficient tyrant would in any event prevent any assembly capable of judging him from ever meeting.

There were scholastic authorities for the view that if a ruler's tyranny amounted to waging war against the whole commonwealth, then the commonwealth, any of its members, or a friendly foreign power had authority to defend the commonwealth, *vim vi repellere*. It had also been argued that blatant tyranny entailed loss of authority, and therefore those acting against such a tyrant were no longer his subjects. Jesuit theologians all accepted the existence of such a reserve power in the commonwealth, however reluctantly. The critical issue was how a verdict of tyranny might be reached and sentence executed, while at the same time maintaining good order, due obedience, and due process of justice. But whatever the tyranny, be it by defect of title or by exercise, tyrannicide might be legitimate as a last resort. Jesuits were as divided on its permissibility as their contemporaries and all their authorities, ancient, biblical, scholastic, and humanist. Some of them introduced the papacy as the competent judge of whether intolerable tyranny existed; others did not.

The Jesuit theologians' treatments of these issues of high political theory were not designed to provide philosophical ammunition for some overall political strategy of the Society. Nevertheless specifically Jesuit priorities and considerations again regulated some aspects of the articulation of these theories. For despite their theological principle that secular and spiritual authority had independent legitimations and jurisdictions, there were issues, and those of the highest importance, where the distinction proved impossible to maintain. Thus one instance where some Jesuits allowed that tyrannicide might be legitimate and others did not, was in case of a heretical ruler, excommunicated and declared deposed by a papal sentence. Tyrannicide was only one, and the most extreme, of several possible means of executing a papal sentence of deposition, and deposition was only one possible, and highly unusual, punishment for heresy, not an automatic consequence of excommunication. The Society's enemies however habitually ran together excommunication, deposition, and tyrannicide, and represented

facilitating the murder of rulers objectionable to the papacy or the Society as the real reason why Jesuits upheld the legitimacy of tyrannicide, and even (illogically) the supremacy of commonwealths over kings. In fact Jesuit theologians only discussed tyrannicide because it was a conventional topic in political theory, or when it had been made an issue by their enemies. And their account of authority in the commonwealth had as such nothing to do the authority of the papacy or the purposes of the Society.

Tyrannicide as a punishment for heresy (as opposed to a remedy for tyranny) was a particularly contentious inference from a doctrine which in itself was regarded as incontestable within the Society, namely the doctrine of the 'indirect' authority of the papacy in temporal matters. This doctrine, in turn, was an impeccably coherent inference from the fundamental beliefs of the Society about the nature of the Church and the requirements of human association. If the Church was a *respublica perfecta* embracing all true Christians, it could by definition recognise no superior and required the same *potestates* as any other commonwealth, including the subjection of all Christian subjects of the *respublica Christiana*, including Christian rulers, to its hierarchy and its hierarch. No Catholic denied that the Church had *spiritual* jurisdiction and was entitled to use *spiritual* punishments, culminating in excommunication, even of secular rulers or entire territories, although the wisdom of acting in this way in any particular instance was always contentious. But Jesuit theologians uniformly regarded it as a simple tenet of orthodox faith that one possible punishment for excommunicate rulers was deposition. Any sovereign (in this instance the Pope) has the right not only to judge but also to pass sentence. A person continuing to rule after a papal sentence of deposition automatically became a 'tyrant by defect of title', and tyrannicide *might* be warranted as a method of executing this sentence, where all other means had failed. This entire line of reasoning unsurprisingly had the approval of the papacy, but it was by no means only 'heretics' who objected to it. The papal *potestas indirecta* was the doctrine that most sharply divided Jesuits and their supporters from many Catholics, notably in France.

This dispute generated embarrassments and aporias for both sides. But it placed the Society in a particularly invidious position. As devoted adherents of monarchy and obedience, Jesuits found themselves cast in the role of enemies of kings and friends of sedition. This was plainly a travesty. But it was not only an occasional maverick in the Society who recognised tyrannicide as legitimate under certain circumstances, or who defended the 'indirect' authority of the papacy to declare secular rulers deposed. Superior General Aquaviva's ban on further discussion of such topics was *not* a repudiation

of previous teaching. It was merely damage limitation, it did not apply to some of the Society's members, and the banned doctrines were still prominent in Jesuit works which continued to circulate freely. To surrender both doctrines would have required the Society to renege on a conception of the Church and the papal primacy which was part of its *raison d'être*. On the other hand, to insist on the *potestas indirecta in temporalibus* contradicted that profound respect for secular authority which was a precondition for many of its own activities, and which accorded with its inclinations, its Thomism, and its practice. Bellarmine himself had proclaimed that the secular polity did not depend for its legitimacy on the existence of the Church, and that the Pope was not even *princeps orbis Christiani*, let alone *princeps mundi*. How was this to be squared with asserting that the Pope was sovereign over every ruler and every commonwealth when the preservation of faith and morals demanded it, and that he was the ultimate judge of what that preservation required? Here the 'natural' account of the polity proved impossible to sustain.

But for all that, the vast library of Jesuit writings contained much that was usable by all sorts of people. This is to say nothing of the indirect influence on manners and culture exercised by the Society by precept and, more importantly, by example, by its colleges, and by spiritual direction. And although the Society did not in the rest of the seventeenth century produce political thinkers comparable in stature to the race of giants it had hitherto nurtured, it never lacked members competent to routinise their charisma.

# Bibliography

## PRIMARY SOURCES

### DATES

The first date after each work cited is the date it was first published; place of publication, name of publisher, and date refer to the edition I have used in my text. Where ERL facsimiles are cited, these are the editions I have used. S.l. = *sine loco*, i.e. no place of publication given; n.p. = no publisher given.

Dates in brackets after the names of Jesuit authors are dates of birth, admission to the Society, and death, where known.

Acosta, José (Josephus) de (1539–1554–1600), *Historia natural y moral de las Indias*, 1590, Seville: J. de Leon

Allen, William, Cardinal, *An Apologie and True Declaration . . . of the Two English Colleges*, 1581, s.l., n.p.; running title: *An Apologie of the English Seminaries* (ERL 67)

*A True, Sincere and Modest Defence of the English Catholics*, 1584, reprinted with the *Execution of Justice in England*, by William Cecil, ed. Robert M. Kingdon, Ithaca: Cornell University Press, 1965

Alvarez, Emmanuel (1526–1546–1582), *De institutione grammatica libri tres*, 1595: Rome: Guilielmo Faccioti

*The Apologies of the Most Christian Kings of France and Navar, Henry III and Lewis XIII, As also of the Most Worthy Bishop of Paris, for the Fathers of the Society of Jesus*, 1611, s.l., n.p., Auctor P. Anthony Hoskins SJ (ERL 48)

Anon., *Articles pour proposer aux estatz et faire passer en loy fondamentale du Royaume*, 1588, s.l., n.p.

Anon., *Dialogue d'entre le Maheustre e le Manant*, 1594, s.l., n.p.

Anon., *Dialogue du Royaume*, 1589, Paris: Didier Millot

Anon., *Discours Merveilleux de la vie, actions et deportments de Catherine de Medici*, s.l., n.p., 1575

Anon., 'Eusebe Philadelphie Cosmopolite', *Le Reveille-Matin des François, et de leurs Voisins*, 'Edinburgh', 1574

Anon., *Mysteria Patrum Jesuitarum, in quibus agitur de Ignatii Loyolae ortu et Apotheosi; de Societatis dogmatibus circa obedientiam caecam, circa Papae*

- potestatem in regum et principum personas et status, fidem servandam*, etc. (Latin translation of *Les Mysteres des peres iesuites*, by G. Scoppius, 'Lampropoli: Robertum Liberum', 1633)
- Anon., *Le Tocsin contre les massacreurs et auteurs de Confusion en France*, 1577; Rheims: Jean Martin, 1579
- Aquaviva (or Acquaviva), Claudio (1543–1567, 4th General 1581–1615), *De felici progressu Societatis Iesu*, 1581, repr. in *Epistolae praepositorum Generalium Societatis Iesu*, Antwerp: J. Meursius, 1635
- Pro confessariis principum*, 1602, *Instructio XXI in Ordinationes Praepositorum Generalium*, Rome: Roman College, 1606
- Aquinas, St Thomas, *Summa theologiae*, vol. III: *Prima secundae*, n.p.p.: Barri-Ducis, 6th edn, 1870
- Argenti(us), Giovanni (Ioannes) (1561–1583–1626), *Apologeticus Pro Societate Iesu*, 1616, Cologne: J. Kinckius
- Auger, Emond (1530–1550–1591), *Catechisme et sommaire de la religion chrestienne*, 1563; 2nd edn 1564, repr. in F. J. Brand, *Die Katechismen des Edmundus Augerius SJ*, Freiburger Theologische Studien 20, Freiburg i. Breisgau: Herder, 1917; the Latin translation was E. Augerius, *Catechismus, id est catholica christianae iuventutis institutio*, unaltered 2nd edn, Paris: Sebastian Nivelles, 1569
- Le pedagogue d'armes*, 1568, Paris: Sebastien Nivelles
- Azor, Juan (1535–1559–1603), *Institutionum moralium tomi III*, 1601, vol. 1: Paris: M. Sonnius; vol. II: Lyons: Horace Caradon, 1607
- Azpilcueta, Martin de (Navarrus), *Enchiridion, sive Manuale confessariorum et poenitentium*, 1549
- Baile, Guillaume (1557–1577–1620), *Catechisme et abregé des controverses de nostre temps*, 1607, Paris: P. Chevallier
- Controversiarum catechismus seu epitome*, Cologne: Kinckius, 1627
- Barclay (Barclaius), William (Guillelmus), *De Potestate Papae, an et quatenus in reges et principes saeculares ius et imperium habet, Liber posthumus*, 1609, Pont à Mousson: F. du Bois and I. Garnich
- Bastida, Fernando de la (1571–?–1637), *Antidoto alle Velenose Considerationi di Fra Paolo di Venetia*, Rome: Bart. Zanetti, 1607
- Becanus (Bekan, Verbeeck, Van der Beck), Martin(us) (1561–1583–1624), *Opusculorum theologicorum tomi quattuor* (cited as *Opuscula*), 1610ff, Mainz: Joannes Albinus
- Disputatio de fide haereticis servanda*, 1608 (*Opuscula*, vol. II)
- Quaestiones miscellaneae de fide haereticis servanda, contra Batavum Calvinistam*; running title: *Quaestiones Batavae*, 1609 (*Opuscula*, vol. III)
- Duellum Martini Becani cum Guilielmo Tookero de primatu Regis Angliae*; running title: *Duellum de primatu regio*, 1609 (*Opuscula*, vol. III)
- Serenissimi Iacobi Angliae Regis Apologiae, et monitoriae praefationis . . . Refutatio*; running title: *De primatu Regis Angliae*, 1609 (*Opuscula*, vol. II)
- Refutatio Tortura Torti* (*Opuscula*, vol. II); transl. as *The Confutation of Tortura Torti: or, Against the King of Englands Chaplaine . . .*, 1610 (ERL 16)
- Examen plagae regiae*, 1610 (*Opuscula*, vol. III)



- Privilegia Calvinistarum*, 1612 (*Opuscula*, vol. III)  
*Controversia Anglicana de potestate pontificis et regis*, 1612, 2nd expanded edn, 1613, Mainz: J. Albinus  
*Dissidium Anglicanum de primatu regis*, 1612 (*Opuscula*, vol. III), translated as *The English Jarre or Disagreement amongst the Ministers of Great Brittain concerning the Kinges Supremacy*, 1612 (ERL 62)  
*Summa theologiae scholasticae*, 1612–13, Paris: Sebastien Chappelet, 1615; pt II, vol. III, Douay: Gerard Patte, 1632  
*De republica ecclesiastica libri quatuor*, Mainz: J. Albinus, 1618  
*Manuale controversiarum huius temporis*, 1625, Münster: Michael Dalius and Johannes Wolmar  
Bell, Thomas, *The Anatomie of Popish Tyrannie*, London, 1603, repr. Amsterdam: Theatrum Orbis Terrarum, 1975  
Bellarmine (Bellarminus, Bellarmino), Saint Robert (1542–1560–1621), *Auctarium Bellarminianum*, ed. Le Bachelet  
*Apologia Roberti . . . Bellarmini pro responsione sua ad librum, Jacobi Magnae Britanniae regis . . . Triplici nodo triplex cuneus*, Cologne: Ioannes Kinckes, 1610  
*Conciones habitae Lovanii ante annos circiter quadraginta*, 1614, Cologne: Henningius, 1626  
*Controverse Venetienne*, 1606, in *Auctarium Bellarminianum*, ed. Le Bachelet, ch. 87  
*Disputationes de controversiis Christianae fidei adversus huius temporis haereticos* (cited as *Controversiae* or *Controversies*), 3 vols., 1586, Ingolstadt: Sartorius  
*Tractatus de obedientia . . . caeca*, 1588, in *Auctarium Bellarminianum*, ed. Le Bachelet, ch. 23  
*De laicis*, *Controversia generalis* II, bk III, reprinted in *Roberti Bellarmini opera omnia, ex Editione Veneta*, ed. Justinus Fèvre, photomechanical repro., Frankfurt: Minerva, 1965, 12 vols., vol. II  
*De Romano pontifice militantis ecclesiae (or: De summo pontifice)*, vol. I, *Controversia. Generalis* III  
‘Franciscus Romulus’ [pseud.], *Responsio ad praecipua capita Apologiae . . . pro successione Henrici Navarreni in Francorum regnum*, 1591, Paris: Fani  
*Oratio in gymnasio Romano habita*, 1576, reprod. in *De controversiis*, 3rd edn, Paris: Tri-Adelphorum, 1608, vol. I, preface  
‘Hieratikon doron’, 1604–5, unpubl., in *Auctarium Bellarminianum*, ed. Le Bachelet, ch. 22  
*Responsio Cardinalis Bellarmini ad duos libros*, 1606, Mainz: B. Lippius and N. Stein; transl. as *Wollgegruendte verantwortung dess Hochwuerdigsten Fuesten . . . Roberti Ballarmini . . . zweyer schreiben/ so wider jetzt regierende Baepstliche H. Paulum V . . . aussgesprengt worden*, Munich: N. Henricus, 1607  
*Mattaei Torti . . . Responsio ad librum inscriptum, Triplici nodi, triplex cuneus, sive apologia pro iuramento fidelitatis*, 1608, 2nd edn, St Omer: n.p.  
*Recognitio librorum omnium*, 1608, Ingolstadt: Sartorius

- Responsio . . . ad rationes quibus persuadetur Archiduci Matthiae concessio libertatis religionis*, in *Auctarium Bellarminianum*, ed. Le Bachelet
- Tractatus de potestate summi pontificis in rebus temporalibus adversus Guilielmum Barclaium*, 1610, Cologne: B. Gualter, 1611
- De officio principis Christiani libri tres*, 1619, Cologne: B. Gualter
- [Belloy (or Beloy), Pierre de], *De l'Autorité du Roy et Crimes de Leze Maieste qui se commettent par Liges . . .*, 1587, s.l., n.p.
- Bèze, Théodore de, *Du Droit des Magistrats*, 1574, ed. R. M. Kingdon, Geneva: Droz, 1970
- Blyssens, Heinrich (1526–?–1586), *Defensio assertionum theologicarum de . . . ecclesia militante*, 1577, Ingolstadt: D. Sartorius
- Bodin, Jean, *Six livres de la Republique*, 1576; cited from facsimile reprint of Paris: Du Puys, 1583 edn, Aalen: Scientia, 1977
- Borja (Borgia), St Francisco (1510–1546, 3rd General 1565–72), *De ratione concionandi* (1550s), reproduced in Ribadeneira, *Vita F. Borgii* (transl. A. Schott SJ)
- The Practice of Christian Workes* 1620 (ERL 37)
- Botero, Giovanni (1544–1560–1580 (left SJ)–1617), *Della ragion di stato*, 1589, ed. L. Firpo, Turin: Unione Tipografico, 1948
- [Boucher, Jean], *Apologie pour Jehan Chastel, execute a Mort, et Pour les peres, et escolliers, de la Societé de Iesus, bannis du Royaume de France . . .*, par Fr. De Verone, n.p., s.l., 1595
- Brillmacher, Peter (1542–1558–1595), *Evidiotheca: Brillenkästlein*, 1593, Münster: Rassfet, 1609
- Busaeus, Ioannes (1547–1563–1611), *De statibus hominum*, Mainz: J. Albinus, 1613
- Caietanus (Gaetano, Cajetan), Thomas de Vio, *D. Thomae Aquinatis . . . primam secundae et secundam secundae Summae theologiae cum commentariis*, vol. XI, Rome: n.p., 1570, reprinted in J. Rocaberti, *Bibliotheca Pontificia*, vol. 19
- Calvin, Jean, *Institutio religionis Christianae* (1559 Latin version), ed. A. Tholuck, 2 vols., Edinburgh: T. and T. Clark, 1874
- Campion, Edmund (1540–1573–1581), *Rationes Decem*, 1580, J. H. P. (ed.), London: Manresa Press, 1914, German transl. in C. Vetter, *Schraeckengast*, 1599; Engl. transl. *Campion Englished*, 1632 (ERL 71)
- Canisius, Peter (1521–1543–1597), *Catechismi Germanici*, in Friedrich Streicher (ed.), *Petrus Canisius, Catechismi Latini et Germanici*, vol. I.II (= Societatis Iesu Selecti Scriptores), vol. II, Munich: Sales, 1933
- Catechisme conteynyng all the partes of the Christian and Catholique Fayth*, Douai: J. Bogardumi, 1589 (ERL 32)
- Castro, Afonso (Alphonsus) à, *De iusta haereticorum punitione libri tres*, 1547, repr. in *Opera omnia*, Paris: Somnius, 1571
- Cecil, William Baron Burghleigh, *The Execution of Justice in England* (1583), ed. Robert M. Kingdon, Ithaca, N.Y.: Cornell University Press, 1985 (in one volume with William Allen, *A True, Sincere and Modest Defence*, cited above)
- Christianorum Galliae et Navarrae Regum Henrici IV et Ludovici XIII apologiae* (transl. by J. Gretser), 1610; English translation: *The Apologies of the Most*

- Christian Kinges of France and Navarre, Henry III and Lewis XIII . . . for the Fathers of the Society of Iesus*, 1611 (ERL 48)
- Clarke, W., *A Reply unto a Certain Libel . . . by F. Parsons*, 1603 (ERL 115)
- Comitoli, Paolo (1554–?–1626), *Trattado Apologetico del Monitorio . . . di . . . Papa Paolo Quinto*, 1606, Bologna: Bellagamba
- Contzen, Adam (1571–1591–1635), *De Pace Germaniae libri duo*, 1616, Mainz: B. Gualter (later incorporated into *Politicorum libri decem*)
- Disceptatio de secretis Societatis Jesu*, 1617, Lyons: Claude Cayne
- Politicorum libri decem*, 1621, Mainz: J. Kinckius (no date)
- [Anon.] *Mysteria politica*, 1624
- [Anon.] *Admonitio ad Ludovicum XIII*, 1625
- Coster(us), Franciscus (Costere, Frans de) (1532–1552–1619), *Enchiridion controversiarum praecipuarum nostri temporis de religione*, 1585; Cologne: Birckmann, 1612
- Piarum et christianarum institutionum libri III*, 1581; later edns.: *Libellus sodalitatis: hoc est christianarum institutionum libri quinque*, Ingolstadt: D. Sartorius, 1588
- Coton (or Cotton), Pierre (1564–1589–1626), *Institution Catholique: Ou est declareé et confirmé la verite de la foy CONTRE LES HERESIES Et SUPERSTITIONS de ce temps . . .*, Paris: Cl. Chapelet, 1610
- Lettre declaratoire*; transl. as *Letter Declaratory of the Common Doctrine of the Fathers of the Society of Iesus*, in T. Owen, *Letter*, 1610
- Interior Occupation of the Soul*, 1618 (ERL 156)
- Decreta Congregationum Generalium Societatis Iesu*, Antwerp: Meursius, 1635
- Dury (Duraeus), John (?–?–?), *Confutatio responsionis Guilielmi Whitakeri . . . ad Rationes decem*, 1582; Ingolstadt: D. Sartorius, 1585
- [Ernhoffer, Sigismund (?–1562–1597)], *Proteus Lutheranus, Der Evangelische Wetterhahn: Das ist: Ungleiche Reden Martin Lutheri: Von den Fürnembsten Artickeln Christlicher Religion*, s.l., n.p., 1587
- Wahrhafft, Augentscheinliche und wohlgegründte Schutzschrift des gemehrten und verbesserten kleinen Catechismi D. Maritini Lutheri . . .*, 1587, Grätz: G. Widmanstetter
- Erster, Zweiter, Dritter Thail des Tractats*
- [Erstenberger, Andreas], *De Autonomia, dass ist, von der Freystellung mehrerley Religion und Glauben . . . durch . . . Herrn Franciskum Burghardum* [pseud. for Erstenberger], 1586, 2nd edn, Munich: Adam Berg, 1593
- Eudaemon-Ioannes, Andreas (1560–1581–1625), *Ad actionem proditoriam Edouardi Coqui Apologia pro Henrico Garneto*, running title: *Apologia pro Henrico Garneto*, 1610, Cologne: J. Kinckius
- Confutatio anti-Cotoni* (also *Anti-Cotoni Refutatio*, etc.), 1611, Mainz: Kinckius (sic)
- Parallelus torti ac tortoris eius . . .*, 1611, Cologne: J. Kinckius
- Favre, Pierre, *B. Petri Fabri Epistolae, memoriale et processus*, MHSJ, Madrid, 1914
- Filmer, Sir Robert, *Patriarcha*, in J. Sommerville (ed.), *Filmer: Patriarcha and Other Writings*, 1680, Cambridge: Cambridge University Press

- Fitzherbert, Thomas (1552–1613–1640), *A Defence of the Catholike Cause*, 1602 (ERL 146)  
*An Apology of T.F. in Defence of Himself and Other Catholykes, Falsely charged in a fayned conspiracy against her Maiesties person . . .*, 1602, s.l., n.p.  
*The First Part of a Treatise concerning Policy and Religion*, 1606, s.l., n.p. (ERL 175)  
*The Second Part of a Treatise concerning Policy and Religion*, 1610, s.l., n.p., 1610, republished 1615, Douay: John Heighham (ERL 175 and 180)  
*An sit utilitas in scelere, vel: De infelicitate principis Machiavelliani, contra Machiavellum et Politicos eius Sectatores*, 1610, Rome: Guilielmo Facciotti  
*A Discussion of the Answer of M. William Barlowe* (by R. Persons, edited and amplified by Fitzherbert), 1612 (ERL 227)  
*A Supplement to the Discussion of M. D. Barlowes Answer To The Judgment of a Catholike Englishman etc., Interrupted by the Death of the Author F. Robert Persons of the Society of Jesus . . .*, 1613, s.l., n.p. (ERL 228)  
*The Reply of Thomas Fitzherbert in Defence of . . . his Supplement . . . impugned by one falsely naming himself Roger Widdrington, in . . . Disputatio Theologica de Juramento Fidelitatis*, 1614, s.l., n.p. (ERL 160)
- Floyd, John (1572–1587–1649), *God and the King*, 1620
- Fonseca, Pedro (1528–1548–1599), *Institutionum dialecticarum libri octo*, 1564; Coimbra: Joannes Barrerius, 1575
- [Garnet, Henry] (1555–1575–1606), *An Apology against the Defence of Schisme* (1593), s.l., n.p. (ERL 167)
- Gentillet, Innocent, *Anti-Machiavel*; original title: *Discours sur les moyens de bien gouverner et maintenir en bonne paix un Royaume ou autre principauté . . . Contre Nicolas Machiavel Florentin*, 1576; cited from C. E. Rathé, ed., *Innocent Gentillet: Anti-Machiavel*, Geneva: Droz, 1968
- [Anon.] *Brieve Remonstrance à la noblesse de France, sur . . . la Declaration de Monsieur le duc d'Alençon*, 1576, 'Augenstein': n.p.
- Gibbons, John (1544–1578–1623) *Concertatio Ecclesiae Catholicae in Anglia . . . quorundam hominum doctrina et sanctitate illustrium renovata*, 1583, Trier: Edmund Hatotus; augmented second edn, Trier: Heinrich Bock, 1588
- Goldast, M. *Monarchiae sacri Romani Imperii*, vol. III, Frankfurt: N. Hoffmann, 1613
- Gordon, James (1541–1563–1620), *Controversiarum epitome*, 1612; transl. as *A Summary of Controversies*, 1618 (ERL 195)
- Goulart, Simon, *Memoires de l'estat de France sous Charles neufiesme*, 3 vols., 'Meidelbourg', n.p., 1576–8
- Gretser (Gretscher), Jacob (1561–1578–1625), *De modo agendi Jesuitarum cum pontificibus, praelatis, principibus, populo, juventute, et inter se mutuo*, 1600: Ingolstadt: Adam sartorius
- De jure et more prohibendi, expurgendi et abolendi . . . Libros haereticos*, 1603 (Opera omnia, vol. XIII)
- Considerationum ad theologos Venetos libri tres*, 1607 (Opera omnia, vol. VII)

- Basilikon Doron, sive Commentarius exegeticus in Serenissimi Magnae Britanniae Regis Praefationem Monitoriam; et in Apologiam pro juramento fidelitatis*, 1610 (*Opera omnia*, vol. vii)
- Vespertilio Haeretico-politicus*, 1610 (*Opera omnia*, vol. xi)
- Contra Libellum Famosum . . . Monita Privata*, 1617/18; (*Opera omnia*, vol. xi)
- Opera omnia*, 17 vols., Regensburg: Peez and Bader, 1736ff
- Guicciardini, Francesco, *Dialogo del Regimento di Firenze*, in *Guicciardini: Opere*, ed. E. L. Scarono, Turin: UTET, 1970
- Ricordi*, ed. R. Spongano; translated as: *Maxims and Reflections of a Renaissance Statesman*, ed. N. Rubinstein, New York: Harper and Row, 1965
- Guivvara, Pedro (or Giwarra) (?-?-?), *Compendium Manualis Navarri*, Cologne: Mylius 1592
- Hay, John (1546–1566–1607), *Certaine Demandes Concerning the Christian Religion and Discipline, . . . proponed to the Ministers of the New Pretended Kirk of Scotland*, 1580, Paris: Th. Brumen (ERL 63)
- Henriquez, Henrique (1536–1552–1608), *Summa theologiae moralis*, part II, 1591–3, Salamanca: J. Fernandez, 1613
- Heiss (Heissius), Sebastian (1572–1591–1614), *Ad aphorismos doctrinae Jesuitarum . . . Declaratio apogetica*, Ingolstadt: D. Sartorius, 1609
- Hobbes, Thomas, *Thucydides, Eight Bookes of the Peloponnesian Warre*, 1629, London: Henry Seils, 1629
- Leviathan*, 1651, ed. R. Tuck, Cambridge: Cambridge University Press, 1991
- Ignatius, St, of Loyola, *see* Loyola
- James I/VI, *Triplici nodo, triplex cuneus*, 1606, originally anonymous; amended 2nd edn: *An Apologie for the Oath of Allegiance*, 1607, facsimile edition (with James's own manuscript corrections), Aldburgh: Archival Facsimiles Ltd, 1987; Latin version 1609, with *Praefatio monitoria*, L. Pereña *et al.* (eds.), *Defensio Fidei Catholicae*, CHP, vol. XIX, Appendix III, pp. 289–351
- Jouvancy, Joseph, *Historia Societatis Jesu pars quinta*, Rome: Plachas, 1710
- Keller, Jacob (1568–1589–1631), *Tyrannicidium oder lehr vom tyrannenmordt*, 1610 (Latin version); 1611, Munich: Nicolaus Henricus (German version)
- Láinez (or Laynez) Diego (Iacobus) (1512–founder, 2nd General 1558–1565), *Jacobi Láinez disputationes Tridentinae*, 1562, 2 vols., ed. H. Grisar, Regensburg, New York and Cincinnati: Rauch, 1886
- ‘Esortazioni del P. Láinez sull’ “Examen Constitutionum”’, 1559, ed. C. de Dalmases, *AHSJ*, vol. 35 (1966), pp. 133–86
- Laymann, Paul (1574–1594–1635), *Theologia moralis*, 1625, 3 vols., Munich: N. Henricus
- [Laymann, Paul and Forer, Lorenz], *Pacis compositio*, 1629, Dillingen: Sutor
- Ledesma, Diego (Jacopo), (1519–1557–1575) *Dottrina Christiana breve . . . a modo di dialogo . . .*, 1572, Engl. transl.: *Christian Doctrine*, 1579 (ERL 2)
- [Leiser, Polycarp], *Doctrinae Jesuitarum praecipua capita*, 1580, 2nd edn, 1589, Rupellae: Theophilus Regius

- Lessius, Leonard (1554–1572–1623), *De iustitia et iure ceteribusque virtutibus cardinalibus*, 1605, cited from Venice: B. Iunta, 1608 edn  
*Defensio Summi Pontifici adversus librum Regis, Barclay et Blacuellii*, 1611, Louvain: suppressed by Aquaviva after printing  
*Quae fides et religio sit capescenda*, 1609, transl. as *A Controversy . . . whether Every Man may be Saved in his Own Faith and Religion*, 1614 (ERL 106)  
*De providentia numinis et animi immortalitate: libri duo adversus atheos et politicos*, 1613, repr. in L. Lessius, *Opuscula*, Antwerp: Moretus, 1625; transl. as *Rawleigh his Ghost, . . . Written against Atheists and Politicians of these dayes*, 1631 (ERL 349)
- Lipsius, J., *Politiorum sive civilis doctrinae libri sex*, 1589. Book IV, chs. 2–4; English transl. *Six Bookes of Politickes or Civil Doctrine . . .*, 1594; facsimile repr., English Experience, vol. 287, Amsterdam and New York: Da Capo, 1970
- Litterae Annuae Provinciae Paraguariae Societatis Iesu*, 1626, 1627; Antwerp: Meursius, 1636
- Loarte, Gabriel (?–1552–1578), *Essercitio della vita Christiana*, 1575; translated as *The Exercise of a Christian Life*, 1579 (ERL 44)
- Locke, John, *Two Treatises of Government*, ed. P. Laslett, Cambridge: Cambridge University Press, 1967
- Loyola, Ignatius (1491–1556), *Constitutiones*, in *Monumenta Ignatiana*, vol. I, *MHSJ*, series 3, vol. 63, 1934  
*Exercitia spiritualia*, 1548, Paris: Goupy et Cie., 1865  
*Epistolae Ignatianae*, in *MHSJ: Letters of St Ignatius of Loyola*, sel. and transl. W. J. Young, Chicago: Loyola University Press, 1959  
*Examen cum declarationibus*, in *MHSJ: Monumenta Ignatiana*, series III, vol. 2 (Spanish), vol. 3 (Latin)  
*Sancti Ignatii de Loyola Societatis Jesu fundatoris epistolae et instructiones*, 12 vols., Madrid: Gabriel Lopez, 1903–11, cited as *EpIg*  
*Ignatius Loyola, Spiritual Exercises and Selected Works*, Ganss, George, Divakas Parmanada, R., Malatesta, Edward J., Palmen, Martin E., preface by John W. Padberg, New York: Paulist Press, 1991
- Mairhofer, Matthias (1549–1567–1641), *Predicantenspiegel*, 1600  
*Des newlich aussgegangeenen Predicantenspiegel Catholische schuttschrieff*, 1601, Ingolstadt: Eder
- Mariana, Juan de (1535–1554–1624), *De rege et regis institutione*, 1599, Toledo: Pedro Rodriguez; second edition, Mainz: Balthasar Lippius, 1605  
*Discours du Pere Jean Mariana Jesuit Espagnol des grands defauts qui sont en la forme de gouvernement des Jesuites*, 1605, s.l., n.p., 1625
- [Matthieu, or Mathieu, Claude] (?–?-?), *Declaration des causes*, 1585, in Simon Goulart, *Memoires de la Ligue*, Geneva: n.p. 1599, vol. I, pp. 61ff.
- Machiavelli, Niccolò, *Il principe e Discorsi*, ed. S. Bertelli, Milan: Feltrinelli, 7th edn, 1981
- Molina, Luis de (Molina) (1535–1553–1600), *De iustitia et iure*, 1593ff; vol. I (for tractatus I and II), Venice: Apud Societatem Minimam, 1602; vol. IV (for tractatus III, IV, and V), 1611, Venice: Apud Sessas  
*Concordia liberi arbitrii cum gratiae donis*, 1588

*Monita Secreta*, see *Secreta Monita*

*Monumenta Paedagogica Societatis Jesu*, ed. L. Lukacs, *MHSJ*, vols. 92 and 93, 1965

More, Thomas, *Utopia*, 1516, ed. G. M. Logan, Cambridge: Cambridge University Press, 1989

Nadal, Jerome (Geronimo) (1507–1545–1580), *Commentarii de instituto Societatis Iesu*, 1554, ed. Michael Nicolau, *MHSJ*, 90, 1962

Negrone, Gulio (Nigronius, Julius) (1553–?–1625), *Orazione del buon governo della repubblica*, in *Orationes XXV*, Douai: n.p., 1614

*Regulae Communes Societatis Jesu Commentariis . . . Illustratae*, Cologne: J. Kinchius, 1617

Ockham, William of, *Breviloquium de principatu tyrannico*, translated as *A Short Discourse on Tyrannical Government*, ed. A. S. McGrade, transl. John Kilcullen, Cambridge: Cambridge University Press, 1992

*Ordinationes praepositorum generalium*, Antwerp: Meursius, 1635

Orlandini, Nicoló (1554–1572–1606), *Historia Societatis Iesu*, 1615, Rome: B. Zannetti

Osiander, Lukas, *Warnung vor der Jesuiten Blutdurstigen Anschlägen und bösen Practicken*, Tübingen: Gruppenbach, 1585

[Owen, Thomas] (1557–1579–1618), *A Letter of a Catholike Man Beyond the Seas*, 1610 (ERL 138)

*The Copie of a Letter sent from Paris*, 1611 (ERL 143)

Parsons, Robert, see Persons, Robert

Pascal, Blaise, *Lettres . . . a un Provincial de ses Amis, et aux RR. PP Jésuites, sur la Morale et la Politique de ces Pères*, 1656, in *Oeuvres Complètes de Blaise Pascal*, ed. Ch. Lahure, Paris: Librairie de La Hachette, 1858, vol. 1

Pereira (Pereirius, Pererio, Pereyra, Perera, etc.), Benedetto (1535–1552–1610), *Commentariorum et disputationum in Genesim, tomi IV*, 1591; Cologne: A. Hierat, 1601

Perpinya, Pedro (Perpinianus, P.) (1530–1551–1566), *Aliquot epistolae*, ed. F. Vavassor, Paris: Veuve Cl. Thibournt, 1683

*Orationes duodeviginti*, 1587, Ingolstadt: Sartorius, 1588 or 1592 (identical edns)

Persons (Parsons; he himself never used that version), Robert (1546–1575–1610)

Anonymous or pseudonymous works, attributed

*The Copie of a Leter, Wryten by a Master of Arte of Cambridge to his friend in London*, n.p., 1584 (ERL 192); cited as *Leicester's Commonwealth. The Copy of a Letter Written by a Master of Art of Cambridge (1584) and Related Documents*, ed. Dwight C. Peck, Athens, Ohio: Ohio University Press, 1985

'Andreas Philopater', *Elizabethae Angliae Reginae haeresim Calvinianum propugnantis saevissimum in Catholicos sui regni Edictum cum responsione*, Rome: Zanetti, 1593, cited as *Philopater*

*Newes from Spayne and Holland, conteyning an Information of English Affayres in Spayne, with a Conference made Theruppon in Amsterdame of Holland*, 1593 (ERL 365)

- 'R. Doleman', *A Conference about the Next Succession*, 1594/5 (ERL 104)  
*A Temperate Ward-word*, 1599 (ERL 13)  
*The Warn-word to Sir Francis Hastings Wast-word*, 1602 (ERL 302)  
*An Answer to the Fifth part of Reportes . . . by Syr Edward Cooke . . .*, 1606 (ERL 245)  
*A Treatise Tending to Mitigation towards Catholicke Subjectes in England . . .*, By P. R., 1607 (ERL 340)  
*The Christian Directorie* (first published as *The Christian Exercise*, 1582), 1607 (ERL 41)  
*The Judgment of a Catholike English-men . . . Concerning . . . Triplici nodo . . .* (running title: *The Letter of a Catholicke touching the Oath of Allegiance*), 1608 (ERL 82); facsimile reprint published with James I/VI, *Apology*

# Works published under own name

- A quiet and sober Reckoning with M. Thomas Morton*, 1609 (ERL 259)  
*A Discussion of the Answer of M. William Barlowe . . . to . . . The Judgment of a Catholike Englishman* (foreword by T. Fitzherbert), 1612 (ERL 227)  
*A Jesuit's Memorial* (c. 1596), publ. by Edward Gee, 1688  
Piatti, Hieronimo (Platus, H.) (1545–1568–1591), *De bono status religiosi libri III*, 1590, expanded edition Augusta Trevirorum (i.e. Trier): H. Bock, 1593  
Polanco, Juan (1516–1541–1577), *Breve directorium ad confessarii ac confitentis munus rite obeundum*, 1555, Vienna: Collegium Caesarium SJ, 1560  
Pontanus, Jacobus (Jiri) (1542–1562–1626), *Progymnasmata Latinitatis*, 1588, Ingolstadt: Sartorius  
Possevino, Antonio (1534–1559–1611), *Il Soldato Christiano*, 1569, Rome: Valeri & Luigi Dorici  
*De sectariorum nostri temporis ATHEISMIS liber*, Cologne: Birckmann, 1586, reprod. in *Moscovia et alia Opera* (facsimile of 1587 Birckmann edn), Farnborough: Gregg International, 1970  
*Iudicium: De Nuae militis Galli scriptis, quae ille Discursos politicos et militares inscripsit. De Ioannis Bodini Methodo historiae: libris de Republica et Daemonomania . . . De Phil. Mornei Libro de Perfectione. de Nicolao Machiavello*, 1592, Rome: Vatican Press; repr. in *Bibliotheca selecta, qua agitur de ratione studiorum in historia, in disciplinis, in salute omnium procurandum*, Rome: Vatican Press, 1593; revised 2nd edn, Venice: Altobellus Salicatus, 1603  
*Aparatus sacer*, Venice: Societas Veneta, 1606  
[Rainolds, William], 'G. Guilelmo Rossaeus', *De iusta reipublicae Christianae auctoritate*, 1590, republ. 1592, Antwerp: Keerbergh  
Regnault, Valère (Reginaldus, V.) (1545–1573–1623), *De prudentia et ceteris in confessariis requisitis*, 1610, Lyons: Horatius Cardon  
*Praxis fori poenitentialis ad directionem confessarii*, 1611; Cologne: B. Gualter and P. Henningius, 1630  
Ribadeneira (Rivadeneira, Ribadeneyra, etc.), Pedro de (1527–1540–1618), *Obras Escogidas del Padre Pedro de Rivadeneira*, Bibliotheca de Autores Espanoles



- (cited as BAE), ed. D. Vincente de la Fuente, Madrid: Hernado y Compañía, 1952
- Historia ecclesiastica de scisma del Reyno in Inglaterra* (based on N. Sander, *De origine et progressu schismatis anglicani*, 1585), repro. in *Obras Escogidas* (BAE)
- Vita Francisci Borgiae*, 1598 Spanish, Latin 1598, Antwerp: Trognaesius, 1598
- Flos sanctorum* (Spanish), 1599
- Tratado de la Religion y Virtudes que deve tener el Prencipe Christiano, para gobernar y conservar sus Estados. Contra lo que N Machiavelo y los Politicos deste tiempo enseñan*, 1595; references in my text identified as SV are to the 2nd edn, Antwerp: Plantin-Moreto, 1597; or, if identified as BAE, to the 1605 edn reproduced in *Obras Escogidas del Padre Pedro de Rivadeneira*; references to the Latin version, identified as LV, are to *Princeps Christianus, Adversus Nicolaum Machiavellum, caeterosque huius temporis politicos*, transl. J. Orán, Mainz: Conrad Butgen, 1603
- De ratione gubernandi SJ* (also: *De ratione Instituti Societatis Jesu*) c. 1605, repr. Laurentius Carlus SJ edn, Rome: Civilitatis Catholicae, 1864
- Catalogus illustrium scriptorum Religionis Societatis Jesu*, Antwerp: Plantin; 2nd edn, 1613
- Vita Ignatii Loyola*, 1572; Spanish version, *Vida de Padre Ignacio Loyola*, 1583, reproduced in *Obras Escogidas*; *The Life of B. Father Ignatius*, transl. M. Walpole, 1616 (ERL 300)
- Richede, Louis (1544–1565–1625), *Treshumble Remonstrance*, 1598, Avignon: J. Bramereau, 1599
- Apologia Societatis Jesu in Gallia ad Christianissimum Galliae et Navarrae Regem Henricum IV*, 1599, transl. J. Gretser, in Gretser, *Opera omnia*, vol. XI, ch. xv
- Plainte Apologetique au Roy*, 1603, Bordeaux; n.p.
- Examen Categorique du libelle Anticoton*, 1613, Bordeaux: J. Mancan
- Ripalda, Jerónimo (Hieronymus) (1536–1551–1618), *Doctrina Cristiana* (or: *Catecismo*), 1591, cited from Juan M. Sanchez edn, Madrid: Alemana, 1909
- Rocaberti, Juan Tomás de (ed.), *Bibliotheca maxima Pontificia*, 21 vols., Rome: Giovanni Francesco Buagni, 1698
- Rodriguez, Alonso (1526–1545–1616), *Ejercicio de Perfeccion y virtudes Cristianas*, 1608, rev. edn, Seville: Matias Clavius, 1615
- Rosenbusch (Rosefius), Christoph (1538–1557–1623), *Antwort und Ehrenrettung auff die Ehrenrürig im Rechten Römischen Reich verbottnne Schmachschrift Lucae Osiandri, die intituliert/Warnung Vor der Jesuiter Blut durstigen Anschlaegen und boesen Practicken*, 1586, Ingolstadt: D. Sartorius
- Replica auff dess Calumnianten Lucae Osiandri Verantwortung wider die Jesuiter*, 1586, Ingolstadt: D. Sartorius
- Ruiz de Montoya, Antonio (1585–?–1652), *Conquista Espiritual. Hecho por los Religiosos de la Compañía de Jesus, en las Provincias del Paraguay, Parana, Uruguay y Tape*, Madrid: Imprenta del Reyno, 1639
- Sa (or Saa), Emmanuel (1530–1545–1596), *Aphorismi confessoriorum ex doctorum sententiis collecti . . .*, 1595, Cologne: Joannes Crithius; later edn Paris: n.p., n.d. (1600)

- Salas, Juan de (1553–1569–1612), *Tractatus de legibus in Iam Ilae S. Thomae*, 1611, Lyons: L. Durand
- Salmerón, Alonso (1515-founder-1585), *Oratio in Concilio Tridentino habita*, 1547, published in V. Switzer (ed.), *Diariorum, Actorum, Epistolarum, Tractatum nova collectio*, Goerres-Gesellschaft, vol. 12, Freiburg i. Breisgau: Herder, 1930–1
- Commentarii in omnes Epistolas*, 1598ff; vol. XIII, Cologne: Hierat and Gymnicus, 1604
- Commentarii in Evangelicam Historiam*, 12 vols., Cologne: Hierat and Gymnicus, 1612–15
- Samier, Henri (also Samerie, etc.) (?-?-?), *Acta tumultuum Gallicanorum*, ed. H. Hauser, *Revue Historique*, vols. 108 and 109
- Sanchez (Sanctius), Tomás (1550–1565–1610), *De sancto matrimonii sacramento disputationes*, 1602, Antwerp: Nutus & Joannes Meursius, 1614
- Opus morale in Praecepta Decalogi*, 2 vols., Madrid, 1613
- Sander(s), Nicholas, *De origine ac progressu schismatis anglicani libri tres*, 1585, ed. E. Rishron, Cologne; 2nd edn 1586 by Robert Persons; Ribadeneira's transl. and revision, 1588, 1610
- Santarelli, or Sanctarelli (Sanctarellius) Antonio (1569–?–1649), *Tractatus de Haeresi, Schismate, Apostasia, Sollicitatione in sacramento poenitentiae, et de Potestate Summi Pontificis in his delictis puniendis*, 1625, Rome: Haeres B. Zannetti; repr. In Rocaberti, *Biblioteca Pontificia*, vol. 4
- Sarpi, Paolo, *P. Pauli [Sarpi] Ordinis Servorum, considerationes* (1606), in M. Goldast, *Monarchiae sacri Romani Imperii*, vol. III
- Sarpi, Paolo, et al., *Theologorum Venetorum tractatio de interdicto Pauli V Pontificis . . .*, 1606, in M. Goldast, *Monarchiae sacri Romani Imperii*
- Scherer, Georg (1540–1559–1605), *Rettung der Jesuiten Unschuld wider die Gifftspinnen Lucam Osiander*, 1586, Ingolstadt: D. Sartorius
- Alle Schriften, Bücher und Tractätlein*, vols. I and II, 1599–1600; vol. II: Mähren: Kloster Bruck, 1600
- Scribani(us), Karel (Carolus) (1561–1580–1629), (Pseud./anagr. *Clarus Bonarscius*), *Amphitheatrum honoris*, 1606; Paleopoli Aduaticorum: Alexander Verheyden, 1606
- Iusti Lipsii defensio postuma*, 1608, Antwerp: Plantin-Moretus
- Orthodoxae fidei controversa*, 1609, Antwerp: Plantin-Moretus
- Superior religiosus: De prudenti ac religiosi gubernatione*, 1619, Antwerp: Mart. Nutius
- Politico-christianus* (subsequently *Politicus Christianus*), 1624, Antwerp: Mart. Nutius, 1626
- Secreta Monita*, also *Monita Secreta*, etc., [H. Zaharowski?] Cracow: 1614; *Secreta Monita SJ: The Secret Instructions of the Jesuits*, London: John Walthoes (bilingual edn), 1723
- Skarga, Piotr (1536–1568–1612), *Les Sermons politiques*, 1597, A. Berga, transl., Paris: Société Française d'Imprimerie et de Librairie, 1916

- Soarez, Cypriano (1524–?–1593), *De arte Rhetorica Libri tres ex Aristotele, Cicerone et Quintilian praecipue deprompti*, 1560, rev. 1568, Paris: Th. Brummen, 1573
- Soto, Domingo de, *De Natura et Gratia*, in *In Epistolas divi Pauli ad Romanos Commentarii*, Antwerp: Steelsius, 1550
- Commentarius in 4. Sententiarum* (reproduced in Rocaberti edn, *Bibliotheca maxima Pontificia*, vol. x)
- Southwell, Robert (1561–1578–1592), *An Humble Supplication to her Maiestie*, written 1591 (?), 1st published 1600 with false date 1595; ed. R. C. Bald, Cambridge: Cambridge University Press, 1953
- [Spee, Friedrich von] (1591–1610–1635), *Cautio Criminalis seu de processibus contra sagas*, 1632, German version, 1632; mod. German transl. J. R. Ritter (ed. and transl.), *Cautio Criminalis oder Rechtliches Bedenken wegen der Hexenprozesse*, Munich: Deutscher Taschenbuch Verlag, 1982
- Stapleton, Thomas, *An politici horum temporum in numero Christianorum sint habendi, Oratio . . . habita*, 1589, in *Opera omnia*, Paris: Fouet, vol. II, 1620
- Suárez, Francisco (1548–1564–1617), *De legibus*, 1613, Coimbra: Didacus Gomez de Loureyro; L. Pereña et al., eds., Madrid: Consejo Superior de Investigaciones Científicas, Corpus Hispanorum de Pace, vols. XI–XVII, 1971–81
- De opere sex dierum*, in *Commentarii et disputationes in Iam Ilae divi Thomae*, 1590, vol. I; Mainz: Hermann Birckmann, 1622
- Opus de virtute et statu religionis*, 2 vols., 1608, vol. I: Mainz: Birckmann, 1625; vol. II: Mainz, Mylius, Birckmann, 1610
- Defensio fidei Catholicae et Apostolicae adversus Anglicanae sectae errores, cum responsione ad Apologiam pro iuramento fidelitatis et Praefationem Monitoriam Sereni. Jacobi Angliae Regis*, 1613; bk III publ. as *Principatus Politicus*, bk VI as *De Iuramento Fidelitatis*, E. Elorduy and L. Pereña, eds., Madrid: Consejo Superior de Investigaciones Científicas, Corpus Hispanorum de Pace, vols. II and XIX, 1965 and 1978
- Opus de divina Gratia Dei seu de Deo Salvatore* (or *Tractatus de gratia Dei*), 1620; *Opera omnia*, ed. C. Berton, vol. VII, Paris: L. Vivès, 1857
- Tractatus de Religione Societatis Jesu*, 1626; in *Opera omnia*, ed. C. Berton, vol. XVI, Paris: L. Vivès, 1860
- Summa actorum facultatis theologiae Parisiensis contra Librum inscriptum Controversia Anglicana . . . Auctore Martino Becano Societatis Jesu*, 1613, London: Bonham Norton
- [John Sweet], [?] *Monsig.<sup>r</sup> fate voi, Or A Discovery of the Dalmatian Apostata, M. Antonius de Dominis . . .*, 1617 (ERL 48)
- Tanner, Adam (1572–1591–1632), *Defensio ecclesiasticae libertatis libri duo: Contra Venetae causae patronos, Joannem Marsilium et . . . Paulum Ventum Servitam*, 1607, Ingolstadt: Eder, Angermar
- Disputationum theologicarum libri IV*, vol. II, Ingolstadt: Eder, 1618
- Apologia pro Societate Jesu ex Boemiae Regno proscripta*, 1618, transl. as *Verantwortung Deren von der Societät Jesu, so auss dem Königreich Bohem . . . ohn billich verwiesen/ im Jahr 1618*, 1618, Vienna: Wolfgang Schumpff

- Toledo (Toletanus), Francisco de (1532–1558–1596), *In Summam Theologiae S. Th. Aquinatis Enarratio, ex autographo in Bibl. Coll. Rom.* (1560s?, unpubl.), 2 vols., ed. J. Paria SJ, Rome: Congregatio de Propaganda Fidei, 1869
- De instructione sacerdotum et peccatis mortalibus libri VIII* (subsequently *Summa casuum conscientiae*), 1599; Douai: Baltazar Beller, 1608; exp. ed. A. Vitorelli and M. Fornarius, ed. R. Gibbons, Antwerp: P. and I. Belleros, 1619
- Torquemada, Juan de (I. de Turrecremata), *Summa de potestate Papali*, bk II, repr. in Rocaberti, *Bibliotheca Maxima Pontificia*, vol. XIII
- Torsellino (Tursellinus), Orazio (Horatius) (1545–?–1599), *Epitomae Historiarum Libri X*, 1598, 1620, Lyons: J. Cardon and P. Cavellat
- Torres (Torrensis), Geronimo (Hieronymus) de (1527–1551–1611), *Confessio Augustiniana in libros IV distributa*, 1567, Dillingen: Sebaldu Mayer; 2nd expanded edn, Paris: M. Somnius, 1580
- Torres (Turrianus), Francisco de (1509–1566–1584), *De hierarchicis ordinationibus ministrorum ecclesiae catholicae, adversus schismaticas vocationes ministrorum et superintendentium . . . libri duo*, 1569, Dillingen: Sebaldu Mayer
- Adversus Magdeburgenses Centuriatores pro Canonibus Apostolorum et Epistolas Decretalibus Pontificum Apostolicorum libri quinque*, 1572, Florence: Bart. Sermartelli
- Torres, Juan de (?–?–?), *Philosophia moral de principes para su guvierno*, 1596; Burgos: Varesio, 1602
- Valentia (or Valencia), Gregorio de (1549–1565–1603), *Analysis fidei Catholicae, hoc est ratio methodica eam in universam fidem ex certis principiis probandi . . .*, 1585; reprinted in *De rebus fidei hoc tempore controversis libris*, 1591, Lyons: Heirs of G. Roville, and in Rocaberti, *Bibliotheca maxima Pontificia*, vol. XIII
- Commentarii theologici . . . in Iam Ilae S. Thomae*, 4 vols., 1591–8; vol. II, Ingolstadt: Sartorius, 1592; vol. III, Paris: Rolin Thierry and Pierre Chevalier, 1609
- Vazquez, Gabriel (1549–1569–1604), *Commentariorum ac disputationum in primam secundae S. Thomae Tomi Duo*, 1605; vol. II, Ingolstadt: Eder 1606; also Lyons: J. Pillehotte, 1620
- Veron, François (1547–1595–1620) (left SJ 1641), *Méthode de traiter des controverses*, 1615, repr. as *Methodus Veroniana*, Cologne: Kinckius, 1628
- Vetter, Conrad (often writing under pseudonym Conrad Andreae) (1548–1576–1622), *Feyerabend Aller Newevangelischen Sectenführer*, 1589
- Der unschuldigel/Demütigel/Wahrhafftigel Christliche . . . Luther*, Münster in Westphalen: Lambert Rossfeldt, 1606 (collected pamphlets from 1595 onwards)
- Der Lutherischen/Calvinischen/und anderen Sectischen Predicanten Schräckengast . . . , dess Ritterlichen Engellendischen Martyrers Edmundi Campiani . . . aller Welt bekandte Motiv und Ursachen* (translation, with martyrology, of *Rationes Decem*), 1599, Ingolstadt: Eder
- Zweyhundert Luther/ Das ist: Zweyhundert helle und sonneklare Proben dess Unschuldigen Luthers*, 1607, Ingolstadt: Eder

- Vitoria, Francesco, *Relectio de postestate civili*, 1528, in: A. Pagden and J. Lawrance (eds.), *Francesco Vitoria, Political Writings*, 1991
- [Walpole, Michael] (?-?-?), *M.C.P., A Briefe Admonition to all English Catholikes*, 1610, s.l., n.p. (ERL 159)
- Watson, W., *A Decacordon of Ten Quodlibetical Questions*, 1602, s.l., n.p.
- Widdrington, Roger, *Discussio discussionum decreti Magni Concilii Lateranis, adversus L.L.* [Leonard Lessius] *S.I. Theologum*, 1618, Augsburg: Libius

## SECONDARY SOURCES

- Abellán, José Luis, *Historia crítica del pensamiento español*, vol. II, Madrid: Espasa-Calpe, 1979
- Aldama, Antonio M. de, *The Constitutions of the Society of Jesus: The Formula of the Institute*, St Louis, Miss.: Institute of Jesuit Sources, 1990
- Alden, Daurel, *The Making of an Enterprise: The Society of Jesus in Portugal, its Empire and Beyond*, Stanford: Stanford University Press, 1996
- Armani, Alberto, *Città di Dio e Città de sole: Lo 'Stato' gesuita dei Guarani, 1609–1768*, Rome: Edizioni Studium, 1977
- Arnold, Franz Xavier, *Die Staatslehre des Kardinals Bellarmin*, Munich: Max Heber, 1934
- Astrain, Antonio, *Historia de la Compañía de Jesús en la Assistencia de España*, Madrid: Razon y Fe, 1902 ff. vol. III
- Baldino, A. Enzo, 'Botero et Lucinge: les racines de la Raison d'Etat', in Y. C. Zarka (ed.), *Raison et déraison d'état*
- Bangert, William, *A History of the Society of Jesus*, 2nd edn, St Louis, Miss.: Institute of Jesuit Sources, 1986
- Barbuto, Gennero Maria, 'Il "Principe di Bellarmino"', in R. de Maio, *Bellarmino e la Controriforma*
- Behringer, Wolfgang, *Witchcraft Persecutions in Bavaria: Popular Magic, Religious Zealotry and Reason of State in Early Modern Europe*, transl. J. C. Grayson and D. Lederer, Cambridge: Cambridge University Press, 1997
- Benzoni, G., 'I "teologi minori" del'Interdetto', *Archivo Veneto*, 1970
- Berga, André, *Pierre Skarga 1536–1612*, Paris: Société Française d'Imprimerie et de Librairie, 1916
- Bertrand, Dominique, *La politique de saint Ignace de Loyola: L'analyse sociale*, Paris: Aubier, 1966
- Bireley, Robert, *Maximilian von Bayern, Adam Contzen und die Gegenreformation in Deutschland, 1624–1635*, Göttingen: Vandenhoeck and Ruprecht, 1975
- The Counter-Reformation Prince: Anti-Machiavellianism and Catholic Statecraft in Early Modern Europe*, Chapel Hill: University of North Carolina Press, 1990
- Black, Antony, *Political Thought in Europe 1250–1450*, Cambridge: Cambridge University Press, 1992
- Blet, Pierre, 'Jésuits Gallicains au XVIIème Siècle?' *AHSJ*, 1960, pp. 55–84
- 'Les Fondements de l'Obéissance Ignatienne', *AHSJ*, 1956, pp. 514–37

- Bok, Sisella, *Lying: Moral Choice in Public and Private Life*, London: Quartet Books, 1978
- Bondi, Albano, 'La *Bibliotheca Selecta* di Antonio Possevino. Un progetto di egemonia culturale', in G. P. Brizzi (ed.), *La 'Ratio Studiorum'*, Rome: Bulzoni, 1981
- Bouwsma, William J., *Venice and the Defence of Republican Liberty*, Berkeley: University of California Press, 1968
- Brand, Friedrich J., *Die Katechismen des Edmundus Augerius SJ*, Freiburger Theologische Studien vol. 20, Herder: Freiburg i. Breisgau, 1917
- Brett, Annabel S., *Liberty, Right and Nature. Individual Rights in Later Scholastic Thought*, Cambridge: Cambridge University Press, 1997
- Brizzi, Gian P., D'Alessandro, A., and Del Fante, A. (eds.), *Università, Principe, Gesuiti: La politica farnesiana dell'istruzione a Parma e Piacenza*, Rome: Bulzoni, 1580
- Brodrick, James, *The Life and Work of Blessed Robert Francis Cardinal Bellarmine S.J., 1542–1621*, 2 vols., London: Burns Oates and Washbourne, 1928
- St Peter Canisius S.J., 1521–1597*, London: Sheed and Ward, 1935
- Brou, A., *Les Jésuites de la Légende*, vol. 1, Paris: Victor Petaux, 1906
- Brouwers, L., *Carolus Scribani S.J., 1561–1629*, Antwerp: Ruusbroec Genootschap, 1961
- Carolus Scribani*, Brussels: Archives et Bibliothèques de Belgique, Numéro Spécial 11, 1977
- Burke, Peter, 'Tacitism, Scepticism and Reason of State', in J. H. Burns and M. Goldie (eds.), *The Cambridge History of Political Thought, 1450–1700*, pp. 479–98
- Brucker, Joseph, *La Compagnie de Jésus: Esquisse de son Institut et de son Histoire (1521–1773)*, 2nd edn Paris: Beauchesne, 1919
- Burns, J. H. and Goldie, Mark (eds.), *The Cambridge History of Political Thought, 1450–1700*, Cambridge: Cambridge University Press, 1991
- Caraman, Philip, *Henry Garnet, 1555–1606, and the Gunpowder Plot*, London: Longmans, Green and Co., 1964
- Chanteur, Janine, 'L'Idée de Loi Naturelle dans la République', in H. Denzer (ed.), *Jean Bodin*
- Church, W. H., *Richelieu and the Reason of State*, Princeton, 1972
- Clancy, Thomas, *Papist Pamphleteers. The Allen-Persons Party and the Political Thought of the Counter-Reformation in England, 1572–1615*, Chicago: Loyola University Press, 1964
- Clarke, M. L., *Rhetoric at Rome*, rev. edn D. H. Berry, London: Routledge, 1996
- Codina Mir, Gabriel, *Aux sources de la pédagogie des Jésuites: Le Modus Parisiensis*, Rome: Institutum Historicum Societatis Jesu, 1968
- Compendium practicum juris Societatis Jesu*, 2nd edn, Rome: Gregorian University, 1986
- Costello, Frank Bartholemew, *The Political Philosophy of Luis de Molina S. J. (1535–1600)*, Rome: Biblioteca Instituti Historici Societatis Jesu, vol. 34 and Spokane: Gonzaga University Press, 1974

- Cozzi, G., 'Gesuiti e politica sul finire del 500', *Rivista Storica Italiana*, vol. 17, 1963, pp. 477-537
- Dainville, François de, *L'éducation des Jésuites, XVIe-XVIIIe siècles*, Paris: Editions de Minuit, 1978
- Dalmases, Candido de, *Ignatius of Loyola, Founder of the Jesuits*, St Louis, Miss.: Institute of Jesuit Sources, 1985
- Daniel-Rops, H., *The Catholic Reformation*, London: J. Dent and Sons, 1962
- De Maio, R., et al. eds., *Bellarmino e la controriforma*, Sora: Centro di Studi Sorani' Vincenzo Patriarca', 1990
- De Mattei, Ridolfo, *Il pensiero politico italiano nell'età della Contro-riforma*, 2 vols., Milan, Naples: Riccardo Riccardi Editore, 1982-4
- Denzer, Horst, *Jean Bodin*, Munich: C. H. Beck Verlag, 1973
- Denzinger, H. and Rahner, Karl (eds.), *Enchiridion Symbolorum*, 31st edn, Freiburg i. Breisgau: Herder, 1950
- Dillon, Anne, *The Construction of Martyrdom in the English Catholic Community, 1535-1693*, Aldershot: Ashgate, 2002
- Donnelly, J. P., 'Antonio Possevino and Jesuits of Jewish Ancestry', *AHSJ*, vol. 55, 1986, pp. 1-11
- Dreitzel, Horst, *Monarchiebegriff in der Fürstengesellschaft*, 2 vols., Cologne: Bohlau, 1991
- Dudik, B. (ed.), 'Correspondenz Kaisers Ferdinand II und seiner erlauchten Familie mit Pater Martin Becanus und Pater Wilhelm Lamormaini Kaiserlichen Beichtvätern SJ', *Archiv für Österreichische Geschichte*, vol. 54, pt II, 1867
- Duhr, Bernard, *Geschichte der Jesuiten in den Ländern deutscher Zunge im XVIIten Jhdt.*, Freiburg i. Breisgau: Herder, 1907
- Die Jesuiten an den deutschen Fürstenhöfen des 16.ten Jahrhunderts*, Freiburg i. Breisgau: Herder, 1901
- Jesuiten-Fabeln*, Freiburg i. Breisgau: Herder, 1891
- Dunn, John, *The Political Theory of John Locke*, Cambridge: Cambridge University Press, 1969
- Edwards, Francis, *Robert Persons: Biography of an Elizabethan Jesuit*, St Louis: Institute of Jesuit Sources, 1995
- Eguiluz, Federico, *Robert Persons el 'architraidor', su vida y su obra, 1546-1610*, Madrid: Española, 1990
- Evans, Robert J. W., *Rudolph II and his World: A Study in Intellectual History 1576-1612*, Oxford: Clarendon Press, 1973
- Evennett, H. Outram, *The Spirit of the Counter-Reformation*, ed. J. Bossy, Notre Dame, Ind.: University of Notre Dame Press, 1970
- Ferraro, Domenico, *Tradizione e ragione in Juan de Mariana*, Milan: Franco Angeli Libri, 1989
- Fessard, Gaston, *La Dialectique des Exercices Spirituels de St Ignace de Loyola*, Paris: Aubier, 1968
- Finnis, John, *Natural Law and Natural Rights*, Oxford: Clarendon Press, 1980
- Fouqueray, H., *Histoire de la Compagnie de Jésus en France*, Paris: Librairie Alphonse Picard et Fils, 1910

- Franklin, Julian H., *Jean Bodin and the Rise of Absolutist Theory*, Cambridge: Cambridge University Press, 1973
- Fraser, Antonia, *The Gunpowder Plot: Terror and Faith in 1605*, London: Weidenfeld and Nicholson, 1996
- Fumaroli, Marc, *L'âge de l'éloquence: Rhetorique et 'res literaria' de la Renaissance au seuil de l'époque classique*, Geneva: Droz, 1980
- Ganss, G. E. (ed.), *The Constitutions of the Society of Jesus*, St Louis, Miss.: Institute of Jesuit Sources, 1970
- Gregory, Brad S., *Salvation at Stake: Christian Martyrdom in Early Modern Europe*, Cambridge, Mass.: Harvard University Press, 2001
- Greenleaf, W. H., *Order, Empiricism and Politics*, London: Oxford University Press, 1964
- Guibert, J. de, *The Jesuits: Their Spiritual Doctrine and Practice*, transl. W. J. Young, ed. G. E. Ganss, Institute of Jesuit Sources, Chicago: Loyola University Press, 1964
- Hanke, Lewis, *Aristotle and the American Indians*, London: Hollis and Carter, 1959
- Heckel, Martin, 'Autonomia und Pacis Compositio: Der Augsburger Religionsfriede in der Deutung der Gegenreformation', *Zeitschrift für Rechtsgeschichte*, vol. 89, 1959
- Hengst, Karl, *Jesuiten an Universitäten und Jesuitenuniversitäten*, Paderborn: Ferdinand Schöningh, 1981
- Hicks, Leo (ed.), *Letters and Memorials of Fr. Robert Persons SJ*, London: Catholic Record Society, vol. 39, 1942
- Hilgers, J., *Der Index der Verbotenen Bücher*, Freiburg: Herder, 1904
- Holmes, Peter, *Resistance and Compromise*, Cambridge: Cambridge University Press, 1982
- Elizabethan Casuistry*, Thetford: Catholic Record Society, 1981
- Höpfel, Harro, *The Christian Polity of John Calvin*, Cambridge: Cambridge University Press, 1982
- 'Isms and Ideology', in N. K. O'Sullivan (ed.), *The Structure of Modern Ideology*, Aldershot: E. Elgar, 1989, pp. 1–26
- 'Fundamental Law and the Constitution in Sixteenth-century France', in R. Schnur (ed.), *Die Rolle der Juristen bei der Entstehung des Modernen Staates*, Berlin: Duncker und Humblot, 1986, pp. 328–56
- 'Suaviter in modo: The Organisational Thought of the Jesuit Founders', in Linstead, S. and Höpfel, H. J., *The Aesthetics of Organisation*, London: Sage, 1999
- 'Orthodoxy and Reason of State', in *History of Political Thought*, vol. 23.2, Summer 2002, pp. 211–37
- Houlston, V. 'The Fabrication of the Myth of F. Robert Parsons', *Recusant History*, vol. 22.2, Oct. 1994
- Janssen, Johannes, *Geschichte des Deutschen Volkes*, vol. v, Freiburg i. Breisgau: Herder, 1886
- Kamen, Henry, *The Phoenix and the Flame: Catalonia and the Counter-Reformation*, New Haven: Yale University Press, 1993



- Kantorowicz, Ernst H., *The King's Two Bodies. A Study in Medieval Political Theology*, Princeton: Princeton University Press, 1957
- Kempshall, M. S., *The Common Good in Late Medieval Political Thought*, Oxford: Clarendon Press, 1999
- Kleinhappl, Johannes, *Der Staat bei Ludwig Molina*, Rauch: Innsbruck, 1935
- Köhler, K., 'Der Augsburger Religionsfriede und die Gegenreformation', *Jahrbücher für Deutsche Theologie*, vol. 23, 1878
- Krebs, Richard, *Politische Publizistik der Jesuiten und ihrer Gegner in den letzten Jahrzehnten vor dem Ausbruch des Dreissigjährigen Krieges*, Halle: Max Niemeyer, 1890
- Le Bachelet, Xavier-M. (ed.), *Auctarium Bellarminianum*, Paris: Beauchene, 1913
- Lecler, Joseph, *Histoire de la Tolérance*, 2 vols., Aubier: Editions Mouton, 1955
- Leites, E. (ed.), *Conscience and Casuistry in Early Modern Europe*, Cambridge: Cambridge University Press, 1988
- Lewy, Guenter, *Constitutionalism and Statcraft during the Golden Age of Spain: A Study of the Political Philosophy of Juan de Mariana S. J.*, Geneva: Librairie E. Droz, 1960
- Lukacs, L., 'De origine Collegiorum externorum deque controversiis circa eorum paupertatem obortis', *AHSJ*, 21, 1960, pp. 189–245; pt II, *AHSJ*, 21, 1961, pp. 1–14
- Lynch, John, *The Hispanic World in Crisis and Change: 1598–1700*, Oxford: Blackwell, 1992
- McCoog, Thomas A., *The Reckoned Expense: Edmund Campion and the Early English Jesuits*, Woodbridge: Boydell Press, 1996
- Maclean, Ian, *Interpretation and Meaning in the Renaissance: The Case of Law*, Cambridge: Cambridge University Press, 1992
- Mancia, Anita, 'La Controversia con i protestanti ed I programmi degli studi', *AHSJ*, 1985, vol. 107, pp. 4–36 and vol. 108, pp. 209–56
- Mansfield, Bruce E., *Phoenix of his Age: Interpretations of Erasmus, c. 1550–1750*, Toronto: University of Toronto Press, 1975
- Martin, A. Lynn, *Henry III and the Jesuit Politicians*, Geneva: Librairie Droz, 1973
- 'The Jesuit Emond Auger and the Saint Bartholomew's Massacre at Bordeaux: The Final Word', in *Regnum, Religio et Ratio*, ed. J. Friedman, Special Issue, *Sixteenth Century Journal*, 1987
- The Jesuit Mind: The Mentality of an Elite in Early Modern Europe*, Ithaca and London: Cornell University Press, 1988
- Milward, Peter, *Religious Controversies of the Elizabethan Age: A Survey of Printed Sources*, London: Scholar Press, 1977
- Moore, R. I., 'Heresy as Disease', in W. Lourdaux and D. Verhelst (eds.), *The Concept of Heresy in the Middle Ages*, Leuven/Louvain: Leuven University Press, 1983, pp. 1–11
- Mousnier, Roland, *L'assassinat de Henri IV*, Paris: Gallimard, 1964

- Münkler, Herfried, *Im Namen des Staates: Die Begründung der Staatsraison in der Frühen Neuzeit*, Frankfurt: S. Fischer Verlag, 1987
- Oakeshott, Michael, *On Human Conduct*, Oxford: Clarendon Press, 1975
- O'Connell, Marvin R., *Thomas Stapleton and the Counter Reformation*, New Haven: Yale University Press, 1964
- O'Gorman, T. H., *Jesuit Obedience from Law to Life*, Loyola House of Studies: Ateneo de Manila University, 1971
- O'Malley, John W., *The First Jesuits*, Cambridge, Mass: Harvard University Press, 1993
- Ong, Walter J., *Ramism and the Decay of Dialogue*, London: Methuen, 1982
- Pagden, Anthony (ed.), *The Languages of Political Theory in Early Modern Europe*, Cambridge: Cambridge University Press, 1987
- Pate, D. E., *Jeronimo Nadal and the Early Development of the Society of Jesus, 1543–1573*, London and Ann Arbor: University Microfilms International, n.d.
- Paulssen, J., *Geschichte des Gelehrten Unterrichts auf den deutschen Schulen und Universitäten . . .*, vol. I, 1919, repr. Berlin: Gruyter, 1965
- Pereña, Luciano, 'Estudio Preliminar' and appendices to Francisco Suárez, *De legibus*, vol. IV (= CHP, vol. XIV), ed. L. Perena, Madrid: CSIC, 1973
- Pereña, L., Abril, P., Baciero, C., et al., *Estudio Preliminar for Francisco Suárez, De iuramento Fidelitatis*, CHP, vol. XVIII, Madrid: CSIC, 1979
- Porter, Jean, *The Recovery of Virtue*, London: SPCK, 1994
- Pritchard, Arnold, *Catholic Loyalism in Elizabethan England*, London: Scholar Press, 1979
- Quaritsch, Helmut, *Staat und Souveränität*, Frankfurt: Athenäum, 1970
- Raab, Felix, *The English Face of Machiavelli*, London: Routledge and Kegan Paul, 1964
- Ravier, André, *Ignatius Loyola and the Founding of the Society of Jesus*, transl. M. Daly et al., San Francisco: Ignatius Press, 1987
- Reusch, Friedrich H., *Beiträge zur Geschichte des Jesuitenordens*, Munich, 1894
- Rose, Elliott, *Cases of Conscience*, Cambridge: Cambridge University Press, 1975
- Rubinstein, Nicholas, 'The History of the Word *Politicus* in Early Modern Europe', in A. Pagden (ed.), *The Languages of Political Theory in Early Modern Europe*, pp. 41–55
- Ruggiero, Maria Luigia, 'Bellarmino e la donna', in R. de Maio (ed.), *Bellarmino e la controriforma*, pp. 895–918
- Salmon, J. H. M., 'Catholic Resistance Theory, Ultramontaniam and the royalist response, 1580–1620', in J. H. Burns and M. Goldie, *Cambridge History of Political Thought, 1450–1700*, pp. 219–53
- Sampson, Margaret, 'Laxity and liberty in seventeenth-century English political thought', in E. Leites (ed.), *Conscience and Casuistry in Early Modern Europe*, pp. 72–118
- Scaduto, Mario, 'Laínez et l'Indice del 1559', *AHSJ*, 1955, pp. 2–31
- Schneider, Burkhardt, 'Nuestro Principio y principal Fundamento. Zum historischen Verständnis des Papstgehorsamsgelübdes', *AHSJ*, 25, 1956, pp. 488–513

- Schnur, Roman, *Individualismus und Absolutismus*, Berlin: Duncker und Humblot, 1963
- Schnur, Roman (ed.), *Die französischen Juristen im konfessionellen Bürgerkrieg des 16. ten Jahrhunderts*, Berlin: Duncker und Humblot, 1962
- Staatsräson: Studien zur Geschichte eines politischen Begriffs*, Berlin: Duncker und Humblot, 1975
- Scoraille, Raoul de, *François Suárez de la Compagnie de Jésus*, 2 vols., Paris: Lethielleux, 1912
- Seils, E.-A., *Die Staatslehre des Jesuiten Adam Contzen, Beichtvater Kurfürst Maximilian I von Bayern*, Historische Studien vol. 405, Lübeck and Hamburg: Mathiessen, 1968
- Sennellart, Michel, 'Y a-t-il une théorie allemande de la raison d'état au XVIIIème siècle?', in Y. C. Zarka (ed.), *Raison et déraison d'état*
- Skinner, Quentin, *The Foundations of Modern Political Thought*, vol. II, Cambridge: Cambridge University Press, 1978
- Sommerville, Johann P., *Politics and Ideology in England 1603–1640*, London: Longman, 1986
- 'The "new art of lying": equivocation, mental reservation, and casuistry', in E. Leites (ed.), *Conscience and Casuistry*, pp. 159–84
- Sommervogel, Carlos, *Bibliothèque de la Compagnie de Jésus*, 10 vols. (revised edn of original by A. and A. Backer), Brussels: O. Schepens and Paris: A. Picard, 1890–1909
- Spence, Jonathan D., *The Memory Palace of Matteo Ricci*, London: Faber and Faber, 1985
- Stewart, P. D., *Innocent Gentillet et la sua polemica antimachiavellica*, Florence: La Nuova Italia Editrice, 1969
- Stolleis, Michael, *Staat und Staatsraison in der frühen Neuzeit*, Frankfurt a. Main: Suhrkamp, 1990
- 'L'idée de la raison d'état de Friedrich Meinecke', in, Zarka, Y. C (ed.), *Raison et déraison d'état*
- Sull, Charles Van, *Leonard Lessius, 1554–1623*, Paris and Brussels: Edits du Museum Lessianum, 1930
- Thompson, Martyn P., 'Significant Silences in Locke's *Two Treatises*', *Historical Journal*, 31.2, 1987, pp. 275–94
- Thompson, M. P. and Höpfel, H. M., 'The History of Contract as a Motif in Political Thought', *American Historical Review*, 84.4, 1979, pp. 919–44
- Tuck, Richard, *Natural Rights Theories*, Cambridge: Cambridge University Press, 1979
- Philosophy and Government, 1572–1651*, Cambridge: Cambridge University Press, 1993
- Van Gelderen, Martin, *The Political Thought of the Dutch Revolt*, Cambridge: Cambridge University Press, 1992
- Vereecke, L. *Conscience Morale et Loi Humaine*, Tournai: Desclée, 1957

- Viroli, Maurizio, *From Politics to Reason of State*, Cambridge: Cambridge University Press, 1992
- Machiavelli*, Oxford: Oxford University Press, 1998
- Weber, Wolfgang, *Prudentia gubernatoria: Studien zur Herrschaftslehre in der deutschen politischen Wissenschaft des 17ten Jahrhunderts*, Tübingen: Niemeyer, 1992
- Wilks, M., *The Problem of Sovereignty in the Later Middle Ages*, Cambridge: Cambridge University Press, 1963
- Young, William J., (ed.), *Letters of St Ignatius of Loyola*, Chicago: Loyola University Press, 1959
- Zagorin, Perez, *Ways of Lying*, Cambridge, Mass.: Harvard University Press, 1990
- Zarka, Yves Charles (ed.), *Raison et Dérason d'état*, Paris: Presses Universitaires de France, 1994

# Index

- absolutism, *see* monarchy
- Acosta, José de, 113
- Allen, William, 18, 57, 101, 329
- Alvarez, Emmanuel, 20
- amphibology *see* equivocation
- Andrewes, Lancelot, 363
- Aphorismi doctrinae Jesuitarum*, 156
- Appellants, 322, 325
- Aquaviva (Acquaviva), Claudio, 11, 16, 17, 27, 35, 57, 58, 60, 61, 68, 184, 248, 318, 322, 326, 337, 341
- Aquinas, St Thomas, 17, 131, 138, 142, 157, 159, 168–74, 177, 182–5, 186, 204, 213, 219, 242, 268, 272, 285, 298, 301, 314, 318, 331, 353
- Araoz, Antonio, 73
- arbitrium* *see* justice
- Argenti, Giovanni, 62, 317, 328
- Aristotle, 168, 192, 234, 298
- atheism, 72
  - of *Politiques*, 99
  - of heretics, 107–8
- atrocities narratives, 325
- Auger, Emond, 14, 21, 50, 107, 111, 117, 119, 284, 340
- Augustine, 159, 169–70, 189
- authorities, citations and ranking of, 183–5, 354
- authority, political authority, *potestas*, chapter 9, 186–8, 189–92, 201–2, 205, 208, 211, 222, 227–9, 234, 248, 349
- origin, mediate derivation of political
  - authority, 194, 197–8, 199–201, 202, 205, 206, 225–9, 230, 232, 239–44, 245, 248, 254
- personalisation of, 190, 191, 210, 263, 307
- ius gentium* and, 305
- Jesuits accused of undermining, 224
- see also* Church, commonwealth, compact, order, papacy, sovereignty
- Azor, Juan, 44, 48, 69, 134, 177, 184, 197, 317, 321, 331, 333, 344, 348, 357, 361
- Azpilcueta, Martin de (Navarrus), 17, 64, 144, 152, 182, 203, 256, 331, 333, 348
- Baile, Guillaume, 45
- Baius, Cardinal, 348
- Bancroft, Richard, 121, 124
- Bañez, Domingo, 71
- Barclay, William, 350, 353, 354, 357, 363, 365
- Baronio, Cesare, 18, 194
- Bartolus of Sassoferrato, 314
- Becanus, Martin, 16, 46, 60, 66, 70, 73, 75, 155–60, 211, 218, 219, 258, 260, 262, 321, 326, 337, 341, 347, 363
- Controversia Anglicana*, 321
- beer, 311
- Bell, Thomas, 181
- Bellarmino, Robert, 18, 30, 41–2, 46, 48, 54, 67, 70, 73, 74, 76, 78, 79, 81, 118, 134, 178, 190, 193, 207, 272, 275, 286, 321, 322, 324, 325, 327, 333, 337, 343, 346, 347, 348, 349, 351, 353, 354, 355, 357, 358, 360
- Bèze, Theodore de, 331, 332
- bishops, authority of, 39, 55, 56
- Blysssem, Heinrich, 45, 67, 71
- Bodin, Jean, 21, 104, 108, 113, 195, 197, 199, 226, 264, 270, 311, 332
- books, importance of, 79–80, 94, 362
- see also* Index of Prohibited Books
- Borgia, Cesare, 129
- Borja (or Borgia), Francisco, St, 9, 10, 14, 20, 165
- Botero, Giovanni, 86, 90–7, 110, 115, 130, 151, 165
- bread, 193, 222
- Brillmacher, Peter, 71
- Buchanan, George, 332
- Busaeus (Buys), Iohannes, 68, 133, 274
- Caietan, Tomasso de Vio, 191, 258, 331, 348
- Calvin, 41, 80, 189, 232, 271, 331, 332, 352
- see also* heresiarchs
- Calvinists, Huguenots, 71, 73, 74, 226, 230, 231, 233
- see also* Monarchomachs
- Campion, Edmund, 57, 141, 324, 341
- Canisius, Peter, 9, 49–50, 66, 68, 74, 76, 114

- Canon law, Canonists, 266, 348, 354, 356  
 cases of conscience, casuistry, 15, 17–18, 21, 89,  
 135, 140, 153, 156, 161–2, 180–1, 183, 214,  
 294  
 Castro, Alonso (or Alfonso) de, 64, 65, 66, 76,  
 132, 182  
 catechisms, 48, 49, 50  
*see also* Canisius  
 Catholic polemicists in England, non-Jesuit,  
 100–1  
 Catholic religion as true civil religion,  
 116–22  
 Catholics in England, 125, 322  
 causation, causes, 188  
 cause, i.e. political engagement, 318–21  
 Childeric, deposition by Pope Zacharias, 235,  
 335, 346, 354, 362  
 Christian liberty, 119, 189, 205  
 church and commonwealth  
   as separate and distinct, 357  
   as inseparable, ideal of co-operation, 117,  
   342  
 Church, True, independent, visible, chapter 2,  
 37, 38, 192  
   *as respublica Christiana*, 22, 38, 63, 355–6,  
   359–60  
   *as respublica perfecta ecclesiastica, spiritualis*,  
   78, 81, 355, 359, 360  
   ecclesiastical immunity, 339–44, 364  
   *see also* papacy  
 Church, territorialisation, 339–42  
 Church, True, disputes about  
 Cicero, 13, 108, 113, 147, 164, 169, 234, 242,  
 288  
 civil war, 284  
 Clement VIII, Pope, 344  
 coercion, 209–11, 215, 271, 284, 285, 286, 305, 355,  
 356  
   rewards and, 212, 213–23  
   *see also* authority, punishment  
 Coke, Sir Edward, 330  
 Comitoli, Paolo, 355, 356  
 common good, chapter 12, 208, 210, 211–12, 214,  
 222, 223, 278, 283, 284, 285, 286, 301  
 commonwealth, polity, *societas perfecta*, 189, 194,  
 195, 200, 203, 204, 205, 206, 230, 255, 335,  
 364–5  
   ends of, 203, 227, 284, 285–6, 287, 346  
   independent of Church, 355, 357, 358, 359,  
   360, 362  
   institution, foundation of, 227–30, 234, 236,  
   239, 249  
   source of regime, prince's authority, 225, 226,  
   227, 228–30, 254, 255, 256–7  
   subordinate to Church, papacy, 335, 336, 364  
   *see also* authority, Church, monarchy,  
   *principatus*, tyrannicide  
*communitas rerum*, common property, 297,  
 298–301, 302  
 compact, contract, as origin of regimes,  
*potestas*, 231–9, 243, 249, 250–7, 255, 262,  
 335, 364  
   *see also* promises, treaties  
 Conciliarism *see* councils of the Church  
 confessional, seal of, 145, 324  
 confessors of princes, 15–18, 21, 58, 89, 136, 165,  
 180, 341  
 consent, 200, 201, 211, 250, 279  
   *ius gentium* and, 302  
   taxes and *c.*, 311  
 conspiracy theories, 323, 335  
 Constance, Council of *see* tyrannicide  
 Constitutions of the SJ, 9, 11, 12, 17, 21, 26, 28,  
 29, 34, 35, 36, 56, 58, 181  
 controversies, controversial theology, 18–19, 182,  
 185  
   *see also* Bellarmine, Molina, Suárez, etc.  
 Contzen, Adam, 16, 63, 71, 92, 119, 133, 136, 195,  
 199, 203, 277, 285, 288, 290, 291, 309–10,  
 311, 328, 337–8, 339, 340, 342, 344, 363  
 coronation oaths, 237  
 Cortez *see* Estates General  
 Coster (or Costere, Costerus), Frans de, 18, 69,  
 74, 75  
 Coton (or Cotton), Pierre, 14, 42, 75, 326, 327,  
 342  
 councils of the Church, conciliarism, 47–8, 189,  
 245, 348, 358  
   Constance, *see* Tyrannicide  
   Lateran, 347  
 custom, 246, 255, 304  
 debasing currency, 321  
 Delrio, Martin *see* witches  
 democracy, 39, 247, 253, 291  
   *see also* commonwealth  
*digna vox*, 276  
 dissimulation, simulation, 134, 150–5  
   *qui nescit (dis)simulare nescit regere (or*  
   *regnare)*, 151–5  
   *see also* lies, lying; equivocation  
 distinctions of rank, 287  
 Divine Right, 199–200, 225, 235, 306, 307, 308,  
 345, 363  
   *see also* monarchy  
*divisio rerum* *see* property  
 divorce, 196–7  
*doctrina civilis*, 63, 127, 290  
 Dominicans, 205, 208–9, 225  
 Dominis, Marc Antonio de, 359

*dominium*, 187–8, 208, 218, 295, 297

see also property

due process, 335–6

duelling, 287

Duplessis-Mornay, Philippe, 104

see also Monarchomachs, *Vindiciae*

Dury, John, 71

Elizabeth, 125, 154–5, 345

ends and means, 172–6

end justifies m., 333

equality see natural liberty

equivocation, amphibology, mental reservation,  
142–5, 295

Erasmus, Ignatius and, 12, 34, 79

Ernhoffer, Sigismund, 68, 74

Erstenberger, Andreas, 98, 339

Estates General, *Reichsstände*, Parliament,  
assembly of the kingdom, 247, 248, 308,  
311, 312, 319, 331, 335

Eudaemon-Ioannes, Andreas, 61, 317, 328, 330,  
332

excommunication see papal authority

*exterminare*, 131–3

see also heresy, heretics

Fall of Man, Adam, 191, 208, 227

see also patriarchy, state of innocence

family, natural, primordial, 194, 195–8, 199–202,  
297

see also patriarchy, wives

Favre, Pierre, 9, 64, 74

fear, 77, 113, 149, 150, 162, 215

and validity of promises, 156–7, 159, 162, 213,  
215–16, 217, 293

see also punishment

*fides*, good faith, chapter 7, 140–7, 148–50,  
163

Filmer, Sir Robert, 195, 200, 202, 207, 208, 225,  
226, 297, 305

Fitzherbert, Thomas, 69, 86, 107, 115, 116, 125–31,  
153–4, 178–80, 212, 324, 357

see also Machiavelli

Fonseca, Pedro, 20, 264

Franciscans, 300

freedom, 76, 77, 191, 207, 255, 291–6

freedom of belief, liberty of conscience, 77,  
98, 102, 118–19, 121, 138, 184

see also *ius*, natural liberty

friendship, 194, 222–3, 285

Gallicanism, 55, 56, 323, 342

see also parlement, Sorbonne

Garnet, Henry, 77, 324, 330

General Congregation, Fifth, 16, 58, 59, 73

generals of the Society see Aquaviva, Borja,  
Ignatius, Láinez, Mercurian, superior  
general, Vitelleschi

Gentillet, Innocent, 87, 100, 107–8

see also Monarchomachs, St Bartholomew's

Day Massacre

Gerson, Jean, 271

Gibbons, John, 67, 71, 101

Girolami, Remigio de', 283

glory see princes, importance of reputation

grace, 259, 260–1

Grégoire de Toulouse, 277

Gretser, Jakob, 19, 40, 41, 42, 59, 61, 71, 79, 220,  
321, 327, 329, 343, 348, 362

Grotius, Hugo, 234, 261

Guicciardini, Francesco, 87, 88

Guise family, 61, 96, 99, 123, 129, 320

Gunpowder Plot, 323–4, 326

Hay, John, 47, 118

Hayek, Friedrich, 333

Heiss, Sebastian, 101, 120, 328, 329

Henri III, 318, 319–20, 327

Henri IV, 8–14, 16, 42, 56, 61, 98, 108, 233, 322,  
326, 327, 328, 330, 332, 343, 346

Henriques, Henrique, 346

heresiarchs see Calvin, Luther, Zwingli

heresy, heretics, 19, 61, 64–9, 71, 82, 83, 107–8,  
124, 132, 205, 212

endanger state, 64–73, 76, 78–83, 112–21, 122,  
133

heretics, as rulers, successor to throne, 72, 76,  
80, 101, 221

private relations with, 154, 158

treaties with, promises to heretics, 150, 151–5,  
158, 159, 163

see also *exterminare*, intolerance, toleration

hierocrats, 348, 350, 353, 354

see also papacy

history, 88, 91

Hobbes, Thomas, 51, 77, 91, 157, 188, 200, 203–4,  
228, 231, 232, 251, 261, 267, 270, 289, 291,  
293, 365

Hooker, Richard, 121, 234, 359

Hôpital, Michel de l', 107

human nature, 234

see also Fall, self-love, passions, *status*  
*innocentiae*

*humaniores litterae*, humanists, rhetoric, 9, 13, 22,  
87, 262

humanists on true nobility, 288

humility, 30, 34

see obedience

Hus, John, 161–2, 317

husbands see wives, patriarchy

- Ignatius of Loyola, 8, 10, 11, 12, 15, 19, 23, 28, 29,  
33–4, 59, 77, 165  
on heresy, heretics, 64, 67, 74, 79, 81, 112  
*see also* order, Society of Jesus
- imperium, merum imperium*, sovereignty, 190,  
200, 210, 278, 280, 355
- imprisonment, escape from, 294, 295
- Index of Prohibited Books, 79, 315, 322, 330  
*see also* books
- individual judgement, 235, 238, 274, 276, 277  
*see also* judge of controversies
- innovations, dangers of, 117
- institution, 228–30, 234, 236, 239, 249
- interest, self-interest, 86, 123–4, 125, 128, 208, 211,  
212, 214, 216, 223  
*see also* common good, self-love
- intolerance, chapter 6, 112–13, 133, 218  
as Machiavellian, 99–103  
*see also* toleration
- Investiture Controversy, 358
- Isidore of Seville, 215, 303
- isms, 68
- ius*, right, rights, 187, 202, 205, 207, 265–6  
alienability of rights, 206–7  
Christianity does not deprive of rights, 215,  
357  
conflict of rights, 193, 222, 283, 296, 306, 313,  
358  
of individuals, 206–7, 255, 265, 266, 291–6,  
306  
*iura maiestatis*, 187  
*summum ius* in Cicero, 164, 221
- ius gentium*, 267, 301, 302–6  
*see also* natural law, property, slavery
- ius publicum*, 267
- James VI/I, 55, 56, 199, 256, 291, 323, 325, 326,  
332, 335–7, 345  
*see also* Oath of Allegiance
- Jesuits, knowledge of Calvinist resistance  
literature, 121, 328, 332
- Jews, 73, 76, 82, 104, 311, 355  
Jesuits of Jewish extraction, 73
- John XXII, Pope, 358
- judge of controversies, 44–9, 71, 273, 363  
*see also* papacy
- justice, 166, 177, 182–5, 284  
distributive justice and birth, 288–9  
*see also* *ius*, taxation
- Keller, Jakob, 292, 321, 328–32
- kings, kingship *see* monarchy
- Knights Templar, Jesuits as, 322
- knowledge, *scientia*, *sapientia*, 169
- Knox, John, 332
- Láinez, Diego, 9, 13, 23, 39, 43–4, 51, 73, 79, 346
- Lamormain(i), Wilhelm, 16, 60, 136, 162, 341
- Las Casas, Bartolomeo de, 207
- law, *lex*, *ius*, chapter 11, 186, 211, 264–8, 269, 270,  
273, 274–5, 281, 282  
ancient law, fundamental law, *lex regia*, 117,  
160, 233, 241, 245, 267, 277  
*constitutio*, 161, 233, 266, 342  
law as will and act, 266, 270, 274–5, 276–82  
positive law and natural law, 266, 271–2, 273  
*see also* Canon law, *ius*, Roman law
- Laymann, Paul and Forer, Lorenz, *Pacis  
compositio*, 160, 162–3, 339
- Laymann, Paul, 142, 160, 171, 192, 220, 222
- leaders/leadership of heretics, 70, 94
- Ledesma, Diego, 50
- Leicester's Commonwealth (The Copie of a Leter)*,  
102–3, 104, 105, 195  
*see also* Persons
- lesser magistrates, 316
- Lessius, Leonard, 73, 110, 145, 154–5, 173–4, 187,  
197–9, 205, 218, 220, 259, 288, 294–5, 299,  
315, 316, 318, 321, 337, 347
- Levellers, 291
- liberality, as princely virtue, *see* Princes
- liberty, *see* freedom
- lies, lying, 141–2, 143, 145, 294  
lies as *mala in se*, 142, 154–5
- Ligue, 105, 117, 121, 129, 132, 226, 230, 231, 233
- limited government, chapter 10, 234–7, 312
- limpieza de sangre*, 73, 289
- Lipsius, Justus, 112, 126, 153, 331
- Loarte, Gabriel, 53
- Locke, John, 188, 193, 194, 197, 207, 222, 231,  
291, 301, 319
- Luther, Martin, 70, 71, 74, 80–1, 104, 120, 132,  
177, 189, 221, 329, 332, 352  
*see also* heresiarchs
- Lutherans, 71, 73, 74, 331
- Machiavelli, 84–5, 86, 98–9, 102, 146  
critiques of M. by Botero, 92–3  
*Discorsi*, 113, 114, 242  
Fitzherbert on M., 126, 129, 147–9  
Gentillet, 100  
*Il principe*, 84–5, 89, 99, 140, 145, 146–8, 152,  
288, 310  
M. on religion, Christianity, 114–15  
Ribadeneira, 100, 104, 106–7, 162  
on *fides*, 145–50  
*see also* reason of state
- Machiavellian, Machiavellism, etc., 84–5, 86,  
98–9, 100–2, 112–31, 133  
Gretser on Venetian *Machiavellismi* and  
*Marsiglianismi*, 362



- Jesuit accused of Machiavellianism etc., 140,  
181, 325  
toleration, intolerance/persecution as,  
99–100, 102–3  
*see also Politiques*, reason of state
- Mairhofer, Matthias, 72, 132  
management, 128
- Mariana, Juan de, 113, 117, 122, 149, 152, 167, 203,  
215, 239–48, 263, 286, 308, 312, 318–21,  
329–30, 337
- Marsiglio of Padua, 38, 350, 362
- martyrs, martyrdom, 81, 141–2, 341
- masters and servants, 199
- matrimony, 196–8  
*see also* family, polygamy, wives
- Maximilian of Bavaria, 56, 135, 317, 340, 343, 363  
*see also* Contzen
- means *see* ends and means
- Medici, Catherine de', 99  
*see also* St Bartholomew's Day Massacre
- mental reservation *see* equivocation
- Mercurian, Everard, 57, 165
- Molina, Juan de, 18, 71, 180, 187, 193, 198, 200,  
202, 203, 204–7, 214, 220, 222, 227–9, 268,  
292–4, 298, 307, 317, 344, 345, 348–9, 350,  
356, 357, 360, 361, 362
- Monarchomachs, 89, 226, 230, 235, 247, 250,  
332  
*see also* Calvinists, Ligue
- monarchy, 36, 37–52, 88–90, 108, 114, 119, 165,  
192, 199, 204, 226, 228–30, 234–7, 241, 244,  
245, 292, 335  
*see also* limited government, order, *principatus*,  
tyrants
- Monita secreta*, 62, 85  
*see also* conspiracy theories
- moral theology, philosophy, principles, 65, 91,  
135, 136, 137–9, 146, 155, 156–7, 170–2, 181,  
183–5, 196–7, 206, 218, 264–5, 287, 316, 332,  
363
- More, Thomas, 123, 320
- motivation, passions, 30–2, 211–12, 214  
*see also* fear, self-love
- Muslims, 66, 70, 73, 76, 82, 90, 94, 96, 101, 110,  
158, 355
- mutua obligatio*, 232  
*see also* compact
- Mysteria Patrum Jesuitarum*, 338
- Nadal, Geronimo, 73, 134–5, 269
- nation, national sentiment, prejudice, 123–4,  
125
- natural instincts, inclinations, 192, 210,  
222  
*see also* passions, self-love
- natural law, 211, 218, 272, 275, 294, 299, 302  
*see also* *ius*, *ius gentium*, law
- natural liberty, 204, 205, 207, 208
- natural polity, 191
- natural rights, 207, 255, 292–6  
escape from prison, 293–5  
*see also* *ius*, law, liberty, natural law, natural  
liberty, self-defence
- natural state, condition *see* state of nature,  
pre-civil condition
- Navarrus *see* Azpilcueta
- necessity and moral obligation, 86, 135, 136, 139,  
299, 356
- New Christians, 73, 269
- nobility, privileges of, 283
- Oakeshott, Michael, 283, 286
- Oath of Allegiance, chapter 13, 322–6, 327–8, 332  
*see also* excommunication, tyrannicide
- Oath of Supremacy, 326
- obedience, 26–9, 30, 34, 38–52, 53, 69, 70–3, 91,  
94, 191, 274, 279  
blind, 29, 274  
presumption in favour of, 314  
*see also* Romans 13
- Ockham, William of, 43
- oderint dum metuant*, 86, 115, 130, 177
- order, organisation, chapter 2, 23, 24–5, 27,  
28–9, 34, 35, 38, 41–2, 53, 194, 222–3, 235,  
250, 251–3, 283, 287, 291, 316  
hierarchy, equated with monarchy, 34–7, 40,  
42  
order in Satan's kingdom, 54
- Owen, Thomas, 42, 326, 327, 329
- Pacis compositio* *see* Laymann and Forer
- pactus* *see* compact
- papacy, Pope, 37–51, 76, 77, 79, 81, 237, 349  
Christ's authority and, 348, 349, 352, 360,  
364  
not prince of the world, 348  
transfer of Roman Empire to Germans by,  
346, 355  
as sovereign, 352, 360  
*see also* Church
- papal authority/ *potestas indirecta* over,  
excommunication, deposition of, secular  
rulers, chapter 14, 66, 79, 157, 158, 192, 257,  
324, 326, 327, 333, 335  
coercive power, 355, 356  
for heresy, 335, 336, 345, 346–7, 349, 350, 356,  
362, 364–5  
non-Jesuit authorities for, 348  
term *potestas indirecta*, 350, 352  
*see also* Childeric

- papal bulls, 44  
*In Coena Domini*, 344  
*Per Venerabilem*, 346, 350, 363  
*Regnans in Excelsis*, 336, 345  
*Unam Sanctam*, 44, 350, 354, 360
- papal excommunication and deposing power *see* papal authority
- Paraguayan reductions, 286
- parents, duties to, 198
- parlement of Paris, 55, 56, 321, 322, 332
- Pascal, Blaise, 140
- passions *see* fear, motivation, self-love
- patriarchs, patriarchy, Adam's authority, 191, 196, 197–8, 199–202, 249, 251, 253, 297
- Paul, V, Pope, 325, 333, 336, 342, 346
- Peace of Augsburg, 134–5, 145, 156, 159–60, 162, 163, 339  
*see also* Laymann and Forer
- people, the *see* commonwealth
- Pereira, Benedetto, 20, 179, 194, 210
- perjury, 141
- Perpinya (Perpinianus), Pedro, 14, 38, 61, 71, 72
- Persons, Robert, 18, 30, 46, 57, 60, 67, 68, 69, 76, 102–3, 104, 105, 121, 123–5, 137, 145, 183, 211, 218, 233–9, 346, 348  
 Persons and Oath of Allegiance, 323, 324, 325, 326, 327, 337  
*see also* Leicester's *Commonwealth*
- Philip II, 56, 130, 323
- Philip III, 323
- Piatti, Hieronimo, 51
- Plato, 179, 234
- Polanco, Juan, 11, 53, 81, 165
- policy, polity, 57, 119, 123, 124, 125, 129, 178–80, 233
- politica*, political science, 57, 85, 91, 95, 96, 127, 195  
 in universities, 181
- political/public matters, persons, chapter 3, 54–63
- political meddling, chapter 3, 56–63, 180, 352
- politice*, as term of approval, 210
- politician, *politicus*, *politico*, *politique*, 62, 85, 104, 362  
*see also* statist, statism
- Politiques*, 98–9, 102, 104, 105, 107–8, 115, 126, 137–9, 154, 290, 308  
 as atheists, 107
- polity *see* commonwealth, policy
- polyandry, 196
- polygamy, 196–7
- possession *see* property
- Possevino, Antonio, 61, 68, 70, 71, 73, 75, 86, 103–4, 106–8, 109–10, 111, 135, 328, 347
- potestas* *see* authority, compact  
*potestas indirecta* *see* papal authority
- practical syllogism, 170
- pragmatic sanctions, 341
- preachers, Jesuit, 14–15
- pre-civil state, 206, 208–9, 231–44, 250, 251–3
- presumption in favour of superiors, 273–4
- pride, 69–70, 72, 116, 119  
*see also* heresy
- princes  
 ecclesiastical patronage, 340, 341, 361  
 importance of reputation, 91–3, 148–50, 152  
 laws and, 210, 226, 227, 263  
 princes and taxation, 306–12  
 role in Church, 340, 341, 361, 362  
 secrecy, simulation, 92, 93, 94, 97, *see* dissimulation  
 virtues, 92, 155–63, 164–5, 166, 221, 247  
*see also* authority, Church, monarchy
- principatus*, 187, 188, 205, 210, 263, 276, 316  
*see also* monarchy, authority
- probabilism *see* casuistry
- promises, 150, 151–5, 156–7, 159–60, 163
- property, ownership, *dominium*, 236, 293, 296, 297–301, 307  
*communitas rerum*, common ownership, 297, 298–301, 302  
 possession as stronger title  
 and *ius gentium*, 301, 303, 305, 306
- providentialist argument, 109–10, 111
- prudence, chapter 8, 86, 87, 88, 91, 127, 153, 164–7, 168–81  
 political, civil prudence, 177  
 true and false (carnal) prudence, cunning, 151, 165, 166, 167, 168–72, 176–81  
*see also* ends and means, reason of state, serpent
- punishment, 78, 128, 206–7, 213, 217–23, 357  
 rewards and, 212, 213–23  
*see also* fear, coercion
- puris naturalibus*, in, 231  
*see also* state of nature
- Puritans, 124, 125
- Ramism, 183, 264
- Ratio Studiorum*, 12, 18, 86, 87, 108  
 politics in, 181, 184
- reason, natural reason, 192, 212, 222  
*see also* natural law
- reason of state, chapters 5–8, 233, 340, 362  
 true and false reason of state, 106, 107, 126, 130, 137, 149, 178  
*see also* Machiavellism, *politiques*, prudence
- Reformation, Jesuit view of the, 69, 94  
*see also* Calvin, Heresy, Luther, Zwingli

*Regnans in Excelsis* see papal bulls  
 Regnault (Reginaldus), Valère, 15, 17, 53  
 religion, civil function of, 113–14, 115, 126  
   see Catholic religion, reason of state  
 religious uniformity, 118–22, 136  
*respublica* see commonwealth  
*respublica Christiana* see Church  
 rewards see punishment  
 Ribadeneira, Pedro de, 13, 19, 20, 30, 51, 68, 73,  
   78, 101, 104, 106–7, 110, 113–18, 126, 133,  
   149, 152, 308, 312  
 Richeôme, Louis, 57, 60–1, 321, 327  
 rights see *ius*  
 Ripalda, Jeronimo de, 50  
 Roman law, 226, 227, 266, 276, 301  
 Romans 13, 121, 189–92, 193, 222, 316  
 Rosenbusch, Christoph, 79, 132, 133  
 Rousseau, Jean Jacques, 114, 147, 269  
 Ruiz de Montoya, Antonio, 286  
 Rules, 266  
   see also law  
 Sa (or Saa), Emmanuel, 295  
 safe-conduct, 161–2  
   see also Hus  
 Salamanca, school of, 168, 182  
   see also Soto, Vitoria  
 Salas, Juan de, 210, 264–5, 267, 272–3, 279, 310  
 Salmerón, Alonso (or Alonso), 9, 20, 39, 40, 54,  
   59, 188, 189–92, 316, 317, 342, 346–7, 348  
*Salus populi suprema lex*, 284  
 I Samuel, 8: 10–19, 307, 308  
 Sanchez, Tomas, 196, 197  
 Sander, Nicholas, 101  
 Santarelli (or Sanctarelli), Antonio, 337  
 Saravia, Adrian, 199, 343  
 Sarpi, Paolo, 343, 346, 358  
 Satan, Lucifer, 69, 77  
 Savonarola, 57  
 Scherer, Georg, 14, 54, 57, 68, 69, 119, 132, 133  
 scholastic tradition, curriculum, ‘schools’, 27,  
   109, 156, 182–5, 188, 190, 204, 208, 234,  
   248–57, 258, 264, 289, 293–6, 346, 348  
   see also Aquinas, Cajetan, Soto, Vitoria  
 Scottish spelling, 117  
 Scotus, John Duns, 192, 221  
 Scribani, Karel, 14, 15, 19, 92, 154, 165, 212, 218  
 Scripture, interpretation of, 39, 43–4, 45, 184,  
   189–92, 351–2  
 Scripture as leaden/Lesbian rule, 45, 290  
   see also tradition  
 secular matters see spiritual/temporal distinction  
 self-defence, of individuals or communities, 193,  
   220, 222, 257, 292, 293–6, 313, 315, 316, 334  
   see also natural rights

self-love, *ordo caritatis*, 30, 216, 289, 294  
   see also interest  
 Seneca, 288  
 Serpent, in the garden of Eden, 179  
 servants see masters and, slavery  
 sexual intercourse, shameful, a duty, 198, 285  
 Sixtus V, Pope, 324, 327  
 Skarga, Piotr, 12  
 slavery, servitude, 187, 196, 205, 207, 208, 210, 298  
   selling oneself, children into, 293, 297  
 Soárez, Cypriano, 13, 86  
 societas, 23–4, 192, 252, 291  
   *daemonum societas*, 54 n. 6  
   naturalness of, 188, 191, 192, 193, 222, 242  
 societas perfecta see commonwealth  
 Society of Jesus, standard accusations against, 55,  
   140, 156, 337  
   see also parlement, Sorbonne  
 Sorbonne, 322, 332, 347  
 Soto, Domingo de, 182, 202, 206, 223, 228, 248,  
   258, 294, 299, 302, 331, 336, 344, 345, 348,  
   349, 350  
 Southwell, Robert, 141, 322, 324, 325  
 sovereignty, *plena* (or *summa*) *potestas*, *merum*  
   *imperium*, 281, 351, 363  
   see also authority  
 Spee, Friedrich von, 220, 294  
 Spiritual Exercises, 29, 30–2  
 spiritual/temporal distinction, chapter 3, 64, 357,  
   358, 361, 362, 365  
 St Bartholomew’s Day Massacre, 100, 113, 133  
 Stapleton, Thomas, 18, 101, 329  
 ‘state’, vocabulary of, 57, 58, 84, 90, 91  
   see also *politica*, reason of state, statism  
 state of nature, *status innocentiae*, *status naturae*  
   *integrae*, *status purae naturae*, chapter 10,  
   231, 242, 257–61, 268, 310  
   see also pre-civil state, 259  
 statism, statistis, 182  
   see also *politiques*, reason of state  
 students, young persons, morals of, 219  
 Suárez, Francisco, 25, 38, 108, 122, 164, 172, 195,  
   196–7, 200–2, 204, 206, 209, 213, 248–58,  
   260, 265, 268, 272, 273–4, 277–9, 296, 300,  
   302–6, 312, 321, 322, 332–7, 348, 349, 351,  
   353, 364–5  
 suicide, 216  
 sumptuary laws, 285  
 Superior General, 16, 24, 34, 35–7, 58  
 superiors, presumption in favour of, 273–4  
 superiors, super- and sub-ordination see order  
 Sweet, John, 359  
 Tacitus, as proxy for Machiavelli, 90, 152  
 Tanner, Adam, 220, 343, 348, 362

- taxation, 306–13  
 temporal *see* spiritual  
 theatre, 114  
 theocracy, 286, 358  
 Thomism, 69, 122, 192, 227, 248, 258, 283, 302, 357  
     *see also* Aquinas, Dominicans, Salamanca, scholastic tradition, Soto, Vitoria  
 Toledo, Francisco de, 17, 73, 76, 205, 266, 291  
 toleration, chapter 5 *passim*, 83, 96, 97, 98–111, 133–9, 155, 159  
     *see also* intolerance, necessity, reason of state, Peace of Augsburg  
 Torquemada, Juan de, 348, 349, 350  
 Torres (Turrianus), Francisco, 18, 24, 43, 74, 352  
 Torres (Turriensis), Geronimo, 38, 45, 66, 71, 81, 82, 215–17, 263, 281  
 torture, 141, 220, 293–5, 324, 325  
 tradition, 45–7, 184, 348, 351–5  
 treaties *see* *pactus*, Peace of Augsburg  
 Turk *see* Muslims  
 Tursellini (Torsellino), Horatio, 133  
 tyrannicide, chapter 13, 191, 257, 314–20, 321, 323, 324, 327, 328–32, 333, 334–7  
     Constance, Council of, 316, 317, 320, 331, 333  
 tyranny, tyrants, 191, 195, 203, 246–8, 257, 308, 315, 330, 331, 333–4, 337–8  
  
 universal commonwealth, monarchy, 204, 304, 305  
 unsocial state, 214  
     *see also* pre-civil state  
 usury, 286  
  
*utile* and *honestum*, 180  
     *see also* *fides*  
  
 Valentia, Gregorio de, 18, 40, 44, 45, 66, 72, 76, 171, 175–6, 215, 220, 265, 266, 272, 274, 290, 296, 297, 298, 299, 318, 348, 352, 364  
 Vazquez, Gabriel, 232, 262, 268, 271, 272, 281, 295, 299, 303, 321, 348  
 Venetian Interdict, Venice, 56, 323, 332, 341, 342, 343, 344, 345, 346, 358, 362, 365  
 veracity, truthfulness  
     *see* *fides*, lying, Machiavelli  
 Verron, François, 355  
 Verstegan, Richard, 66  
 Vetter, Conrad, 68, 74, 119, 120, 341  
*vim vi repellere*, *see* self-defence  
 Vincent of Laurins, 47  
*Vindiciae contra tyrannos*, 104, 332  
     *see also* Duplessis-Mornay, Monarchomachs  
 virtue, as a habit, 290  
 Vitelleschi, Mutius (Superior General SJ), 60, 341, 347  
 Vitoria (Victoria), Francisco de, 182, 186, 206–7, 228, 229, 302, 305, 344, 345, 348, 361  
  
 Widdrington, Roger (i.e. Thomas Preston), 347  
 witches, witchcraft, 220, 294  
     *see also* Spee  
 wives and husbands, equality of, 197–8, 205  
     obedience of wives, 196–7, 198, 209  
 women, 198, 202, 285  
  
 Zwingli, Ulrich (Huldreich), Zwinglians, 73, 74, 332  
     *see also* heresiarchs

## IDEAS IN CONTEXT

*Edited by* QUENTIN SKINNER (*General Editor*),  
LORRAINE DASTON, DOROTHY ROSS, and JAMES TULLY

- 1 RICHARD RORTY, J. B. SCHNEEWIND, and QUENTIN SKINNER (eds.)  
Philosophy in History  
*Essays in the Historiography of Philosophy*  
pb: 0 521 27330 7
- 2 J. G. A. POCKOCK  
Virtue, Commerce and History  
*Essays on Political Thought and History, chiefly in the Eighteenth Century*  
pb: 0 521 27660 8
- 3 M. M. GOLDSMITH  
Private Vices, Public Benefits  
*Bernard Mandeville's Social and Political Thought*  
hb: 0 521 30036 3
- 4 ANTHONY PAGDEN (ed.)  
The Languages of Political Theory in Early Modern Europe  
pb: 0 521 38666 7
- 5 DAVID SUMMERS  
The Judgment of Sense  
*Renaissance Nationalism and the Rise of Aesthetics*  
pb: 0 521 38631 4
- 6 LAURENCE DICKEY  
Hegel: Religion, Economics and the Politics of Spirit, 1770–1807  
pb: 0 521 38912 7
- 7 MARGO TODD  
Christian Humanism and the Puritan Social Order  
hb: 0 521 33129 3
- 8 LYNN SUMIDA JOY  
Gassendi the Atomist  
*Advocate of History in an Age of Science*  
hb: 0 521 30142 4
- 9 EDMUND LEITES (ed.)  
Conscience and Casuistry in Early Modern Europe  
hb: 0 521 30113 0
- 10 WOLF LEPENIES  
Between Literature and Science: The Rise of Sociology  
pb: 0 521 33810 7

- 11 TERENCE BALL, JAMES FARR, and RUSSELL L. HANSON (eds.)  
Political Innovation and Conceptual Change  
pb: o 521 35978 3
- 12 GERD GIGERENZER *et al.*  
The Empire of Chance  
*How Probability Changed Science and Everyday Life*  
pb: o 521 39838 x
- 13 PETER NOVICK  
That Noble Dream  
*The 'Objectivity Question' and the American Historical Profession*  
pb: o 521 35745 4
- 14 DAVID LIEBERMAN  
The Province of Legislation Determined  
*Legal Theory in Eighteenth-Century Britain*  
hb: o 521 24592 3
- 15 DANIEL PICK  
Faces of Degeneration  
*A European Disorder, c.1848–c.1918*  
pb: o 521 45753 x
- 16 KEITH BAKER  
Inventing the French Revolution  
*Essays on French Political Culture in the Eighteenth Century*  
pb: o 521 38578 4
- 17 IAN HACKING  
The Taming of Chance  
pb: o 521 38884 8
- 18 GISELA BOCK, QUENTIN SKINNER, and MAURIZIO VIROLI (eds.)  
Machiavelli and Republicanism  
pb: o 521 43589 7
- 19 DOROTHY ROSS  
The Origins of American Social Science  
pb: o 521 42836 x
- 20 KLAUS CHRISTIAN KOHNKE  
The Rise of Neo-Kantianism  
*German Academic Philosophy between Idealism and Positivism*  
hb: o 521 37336 o
- 21 IAN MACLEAN  
Interpretation and Meaning in the Renaissance  
*The Case of Law*  
hb: o 521 41546 2

- 22 MAURIZIO VIROLI  
From Politics to Reason of State  
*The Acquisition and Transformation of the Language of Politics 1250–1600*  
hb: o 521 41493 8
- 23 MARTIN VAN GELDEREN  
The Political Thought of the Dutch Revolt 1555–1590  
hb: o 521 39204 7
- 24 NICHOLAS PHILLIPSON and QUENTIN SKINNER (eds.)  
Political Discourse in Early Modern Britain  
hb: o 521 39242 x
- 25 JAMES TULLY  
An Approach to Political Philosophy: Locke in Contexts  
pb: o 521 43638 9
- 26 RICHARD TUCK  
Philosophy and Government 1572–1651  
pb: o 521 43885 3
- 27 RICHARD R. YEO  
Defining Science  
*William Whewell, Natural Knowledge and Public Debate in Early Victorian Britain*  
hb: o 521 43182 4
- 28 MARTIN WARNKE  
The Court Artist  
*The Ancestry of the Modern Artist*  
hb: o 521 36375 6
- 29 PETER N. MILLER  
Defining the Common Good  
*Empire, Religion and Philosophy in Eighteenth-Century Britain*  
hb: o 521 44259 1
- 30 CHRISTOPHER J. BERRY  
The Idea of Luxury  
*A Conceptual and Historical Investigation*  
pb: o 521 46691 1
- 31 E. J. HUNDERT  
The Enlightenment's 'Fable'  
*Bernard Mandeville and the Discovery of Society*  
hb: o 521 46082 4
- 32 JULIA STAPLETON  
Englishness and the Study of Politics

*The Social and Political Thought of Ernest Barker*

hb: o 521 46125 1

33 KEITH TRIBE

Strategies of Economic Order

*German Economic Discourse, 1750–1950*

hb: o 521 46291 6

34 SACHIKO KUSUKAWA

The Transformation of Natural Philosophy

*The Case of Philip Melancthon*

hb: o 521 47347 0

35 DAVID ARMITAGE, ARMAND HIMY, and QUENTIN SKINNER (eds.)

Milton and Republicanism

pb: o 521 64648 0

36 MARKKU PELTONEN

Classical Humanism and Republicanism in English Political Thought

1570–1640

hb: o 521 49695 0

37 PHILIP IRONSIDE

The Social and Political Thought of Bertrand Russell

*The Development of an Aristocratic Liberalism*

hb: o 521 47383 7

38 NANCY CARTWRIGHT, JORDI CAT, LOLA FLECK, and

THOMAS E. UEBEL

Otto Neurath: Philosophy between Science and Politics

hb: o 521 45174 4

39 DONALD WINCH

Riches and Poverty

*An Intellectual History of Political Economy in Britain, 1750–1834*

pb: o 521 55920 0

40 JENNIFER PLATT

A History of Sociological Research Methods in America

pb: o 521 64649 9

41 KNUD HAAKONSEN (ed.)

Enlightenment and Religion

*Rational Dissent in Eighteenth-Century Britain*

hb: o 521 56060 8

42 G. E. R. LLOYD

Adversaries and Authorities

*Investigations into Ancient Greek and Chinese Science*

pb: o 521 55695 3



- 43 ROLF LINDNER  
The Reportage of Urban Culture  
*Robert Park and the Chicago School*  
hb: o 521 44052 1
- 44 ANNABEL BRETT  
Liberty, Right and Nature  
*Individual Rights in Later Scholastic Thought*  
hb: o 521 56239 2
- 45 STEWART J. BROWN (ed.)  
William Robertson and the Expansion of Empire  
hb: o 521 57083 2
- 46 HELENA ROSENBLATT  
Rousseau and Geneva  
From the *First Discourse* to the *Social Contract*, 1749–1762  
hb: o 521 57004 2
- 47 DAVID RUNCIMAN  
Pluralism and the Personality of the State  
hb: o 521 55191 9
- 48 ANNABEL PATTERSON  
Early Modern Liberalism  
hb: o 521 59260 7
- 49 DAVID WEINSTEIN  
Equal Freedom and Utility  
*Herbert Spencer's Liberal Utilitarianism*  
hb: o 521 62264 6
- 50 YUN LEE TOO and NIALL LIVINGSTONE (eds.)  
Pedagogy and Power  
*Rhetorics of Classical Learning*  
hb: o 521 59435 9
- 51 REVIEL NETZ  
The Shaping of Deduction in Greek Mathematics  
*A Study in Cognitive History*  
hb: o 521 62279 4
- 52 MARY MORGAN and MARGARET MORRISON (eds.)  
Models as Mediators  
pb: o 521 655714
- 53 JOEL MICHELL  
Measurement in Psychology  
*A Critical History of a Methodological Concept*  
hb: o 521 62120 8

- 54 RICHARD A. PRIMUS  
The American Language of Rights  
hb: o 521 652502
- 55 ROBERT ALUN JONES  
The Development of Durkheim's Social Realism  
hb: o 521 65045 3
- 56 ANNE McLAREN  
Political Culture in the Reign of Elizabeth I  
*Queen and Commonwealth 1558–1585*  
hb: o 521 65144 1
- 57 JAMES HANKINS (ed.)  
Renaissance Civic Humanism  
*Reappraisals and Reflections*  
hb: o 521 78090 x
- 58 T. J. HOCHSTRASSER  
Natural Law Theories in the Early Enlightenment  
hb: o 521 661935
- 59 DAVID ARMITAGE  
The Ideological Origins of the British Empire  
hb: o 521 590817 pb: o 521 789788
- 60 IAN HUNTER  
Rival Enlightenments  
*Civil and Metaphysical Philosophy in Early Modern Germany*  
hb: o 521 792657
- 61 DARIO CASTIGLIONE and IAIN HAMPSHER-MONK (eds.)  
The History of Political Thought in National Context  
hb: o 521 782341
- 62 IAN MACLEAN  
Logic, Signs and Nature in the Renaissance  
*The Case of Learned Medicine*  
hb: o 521 806488
- 63 PETER MACK  
Elizabethan Rhetoric  
*Theory and Practice*  
hb: o 521 812925
- 64 GEOFFREY LLOYD  
The Ambitions of Curiosity  
*Understanding the World in Ancient Greece and China*  
hb: o 521 815428 pb: o 521 894611

- 65 MARKKU PELTONEN  
The Duel in Early Modern England  
*Civility, Politeness and Honour*  
hb: o 521 820626
- 66 ADAM SUTCLIFFE  
Judaism and Enlightenment  
hb: o 521 820154
- 67 ANDREW FITZMAURICE  
Humanism and America  
*An Intellectual History of English Colonisation, 1500–1625*  
hb: o 521 822254
- 68 PIERRE FORCE  
Self-Interest before Adam Smith  
*A Genealogy of Economic Science*  
hb: o 521 830605
- 69 ERIC NELSON  
The Greek Tradition in Republican Thought  
hb: o 521 835453
- 70 HARRO HOPFL  
Jesuit Political Thought  
*The Society of Jesus and the state, c. 1540–1630*  
hb: o 521 837790
- 71 MIKAEL HORNQVIST  
Machiavelli and Empire  
hb: o 521 839459