

Freedom Under the Law: Milton, the Virtues, and Revolution in the Seventeenth-Century

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Dissertation submitted in partial fulfillment of  
the requirements for the degree of Doctor  
of Philosophy in the Department of  
English in the Graduate School  
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ABSTRACT

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## Abstract

John Milton argued that customs are antithetical to rational judgment. My dissertation, *Freedom Under the Law*, investigates the conception of rationality that underlies the divorce of tradition and reason in the writings of the English Civil Wars and Interregnum (1642-1660). In this period, republican authors strive to turn English subjects into citizens whose active virtue and rational judgment is unclouded by tradition and habits. This dissertation argues that these writers build their arguments on a paradoxical depiction of the people as both rationally capable of consenting to political association and irrationally bound by custom. In conversation with Alasdair MacIntyre's analysis of the Aristotelian tradition, *Freedom Under the Law* exposes the tensions that arise in the writings of both canonical and non-canonical seventeenth-century authors as they attempt to re-imagine and represent the individual, the family, and the commonwealth. As this project demonstrates, writers ranging from John Milton to the millenarian John Rogers to the Parliamentarian Henry Parker reveal a residual understanding of political and social community that owes its vocabulary to medieval and classical modes of thinking. However, while Aristotelian models of political association closely link reason, habit, and justice, the authors considered in my project present an understanding of individuals as capable of rational action independent of tradition and custom.

This dissertation traces how this revolutionary account of the individual in political association is expressed through a range of often-conflicting formulations of the English nation. *Freedom Under the Law* begins with Milton's representation of education in the virtues in his early theatrical piece, *Comus* (1634). This first chapter establishes the guiding question of the project: how is the relationship between individual and community reconfigured in the literature of the seventeenth-century? In chapters two and three, I situate Milton's domestic and political prose of 1643-49 in the context of Puritan marriage manuals and Parliamentarian and royalist tracts. Through these comparisons, I show that Milton's distrust of customary laws produces a representation of the virtuous individual and the ideal nation as independent of their own history and, ironically, driven to constant iconoclastic self-reformation. Chapter four demonstrates how impoverished accounts of natural law lead to a devaluing of the people's legislative authority in Edward Sexby's call for the killing of Oliver Cromwell in *Killing No Murder* (1657), apologias of the Cromwellian dissolution of the Parliament in 1653, and the Putney Debates in 1647. Chapter five considers Milton's *Readie and Easie Way* (1660) alongside Fifth Monarchist pamphlets. This chapter questions J.G.A. Pocock's distinction between a medieval custom-based juristic tradition and a republican understanding of rational political life, a distinction adopted widely in Milton studies. I argue that comparison with Aquinas's Aristotelian account of custom and law brings into relief tensions in Milton's model of rational political participation. Throughout the

dissertation, I argue that the conception of virtue and reason adopted by Milton and his contemporaries allows them to dismiss historically-bound embodiments of justice and reason as enslaving accretions.

## **Dedication**

To my mother, with love and gratitude.

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## Preface

*The concept of an intelligible action is a more fundamental concept than that of an action.*<sup>1</sup>

This dissertation emerged at first from an attempt to trace the role of the virtues in John Milton's thought, an exploration that is often conducted in dialogue with Alasdair MacIntyre's work on virtue ethics. In the chapters that follow, my research has been motivated by a desire to make sense of the discrepancy I registered between Milton's "elitism" and his "republicanism." In both his poetry and prose works, Milton, like the Son in *Paradise Regained*, represents the people as fickle and capable only of valuing vulgar things and actions: "what the people but a herd confused,/ a miscellaneous rabble, who extol/ Things vulgar" (III.49-51).<sup>2</sup> At the same time, Milton repeatedly extols the republican ideal that political power resides in "the people." A republican form of government, Milton maintains in the prose works of the 1640s and 1650s, can turn the "miscellaneous rabble" into a virtuous and self-governing people. As I argue throughout the dissertation, the discrepancy between his portrayal of "the vulgar" and his attempts to write into existence republican citizens has its roots in the conception of virtue, reason, and action that underlies Milton's writings. The task of this

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<sup>1</sup> Alasdair MacIntyre, *After Virtue: A Study in Moral Theory*, 3<sup>rd</sup> ed. (Notre Dame: University of Notre Dame Press, 2007), 209.

<sup>2</sup> *The Complete Poetry and Essential Prose of John Milton*, ed. Kerrigan, William, John Rumrich, and Stephen M. Fallon (New York: Random House, 2007). Throughout the dissertation, all quotes from Milton's poetry will be from this edition and cited parenthetically.

preface is to begin to give a motivation for this claim and how I pursue it in the dissertation.

The epigraph to this preface captures a central claim of *After Virtue* that guides my thinking about the virtues throughout this dissertation. As MacIntyre proceeds to explain on the same page, the “importance of the concept of intelligibility is closely related to the fact that the most basic distinction [...] is that between human beings and other beings. Human beings can be held to account for that of which they are the authors; other beings cannot” (*After Virtue*, 209). I want to pause on these two brief quotes from MacIntyre because they link two concepts that we often do not see as intrinsically connected: action and meaning. MacIntyre’s characterization that specifically *human* actions can be intelligible and that we can be held accountable for them is dependent on his claim that human lives are characterized by narrative unity. In this account, a narrative concept of the self—creating a unified whole from birth to death—makes it possible to understand actions as intelligible and, concomitantly, to hold the agent accountable for his actions. As MacIntyre argues throughout his writings, such an account of human action and selfhood is alien to modernity. The virtue ethics

tradition that links Aristotle to Aquinas is discarded as a new understanding of reason takes hold in the late middle ages and the early modern period.<sup>3</sup>

However, this is not to say that early modern writers did not express themselves in the language of the virtues. Case in point, in *De Doctrina Christiana*, Milton describes the virtues in terms of habits: “The IMMEDIATE CAUSES of good actions are, generally speaking, good habits. These are called VIRTUES, and in them is comprised the whole sum of our duty both towards God and towards man.”<sup>4</sup> In this passage, Milton links good actions with good habits, which, in turn, he terms virtues. The link between these terms—actions, habits, and virtues—is also found in Aquinas’s discussion of virtue in the *Summa Theologiæ*. Both accounts have a common source in Aristotle’s discussion of the virtues. While there is a continuity of language between Aquinas and Milton, they arrive to very different conclusions about habit and virtue. It is this difference and its consequences that my dissertation explores.

My project starts by considering Milton’s early theatrical piece, *A Maske*. There, Milton stages an argument between the Lady and Comus on how Nature “means” her

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<sup>3</sup> MacIntyre’s account points to Protestantism and Jansenist Catholicism (and “their immediate late medieval predecessors”) as the new theologies that reject the Aristotelian conception of reason (*After Virtue*, 53-4). Recently, Brad S. Gregory has argued that MacIntyre’s diagnosis of the abandonment of the Aristotelian moral tradition does not pay sufficient attention to the religious and political violence of the Reformation period (*The Unintended Reformation: How a Religious Revolution Secularized Society* (Cambridge, MA: Belknap Press, 2012), 180-89).

<sup>4</sup> *Complete Prose Works of John Milton*, gen. ed. Don M. Wolfe (New Haven, CT: Yale University Press, 1953-82), VI:647. Throughout the dissertation, all quotes from Milton’s prose works will be from this edition and cited parenthetically as *CPW* followed by volume and then page.

“full blessings” to be used. Comus, in a seductive *carpe diem* poem, claims that the abundance of nature signifies that extravagant consumption is justified; it is just to use nature’s bounty as nature means it to be used, abundantly. The Lady, the virtuous individual around whom the masque is centered, argues against this claim. Nature does not mean that “her children should be riotous with her abundance” (763-4); her laws are “sober” and her dictates advise “spare Temperance” (766, 767). As the Lady goes on to argue:

If every just man that now pines with want  
Had but a moderate and beseeming share  
Of that which lewdly-pampered Luxury  
Now heaps upon some few with vast excess,  
Nature’s full blessings would be well dispensed. (768-72)

The Lady’s stirring speech presents an impassioned defense of some of the obligations that each member of a community owes to all others. The significance of our own consumption of Nature’s gifts can only be understood when taken into consideration within the context of the needs of others. In turn, as the Lady’s speech proceeds, this duty towards others—our temperate consumption—is inextricably linked to our duty towards God. By following the sober rules of Nature, “the Giver would be better thanked,/ His praise due paid” than by following Comus’s advice of “riotous” consumption (775-6).

At the same time, the setting of this speech raises a question: what resources does the Lady have to withstand temptation and how has she acquired them? She is alone in Comus's palace in the woods, separated from her brothers and family, and immobilized by Comus's spell. In her wanderings through the dark woods, her feet are "unacquainted" with the mazy paths they traverse. In representing her trial, Milton attempts to isolate an atom of action, her virtuous resistance against Comus's seduction. I place this crucial moment in *A Maske* side-by-side with MacIntyre's characterization of human action to draw out some of the central concerns of my project. By focusing on the setting of the Lady's actions, I wish to invoke not only the theatrical place of action in which the Lady's speech occurs, but also a broader notion. As MacIntyre points out in *After Virtue*, actions become intelligible in different ways when considered within different settings: "it is central to the notion of a setting as I am going to understand it that a setting has a history, a history within which the histories of individual agents not only are, but have to be, situated, just because without the setting and its changes through time the history of the individual agent and his changes through time will be unintelligible."<sup>5</sup> The setting, with its history, makes actions intelligible. More precisely, an agent's actions can become intelligible only in relation to two contexts: first, the agent's own history, and, second, the history of the settings of his actions. First, my

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<sup>5</sup> MacIntyre, *After Virtue*, 206-7.



action of typing a quote from *After Virtue* on this page, for instance, becomes intelligible within the context of my writing a dissertation and pursuing graduate studies.<sup>6</sup> That is, an action becomes intelligible by identifying an agent's intention in terms of her own history. However, identifying this context is not enough. Second, my action of typing this quote may be made intelligible by also accounting for its role within the history of graduate education at Duke University. That is, my intentions, and therefore my action, could not be intelligible without reference to the history of their setting.

MacIntyre's definition of a setting fights against the idea that we can meaningfully talk about the notion of *an* individual human action, isolated from all context (*After Virtue*, 209). Human actions, as opposed to simple natural phenomena, are intelligible only when part of a narrative, of a history. It is, moreover, crucial that these narratives are teleological in nature:

We live out our lives, both individually and in our relationship with each other, in the light of certain conceptions of a possible shared future, a future in which certain possibilities beckon us forward and others repel us, some seem already foreclosed and others perhaps inevitable. There is no present which is not informed by some image of some future and an image of the future which always presents itself in the form of a *telos*—or of a variety of ends and goals—towards which we are either moving or failing to move in the present. (*After Virtue*, 215-6)

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<sup>6</sup> It is worth clarifying that my action may be intelligible even though my explication of MacIntyre's quote may be, unfortunately, not understandable. On this, see *After Virtue*, 210-211.

In this account, the concept of an action is that of an episode abstracted from a history with a beginning and moving towards a possible end. Since ends and goals are created in common with others, my actions become intelligible only within a shared narrative. With this understanding of action in mind, the virtues are to be understood as those habits that aid us in the attempt to live the good life. More precisely, the concept of the virtues shared by Aristotle, Aquinas, and MacIntyre presupposes a notion of human flourishing and proposes that the virtues are exactly those habits that allow us to learn what the good life is and to pursue it. However, what is good for me has to be learned in the context of not only my narrative, but the role of my narrative in those of others as well as in our shared teleological narrative in our search to learn what *the* good is. Consequently, the notion of the virtues is only coherent with an understanding of a person as someone who inhabits a certain narrative and who plays specific roles in the narratives of others. These roles and narratives have a history into which we are born. The virtues, by sustaining the pursuit of the good as an inhabitant of my own and others' narratives, sustain "relationships to the past—and to the future—as well as in the present" (*After Virtue*, 221). Virtue ethics, then, presuppose a notion of human action which takes into account how actions are only intelligible in the context of a shared past and, at the same time, of a narrative that project into the future in terms of our ends and goals.

MacIntyre's rich account of action and the virtues uncovers the complex and historical character of the virtue tradition shared by Aristotle and Aquinas. This is a tradition which Milton explicitly singles out in *Areopagitica* as part of the ethical resources he both draws on and challenges in his conception of virtuous reading: he insists that "our sage and serious Poet *Spencer*" is "a better teacher then *Scotus* or *Aquinas*" (CPW II:516). MacIntyre's work furnishes my dissertation with both a history of Aristotelianism and a penetrative theoretical account of the relationship between the virtues and the past, an account that illuminates often-overlooked incoherences and tensions in Milton's thought. Milton's writings, taken together, present a puzzle when read in this light: Milton praises good habits in *De Doctrina*, but repeatedly rejects tradition and custom throughout his polemical prose works. By rejecting tradition, Milton attempts to separate the individual narrative from shared history. When viewed in the light of MacIntyre's account of Aristotelian virtues, such an attempt renders the notions of action and habituation in the virtues incoherent. In other words, my dissertation asks: what are the consequences of understanding the virtues as dispositions of human beings viewed as individuals? In turn, how does this conception of the virtues reorient the role of a person in a political and social community?

Concern for the conception of the individual in society is certainly not new to Milton studies or the scholarship of seventeenth-century literature. The tendency in both

historical and literary studies of the period, however, is to accept, in broad terms, Milton's own formulation of this relationship. While scholars have criticized Hobbes's thin conception of the contracting individual, the men and women that spring forth from Milton's pages are often embraced as virtuous exemplars of political animals. On this issue, Milton's prose is as dangerously seductive as Satan's poetry: it shows us a version of the individual as capable of developing in the virtues while radically independent of others and of tradition. In the prose works of the Civil Wars and Interregnum, Milton's conception of political association is tested as he forays into the spirited print debates over the reshaping of England's domestic, religious, and political institutions. In these writings, the depiction of the virtues in *A Maske* is brought out of Comus's enchanted woods to face a nation in political and social turmoil. After the first chapter on *A Maske*, my project turns to—and does not leave—Milton's polemical prose. This decision was deliberate, but perhaps needs explaining.

This dissertation begun as a project on Milton and Milton remains central to my analysis. However, over the course of its writing, a methodological concern became increasingly clear. My questions about Milton's notion of the virtues required me to carefully trace the development of his thought. While I repeatedly speak of "Milton's conception of the individual and the virtues," these terms are not meant to represent monolithic constants that remain unchanged throughout Milton's life. Responding in

part to the events of the Civil Wars and the Interregnum, Milton's representation of the role of individuals in political association changes from pamphlet to pamphlet. These changes, however, do not mirror a consistent development. Even within the same text, Milton will produce an often-conflicting depiction of the people of England. In attempting to account for these variations and contradictions in the course of writing the dissertation, I became interested in tracing what underpinning assumptions of political association Milton shared with his contemporaries. In the chapters that follow, I endeavor to investigate these contexts with the same care and through the same Aristotelian lens that I apply to Milton's writings. By paying attention to the consequences of the rejection of Christian Aristotelianism by not only Milton but also by some of his contemporaries, my dissertation brings to light inconsistencies in the mid-seventeenth-century language of social and political association. In other words, my original question about Milton's conception of the virtues led me to inquire more widely about the role that accounts of the virtues played in the political thought of the English revolution.

Starting with chapter three, my dissertation enters the debate over the language of citizenship in the mid-seventeenth-century. Both historians and literary critics primarily place Milton's anti-monarchical and political writings in the context of English republicanism. The Civil War—pitting Parliament against king—led Englishmen to re-

examine the relationship between forms of government, tradition, and customary law. Following J. G.A. Pocock's magisterial account of classical republicanism in *The Machiavellian Moment*, scholars have located in the regicide a turning in how Englishmen conceptualized their role in the political life of the nation. Pocock argues that classical republicanism, drawing primarily on Aristotle's *Politics*, furnishes a new political language which allows Englishmen to see themselves as "citizens" participating rationally in the political life of the nation. In this account, the regicide presented a stark break from traditional modes of social life and provided an opening for the development of a truly *political* form of association. Pocock's influential model contrasts, on the one hand, traditional modes of social life supported by non-rational custom and, on the other, rational political association fostered by the balancing of individual interests. It is one of the central concerns of this dissertation to question this contrast. In Pocock's account, Aristotle's conception of the virtues provides the core to the early modern language of republican citizenship. Aristotle's moral and political philosophy, reinterpreted by civic humanists, furnished a framework for theories of citizenship.<sup>7</sup> Informed by MacIntyre's account of Aristotelian ethics and by Aquinas's own Christian version of the virtues, I argue against Pocock's stark distinction between customary and

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<sup>7</sup> J. G. A. Pocock, *The Machiavellian Moment: Florentine Political Thought and the Atlantic Republican Tradition* (Princeton, NJ: Princeton University Press, 1975), 64-75.

republican versions of association. Pocock underestimates the account of rational political participation essential to Aquinas's Aristotelian natural law theory.

*The Machiavellian Moment* has proved particularly important in the context of Milton criticism. By and large, studies of the literature of the mid-seventeenth-century have uncritically assimilated Pocock's conceptual framework. Prominent among these are David Norbrook's *Writing the English Republic*, Sharon Achinstein's *Milton and the Revolutionary Reader*, as well as the collection of essays edited by David Armitage, Armand Himy, and Quentin Skinner, *Milton and Republicanism*.<sup>8</sup> These, as well as other, studies of Milton place his writings in the context of English republicanism. By accepting Pocock's account of the sharp distinction between the rational nature of republican citizenship and the unthinking reliance on custom of juristic thought, literary scholars tend to adopt Milton's own account of English men and women as blinded by an idolatrous reliance on tradition. Even those scholars who are critical of some aspects of Pocock's discussion of the emergence of republican thought in England share a fundamental agreement about the nature of political rationality. For instance, Norbrook accepts the characterization put forth in *The Machiavellian Moment* by maintaining that

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<sup>8</sup> David Norbrook, *Writing the English Republic: Poetry, Rhetoric and Politics, 1627-1660* (Cambridge: Cambridge University Press, 1999), Sharon Achinstein, *Milton and the Revolutionary Reader* (Princeton, NJ: Princeton University Press, 1994), and *Milton and Republicanism*, ed. David Armitage, Armand Himy, and Quentin Sinner (Cambridge: Cambridge University Press, 1995). For a fuller account of the influence of Pocock's history of classical republicanism on Milton studies, see chapter five, section three.

focus on civic virtue, rational political participation, and a concern for the “freedom” of “the people” is distinctive of republicanism.<sup>9</sup> Norbrook’s study meticulously traces the development of republican language in England from Thomas May’s translation of Lucan’s *Pharsalia* in 1627 to Milton’s publishing of *Paradise Lost* in the 1660s and 1670s. However, at the same time, *Writing the English Republic* reduces medieval political theory to a precursor of Robert Filmer’s “absolutist thought.” In Norbrook’s account, medieval thinkers collapsed the classical distinction between state and family: in “the medieval world, with rule in the hands of personal lord, public and private realms became inextricably mingled. The *polis* came under the hegemony of a super-*oikos*, the household of the emperor or monarch.”<sup>10</sup> Milton’s republican achievement in, for instance, the divorce tracts is to turn each household into a miniature classical *polis*.<sup>11</sup> As I argue in

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<sup>9</sup> Norbrook, *Writing the English Republic*, 18.

<sup>10</sup> *Ibid.*, 115.

<sup>11</sup> *Ibid.*, 117-8. More strikingly, Norbrook maintains that Milton envisions a form of female political participation, albeit limited, in his elevation of intellectual and spiritual over physical conversation in the divorce tracts (117-8). Here too, Norbrook seems to have unquestioningly assimilated Pocock’s categories of thought. In the context of the Putney Debates, Pocock argues that the “radicals” at Putney began to articulate “a new level of civic consciousness” by perceiving themselves in a moment “of freedom triumphing over necessity.” In Pocock’s account, Ireton, on the other hand, denied this claim of far-reaching “natural liberty” and insisted that Englishmen were still bound by “necessity” and had to be anchored by a system of customary law (*The Machiavellian Moment*, 374-6). Echoing Pocock’s language, Norbrook falls in line with Milton’s privileging of the spiritual over the physical: “Sexuality is presented [in the divorce tracts] in terms of meeting a bodily need, identified with the realm of necessity, so that the role of conversation as nurturing freedom can be brought out by contrast; the *oikos* becomes a little *polis*. [...] a good marriage could potentially produce an enabling relationship for the male citizen between the household and the private sphere” (*Writing the English Republic*, 118; emphasis mine). Norbrook relegates a brief discussion of Milton’s misogynist language in the pamphlets to paragraph, where he mildly comments: “Yet Milton’s divorce tracts are riven with contradictions” (118). On my take on this vast understatement, see chapter two below.



chapter five, the assimilation of Pocock's misreading of Aristotelianism as well as of medieval Aristotelian thought has distorted our understanding of Milton's political thought.

Informed by MacIntyre's conception of rationality as tradition-bound and by Ludwig Wittgenstein's philosophy of language, my dissertation maintains both that Milton's attack on custom presents a sharp break with the tradition of Aristotelian ethical and political thought and that this break has catastrophic consequences for his conception of political life. In bringing Aquinas's account of social life to bear on Pocock's representation of Aristotelian political theory, I aim to address my original puzzlement about Milton's rejection of custom. In the late prose works, Milton argues that he writes in order to urge the institution a form of government that will turn custom-bound English subjects into rational and virtuous citizens. I suggest that this claim can be illuminatingly scrutinized in light of MacIntyre's account of the intelligibility of human action and the narrative unity of human life. As MacIntyre explains, Aquinas's formulation of the virtues affords a view of human life as having the potential for unity and directedness. Custom, rather than hinder rational deliberation about political association, forms part of the shared narrative that helps us to make our actions intelligible.

## 1. Milton's "freedom of the mind": The Virtues in "A Maske"

*The sports began each day in manner and such sorte, as well nigh persuaded me of Mahomets paradise. We had women, and indeed wine too, of such plenty, as would have astonished each sober beholder. [...] I do often say (but not aloud) that the Danes have again conquered the Britains, for I see no man, or woman either, that can now command himself or herself.<sup>1</sup>*

*Diis etenim sacer est vates, divumque sacerdos,  
Spirat et occultum pectus, et ora Iovem.  
At tu siquid agam scitabere [...]   
Paciferum canimus caelesti semine regem  
Faustaque sacritis saecula pacta libris,  
Vagitumque Dei, et stabulantem pauper tecto  
Qui suprema suo cum patre regna colit.<sup>2</sup>*

In his 1629 verse letter to Diodati, Milton distinguishes between two types of poet: the writer of light love verses, who may be often drunk with old wine, and the writer of serious poetry, who should only drink "the clearest water." The latter kind of poet not only must follow an austere diet, but must also demonstrate "scelerisque

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<sup>1</sup> *The Letters and Epigrams of Sir John Harington: Together with the Prayse of Private Life*, ed. Norman Egbert McClure (Philadelphia: University of Pennsylvania Press, 1930), 119-21.

<sup>2</sup> "For a bard is sacred to the gods, and a priest to the gods, and both his hidden heart and mouth breathe forth Jove. But if you would know what I am doing [...], we are singing the peace-brining king of heavenly seed, and the happy ages promised in the sacred books, and the baby cries of God, and the stabling under a poor roof of him who inhabits the highest kingdom with his father" (*Elegy VI. To Charles Diodati, staying in the country*, ll 77-84). All quotes from Milton's poetry are from: *The Complete Poetry and Essential Prose of John Milton*, ed. Kerrigan, William, John Rumrich, and Stephen M. Fallon (New York: Random House, 2007).

vacans et casta iuventus,/ Et rigidi mores, et sine labe manus" ("a youth free of crime and chaste, and strict moral, and a hand free from stain," 63-4). The young Milton of course chooses the sobriety of the poet of Jove and sends to Diodati a portrait of holiday pastimes that are consonant with that "casta iuventus" necessary for the formation of a "hand free from stain" and capable of writing a divine poem. The poet's self-representation as a chaste bard is reiterated in *An Apology Against a Pamphlet* (1642), where, against accusations of being a frequenter of brothels, he reminds the reader of his vocation as a writer of divine verse: "he who would not be frustrate of his hope to write well hereafter in laudable things, ought himself to be a true Poem; that is, a composition, and patterne of the best and most honourablest things."<sup>3</sup> The idea of virtuous abstention from temptation, of rejection of the intoxicating wine of the frivolous poet, is a recurring trope in Milton's self-representations, a trope that is central to *A Maske Presented at Ludlow Castle* (1634). In this early theatrical work, falling from virtue is symbolized by tasting the "sweet poison" of Bacchus (47).<sup>4</sup> Whoever tastes Comus's "orient liquor" is instantly transformed into a grotesque icon of sin:

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<sup>3</sup> *Complete Prose Works of John Milton*, gen. ed. Don M. Wolfe (New Haven, CT: Yale University Press, 1953-82), I:890. Throughout the dissertation, all quotes from Milton's prose works will be from this edition and cited parenthetically as *CPW* followed by volume and then page.

<sup>4</sup> Milton's *A Maske Presented at Ludlow* exists in five versions: the Bridgewater MS; the Trinity MS (written in Milton's hand); a 1637 version printed by Henry Lawes, who wrote the songs for the *Maske*; and two versions printed with Milton's *Poems* in 1645 and 1673 (S. E. Sprott, ed., *John Milton: A Maske, The Earlier Versions* (Toronto: The University of Toronto Press, 1973), 3). I use the 1645 version of the masque since we can assume Milton's full control of the text. For Milton's reaction to Henry Lawes' publication of the acting

Soon as the potion works, their human count'nance,  
Th'express resemblance of the gods, is changed  
Into some brutish form of wolf, or bear,  
Or ounce, or tiger, or hog, or bearded goat,  
All other parts remaining as they were;  
And they, so perfect is their misery,  
Not once perceive their foul disfigurement.  
But boast themselves more comely than before,  
And all their friends and native home forget  
To roll with pleasure in a sensual sty. (68-77)

Through the "intemperate thirst" that leads them to partake of Comus's cup, the revelers lose "their human count'nance" and become bestial figures incapable of distinguishing between mere sensual pleasures and what is truly good.

Seventeenth-century masques were primarily private entertainments; their aim was to celebrate and include their audience.<sup>5</sup> Milton's masque is written to be performed by three children of the Earl of Bridgewater and, in her leading role as the Lady, the fifteen years old Alice Egerton celebrated the virtue of chastity.<sup>6</sup> *A Maske* explores the problem of discernment when dangerous temptations are disguised and presented as

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manuscript of *A Maske*, see Barbara Lewalski, "Milton's *Comus* and the Politics of Masquing," in *The Politics of the Stuart Court Masque*, ed. David Bevington and Peter Holbrook (Cambridge, 1998), 307.

<sup>5</sup> With this aim in mind, court masques usually ended with the masquers selecting partners from the audience and including them in a final dance (Stephen Orgel, "The Case for Comus," *Representations* 81 (2003): 31).

<sup>6</sup> While the virtue of chastity was well suited to the age and gender of the Lady, the topic was particularly sensitive for the Bridgewater family. The sister of the Early of Bridgewater was married to the Earl of Castlehaven who, three years prior to the writing of *A Maske*, was found guilty of and executed for a series of cruel sexual crimes against his wife and her daughter (Barbara K. Lewalski, *The Life of John Milton* (Oxford: Blackwell Publishing, 2000), 58-9).

licit pleasures. Unlike the “fugitive and cloister’d” virtue that Milton would denigrate in *Areopagitica* (CPW II:515), the Lady’s chastity must face temptation and temperately and correctly discern the true nature of Comus’ offerings. The link between temperance, chastity, and right reason that drives much of the rhetorical sparring between the Lady and Comus in *A Maske* finds its immediate ancestor in the episode of Acrasia in Book II of the *Faerie Queene*:

Said [the Palmer], these seeming beasts are men indeed,  
Whom this Enchauntresse hath transformed thus,  
Whylome her louers, which her lusts did feed,  
Now turned into figures hideous,  
According to their minds like monstrous.  
Sad end (quoth he [Guyon]) of life intemperate,  
And mournfull meed of ioyes delicious. (II.xii.85)<sup>7</sup>

Guyon, upon hearing the Palmer’s explanation of the brutish transformation of Acrasia’s lovers, links their lust to intemperance. Similarly, in Milton’s masque, Comus reproaches the Lady’s refusal of the proffered cup by accusing her of unnecessary temperance and “lean and sallow Abstinence” (709). With a logic similar to Guyon’s linking of lust with intemperance, Comus moves from a negatively depicted form of temperance to that “vaunted name Virginity” (738). What then is the connection between “the serious

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<sup>7</sup> All quotes from *The Faerie Queene* are from: Edmund Spenser, *The Faerie Queene*, ed. Thomas P. Roche, Jr. and C. Patrick O’Donnell, Jr. (New York: Penguin, 1987). In writing the figure of Comus, Milton could have relied on Ovid, Homer, or, more immediately, on the figure of Circe in *Tempe Restored*. However, throughout *A Maske* there are multiple echoes of Spenser’s *Faerie Queene*. For a discussion of the influence of Spenser’s representation of chastity in Book III of the *Faerie Queene* in *A Maske*, see David Norbrook, *Poetry and Politics in the English Renaissance* (Oxford: Oxford University Press, 2002), 238-42.

doctrine of Virginit<sup>y</sup>” (787) and the “holy dictate of spare Temperance” (767)? Why does a work dedicated to the praise of chastity base its affirmation of virtue on the “freedom of the mind”? In *A Maske*, Milton begins to limn the connection between reason and virtue that will be developed in his later writing. As I will argue, Milton transforms Spenser’s representation of intemperance to reinterpret an Aristotelian concept of right reason. At the same time, Milton’s reworking of Aristotle’s model of rational action produces a version of human agency and reason that is at odds with the processes of virtuous education put forward in the masque.

Much of the critical debate surrounding *A Maske* produced since the New Historicist studies of the 1970s and 1980s has focused on interpreting Milton’s politics and ecclesiology as expressed by his engagement with the genre of the masque. Beginning with Stephen Orgel’s *The Illusion of Power* (1975), the aesthetics of the court masque have been linked with Stuart politics, and Milton’s *A Maske* has been read as an attempt at reforming the genre.<sup>8</sup> More recently, the understanding of Milton’s

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<sup>8</sup> For influential discussions of *A Maske* as a reformed (and even “radical”) example of the genre, see Maryann Cale McGuire, *Milton’s Puritan Masque* (Athens, GA: University of Georgia Press, 1983); David Norbrook, “The Reformation of the Masque,” in ed. David Lindley, *The Court Masque* (Manchester: Manchester University Press, 1984), 94-110; Cedric C. Brown, *John Milton’s Aristocratic Entertainments* (Cambridge: Cambridge University Press, 1985); David Loewenstein, “‘Fair Offspring Nurs’t in Princely Lore:’ On the Question of Milton’s Early Radicalism,” *Milton Studies* 28 (1992): 37-48; and Barbara Lewalski, “Milton’s *Comus* and the Politics of Masquing,” in ed. David Bevington and Peter Holbrook, *The Politics of the Stuart Court Masque* (Cambridge: Cambridge University Press, 1998), 296-320. Lewalski, in particular, sees Milton as striking a balance between court and Puritan values to recreate the genre of the masque as an educational form: “*Arcades* and *A Maske* develop a stance toward art and recreation that repudiates both

entertainments as in line with his later radical politics has come under attack, most notably by Gordon Campbell and Thomas Corns. In their biography of Milton, *John Milton: Life, Work, and Thought* (2008), they argue the young poet is far from being the radical pamphleteer of the 1640s. In their reading, “[t]he Attendant Spirit has some of the characteristics of grace, as conceptualized in Arminian soteriology.”<sup>9</sup> More precisely, they argue that, differing from Milton’s later Arminianism, as delineated in *Paradise Lost*, the soteriology of the early masque is Laudian: “[I]n the masque, as in Laudian Arminianism, external agencies function as vital catalysts. This is the role that the clergy and the ceremonies they promote have within the church. In part, that role is discharged by some aspects of the Attendant Spirit, in part also by the Brothers, but most significantly by Sabrina.”<sup>10</sup> This type of analysis tries to categorize Milton’s political, ecclesiological, and social thinking by selecting a given aspect of *A Maske*—be it his transformation of the Jonsonian masque or his alleged allusion to Laudian ritual—and

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court aesthetics and the Puritan wholesale prohibitions. Associating better aesthetics with the values of a virtuous Protestant aristocracy, Milton’s entertainments seek both to confirm and to educate these noble families in these good values” (297). Similarly, Leah S. Marcus, in *The Politics of Mirth* (Chicago: University of Chicago Press, 1986), sees *A Maske* as a symbolic annihilation of royal power (a power to be replaced, at least at Ludlow, by the Earl of Bridgewater’s virtuous rule) by arousing and then subverting generic expectations (169-212).

<sup>9</sup> Gordon Campbell and Thomas N. Corns, *John Milton: Life, Work, and Thought* (Oxford: Oxford University Press, 2008), 83.

<sup>10</sup> Loc. Cit. The relatively brief argument for Milton’s early Laudianism presented in the biography is based on a more detailed and focused study by Thomas Corns, “Milton before ‘Lycidas’” in ed. Graham Parry and Joad Raymond, *Milton and the Terms of Liberty* (Cambridge: D.S. Brewer, 2002); 23-36.

using it as the critical key that will decode the poet's thinking. For Corns and Campell, Sabrina's sprinkling of water is a clear echo of the sacraments. On the other hand, for Leah S. Marcus, Henry Lawes' performance as the Attendant Spirit, when read in connection to his participation in the production of *Coelum Britannicum* at Whitehall, can yield the opposite conclusion, that is, *A Maske* engages in anti-Laudian and anti-court poetics.

While the studies mentioned above have helped to clarify the context and the web of allusions of Milton's masque, their symmetrically opposed conclusions warn us that the search for independent elements that serve as interpretive keys inserted, consciously or otherwise, by the author to flag his political and religious allegiances can prove frustrating and inconclusive if detached from a clear understanding of the intellectual framework that underpins the deployment of any given factor in his poetry or prose.<sup>11</sup> More precisely, if we want to understand Milton's conception of grace, human free will, and reason, we need to grasp the categories of thought employed by the poet: How does his understanding of the role of grace play into the Lady's reliance on virtue in her encounter with Comus? And how does Milton's concept of virtue itself

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<sup>11</sup> In a move characteristic of much of this debate, Thomas Corns, in an otherwise rich and moderate essay, claims that "The Passion" exhibits an "idiom that Laud could have relished" when the incarnate Christ is described as "a 'sovrn priest, stooping his regal head/ That dropped with odorous oil down his fair eyes'" ("Milton before 'Lycidas'" 29, quoting lines 15-6). By the same logic, Laud, had he been alive to read it, would have applauded the passage in *Paradise Lost* where we find Adam and Eve offering "prayers, which in this golden censer, mixed/ With incense, I thy priest before thee bring" (XI.24-5; emphasis mine).



differ from Aristotle's? These questions need to be answered if we want to understand where Milton's early poetry fits theologically, ecclesiastically, and politically in the development of his thought. Indeed, if in 1645, Milton still included in the middle of his collected poems a decisively Laudian text where "external agencies function as vital catalysts," how are we to reconcile this to the language of *Areopagitica* (1644) and his growing disenchantment with Presbyterian, as well as Laudian, ecclesiology? What exactly is the freedom of the mind envisioned by Milton?

### **1.1 Brutish Slavery and Aristotelian Liberty**

In the second book of *Of Reformation* (1641), Milton describes the *telos* of a Christian monarchy in clearly Aristotelian terms:

They teach not that to govern well is to train up a Nation in true wisdom and virtue, and that which springs from thence magnanimity, (take heed of that) and that which is our beginning, regeneration, and happiest end, likeness to *God*, which in one word we call *godlines*, & that this is the true flourishing of a Land, other things follow as the shadow does the substance: to teach thus were meer pulpitory to them. This is the masterpiece of a modern politician, how to qualifie, and mould the sufferance and subjection of the people to the length of that foot that it to tread their necks [...] To make men governable in this manner their precepts mainly tend to break a nationall spirit, and courage by count'nancing upon riot, luxury, and ignorance, till having thus disfigur'd and made men beneath men, as *Juno* in the Fable of *Iö*, they deliver up the poor transformed heifer of the Commonwealth to be stung and vext with the breese, and goad of oppression under the custody of some *Argus* with a hundred eyes of jealousy. [...] Alas Sir! a Commonwealth ought to be but as one huge Christian personage, one mighty growth, and stature of an honest man, as big, and compact in vertue as in body; for looke what the grounds, and causes are of single happiness to one man, the same yee shall find them to a whole state, as *Aristotle* both in his ethicks,

and politik, from the principles of reason layes down. (CPW I:571-2; underlining mine)

In his first anti-prelatical tract, Milton alludes to *The Nicomachean Ethics* and *The Politics* to remind his readers of the connection between private and public virtue; virtuous citizens are needed to form a healthy commonwealth. The passage compares the “modern politician’s” Machiavellian molding of citizens for subjection, to Aristotle’s stated goal of politics in the *Ethics*: “political science is concerned most of all with producing citizens of a certain kind, namely, those who are both good and the sort to perform noble actions” (1099<sup>b</sup>).<sup>12</sup> To follow this main precept of political science, the legislator ought to urge virtue through his laws and punish those who behave viciously. More importantly, for Aristotle, the legislation of a good *polis* is meant to make possible the right form of education and thus allow its citizens to become habituated in the virtues: “[I]f one has not been reared under the right laws it is difficult to obtain from one’s earliest years the correct upbringing for virtue, because the masses, especially the young, do not find it pleasant to live temperately and with endurance. For this reason, their upbringing and pursuits should be regulated by laws, because they will not find them painful once they have become accustomed to them” (1179<sup>b</sup>). This is the model of a

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<sup>12</sup> All quotes from the *Ethics* are from Aristotle, *Nicomachean Ethics*, trans. and ed. Roger Crisp (Cambridge: Cambridge University Press, 2000). Citations from this work will be given parenthetically in the text throughout the dissertation.

good legislator that Milton wants his readers to remember as he develops his argument for a Presbyterian Church polity in *Of Reformation*.

Moreover, to drive home the importance of good politicians, Milton uses the description of the commonwealth as transformed-Io to recall the language of slavery in *The Politics*. In Book I, Aristotle addresses the question of whether slavery is right or against nature (1254<sup>a</sup>-1255<sup>a</sup>).<sup>13</sup> In answering that slavery is indeed natural—that in fact “from their hour of their birth, some are marked out for subjection, others for rule” (1254<sup>a</sup>)—Aristotle creates a parallel between soul and body, man and animal, and master and slave:

Where there is such a difference as between soul and body, or between men and animals (as in the case of those whose business is to use their body, and who can do nothing better), the lower sorts are by nature slaves, and it is better for them as for all inferiors that they should be under the rule of a master. [...] And indeed the use made of slaves and of tame animals is not very different; for both with their bodies minister to the needs of life. (1254<sup>b</sup>)

The connection between the body, animals, and those who “are by nature slaves” recalls the discussion in book ten of *The Nicomachean Ethics* on happiness and sensual pleasures.

There, Aristotle begins by considering whether a life of amusements can be called happy:

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<sup>13</sup> All quotes are from Aristotle, *The Politics*, trans. Jonathan Barnes, ed. Stephen Everson (Cambridge: Cambridge University Press, 1988). Citations from this work will be given parenthetically in the text throughout the dissertation.

pleasurable amusements also seem [worthy of choice in themselves]; for people do not choose them for the sake of other things, since they are more harmed than benefited by them, through failing to take care of their bodies and their property. And most of those called happy have recourse to pastimes like this, which is why those who are adroit in them are highly esteemed at the courts of tyrants; they offer themselves as pleasant purveyors of what the tyrants are after, and the tyrants want people like this. And so these amusements seem to be connected with happiness, because those in positions of power spend their leisure time on them. (1176<sup>b</sup>)

While these sorts of amusements may at first seem desirable for their own sakes, that is, they may seem to be true goods, Aristotle quickly dismisses them as not capable of giving real happiness. Sensual enjoyments can be had by anyone, even slaves, and therefore they cannot possibly lead a citizen to happiness: “absolutely anyone, a slave no less than the best people, can enjoy the bodily pleasures; but no one attributes a share in happiness to a slave, unless he also attributes to him a share in the life we live” (1177<sup>a</sup>). Just as a free citizen of the *polis* could not possibly learn how to live happily by imitating an ox, neither could he achieve happiness by indulging in the kind of entertainments that would please a slave. Virtue is a necessary component in a full human life.

*A Maske* also highlights the Aristotelian connection between freedom and virtue that is found in *Of Reformation*. The issue of freedom is raised most urgently in Comus’s palace. The description of the setting is telling and recalls Aristotle’s palace of tyrants as much as the court of Charles I: “The scene changes to a stately palace, set out with all manner of deliciousness: soft music, tables spread with all dainties” (Milton’s stage

directions, after line 658). It is in this “stately palace” that Comus tries to tempt the Lady with his magic cup: “Comus appears with his rabble, and the Lady set in an enchanted chair, to whom he offers his glass, which she puts by, and goes about to rise” (stage directions, *ibid.*). As she attempts to leave the chair, the Lady is prevented by Comus who threatens her with his occult powers: “Nay, Lady, sit; if I but wave this wand/ Your nerves are all chained up in alabaster” (659-60). The Lady’s response to Comus’s threat opposes her inner strength and freedom to his binding of her body: “Thou canst not touch the freedom of my mind/ With all thy charms, although this corporeal rind/ Thou hast immanacled” (663-5). The freedom of the mind is, to use Stanley Fish’s words, “everything that matters” to Milton, and this becomes evident when the Lady has been stripped of every other support.<sup>14</sup> But how exactly is her freedom of the mind related to her unshakable virtue?

Milton’s praise of freedom has often been taken as a sign of a form of antinomianism. Notably, Stanley Fish argues that, in the masque and thus as early as the 1630s, the poet does not construct rigid categories of virtuous versus vicious actions, but rather assigns ethical values based on moral status of the agent: “The Lady is not good because she does X; rather, X is good because *she* does it. And exactly the reverse is true of the actions and offers of Comus, which are intended (by Milton) less to persuade than

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<sup>14</sup> Stanley Fish, *How Milton Works* (Cambridge, MA: Belknap Press, 2001), 151-2.

to supply the other pole of the two worldviews the mask is always contrasting.”<sup>15</sup> In this view, the work of the masque is to stage for its audience a representation of free virtue in action. Even the intervention of Sabrina at the behest of the brothers is meant “to underline the freedom of virtue, which is as independent (in its own sphere) of heavenly intervention as it is immovable before the lure of earthly temptations.”<sup>16</sup> The masque’s fit audience can learn from its performance by understanding and recognizing that virtue does not consist in doing a set of specific actions, but rather in having internalized a certain “hierarchy of loyalties.”<sup>17</sup> It is this ordering of values that allows the Lady to correctly reason about and interpret the dark woods, Comus’s offer, and the proper use of Nature’s bounty. In *Reviving Liberty*, Joan Bennett refines this understanding of the antinomian Milton and argues that, at least by the time of the writing of the late poems, the role of Miltonic right reason is “to balance all applicable laws in a noncontradictory hierarchy consistent with the unified divine purpose, with ‘natural law,’ ultimate truth. This rational balancing is a normal activity of the divine spirit within us,” akin to the Aristotelian notion of striving for the mean.<sup>18</sup> Thus, while any particular commandment may be broken, this can only be done “in deference to a rationally understood higher

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<sup>15</sup> Ibid., 157.

<sup>16</sup> Ibid., 159.

<sup>17</sup> Ibid., 156.

<sup>18</sup> Joan S. Bennett, *Reviving Liberty: Radical Christian Humanism in Milton’s Great Poems* (Cambridge, MA: Harvard University Press, 1988), 110.

purpose of the whole law.”<sup>19</sup> This balancing act is the proper use of human reason and free will as created in the image of divine rationality.<sup>20</sup> It is this view of Miltonic reason and freedom as Aristotelian that I would like to question.

At the beginning of *A Maske*, Milton illustrates the consequences of having lost the freedom of one’s mind. To the audience of the masque, the dangers of drinking from the charmed cup would have been apparent even before Comus’s entrance on the stage. The Attendant Spirit, in his first speech, describes the dangers of the “sweet poison of misused wine” (47) and warns that all those who drink of it “through fond intemperate thirst” (67) are turned into “brutish form” (70). The Spirit’s depiction of the rioters is confirmed by the physical appearance of the revelers once they do step onto the stage. Comus’s first speech begins by sounding benign enough, if unruly: “welcome joy, and feast,/ Midnight shout, and revelry,/ Topsy dance, and jollity” (102-4). His speech only turns ominous once Comus invokes Cotytto: “Hail goddess of nocturnal sport,/ Dark-veiled Cotytto” (128-9). However, while the beginning of Comus’s speech may have sounded innocuous to the audience, the appearance of the cast of rioters would have contradicted these words and anticipated the invocation of Cotytto. His company is

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<sup>19</sup> Loc. Cit.

<sup>20</sup> Ibid., 9-11. For Bennett, Milton is the heir of Hooker and a tradition of Christian humanism that values reason not as a limited instrument that can only be applied to the material world, but as *right reason*. She argues that the Anglican support of the Stuart doctrine of divine right is a repudiation of Hooker’s understanding of human free will as based on the rational nature of God (*Reviving Liberty*, 6-32).

described as “a rout of monsters headed like sundry sorts of wild beasts” (Milton’s stage directions; after line 92). The effects of intemperance are thus made clear to the audience twice: once by the introductory speech of the Attendant Spirit, and the second time by the actual appearance of Comus and his followers. The audience has a privileged view and therefore should not be deceived by the enchanter’s “dazzling spells” (154) and “glozing courtesy” (161). The Lady, on the other hand, will be denied exactly this visual revelation of the effects of “intemperate thirst” (64) on Comus’s followers.

Milton, however, does not always give the audience a privileged view in *A Maske*. While in her first encounter with Comus, the Lady is fooled by his disguise and spells, in her first appearance in the masque, she is granted a vision denied to the audience. Approaching the place of Comus’s revels, the Lady begins to fear that the sounds of “riot and ill-managed merriment” (172) heard in the woods are signs of danger. Imagining a “thousand fantasies” (205), she is afraid, but her fear lasts only a moment:

These thoughts may startle well, but not astound  
The virtuous mind, that ever walks attended  
By a strong siding champion Conscience.—  
O welcome pure-eyed Faith, white handed Hope,  
Thou hovering angel girt with golden wings,  
And thou unblemished form of Chastity,  
I see ye visibly, and now believe  
That he, the Supreme Good, t’whom all things ill  
Are but as slavish officers of vengeance,  
Would send a glist’ring guarding if need were



To keep my life and honor unassailed. (210-20; emphasis mine)

While the spectator of the masque has been given a privileged view into the true nature of Comus and the rioters, the audience does not see the virtues invoked by the Lady in this passage. What the masque does not explicitly present is an allegorical embodiment of the Faith, Hope, and Chastity. Their personifications are called to mind by the Lady's speech, but they are not physically present on the stage.

By way of contrast we need only recall one of the many entertainments offered to King James earlier in the century. Among the "sports" alluded to by Sir John Harington in the letter quoted in the epigraph to this chapter, we find a performance in which Faith, Hope, and Charity address James I in a (misfired) compliment:

Now did appear, in rich dress, Hope, Faith, and Charity: Hope did assay to speak, but wine renderd her endeavours so feeble that she withdrew, and hope the King would excuse her brevity: Faith was then all alone, for I am certain she was not joined with good works, and left the court in a staggering condition: Charity came to the King's feet, and seemed to cover the multitude of sins her sisters had committed; in some sorte she made obeisance and brought giftes, but said she would return home again, as there was no gift which heaven had not already given his Majesty. She then returned to Hope and Faith, who were both sick and spewing in the lower hall.<sup>21</sup>

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<sup>21</sup>*The Letters and Epigrams of Sir John Harington*, 119. My attention was first drawn to this letter by Leah S. Marcus's quoting this passage in *The Politics of Mirth* (10). The use of allegorical figures was of course common in masques and their roles were at times acted, at least during the reign of Charles I, by the King and Queen themselves (see, for instance, Lewalski, Barbara, "Milton's *Comus* and the Politics of Masquing," 296-7).

There is no such allegory in *A Maske*. Strikingly, while sin is made evident in the visage of the rioters who, almost like Dante's sinful souls, embody their own debauchery, there are no personifications of the virtues in *A Maske*. The three virtues are shown only to the Lady, who is given the ability to see what no spectator can. The virtues' presence, however, is evidenced by the effects that they bring about in the Lady. For her, Faith, Hope, and Chastity appear "visibly" (216), and, immediately, evoke a belief in the active agency of providence: "I see ye visibly, and now believe" (216; emphasis mine). Having "seen" the virtues once, the Lady never swerves from her steady faith in providence. She is not afraid of following Comus disguised as a shepherd because she believes that her moral strength will not be tested beyond its abilities: "Eye me blest Providence, and square my trial/ To my proportioned strength. Shepherd lead on" (329-30). Having been given the pattern of the virtues "visibly," the Lady knows herself capable of correctly measuring all temptations against them.

Is she right? The Lady of course resists temptation. At no point do we believe that she will give in to Comus's offers and taste his "cordial julep" (672). It is clear that she is capable of matching the enchanter's eloquence; she can supply Virtue with the "tongue to check [Vice's] pride" (761). At the same time, her encounter with Comus indicates a tension between her first belief that a "glist'ring guardian" would appear to keep her "life and honor unassailed" (219-20) and her subsequent trust in Providence to

only send trials “proportioned to her strength” (330). In her second statement, she no longer claims that her virtue is not “unassailed.” What resources does she have to withstand Comus’s temptations? And does the masque tell us how she has acquired such resources? *A Maske* is an example of a genre particularly concerned with instructing its audience, but, according to Stanley Fish, Milton gives a very limited answer to the question of what we can learn from the Lady. In *How Milton Works*, Fish argues that the Lady’s trial is an illusion. She does not actually *do* anything. Her only duty is to bear witness to virtue: “Her moment of trial (or, more properly, of self-explification) requires an affirmation, and we are required to comprehend it; the text for both is the same: ‘Thou canst not touch the freedom of my mind.’”<sup>22</sup> Indeed, according to Fish, in all of Milton’s early works, there is no real growth towards virtue:

In the early poetry and prose, we meet the members of these two categories [regenerate and unregenerate] already fully formed and forever alien to one another [...]. There is no sense of possible movement in either direction, and consequently there is no genuine role for time, which is imagined not as the vehicle for change but as a succession of spaces in which agents already constituted (either in truth or in its opposite) testify to what they are and what they are not.<sup>23</sup>

In this reading then, the Lady’s transition from fear at hearing the noise from Comus’s revels to belief at her vision of Faith, Hope, and Chastity is simply a self-recognition of her own “freedom of the mind.” That is, whatever carries her through her trial is already

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<sup>22</sup> Stanley Fish, *How Milton Works*, 153.

<sup>23</sup> *Ibid.*, 215-6.

present in her at the start of the masque. Moreover, the reader who is not already regenerate cannot learn how to become so from the Lady's defense of virtue. In *How Milton Works*, *A Maske* is viewed as a spectacular example of what is celebrated by the Chorus of Marvell's "A Dialogue, Between the Resolved Soul, and Created Pleasure":

Earth cannot show so brave a sight  
As when a *single* soul does fence  
The batt'ries of alluring sense,  
And Heaven views it with delight.<sup>24</sup>

In Marvell's poem, the reader is presented with a disembodied Soul refusing the temptations offered by Pleasure while the Chorus exhorts the Soul to remain virtuous. Like the Lady, the "single soul" remains firm against a series of temptations offered her by Pleasure. Presented with "Nature's banquet" (14), the Soul rejects it and tersely replies: "I sup above, and cannot stay/ To bait so long upon the way" (17-8).

While Marvell's "A Dialogue" draws heavily on *Paradise Lost*, pairing Marvell's poem with *A Maske* helps to highlight the importance of the Lady's isolation.<sup>25</sup> Her external guides have been stripped away and she is left alone in the woods. For Fish, this is the central point of the masque: "Friends, light, vision, hearing, direction—one by one they are taken from her, until in Comus's lair she is deprived even of her mobility and is left with nothing at all. Yet, as it turns out, she is left with everything—*everything*

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<sup>24</sup> *The Poems of Andrew Marvell*, ed. Nigel Smith (London: Pearson Longman, 2007), ll. 45-8; emphasis mine.

<sup>25</sup> The tentative dating of Marvell's poem to 1667 is based on the publication of the first edition of Milton's epic (*The Poems of Andrew Marvell*, 33).

*that matters,*" that is the freedom of the mind.<sup>26</sup> What is the difference between the Soul in "A Dialogue" and the Lady paralyzed on the chair? On one level, nothing. Through the device of Comus's enchantment, Milton has brought the Lady to a situation that is very similar to that of Marvell's disembodied Soul. Both are presented with worldly and sensual temptations. Both resist by remembering that they must strive for a higher purpose than physical enjoyment. On another level, however, everything in the masque fights against the model of temptation represented in Marvell's poem. In "A Dialogue," Pleasure tries to allure the Soul with physical and material enticements, but many of these baits are strangely incorporeal. In his poem, Marvell does not present a hungering individual lured by appetizing food, but rather a soul tempted with "the souls of fruits and flowers" (15). In Milton's masque, instead, the Lady is alone and vulnerable because her brothers notice that she is "weared out/ With this long way" (182-3). Her physical weakness is what exposes her to Comus's temptations. It is to alleviate her hunger and thirst that they step "to the next thicket" to bring her "berries, or such fruit/ As the kind hospitable wood provide" (185-7). Similarly, the Younger Brother is worried about the physical discomfort that their lost sister might be suffering. He worries about the "chill dew" and the "rude burs and thistles" (352), and imagines that "[p]erhaps some cold bank is her bolster now/ Or' gainst the rugged bark of some broad elm/ Leans her

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<sup>26</sup> Stanley Fish, *How Milton Works*, 152.

unpillowed head fraught with sad fears" (353-5). The Lady's physical body is an essential part of *A Maske*.

Thus, while she resists temptation by declaration that she only needs the freedom of the mind, the Lady is not Marvell's disembodied soul. Indeed, one of the central questions of her debate with Comus is how to interpret physical reality. Unlike the revelers, the Lady does not succumb to their bestial slavery of the flesh. Nonetheless, the enchanter realizes that cold, thirst, and hunger can be a powerful aid in his attempt to seduce her. He describes his drink as "[t]o life so friendly" and "cool to thirst" (678). It is by reminding the Lady of her need for the gifts of all-giving Nature that Comus begins to tempt her:

Why should you be so cruel to yourself,  
And to those dainty limbs which Nature lent  
For gentle usage and soft delicacy?  
But you invert the cov'nants of her trust,  
And harshly deal like an ill borrower  
With that which you received on other terms,  
Scorning the unexempt condition  
By which all mortal frailty must subsist,  
Refreshment after toil, ease after pain,  
That have been tired all day without repast,  
And timely rest have wanted. (679-89)

Comus's language echoes that of Despair in Book I of the *Faerie Queene*. In Canto 9, the Redcrosse Knight comes upon a "drearie corse" and threatens revenge against Despair, whom he accuses of being the "author of this fact" (I.ix.36). Despair answers that it is not

“vniust to each his due to give” (I.ix.38) and that in death, one finally finds “Sleepe after toyle, port after stormie seas,/ Ease after warre” (I.ix.40). Redcrosse has been travelling through dangerous and tempting woods and the words of Despair remind him that he has sinned repeatedly: “The knight was much enmoued with his speech/ [...] / And to his fresh remembrance did reuerse/ The vgly view of his deformed crimes” (I.ix.48). The knight takes the knife that Despair hands to him and “At last resolu’d to worke his finall smart,/ He lifted vp his hand” (I.ix.51). He is, however, saved by Una’s intervention, who “snatch the cursed knife” (I.ix.52) from his hands and takes him to the House of Holiness. There, he is taught by Fidelia from her “sacred Booke” (I.x.19), comforted by Speranza, and instructed in “loue, and righteousnesse, and well to donne” by Charissa (I.x.33). It is through his progress in the House of Holiness and through the ministrations of Faith, Hope, and Charity that the Redcrosse Knight is prepared for the vision of the covenant of Grace that he receives by climbing “the highest Mount” with Contemplation (I.x.53).

As we have seen above, the Lady, however, has already received a vision of faith, hope, and chastity. She is steadfast in her faith and Comus tempts her with “refreshment,” rather than “sleepe,” after toil. Spenser’s Redcrosse is restored to the covenant of Grace after his encounter with Despair by the figure of Contemplation. Comus, instead, scolds the Lady for betraying the “cov’nants” of Nature. He attempts to

lead the Lady to understand her own body as the rule by which to judge what is good for her. Since her limbs are “dainty,” she is meant for “gentle usage and soft delicacy,” or so goes the enchanter’s reasoning. In Comus’s view, an individual’s purpose can be deduced from her apparent nature. Comus returns to this argument after the Lady’s first refusal of the cup. In his alluring *carpe diem* poem in lines 737-755, he reiterates his argument that we can deduce our proper end from our appearance: “coarse complexions/ And cheeks of sorry grain will serve to ply/ The sampler, and to tease the housewife’s wool” (749-51). The Lady’s beauty, instead, has another use and meaning: “What need a vermeil-tinctured lip for that,/ Love-darting eyes, or tresses like the morn?/ There was another meaning in these gifts” (752-4; emphasis mine). Meaning is evident in the thing itself with no need of external interpretive rules. The Lady’s reply to this line of reasoning turns against Comus his own language: “Impostor, do not charge most innocent Nature,/ [...] she good cateress/ Means her provisions only to the good” (762, 764-5; emphasis mine). While both interlocutors are using the language of “meaning/to mean,” the logic behind their respective arguments is markedly different. For the Lady, meaning can only be known by understanding the *intentions* of Nature, “she good cateress/ *means* her provisions.” This play on grammar, the change from noun to verb, allows Milton gently to alert the reader (even more so than the original spectators) that to understand the *meaning* of Nature’s gifts, we need to know how she



*means* them to be used; that is, we need to know their extrinsic end and their proper use.<sup>27</sup> Moreover, we will not be able to discover how to correctly use Nature's bounty, if we do not know our own *telos*. For the Lady, the worth of things is not intrinsic in their own properties, but can be understood from their uses and from the moral status of those using them: only those who "are good men can give good things,/ And that which is not good, is not delicious/ To a well-governed and wise appetite" (703-5). The difference between each object's surface properties and the ends to which it is used is highlighted by the distinction between a drink being *good* and being *delicious*. Taste, being delicious, should be inherent in the object itself, but, for the Lady, it is dependent on the agent dispensing the drink.

## **1.2 Misinterpreting Temperance as "sallow Abstinence": The Lady's Reply to Comus**

To fully comprehend the difference between the Lady's and Comus's conception of meaning and interpretation, we need to lay out more explicitly the connections between proper ends of objects and the moral status of an agent. However, before turning to this task, I would like to bring in for comparison a blunter version of the

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<sup>27</sup> John Donne, in his *Paradoxes and Problems* xii, seems to create a similar tension between both ideas of meaning by making a virtue of temporary virginity as long as it is relinquished in a timely and appropriate manner: "For surely nothing is more unprofitable in the commonwealth of *Nature*, than they that dy old maids, because they refuse to be used to that end for which they were only made" (*The Complete Poetry and Selected Prose of John Donne*, ed. Charles M. Coffin (New York: Random House, 2001), 304). The meaning of one condition, virginity, is deduced from its future end, rather than from its current state. Thus, virginity can be both either a virtue or a vice based on whether Nature's intention is correctly interpreted.

position stated by the Lady as found in the sermons of John Preston.<sup>28</sup> Preston, a reluctant convert to the study of Divinity, enjoyed a surprising career after gaining the favor of King James in 1615 during a public disputation on whether dogs can reason.<sup>29</sup> In 1621, he became chaplain to Prince Charles and, in 1622, he was appointed to the pulpit at Lincoln's Inn after John Donne became Dean of St. Paul's.<sup>30</sup> Preston enjoyed the Court's favor through most of the 1620s and lost his privileged position only after the Duke of Buckingham turned against him. In his sermon, "The Doctrine of Selfe-deniall," Preston praises what Comus would have labeled "lean and sallow Abstinence."<sup>31</sup> The sermon urges self-denial as a remedy against what Preston calls "idolatry of the flesh," that is, the worshipping of creation instead of the Creator.<sup>32</sup> Keeping this kind of idolatry

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<sup>28</sup> I choose John Preston to stand in comparison with Milton because of his wide influence and acceptance both at court and in the "Puritan party." For a discussion of the problematic term "Puritan" and of the interpenetration of Puritans at court, see Lake, Peter, "Defining Puritanism—Again?" in ed. F. J. Bremer, *Puritanism: Transatlantic Perspectives on a Seventeenth-Century Anglo-American Faith* (Boston: Northeastern UP, 1993), 3-29.

<sup>29</sup> All biographical details on Preston are from Christopher Hill, *Puritanism and Revolution: The English Revolution of the 17<sup>th</sup> Century* (London: Secker and Warburg, 1958), 239-74. For a more detailed life of John Preston, see Irvonwy Morgan, *Prince Charles's Puritan Chaplain* (London: Allen and Unwin, 1957).

<sup>30</sup> Christopher Hill gives an impressive roll call of Puritan notables who probably listened to Preston's sermons at Lincoln's Inn, including William Prynne (*Puritanism and Revolution*, 240).

<sup>31</sup> Published in 1633 as part of a collection of sermons, *Fovre Godly and Learned Treatises*. All quotes are from Preston's sermons are from: John Preston, *Fovre Godly and Learned Treatises* (London, 1633). Early English Books Online. Union Theological Seminary Library (New York, N. Y.). 17 January 2010.

[http://gateway.proquest.com/openurl?ctx\\_ver=Z39.882003&res\\_id=xri:eebo&rft\\_id=xri:eebo:citation:99850259](http://gateway.proquest.com/openurl?ctx_ver=Z39.882003&res_id=xri:eebo&rft_id=xri:eebo:citation:99850259).

<sup>32</sup> Milton may have a similar idea in mind when he has both the Lady and Comus defend their answer to the question of how to correctly praise the "All-giver." While Comus claims that "if all the world/ Should in a pet of temperance" give up all luxury, "Th' All-giver would be unthanked, would be unpraised" (720-3), the Lady replies that if all "Had but a moderate and beseeching share/ [...] then the Giver would be better thanked/ His praise due paid" (769-76).

at bay requires constant denial of the desires of the flesh: “[c]onsider what your morning thoughts are, consider that the flesh is lusting and running; thinke therefore every morning how to crosse it the day following, you must dayly deny your selves.” Not surprisingly, the preacher imagines an interlocutor protesting that “this is a hard saying, who can beare it?” Preston insists that happiness cannot be found in what has been created, but only in the Creator.

This is a theme to which he returns frequently. For instance, in “A Remedy Against Covetousnesse,” he urges those who claim that they rejoyce in the goods of creation as blessings from God to carefully examine their motives: “If yee thinke this with your selves, wee have Wives, Children, Friends and Riches, ’tis true we have them, but yet they shall not continue with us an houre or minute longer than God will: If ye thinke so in good earnest, then yee rejoyce in them as blessings.” For Preston, the truly godly may be thankful for the bounty of providence, but they must not put their trust in its gifts. He urges his listener to remember to:

looke on them onely as the Vehiculaes or Conduit pipes, to convey comfort. The aire yeelds light as an Instrument, though it hath no light of its owne: the water may heat, but not of its selfe, but by that heate which is infused into it by the fire: So if a man drinke a Potion in beere, the beere of itselfe doth not worke but the Potion worketh by the beere: So it is with all outward blessings, they of themselves can yield you no comfort at all, but if they yeeld you any, it is by reason of that comfort which God puts into them.<sup>33</sup>

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<sup>33</sup> Preston, *Fovre Godly and Learned Treatises*, 18; emphasis mine.

Comfort and hope cannot be found in creation, but only in the Creator. Thus, "Wives, Children, Friends and Riches" can only be counted as blessings as long as we keep vividly before our eyes the giver of those gifts; none but such as are good can enjoy good things. The distinction between loving creation for its own sake and loving it for the sake of the Creator is not of course new to Preston. But in reading the passage above, one has to ask whether one "conduit pipe" would work as well as another. Are all material conditions and personal relations truly equivalent to the godly? More precisely, is loving creation for the sake of the Creator fundamentally independent of the particularity of the gifts of providence even when those gifts are "Wives" and "Children"? In "The Doctrine of Selfe-deniall" and "A Remedy Against Covetousnesse," not only are riches and physical pleasures suspect, but so are all human relationships, including the most intimate. Reading the sermons, one is left with the bewildering sense that the best course of action for an individual might be to create as few attachments and supports as possible. Friends, who sustain us in our attempts at virtue today, may turn out to be luring us into idolatry tomorrow.

To better understand what other form could be given to the idea of loving creation for the Creator, I would like to compare Preston's sermons with Augustine's

*Confessions*.<sup>34</sup> In Book IV, Augustine utters his famous cry of self-doubt and opacity, “I had become to myself a vast problem,” while narrating his grief over the death of an unnamed childhood friend.<sup>35</sup> This death is a moment of tremendous pain and loneliness in the *Confessions*: “all that I had shared with him was without him transformed into a cruel torment. My eyes looked for him everywhere, and he was not there.”<sup>36</sup> It is the passing of time that dulls Augustine’s grief: “[t]ime is not inert. It does not roll on through our senses without affecting us. [...] by its coming and going it implanted in me new hopes.”<sup>37</sup> But these hopes too are transient; they cannot be a solid foundation for permanent joy since they also die: “Things rise and set: in their emerging they begin as it were to be, and grow to perfection; having reached perfection, they grow old and die.”<sup>38</sup> The successive passing away of all that is created leads those who love only creation to constantly feel longing and suffering. Transient things “rend the soul with pestilential desires; for the soul loves to be in them and take its repose among the objects of its love. But in these things there is no point of rest: they lack permanence.”<sup>39</sup> In a striking simile, Augustine likens the constant passing away of creatures to the formation and

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<sup>34</sup> For a discussion of the influence of Augustine’s *Confessions* on Puritan diaries of the sixteenth- and seventeenth-centuries, see Margo Todd, “Puritan Self-Fashioning” in *Puritanism: Transatlantic Perspectives on a Seventeenth-Century Anglo-American Faith*, 57-87.

<sup>35</sup> Augustine, *Confessions*, trans. Henry Chadwick (Oxford: Oxford University Press, 1992), 57.

<sup>36</sup> *Ibid.*, 57.

<sup>37</sup> *Ibid.*, 60.

<sup>38</sup> *Ibid.*, 61.

<sup>39</sup> *Ibid.*, 62.

understanding of speech: “That is the way our speech is constructed by sounds which are insignificant. What we say would not be complete if one word did not cease to exist when it has sounded its constituent parts, so that it can be succeeded by another.”<sup>40</sup> In a drawn-out lament for the suffering caused by loving only what is created and thus impermanent, Augustine creates a parallel between the successive passing away of all the frail objects we love and the creation of meaning through consecutive sounds. The image presents completeness as achieved by understanding how to transcend the frailty of temporality by correctly fitting each sound, each life, in a fabric of meaning. For though each creature, taken separately, is just like a short sound, yet all of creation seen in its succession becomes meaningful as speech. It is speech that makes order out of the instants of Augustine’s life through the constant calling and praising of God that permeates the *Confessions*; the text itself becomes an example of how to read creation.

At this moment, Augustine attempts to show how to love creation without resting his hopes on it. This kind of love can only be known through the incarnation:

He who for us is life itself descended here and endured our death and slew it by the abundance of his life. In a thunderous voice he called us to him, at that secret place where he came forth to us. [...] He did not delay, but ran crying out loud by his words, deeds, death, life, descent, and ascent—calling us to return to him. And he was gone from our sight that we should ‘return to our heart’ (Isa. 46:8) and find him there. He went away and behold, here he is.<sup>41</sup>

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<sup>40</sup> Ibid., 62.

<sup>41</sup> Augustine, *Confessions*, 64.

In this passage, the incarnation itself is presented with a syntax that mimics the quick passing away of instants of time and bits of language.<sup>42</sup> The life of Christ then becomes a pattern for human life not only as an example to be followed, each life to be lived as *imitatio Christi*, but also as the interpretive key to life.<sup>43</sup> As Jennifer Herdt points out, the rhetorical strategy of the *Confessions* is to teach through a series of examples:

“Augustine’s *Confessions* is not a static record of his own experience but a cascade of exemplary conversions serving as the occasion for other conversions, which can in turn serve as exemplary. These exemplars can serve as such inasmuch as they point back beyond themselves to scripture and ultimately to Jesus as the original exemplar.”<sup>44</sup> This is not to say that, for Augustine, justification can be achieved without divine grace.

Rather, it is through examples, and most importantly the example of Christ, that the individual can move from conversion to growth in the virtues: “Augustine’s language

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<sup>42</sup> The original Latin, if anything, is even more emphatically fast-paced with its quick succession of dentals: “et descendit huc ipsa vita nostra, et tulit mortem nostram, et occidit eam de abundantia vitae suae: et tonuit clamans, ut redeamus hinc ad eum in illud secretum unde processit ad nos [...]. non enim tardavit, sed cucurrit; clamans dictis, factis, morte, vita, descensu, ascensu; clamans ut redeamus ad eum. et discessit ab oculis, ut redeamus ad cor, et inveniamus eum. abscessit enim, et ecce hic est” (Augustine, *Confessions*, ed. James J. O’Donnell (Oxford: Clarendon Press, 1992), 1:40)

<sup>43</sup> It is then not surprising that the *Confessions* end with a discussion of hermeneutics and allegory. The whole narration of the *Confessions* can be viewed as an attempt at interpreting Augustine’s life in terms of Christ’s.

<sup>44</sup> Jennifer A. Herdt, *Putting on Virtue: The Legacy of the Splendid Vices* (Chicago: University of Chicago Press, 2008), 67.

leaves ample room for gradual process and transformation, for spiritual exercise that habituate one slowly in Christian virtue."<sup>45</sup>

It is as part of this interpretive effort that the distinction between loving a creature for its own sake and loving it for the sake of the Creator can be understood. For Augustine, to love creation for its own sake is to rely on transient things as if they were permanent: "The reason why that grief had penetrated me so easily and deeply was that I had poured out my soul on to the sand by loving a person sure to die as if he would never die."<sup>46</sup> To love them for the sake of the Creator is to correctly interpret them and to understand their true end as well as our own. If we compare this view of creation with Preston's, the difference becomes clear. In the "The Doctrine of Selfe-deniall," *imitatio Christi* becomes renunciation: "learne to know CHRIST aright, that will make you deny your selves."<sup>47</sup> There is no concern for others, but rather a relentless returning to the self as what needs to be controlled, while the rest of creation is seen as a potential trap to lure the individual into idolatry. The focus is on the sinfulness of the flesh: "The flesh is to the Soule, as a disease is to the body; If ye give one that is sicke of a Dropsie, drinke; or one sicke of a Feaver, Wine; you will please the humour well, but ye kill the man; so it

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<sup>45</sup> Ibid., 70.

<sup>46</sup> Augustine, *Confessions*, 60.

<sup>47</sup> Preston, *Fovre Godly and Learned Treatises*, 211.



is here.”<sup>48</sup> While the language of sinfulness and of the works of the flesh is from Paul—Preston quotes Rom. 7.20, “It is no longer I that doe it; but sinne that dwels in mee”—nowhere in the sermon can we find a mitigating understanding of corruption of the flesh as a punishment for original sin rather than the source of sin itself.<sup>49</sup> Preston’s sermons relentlessly ask us to view “the flesh,” a category that seems to include our attachments to friends and family, only as a possible source of sin. In Preston’s account, one must be ready to relinquish all human relationships, even those that have hitherto helped in the development of the virtues. Indeed, the very support we might receive from others is a potential source of sin. The fundamental position advocated in his sermons is that we must strip away anything external that might stand in the way of relying on God. Anything else risks breaking the first commandment.<sup>50</sup> With such a focus on self-control and renunciation, Preston’s discussion of the duty to follow the example of Christ is given only five lines, where the reader is reminded of His “love, which he shewed in his

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<sup>48</sup> Preston, *Fovre Godly and Learned Treatises*, 190.

<sup>49</sup> This second view is the one found in Chapter 3 of Book XIV of *The City of God*: “For the corruption of the body, which weighs down the soul, is not the cause of the first sin, but its punishment. And it was not the corruptible flesh that made the soul sinful: it was the sinful soul that made the flesh corruptible” (Augustine, *The City of God*, trans. Henry Bettenson (New York: Penguin, 2003), 551).

<sup>50</sup> A clear example of this is found in “A Remedy Against Covetousness,” Preston’s sermon on the text of Col. 3.5: “to seeke helpe and comfort from any creature and not from God alone, is vaine and sinfull: It must needs bee so, because it is Idolatry” (Preston, *Fovre Godly and Learned Treatises*, 27).

readinesse both to give and forgive.”<sup>51</sup> Charity—exemplified by Christ’s love—is reduced to self-denial and moderation.

While Preston’s sermons give voice to concerns about the misuses of natural bounty that parallel those voiced by the Lady, her rejection of “lewdly-pampered Luxury” (770) moves beyond Preston’s fear of idolatry of the flesh. Although Comus accuses her of listening to “those budge doctors of the Stoic fur” (707), the Lady does not express a slavish obedience to temperance for its own sake or for fear of idolatry. In her speech, temperance becomes part of a form of justice (giving to others what is due to them) and piety (the proper worship due to God). It is through temperance, rather than gluttony, that natural bounty can be properly distributed. Nature

Means her provisions only to the good  
That live according to her sober law,  
And holy dictate of spare Temperance:  
If every just man that now pines with want  
Had but a moderate and beseeming share  
Of that which lewdly-pampered Luxury  
Now heaps upon some few with vast excess,  
Nature’s full blessings would be well dispensed  
In unsuperfluous even proportion. (765-73)

The material gifts of Nature are meant for those who are good and follow “her sober law.” This vision of “moderate and beseeming share” is meant to bring into relief the suffering hidden by Comus’s praise of unending consumption. Want and deprivation

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<sup>51</sup> Preston, *Fovre Godly and Learned Treatises*, 249.

are unimaginable in the world described by the enchanter. There, “odors, fruits, and flocks” are put forth by Nature “to please and sate the curious taste” (712-4). Creation offers itself freely and commands that “millions of spinning worms [...] weave the smooth-haired silk/ To deck her sons” (715-7).<sup>52</sup> It is in reply to this attempt to deceive with “false rules pranked in reason’s garb” (759) that the Lady feels compelled to speak. As we have seen, her answer bypasses the seductive *carpe diem* poem which concludes Comus’s speech and becomes instead a vehement defense of what Nature *means* by her gifts. The Lady seems to have no concern for her own safety, but rather she is angered by his insult to “most innocent Nature,/ As if she would her children should be riotous/ With her abundance” (762-4; emphasis mine). Just as Comus creates a parallel between consumption and free enjoyment of beauty and sexuality, so does the Lady repel his sexual advances by refuting his rationalization of luxurious waste. In Preston, we have seen a reduction of *imitatio Christi* to self-denial with little focus on the role of charity or justice. *A Maske* does not go so far, but Milton does imply that “spare Temperance” could reform the misuse of creation, “Nature’s full blessings would be well dispensed”

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<sup>52</sup> In *God Speed the Plow*, Andrew McRae points to Thomas Moffett’s use of the image of the hardworking silkworm in *The Silkwormes, and their Flies* (1599) to justify the production of a luxury item, silk, by transforming its producer, the silkworm, into an example of honest industry (Andrew McRae, *God Speed the Plough: The Representation of Agrarian England, 1500-1660* (Cambridge: Cambridge University Press, 1996), 210-11). In this passage, Comus attempts a similar representation of luxury.

(772), by leading us to partake only of “a moderate and beseeming share” (769; emphasis mine).<sup>53</sup>

However, while the masque displays an awareness of the social repercussions that follow the sort of conspicuous consumption praised by Comus, the Lady must defend this conception of justice while removed from all social contexts. More precisely, Milton verbally gestures at the social consequences of individual behavior and at the dependence of the individual on society.<sup>54</sup> At the same time, the Lady, representing a mature moral agent, not only must be able to stand alone, but must do so independently of her own history and education. Each ethical act is an atomic unit, disjoined from the foregoing narrative. To be dependent on others, on tradition, or on habit would “starch us all into” conformity and slavish obedience: “How goodly, and how to be wisht were such an obedient unanimity as this, what a fine conformity would it starch us all into? doubtles a stanch and solid peece of frame-work, as any January could freeze together.”<sup>55</sup>

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<sup>53</sup> I would like to clarify why I have labeled what the Lady defends in this speech justice rather than charity, the missing third from her reformulation of Paul’s triad of virtues. Indeed, Maryann MacGuire, in *Milton’s Puritan Masque*, uses “Puritan” texts’ association of charity with the image of the marriage of the soul to Christ to claim that “chastity is Milton’s version of charity” (138). However, at this point in the masque, the Lady does not seem to be concerned with loving one’s neighbor and God as much as with just distribution of Nature’s bounty based on the merit of the recipient, that is, to give what is due to “every *just* man that now pines with want.”

<sup>54</sup> This interdependence of justice is seen in the passage from *Of Reformation* quoted earlier.

<sup>55</sup> *Areopagitica*, CPW II:545. However, in the divorce tracts and in Adam’s love for Eve, this understanding seems to come under strain.

### **1.3 The Lady as Spenser's Artegall: Milton's Conception of Education in Temperance and Justice**

The argument between Comus and the Lady focuses on their diverging conceptions of the relationship between nature, the virtues, and the proper end of human life. As we have seen in *Of Reformation*, Milton's understanding of the virtues and their political ramifications relies on his reading of Aristotle. However, while Milton relies on the Aristotelian language of the virtues and their connection to the proper human *telos*, the moral framework deployed in *A Mask* differs from that of the *Ethics* by incorporating an understanding of human reason that is alien to Aristotle. To bring out this difference, I will begin by reviewing Aristotle's ethical model and then compare it with the picture proposed by *A Maske*. In my reading of Aristotle, I follow MacIntyre's discussion of the Aristotelian virtues and their development in Christian thought. As MacIntyre argues in *After Virtue*, the *Nicomachean Ethics* sets up a teleological moral scheme in which "man-as-he-happens-to-be" is essentially different from "man-as-he-could-be-if-he-realized-his-essential-nature."<sup>56</sup> It is the role of ethics to discover the means of how to progress from the first to the second state. In this view, ethics must be based on an account of human nature (including passions, desires, and reason—the characteristic human activity) and of the proper end of man.<sup>57</sup> The role of the virtues is

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<sup>56</sup> Alasdair MacIntyre, *After Virtue* (Notre Dame, IN: University of Notre Dame, 1981), 52.

<sup>57</sup> Loc. cit.

to enable us to reach our *telos*. To accomplish this, the “desires and emotions which we possess are to be put in order and educated by the use of such precepts and by the cultivation of those habits of action which the study of ethics prescribes; reason instruct us both as to what our true end is and as to how to reach it.”<sup>58</sup> For Aristotle, “the exercise of the virtues is not [...] a means to the end of the good for man. For what constitutes the good for man is a complete human life lived at its best, and the exercise of the virtues is a necessary and central part of such a life, not a mere preparatory exercise to secure such a life.”<sup>59</sup> So the virtues are not an end in themselves, but they are rather an integral part of the happy life.

As we have seen, in her debate with Comus, the Lady defends temperance as necessary for both piety and justice. Behind the idea of dividing “Nature’s full blessings” in “even proportion” lies Milton’s reading of the Aristotelian notion of proportional justice. In Book V of the *Nicomachean Ethics*, Aristotle begins by discussing justice in terms of greed: “Since the unjust person is greedy, he will be concerned with goods—not all goods, but those with which good and bad fortune are concerned; these are always good without qualification, but not always for a particular individual” (1129b). Material goods—those dependent on fortune—are, when spoken of in general, “always good without qualification,” they are true goods. However, if we are concerned

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<sup>58</sup> Ibid., 52-3.

<sup>59</sup> Ibid., 149.

with particular individuals, material goods can be detrimental. When speaking of pleasure, Aristotle further clarifies that good fortune “in excess can be an impediment, and presumably should by rights no longer be called good fortune, its limits of application being defined in relation to happiness” (1153<sup>b</sup>). That is, while pleasure is a good, it is a good only in so far that it promotes a happy life. Pleasure pursued beyond reason cannot be counted as good, and for the vicious individual, material goods will not lead to happiness: “In the case of bodily goods, there can be an excess, and it is the pursuit of this excess, not the necessary pleasures, that makes a person bad; for everyone enjoys fine food and wine and sexual intercourse in some way, but not everyone in the way he ought” (1154<sup>a</sup>). Nonetheless, the unjust person will, against his own interest, attempt to obtain an unfair share of goods and so injure others. Similarly, in Milton’s masque, not only do the rioters injure themselves by their intemperance, but, as it is revealed by the Lady’s speech, their overindulgent reveling is a form of injustice towards others.

How closely does Milton’s idea of justice follow Aristotle’s? In the *Faerie Queene*, we find a more immediate source for Milton’s understanding of the Aristotelian virtues. At the beginning of Book V, Spenser introduces Artegall, the knight of justice. After lamenting the decay of justice in the proem, Spenser recounts the education of its knight: “For *Artegall* in iustice was vpbrought/ Euen from the cradle of his infancie” (V.i.5).

When only a child, he is found by Astraea, who immediately understands that he is “with no crime defilde” (V.i.6). She then lures him away from his games to raise him in the wilderness in service of justice:

Of all the which, for want there of mankind,  
She caused him to make experience  
Vpon wyld beasts, which she in woods did find,  
With wrongfull powre oppressing others of their kind. (V.i.7)

The young knight learns how to “weigh both right and wrong” (V.i.7) outside of a human community. At this point in the poem, Artegall’s virtue is in some sense not complete, he still needs Britomart. There is no attempt to hide the violent and implacable nature of Artegall’s “iustice”: “euen the wilde beasts did feare his awfull sight,/ And men admyr’d his oueruling might” (V.i.8). As Spenser makes clear by allowing Artegall to fall prey to Radigund in Canto v, the knight of justice, without Britomart’s help, is under the sway of intemperate emotions.<sup>60</sup> The question arises of whether Artegall’s education in the virtue is deficient: how can the virtue of justice be developed without temperance? At the same time, the narrative insists that Artegall’s education in the forest has given him all the skills he needs to dispense at least some form of justice: “Thus she him trained, and thus she him taught,/ In all the skill of deeming wrong from right”

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<sup>60</sup> The Amazons are described as a “troupe incontinent” (V.iv.26) and “a sort of Bees in clusters” (V.iv.36).



(V.i.8; emphasis mine).<sup>61</sup> Canto i of Book V gives an image of education in justice that is removed from all human society and yet capable of giving the essential knowledge of the virtue. However, in an Aristotelian sense, Artegall could not possess justice even in the restricted sense that Spenser grants him before his union with Britomart. Indeed, the knight would barely be considered human in any meaningful sense: "That is why, if [man] has not excellence, he is the most unholy and the most savage of animals, and the most full of lust and gluttony. But justice is the bond of men in states; for the administration of justice, which is the determination of what is just, is the principle of order in political society" (*Politics* 1253<sup>a</sup>36-40). For Aristotle, justice cannot be learned outside of the *polis*.

More broadly, Spenser, by depicting Artegall as learning how to reason correctly about justice outside of society, puts forward a model of rationality that is, for all practical purposes, independent of human education and relationships. Similarly, in *A*

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<sup>61</sup> The figure of Astraea as a teacher is of particular interest in a reading of *A Maske* because we find echoes of her in the figure of the Attendant Spirit. Astraea, after completing Artegall's education, leaves the world to return to her proper place in the heavens:

Now when the world with sinne gan to abound,  
*Astræa* loathing lenger here to space  
Mongst wicked men, in whom no truth she found  
Return'd to heauen, whence she deriu'd her race;  
Where she hath now an euerlasting place. (V.i.11)

The Attendant Spirit is almost a returned Astraea, willing to "soil these pure ambrosial weeds/ With the rank vapors of this sin-worn mold" (*A Maske*, 16-7) in order to help the Lady.

*Maske*, we find the Lady sitting alone in Comus's chair. Milton has carefully stripped her of all support. While her predicament is different from Artegall's—she is after all “the fair offspring” (34) of a “noble peer of mickle trust and power” (31) and she has been “nursed in princely lore” (34)—her moment of trial is staged at a remove from all social connections. In this early work, we see the first instance of a recurring Miltonic trope: to resist against or to fall to temptation is the defining task of the individual capable of reasoning independently of all others.

In Book II of the *Nicomachean Ethics*, Aristotle spells out the concept of the mean and how it relates to the virtues of character: “[F]ear, confidence, appetite, anger, pity and in general pleasure and pain can be experienced too much or too little, and in both ways not well. But to have them at the right time, about the right things, towards the right people, for the right end, and in the right way, is the mean and the best; and this is the business of virtue” (1106<sup>b</sup>). The good person not only acts in accordance to the virtues, but he has also trained his passions so that virtuous action is a source of pleasure for him. Thus the difference between temperance (a true virtue) and continence (a step towards virtue) is that only the temperate person knows what is good and he acts upon it without interference from the passions. Part of our education in the virtues will then consist in training our emotions so that they will neither be too strong nor too weak, i.e., they will achieve the mean. But it will also consist in learning how to have

these emotions in the appropriate circumstances and toward the appropriate goals. Moreover, training in the virtues will also involve learning how to reason correctly: “Virtue, then, is a state involving rational choice, consisting in a mean relative to us and determined by reason—the reason, that is, by reference to which the practically wise person would determine it” (1107<sup>a</sup>). Thus, only the good person can reason correctly, and right reason and the virtues must develop together (1144<sup>a</sup>). For Aristotle, right reason is not simply an instrument for achieving *any* end; it is oriented toward the good.<sup>62</sup>

In *A Maske*, we see two stages in the training in wisdom. On the one hand, the Lady represents, for Milton, the already-virtuous individual who uses right reason to withstand temptation. On the other, the two brothers enact in their argument an attempt at learning how to feel and reason correctly. Indeed, after the Second Brother enumerates the possible dangers that may await a young woman alone in the woods, the Elder Brother tries to calm his fears by reminding him of their sister’s fortitude. The darkness of the woods will not disturb “the constant mood of her calm thoughts” (371). Lacking external light, she is guided by her virtue: “Virtue could see to do what Virtue would/ By her own radiant light, though sun and moon/ Were in the flat sea sunk. And

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<sup>62</sup> On the other hand, in the *Ethics*, Aristotle defines “cleverness” as the instrumental ability to achieve any goals we might set for ourselves, be they good or evil. Practical wisdom is different from cleverness since “virtue is involved in this eye of the soul’s reaching its developed state” (1144<sup>a</sup>).

Wisdom' self/ Oft seeks to sweet retired solitude" (373-6). The lines link virtue to wisdom; just as the sun and the moon sink in "the flat sea," wisdom completes the line to replace their light. The Elder Brother attempts to reassure the Second Brother that the Lady can correctly discern what to do because she is guided by the light of her virtue. However, this passionate defense of virtue's ability to find its way is humorously deflated by the Elder Brother's earlier speech lamenting the darkness of the woods. Indeed, the Second Brother seems to find the Elder's philosophizing out of place and does not hesitate to make a joke of it. While no one would dare to rob a hermit in his cell, "beauty like the fair Hesperian tree/ Laden with blooming gold, had need the guard/ Of dragon watch" (393-5). But by its end, his speech leaves all bantering allusions to mythical creatures and focuses on the very real dangers that may lurk in the forest: "Lest some ill-greeting touch attempt the person/ Of our unownèd sister" (406-7). In reply to this last worry, the Elder Brother insists that the Lady is nonetheless safe: "my sister is not so defenseless left/ As you imagine; she has hidden strength/ Which you remember not" (414-6). The Second Brother, trying to understand this strength, unwittingly stumbles on the right answer:

*Second brother.*           What hidden strength,  
Unless the strength of Heav'n, if you mean that?  
*Elder brother.* I mean that too, but yet a hidden strength  
Which if Heav'n gave it, may be termed her own:  
'Tis chastity, my brother, chastity:  
She that has that, is clad in complete steel. (417-21)

Here, the Elder Brother, following the Second Brother's guess, makes a clear connection between chastity and divine aid. While "the constant mood of her calm thoughts" help the Lady keep fear at bay, the heavenly gift of chastity will protect her. For the next thirty-five lines, the Elder Brother depicts the virtue as a shield against whatever dangers may lurk in the forest.<sup>63</sup>

However, starting on line 454, there is a shift in the description of the powers of the Lady's virtue. Chastity, rather than keep "goblin, or swart fairy" (436) at bay, becomes the passive recipient of providence's aid. This virtue is so loved by heaven

That when a soul is found sincerely so,  
A thousand liveried angels lacky her,  
Driving far off each thing of sin and guilt,  
And in clear dreams and solemn vision  
Tell her of things that no gross ear can hear. (454-8)

The lines convey the Elder Brother's faith in his sister's chastity, but they are difficult to accurately parse. In particular, line 456 is ambiguous: Is "each thing of sin and guilt" an exterior or an interior threat? As we move from the first part of the speech into this line, "each thing" appears to belong to the same world as the mythological creatures conjured

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<sup>63</sup> In these moments, Milton's depiction of chastity recalls Fletcher's in *The Faithfull Shepherdess* (originally staged in 1608, but revived in 1633). In the Jacobean play, we find that true chastity can heal the shepherdess Amoret from the stab-wounds inflicted by her beloved (and deceived) Perigot. In a scene that Milton echoes in Sabrina's sprinkling of the Lady, Fletcher's God of the River tests Amoret's virtue with a drop of water and then heals her with a magic flower. It is because she is found truly chaste, that he can heal her. His magic would not have worked on a less pure shepherdess.

earlier by the Elder Brother. However, as we follow the sentence into the next two lines, it seems that “sin and guilt” are being banished, paradoxically, from the mind of the chaste soul by the angels. The change is startling; after all, the angels only come to those who are “found sincerely” virtuous (454). The rest of the speech, rather than clarifying the earlier lines, adds another layer of confusion. In a moment that seems to anticipate Milton’s later monism, we find the body, the “unpolluted temple of the mind” (461), being transformed by the conversation of angels to “the soul’s essence” (462).<sup>64</sup>

How exactly does this process of purification come about? And what are the respective roles of grace, human agency, and education in the virtues in this transformation? It is not chastity itself that refines the body. “Saintly chastity” is “so dear” to heaven that a “thousand liveried angels lacky her.” In conversation with these “Heav’nly habitants” (459), the “outward shape” of those who are chaste is transformed and turned “by degrees to the soul’s essence,/ Till all be made immortal” (462-3). It is at this point of the process that the ambiguous nature of “each thing of sin and guilt” becomes crucial. On the one hand, once the Attending Spirit informs the boys that the

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<sup>64</sup> The passage seems to play with a Neoplatonic idea of harmony between body and soul that is similar to that expressed by Donne in *The Second Anniversary*: “her pure, and eloquent blood/ Spoke in her cheeks, and so distinctly wrought,/ That one might almost say, her body thought” (*Complete Poetry and Selected Prose*, 244-6). Virtue can be recognized by its exterior. Similarly vice, like Comus’s, would eventually be found out, as is demonstrated by the bestial heads of the rioters. For Milton’s monism, see Stephen Fallon, *Milton among the Philosophers: Poetry and Materialism in Seventeenth-Century England* (Ithaca, NY: Cornell University Press, 1991).

Lady has been lured into Comus's palace, the Elder Brother insists that no external violence can defile a virtuous individual: "Virtue may be assailed, but never hurt,/ Surprised by unjust force, but not enthralled" (589-90). On the other, at this point in the masque, it is difficult to avoid the implication that outside pollution may contaminate the soul. While the process of purification is one of gradual divine inspiration through dreams and visions (457), the process of defilement seems to occur without any supernatural intervention:

but when lust,  
By unchaste looks, loose gestures, and foul talk,  
But most by lewd and lavish act of sin,  
Lets in defilement to the inward parts,  
The soul grows clotted by contagion. (463-7)

These lines present a process of habituation into vice. Repeated lustful actions, "unchaste looks, loose gestures, and foul talk," progressively corrupt the individual. Lust proceeds from the body and actions to defile "the inward parts." This is drastically different from the discussion of chastity that immediately precedes these lines. While he explains how chastity and conversation with angels "cast a beam on th' outward shape," until "all be made immortal," the Elder Brother does not describe a process of habituation in the virtues.

Then, what does education in virtue consist of and how does it help the Lady withstand Comus's temptation? The Elder Brother has a clear answer to this question: "I

do not think my sister [...] so unprincipled in virtue's book" as to give in to temptation (366-7; emphasis mine). The Elder Brother's use of the metaphor of "virtue's book" for education in the virtues appears in his first speech defending his sister's ability to withstand temptation. Only after the Second Brother's humorously chides him, does he correct this first description and includes the aid of angelic conversation. While the terminology of "virtue's book" may be simply a conventional metaphor for education, it is a significant one in light of the discrepancy in the models of education in the virtues and vices.<sup>65</sup> The understanding that virtue can be acquired through a book and verbal instruction belongs to the same tradition of religious pedagogy that places a strong emphasis on catechism.<sup>66</sup> In a standard description of catechizing, Thomas Walkington insists that it is the foundation of faith: "in the spiritual building up of mens consciences to God, the doctrine of Catechisme is first to be laid as a foundation, and afterward the

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<sup>65</sup> This is an image that Milton often returns to. Besides the all-important role of books found in *Areopagitica*, we see young students being led to virtue by a book in, for instance, *Of Education* (1644), where to "win [students] early to the love of vertue and true labour, ere any flattering seducement, ere vain principle seise them wandering, some easie and delightfull book of Education would be read to them" (CPW II: 384).

<sup>66</sup> For a discussion of the importance of catechizing both children and adults in the seventeenth century, see Stanley Fish, *The Living Temple: George Herbert and Catechizing* (Berkeley: University of California Press, 1978), chapter one. In particular, for the common, but incorrect, derivation of the term "catechism" from the Greek for echo, see pages 17-19. Moreover, Jennifer Herdt, in *Putting on Virtue*, discusses the central role of repetition of doctrine and Scriptural places in Lutheran pedagogy: "To impress the Word of God on the young meant above all to repeat it over and over" (191). This focus on rote learning is carried into Reformed attitudes towards education. See, for instance, how Prudence catechizes Christiana's children in the second part of *Pilgrim's Progress*. For a detailed study of the large number of printed catechisms in circulation in the sixteenth- and seventeenth-centuries, see: Ian Green, *The Christian's ABC: Catechisms and Catechizing in England c. 1530-1740* (Oxford: Oxford University Press, 1996). According to Green, one of the distinguishing features of Protestant, as opposed to Catholic, catechisms is their focus on transmitting knowledge of doctrine rather than functioning as practical manuals (15-6).



misterie of Christ is more highly and deeply to bee handled, as it were the rearing of the walles, roofe, and loover.”<sup>67</sup> We see this same focus in *The Faerie Queene*, when, in Book I, the Redcrosse Knight is taken to the House of Holiness to be healed from the wounds of Despair. As we have seen earlier, Una requests that Redcrosse be allowed to go to the schoolhouse to “heare the wisdom of [Fidelia’s] words diuine” (I.x.18; emphasis mine). In the schoolhouse, Fidelia instructs all her pupils with “her sacred Booke, with bloud ywrit” (I.x.19). The message of the allegory is clear: Faith instructs the believer with Scripture and her speech is so powerful that “she was able, with her words to kill,/ And raise againe to life the hart, that she did thrill” (I.x.19).

The allegory in this canto of the *Faerie Queene* is concerned with didactic clarity. It resembles what Elizabeth Salter, in the context of *Piers Plowman*, calls diagrammatic allegory. In Langland, it is a form that is closely connected with the visual arts and with the use of allegorical buildings by medieval preachers.<sup>68</sup> Each element in the allegory is clearly and accurately labeled and, “like the maps and diagrams of medieval religious art, it is not meant to be visualized *in depth* [...]. Such allegory, in which nothing is left to chance, or to the reader’s imagination, must be seen as the verbal equivalent of the

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<sup>67</sup> *An exposition*, quoted in Stanley Fish, *The Living Temple*, 79.

<sup>68</sup> Elizabeth Salter, *English and International: Studies in the Literature, Art and Patronage of Medieval England*, ed. Derek Pearsall and Nicolette Zeeman (Cambridge: Cambridge University Press, 1988), 120-2.

elaborately inscribed and glossed art of medieval tract illustrations.”<sup>69</sup> Spenser’s allegory of the House of Holiness is less static than the passages of diagrammatic allegory that Slater considers in *Piers Plowman*: the Redcrosse Knight meets and interacts with the personifications of Faith, Hope, and Charity as he progresses through his education. At the same time, in this canto of *The Faerie Queene*, the relationship between message and imagery is spelled out with the same concern for precision and clarity that is typical of diagrammatic allegories. For instance, rather than seeing how Faith acts, presumably a central part of the work of the book of holiness, we are told that Fidelia can “comaund the hastie Sunne to stay,/ Or backward turne his course from heauens hight” (I.x.20). That is, the passage gives a paraphrase of Joshua’s feat of faith. This stanza carefully and precisely recalls notable places in Scripture where the power of faith is described.<sup>70</sup> As we have seen earlier, Milton echoes the encounter of the Redcrosse Knight with Despair in Comus’s speech to the Lady; *The Faerie Queene* is a model for encounters with temptation and a type of “virtue’s book” for *A Maske*.<sup>71</sup> In Comus’s palace, the Lady is

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<sup>69</sup> Salter, *English and International*, 121-2.

<sup>70</sup> In the 1590 and 1596 editions, the eight lines of stanza 20 point to Joshua 10.12, 2 Kings 20.10, Judges 7, and Matthew 21.22. The 1609 edition also included Exodus 14.21-31 (*The Faerie Queene*, n. 20 to p. 1103).

<sup>71</sup> It is in *The Faerie Queene* that we find the startling idea that Charity must not be confused with lust. Spenser clarifies that Charissa is no wanton, but a chaste matron:

She was a woman in her freshest age,  
Of wondrous beauty, and of bountie rare,  
With goodly grace and comely personage,  
That was on earth not easie to compare;

left only with the freedom of her mind and her voice. *A Maske* is emphatically clear that speech and words play a central role in both instructing in and defending virtue. Indeed, it is the “gross ear” (458) that cannot be educated even by angels’ words.<sup>72</sup> Moreover, the Lady feels the need to speak in defense of a virtue that is at risk of being rendered inaudible by the eloquence of vice: “I hate when Vice can bolt her arguments,/ And Virtue has no tongue to check her pride” (760-1). While she knows that Comus cannot be converted to chastity, he has no ear for it, she is compelled to argue against vice. For Milton, education in virtue is fundamentally verbal.

Clearly, Milton’s understanding of the virtues cannot be Aristotelian. In the *Nicomachean Ethics*, we see that direct teaching can only play a secondary part in the formation of a virtuous individual. One cannot be persuaded into virtue:

Some think we become good by nature, some by habit, and others by teaching. [...] Argument and teaching, presumably, are not powerful in every case, but the soul of the student must be prepared beforehand in its habits, with a view to its enjoying and hating in a noble way, like soil that is to nourish seed. For if someone were to live by his feelings he would not listen to an argument to

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Full of great loue, but *Cupids* wanton snare  
As hell she hated, chast in worke and will;  
Her necke and breasts were euer open bare,  
That ay therof her babes might sucke their fill. (I.x.30)

The image of the mother of the virtues as bare-breasted seems to have alarmed Spenser and led him to clarify that her partial nudity represents generosity and nurture rather than erotic display.

<sup>72</sup> Milton includes a similar line in his earlier entertainment, the *Arcades*, where Genius sings that about “the heavenly tune, which none can hear/ Of human mold with gross unpurgèd ear” (72-3).

dissuade him, nor could he even understand it. How can we persuade a person in a state like this to change his ways? And, in general, feelings seem to yield not to argument but to force. There must, therefore, somehow be a pre-existing character with some affinity for virtue through its fondness for what is noble and dislike of what is disgraceful. (1179<sup>b</sup>; emphasis mine)

For Aristotle, it is clear that “argument and teaching” are insufficient. Fidelity’s schoolhouse and the Elder Brother’s “virtue’s book” could not produce a virtuous individual. Indeed, someone whose soul had not been “prepared beforehand in its habits” would be incapable of understanding their teaching. But it is exactly this element of habituation that is missing in both Spenser and Milton. This is not surprising since a distrust of habit is expressed in protestant discussions of education. This is evident, for instance, in Luther’s thought. Herdt, extending the argument of Gerald Strauss’ *Luther’s House of Learning*, clearly lays out the tension apparent in Luther’s moral pedagogy. On the one hand, rote learning, instruction from one’s parents, and rewards for good performance are necessary to lead children to a genuine encounter with the sacraments and the Scriptures, virtue’s book. On the other hand, by these methods, we “may well succeed only in miring our children in the most dangerous—because the most hidden—vices of all [and] habituate our children in the worst semblances of virtue.”<sup>73</sup> In his later writings, Milton becomes increasingly vocal against tradition and habits, but already in

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<sup>73</sup> Herdt, *Putting on Virtue*, 191.

the 1630s, there is little room in his poetry for an Aristotelian idea of habituation. For Aristotle, habits are part of the happy life; for Milton, they are obstacles to true virtue.<sup>74</sup>

### **1.4 Bringing Light into the Woods: The Lady's Encounter with Hypocrisy**

When the two brothers first appear in *A Maske*, the Elder Brother addresses the elements and asks for some light to guide him through the forest and find his lost sister: "Unmuffle ye faint stars, and thou fair moon/ That wont'st to love the traveler's benison,/ Stoop thy pale visage through an amber cloud" (331-3). The language of his request parallels his sister's exclamation at seeing "a sable cloud/ Turn forth her silver lining on the night" (221-2) after her vision of "pure-eyed Faith, white-handed Hope, [and the] unblemished form of Chastity" (213-15). Both the Lady and her brothers need physical, intellectual, and spiritual light to help them navigate the woods. However, no light from either the stars or the moon shows itself to the two boys, and the Elder Brother asks for "some gentle taper,/ Though a rush candle from the wicker hole/ Of some clay habitation" (337-9). The allegorical value of the "gentle taper" shining through "some clay habitation" is gently reinforced by Comus's own description of the Lady as a "mortal mixture of earth's mold" animated by "something holy" (244-6). The image is

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<sup>74</sup> This places Milton well in line with Preston's thought. As we see in Preston we are *persuaded* to a life of faith: "But after what manner is this effectuall perswasion wrought? I answer, when as God gives an eare, and speakes a voice for it to heare: *He that hath an eare to heare, saith Christ, let him hear. Wee then heare when as there is a listning and yielding disposition wrought within us*" (*Foore Godly and Learned Treatises*, 144).

not new to *A Maske*. It calls us back to Milton's earlier poem, *On the Morning of Christ's Nativity*, where we find Christ putting aside "That glorious form, that light unsufferable" to put on "with us a darksome house of mortal clay" (8, 14). In the *Nativity Ode*, as the poem is often referred to, Milton undertakes an early representation of the agency of grace removing the stain of original sin through the incarnation. The "Heav'n-born-child" (30) finds a world corrupted by sin. Even Nature

woos the gentle air  
To hide her guilty front with innocent snow,  
And on her naked shame,  
Pollute with sinful blame,  
The saintly veil of maiden white to throw,  
Confounded that her maker's eyes  
Should look so near upon her foul deformities. (38-44)

In an image that recalls Genesis 3.7, and which will be repeated in *Paradise Lost*, Milton depicts a shameful nature attempting to hide her guilt from the Creator. The intervention of divine grace anticipates Nature's shame and provides a remedy: "But he her fears to cease,/ Sent down the meek-eyed Peace" (45-6). With these lines, the *Nativity Ode* creates the same movement as Herbert's *Love* (3). In Herbert's poem, the soul is afraid to accept the body of Christ at the altar, but is reassured by the always-present divine love: "Love bade me welcome; yet my soul drew back,/ Guilty of dust and sin/

[...] And know you not, says Love, who bore the blame?" (1-2, 15).<sup>75</sup> Similarly, Milton's poem imagines grace as rescuing the unworthy soul from its own sins even before the soul attempts to shamefully hide. Thus, in a pattern of complex temporal games and personifications, the *Nativity Ode* leads the reader to move between its literal and allegorical meaning.

To deal with the incarnation and the Fall, the *Nativity Ode* eschews the Neoplatonism found in *A Maske*, where sin "embodies and imbrutes" the soul (468), and introduces instead the language of choice. Indeed, the second stanza of the induction represents the birth of Christ as the moment when He left the "trinal unity" (11) and "chose with us a darksome house of mortal clay" (14; emphasis mine). The lines recall the question of choice and free will implicated in the idea of the Fall, and ask us to puzzle over the respective roles of human agency and divine providence in both sinful choice and redemption. By having Christ choose *with us*, the line gently reminds the reader of the difficulty of separating the concept of the incarnation (and thus of redemption) from the idea of original sin and free will. The effects of the Fall on the human soul are seen in the personification of Nature, who is "[c]onfounded that her maker's eyes/ Should look so near upon her foul deformities." As we move through the next hundred lines of the poem, this allegorical reading is strengthened by the heavenly

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<sup>75</sup> George Herbert, *The Complete English Poems*, ed. John Tobin (New York: Penguin, 2004).

music that celebrates the birth of Christ and announces what seems an ever-lasting peace through the world:

Such music (as 'tis said)  
Before was never made,  
But when of old the sons of morning sung,  
While the Creator great  
His constellations set,  
And the well-balanced world on hinges hung. (117-21)

The music that accompanied the making of the universe is ushering in a new creation, the customary image for spiritual rebirth. For a few stanzas we are allowed to imagine that "lep'rous Sin will melt from earthly mold,/ And Hell itself will pass away" (138-9). Justification is immediate sanctification. However, this interpretation is abruptly forestalled: "But wisest Fate says no,/ This must not yet be so" (149-50). Christ is still an infant and the crucifixion has yet to happen: "The babe lies yet in smiling infancy,/ That on the bitter cross/ Must redeem our loss" (151-3). Nature has not been purged of its sin, and, as the poem reminds us in a few lines, it won't be until the second coming. The birth of Christ is just the first step: "But now begins; for from this happy day/ Th'old Dragon under ground/ In straiter limits bound" (168-9). It is at this moment of the poem that we might expect to find room for human agency and for the formation of virtue. But



all that is required for human, as well as angelic, service is to wait for a command:

“Bright-harnessed angles sit in order serviceable” (244).<sup>76</sup>

Given this understanding of grace in the *Nativity Ode*, what is the role of human agency in *A Maske*? At the beginning of the masque, the direct intervention of providence is manifested in the arrival of the Attendant Spirit. It is through his explanatory speech that the audience is made aware of the existence of danger in the forest. Figures with long didactic speeches are of course a standard part of most masques and Milton effectively uses this feature of the genre to create an interpretive frame for the “anti-masque” of Comus and his revelers. From the very first lines, the audience is made aware of the distance between the riotous world of the dark woods and the “regions mild of calm and serene air” that Attendant Spirit left to help those who “by due step aspire/ To lay their just hands on that golden key/ That opes the palace of eternity” (4, 12-14). But as the masque proceeds, it becomes increasingly difficult to image what due steps may be taken in order to earn that golden key. The

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<sup>76</sup> Milton returns to a very similar formulation in the 1650s in *Sonnet XVI*:

“Doth God exact day labor, light denied?”  
I fondly ask; But patience *to prevent*  
*That murmur*, soon replies, “God doth not need  
Either man's work or his own gifts, who best  
Bear his mild yoke, they serve him best; his state  
Is kingly. Thousands at his bidding speed  
And post o're Land and Ocean without rest:  
They also serve who only stand and wait.” (7-14; emphasis mine)

only steps represented in Milton's work lead to wandering in the dark woods. The Lady is lost because her brothers "stepped as they said to the next thicket side/ To bring [her] berries" (185-6). That is, though presumably virtuous and intent on performing a good action, the brothers' steps place their sister in danger. Similarly, the Lady finds herself wandering through an unknown forest with "unacquainted feet." Thus, in the "perplexed paths of this drear wood" (37), she has to search for the noise of "riot and ill-managed merriment" (172) because she can find no other guide: "yet O where else/ Shall I inform my unacquainted feet/ In the blind mazes of this tangled wood?" (179-81).

Both Rosemond Tuve and Stanley Fish point out that hypocrisy is the vice that even a virtuous eye cannot discern.<sup>77</sup> However, the Lady did judge the sounds of revels correctly. While she cannot penetrate Comus's disguise, she meets him where she expects to find those who "thank the gods amiss" (177). Indeed, the Dantean image of being lost in the dark woods is given a strange re-interpretation in *A Maske*. For Milton, the "selva oscura" is not an allegory of the moral decay of the pilgrim as it is in Dante. It is rather a representation of the outside world and how it is to be interpreted. As Fish argues, the moral status of the wood itself is neutral; in the Lady's first speech, it is a "tangled wood" when she is thinking about being lost and a "hospitable" forest when she remembers that it might offer "cooling fruit" to a traveler. Similarly, the forest is

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<sup>77</sup> Rosemond Tuve, *Images and Themes in Five Poems by Milton* (Cambridge, MA: Harvard University Press, 1957), 128; Stanley Fish, *How Milton Works*, 146-7.

simply a stage for Comus's enchantments and illusions, and it is his magic that compels the "spongy air" to participate in his deception. The wood becomes dangerous for the Lady only once Comus and the revelers make it so. Then, what can the Lady do to correctly interpret and move through "the blind mazes of this tangled wood"? Since she does not belong in the forest, she moves through it with "unacquainted feet" trying to reach her father's (and ultimately Jove's) court, she has to follow guides, such as Comus, who are at home in this world of darkness and confusion.

In the Lady's predicament, we encounter a problem that becomes a constant part of Milton's thought. On the one hand, the virtuous individual is not soiled by the outside world. While the Lady can be violently forced to partake in sin, as long as she does not waver from her firm obedience to divine commandment, she remains sinless: "To the pure all things are pure" (*Areopagitica*, CPW II:512) and "Evil into the mind of god or man/ May come and go, so unapproved, and leave/ No spot or blame behind" (*Paradise Lost*, V.117-9). Indeed, as Milton makes clear in *Areopagitica*, to truly learn virtue, we must come into contact with and learn from evil.<sup>78</sup> Thus, the Lady seeks out those who produced "the sound of riot" so as to find her way through the woods. On

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<sup>78</sup> In *Areopagitica*, Milton begins by saying that to wise men "such [idle] books are not temptations, nor vanities; but usefull drugs and materials wherewith to temper and compose effective and strong med'cins" (CPW II:521). That is, those who are virtuous know how to make good use of even the worst materials. But then moves on claim that knowing evil is actually necessary to know good: "And perhaps this is that doom which *Adam* fell into of knowing good and evill, that is to say of knowing good by evill" (CPW II:514).

the other hand, though she has no knowledge of the sinful and mazy world of Comus, the Lady has to be able to recognize evil and reject it. The enchanter, in a sense, makes her job easy for her. While he is at first disguised as a lowly shepherd, he soon reveals himself for what he truly is. However, how would the Lady fare if presented with a concealed evil that does not so brazenly reveal itself as Comus does? Milton's answer would be that she should test it, with the aid of divine guidance, and compare it with known good. This is indeed what the Lady seems to be doing when resisting Comus's temptation. She sees that the enchanter has lied to her about his identity and that he led her to a palace rather than to "the cottage and the safe abode" he promised her (693-4). From this first lie, and from the revealed appearance of the rioters (695), she knows that the "cordial julep" would be a similar trap. However, in Milton's later works, temptation is not so easily rejected.<sup>79</sup> As becomes fully evident in *Samson Agonistes*, the commands of grace may require diametrically opposed actions at different times. While

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<sup>79</sup>In *A Maske*, Milton is confronting the problem of the eloquence of vice, to which he will return in *Paradise Lost*. What is striking about the Lady's (correct) answer to Comus's speech is that it is an emotional and passionate response to the enchanter's alluring language. While she speaks of the fear that he would "charm [her] judgment" (758), it is her *hate* at hearing "Vice [...] bolt her arguments" (760) that prompts her to defend virtue. By way of comparison, we see that Preston identifies five possible signs that a "desire be from the Spirit [rather than] from the Flesh": First, the godly desires are "gentle and quiet," while those from the Flesh are "turbulent and violent." Secondly, "the desires of the Spirit doe not easily rise; we must take paines with our hearts for good desires; fleshly desires are hasty." Thirdly, a good desire makes one "more heavenly minded," while a bad desire tends to make one "more earthly minded, and indisposed to holy duties." Fourthly, if prayer strengthens it, the desire is probably godly. And finally, "if there be some self-respect that doth carry you, so farre yee goe and no farther: that respect being taken away, ye end" (*The Doctrine of Self-deniall*, 202-3). The Lady's enthusiasm against Comus's speech would fit well in this scheme once we remember that she forced back the "thousand fantasies" that at first perturbed her mind by relying on conscience, faith, hope, and chastity.

marrying the “daughter of an infidel” when “divinely called” (*Samson Agonistes* 221, 226), may be allowed, a second such marriage can prove unlawful if not prompted by a new dispensation from God. What is required of a virtuous individual is to be willing, in Preston’s language, to deny all goods, friendships, and loves, as soon as they interfere with his obedience to unpredictable divine commands. This understanding of human response to divine will leaves very little room for freedom in the Aristotelian sense, where a virtuous individual acts freely towards his own good by developing habits that form the basis of rationality. For Milton, the role of human reason is restricted to an ever-diligent attending to and interpreting of the promptings of grace.

How is this achieved? The foundation for salvation is of course found in the plain commandments of Scripture. It is by correctly understanding the Bible that we learn to rightly follow God’s will. In *Of Reformation*, for instance, Milton insists on the clarity of Scripture in all essential matters, including church government: “But it will be reply’d, the Scriptures are difficult to be understood, and therefore require the explanation of the Fathers, ‘tis true there be some Books [...] that remain clouded; yet ever that which is most necessary to be known is most easie” (CPW I:566; emphasis mine). Indeed, all who approach the Bible have been furnished with enough reason and understanding to gather what is necessary for salvation from its text:

The very essence of Truth is plainnesse, and brightness; the darknes and crookednesse is our own. The *Wisdome of God* created *understanding*, firm and

proportionable to Truth the object, and end of it, as the eye to the thing visible. If our *understanding* have a film of *ignorance* over it, or be blear with gazing on other false glistening, what is that to Truth? If we will but purge with sovraign eyesalve that intellectual ray which *God* hath planted in us, then we would believe the Scriptures protesting their own plainness, and perspicuity, calling to them to be instructed, not only the *wise*, and *learned*, but the *simple*, the *poor*, the *babes*, foretelling an extraordinary effusion of *Gods* Spirit upon every age, and sexe, attributing to all men, and requiring from them the ability of searching, trying, examining all things, and by the Spirit discerning that which is good. (CPW I:566; emphasis original)

Unlike the image of dismembered body of Christ depicted in *Areopagitica*, the Scriptural truth presented in *Of Reformation* is a plain and bright object. Truth, if we had a clear enough eye, would be so easily perceived that it would seem to be “protesting [its] own plainness, and perspicuity.”<sup>80</sup> Indeed, the “*Wisdome of God* created *understanding*, firm and proportionable to Truth the object” and it is only ignorance, something we can remedy, that keeps us from correctly perceiving what is good. In the logic of the passage, once this film is removed and Truth apprehended in Scripture, all will be able, with the aid of the Spirit, to distinguish between what is good and what is “false

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<sup>80</sup> Milton’s view of the clearness and integrity of Scripture undergoes extensive revision over time. In the divorce tracts, for instance, the written word of God seems less plain and bright than in the anti-prelatical pamphlets. There, even passages that seem to clearly prohibit divorce must be understood within a larger context and correctly interpreted: “Christ meant not to be tak’n *word for word*, but like a wise Physician, administering one exesse against another to reduce us to a perfect mean” (*The Doctrine and Discipline of Divorce*, CPW II:282-3). Similarly, in *Christian Doctrine*, even the textual integrity of the New Testament is doubted: “I do not know why God’s providence should have committed the contents of the New Testament to such wayward and uncertain guardians, unless it was so that this very fact might convince us that the Spirit which is given to us *is a more certain guide than scripture*, and that we ought to follow it” (CPW VI: 589; emphasis mine). For Milton’s evolving sense of Scriptural interpretation, see Dayton Haskin, *Milton’s Burden of Interpretation* (Philadelphia, PA: University of Pennsylvania Press, 1994), in particular, see p. 46 for *Colasterion* and Milton’s claim that such a “pork” cannot interpret Scripture.

glistening." But while truth may be plain and bright, while "the darknes and crookednesse is our own," the moral dilemmas we encounter outside Scripture are not so clear. The Lady certainly did not bring darkness to the wood, she brought light rather, but Comus's disguise was nonetheless impenetrable to her understanding.

Milton uses Aristotelian language and categories to talk about virtue, reason, and liberty, while, at the same time, radically reconstructing the way they function through a specific model of the respective roles of human agency and divine grace. For Milton, grace fundamentally changes the scope of human reason: the virtues are anything but habits. We become virtuous by attending to divine truth and commandments. Christian readings of Aristotle, however, need not come to this conclusion. In the writings of Aquinas, there is a medieval solution to the problem of reconciling Aristotle and Christianity. Thomistic thought on the virtues can be seen as a synthesis of Aristotelian philosophy with the understanding of the will developed by Augustine.<sup>81</sup> In contrast with the Puritan line of thinking exemplified by Preston, for both Aquinas and Aristotle, one's family, friends, and city are not simple externals to the life of a virtuous individual that can be discarded at the perceived whims of an inscrutable divine will. As MacIntyre argues, Aquinas, in the *Commentary upon the Ethics*, proposes a model of education in the virtues that is fundamentally dependent on others: "[w]hat the person deprived hitherto

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<sup>81</sup> In this reading of Aquinas, I am following MacIntyre's discussion in *Whose Justice? Which Rationality?*

of adequate moral education has to discover is that what he or she needs is a friend who will also be a teacher in the approach to the virtues.”<sup>82</sup> That is, it is impossible to fully come to virtue on our own. And, more importantly, it is clear that not any human relationship will help us begin our moral education. Rather, only those friendships that are “defined in practice as well as in theory by the standards set by the natural law” can help us understand our *telos*.<sup>83</sup> Why do we need this kind of relationship? An individual can find the precepts of divine law in revelation and in natural law as perceived by human reason, but for Aquinas as well as for Aristotle, one may not become virtuous simply by reasoning or argumentation.<sup>84</sup> One must *act* virtuously in order to become virtuous. It is thus in human relationships that we *practice* the virtues (which can only be made sense of within a social context) and learn to become virtuous.

What is important for our discussion is that for Aquinas, except in a few fundamental cases, we can understand natural law correctly and yet act sinfully: “our apprehension of basic true practical judgments as true does not involve that we understand what is involved in the living out of those judgments in the specifications

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<sup>82</sup> *Whose Justice? Which Rationality?*, 180. This is not to deny a role for grace, as we see in Aquinas’ discussion of how certain habits, namely the theological virtues, can be infused: “The fact that God works in all things in a way appropriate to their nature does not prevent His doing what nature cannot do; but it follows from this that He does nothing adverse to what is fitting to nature” (Ia-IIae, q. 51, art. 4). All quotes from Ia-IIae, questions 49-67 of the *Summa* are from: Thomas Aquinas, *Treatise on the Virtues*, trans. John A. Oesterle (Notre Dame, IN: University of Notre Dame Press, 1984).

<sup>83</sup> MacIntyre, *Whose Justice? Which Rationality?*, 180.

<sup>84</sup> Indeed, right reason cannot exist prior to and disjoined from virtue, hence the distinction between reason and cleverness noted earlier in Aristotle.



and particularities of practical life.”<sup>85</sup> Moreover, Aquinas in following Augustine as well as Aristotle has to confront the Augustinian understanding that our perverted will—*mala voluntas*—leads us to disobey even those precepts of divine law that we do understand fully.<sup>86</sup> Thus, for Aquinas, it is not just an *akratic* individual who may rationally know what he must do and yet not do it, as it would be for Aristotle.<sup>87</sup> Rather, an individual’s rational thought can sufficiently apprehend what ought to be done and yet fail to do it. This is because the will is free to choose not to follow the promptings of reason.<sup>88</sup> We see a clear example of this when Aquinas, distinguishing between moral and intellectual virtues, points out the failings of rationality:

the Philosopher says that ‘reason commands the appetitive principle by political rule,’ namely, that by which one rules over free men that have certain right of opposition.<sup>89</sup> Thus Augustine says that ‘sometimes the intellect leads the way, and the desire follows belatedly or not at all,’ inasmuch as sometimes the passions or habits of the appetitive powers act in such a way that they impede the use of reason in a particular act. [...] Therefore, in order that man’s actions be

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<sup>85</sup> Ibid., 185.

<sup>86</sup> Ibid., 181.

<sup>87</sup> For Aristotle, the problem with incontinence is a form of faulty knowledge: “In the case of having knowledge without using it we see a different kind of having, so that one can in a sense both have and not have it—for example, if one is asleep, mad or drunk. Now this is the condition of people under the influence of the ways they are affected; for spirited feelings, sexual appetites, and some other such things clearly alter our bodily condition as well, and in some people even produce attacks of madness. It is obvious, then, that we should say that incontinent people have knowledge in a similar way to these people” (*Nicomachean Ethics* 124).

<sup>88</sup> MacIntyre, *Whose Justice? Which Rationality?*, 189-91.

<sup>89</sup> This is opposed to the rule of reason over the body: “Hence the Philosopher says that ‘the soul rules the body despotically,’ that is, like a master rules a servant who does not have the right to oppose his master” (Aquinas, *Ia-IIae*, q. 58, art. 2).

good, not only must his reason be well disposed by a habit of intellectual virtue but also his appetitive power by a habit of moral virtue.<sup>90</sup>

The only solution to our repeated disobedience of the law, the only way that we can act and reason well, is to develop the habits of moral and intellectual virtue, which cannot be done without the gift of charity given to us by grace; the virtue supplanted by chastity in *A Maske*.<sup>91</sup> Indeed, for Aquinas, our growth in moral virtue would be limited without the infused virtue of charity: “insomuch as they are productive of good works in relation to a supernatural last end, and thus truly and perfectly attain the nature of virtue, they cannot be acquired by human acts but are infused by God.”<sup>92</sup> That is, to learn how to act virtuously and how to reason correctly, we need both human and divine help.

While Milton does not call friends and family conduits and pipes they way Preston does, it is telling that in his work we find virtues and right reason considered only in abstract terms rather than in a full social and practical context. Looking back to the passage on the clarity of Scripture from *Of Reformation* quoted earlier, we can see a move typical of Milton’s prose works: the subject of the key sentence is an abstraction and it is used to hide the (implied) agent. The tract asks us to purge our eyes from our

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<sup>90</sup> Ia-IIae, q. 58, art. 3.

<sup>91</sup>MacIntyre, *Whose Justice? Which Rationality?*, 205. See also, Aquinas: “Charity is called the end of the other virtues because it directs them all to its own end. And since a mother is one who conceives in herself from another, charity is called the mother of the other virtues, because from desire of the ultimate end it conceives their acts by charging them with life” (IIa-IIae, q. 23, art. 3, Aquinas, *Summa Theologiae*, translated by Fathers of the English Dominican Province and re-issued by Cambridge University Press, 2006).

<sup>92</sup> Ia-IIae, q. 65, art. 2.

own ignorance and see “the Scriptures protesting their own plainness, and perspicuity” (CPWI:566). That is, the Scriptures themselves call all readers to learn from them. The choice of the grammatical subject is not accidental. Milton is arguing that his readers can stop relying on the Church Fathers to understand the Bible; it is plain to those with clear sight. Thus, the structure of the passage allows Milton to avoid the problem of the role of human agency in scriptural interpretation. All that is needed is for “every age, and sexe” to have the “ability of searching, trying, and examining all things” (emphasis mine).<sup>93</sup> At no point does the tract come to terms with what would be involved in applying this ability.

Milton’s picture of reason in his early works is thus clearly at odds with both Aquinas’ and Aristotle’s understanding of reason and virtue. For Aquinas, as we have just seen, we cannot begin our moral education until we have formed human relationships that are based on natural law. The virtues are not abstract entities that are applied to an abstracted conception of others. Charity, most crucially, is not only an infused virtue, but is a form of friendship, and it is learned through specific

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<sup>93</sup> For a similar move in another anti-prelatical tract, see *Animadversions*: “Wee shall adhere close to the Scriptures of God which hee hath left us as the just and adequate measure of truth, fitted and proportion’ d to the diligent study, memory, and use of every faithfull man, whose every part consenting and making up the harmonious *Symmetry* of compleat instruction, is able to set out to us a perfect man of God or *Bishop*” (CPWI:700). Again, it is each part of Scripture that consents and makes up “harmonious *Symmetry* of compleat instruction,” and there is no need for a reader to add anything in order to understand what makes a good Bishop.

relationships. In Aquinas' formulation, we find a role for divine grace that does not negate the possibility for human agency. Virtues can be both infused and habitual, "some habits are infused in man by God" and, moreover, the "fact that God works in all things in a way appropriate to their nature does not prevent His doing what nature cannot do; but it follows from this that He does nothing adverse to what is fitting to nature" (I-II:51.4). Divine grace does not work arbitrarily, but rather in concert with human nature, habits, and practices. While Milton neglects the virtue in *A Maske*, the rule of charity becomes his central hermeneutic tool in the *Doctrine and Discipline of Divorce* and in *Christian Doctrine*. However, any interpretation of Milton's hermeneutics must take into account his reformulation of the virtue and his rejection of habit and tradition.

## 2. Justice and the Rule of Charity: Milton's Divorce Tracts and Puritan Marriage

*And for the love of virtue, this said Philosopher Socrates would not expel his wife of the house. Yea, some say that he did therefore marry his wife to learn this virtue by that occasion.*<sup>1</sup>

"First comes the man, then a quarter of an houre after, his wife." So begins Robert Cleaver's and Jon Dod's complaint in *A godly forme of houshold government* against "household-governors" who allow their family members to come to Church separately. The husband goes first, but allows his wife to leave later. She, in turn, causes the servants to delay even further: "and after her, we cannot tel how long, especially the maid-seruants, who must needs be as long as after her, as the men-seruants are after him. Whereby it commeth to passe, that either half the seruice of God is done before all be met: or else if the Minister tarry till there be a sufficient congregation, the first comers may be weary, and sometimes cold with tarrying, before the other shalbe warme in their seates."<sup>2</sup> One delay causes another and disrupts the devotions of the entire congregation. Those who are late miss part of the service, while those who arrived on time cannot

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<sup>1</sup> "Homily of the State of Matrimony" in *Certain Sermons or Homilies Appointed to Be Read in Churches* (1623), in *Sexuality and Gender in the English Renaissance: An Annotated Edition of Contemporary Documents*, ed. Lloyd Davis (New York: Garland, 1998), 33.

<sup>2</sup> All quotes are from Robert Cleaver and Jon Dod, *A godly forme of houshold government for the ordering of priuate families*, (London, 1621), image 17. Early English Books Online. Folger Shakespeare Library (Washington, DC). April 8, 2010. [http://proxy.lib.duke.edu:2212/search/fulltext?ACTION=ByID&ID=D00000243274680000&SOURCE=var\\_spec&WARN=N&FILE=../session/1282307580\\_15461](http://proxy.lib.duke.edu:2212/search/fulltext?ACTION=ByID&ID=D00000243274680000&SOURCE=var_spec&WARN=N&FILE=../session/1282307580_15461). Cleaver's first edition of the text dates from 1598. The manual went through nine editions, including, in 1610, an edition "newly perused, amended and augmented" in collaboration with Jon Dod.

attend with the proper state of mind. Cleaver and Dod place the fault of the delays squarely on the shoulders of the master of the household:

Now, if it be demanded of the maisters, why they alone make such hast, and leaue all the rest behind them; & they answer truly, because the time is come, wherein vsually public prayer beginneth: can they be perswaded that it is time for themselues to come (as it is indeed) and yet not time for the rest to come with them? Hath the maister no longer time to tarry, and haue his seruants time to tarry so long after him? As though there were one law for him, and another for them: or rather, that the same law of the Sabbath, which moueth him of conscience to do that which he doth, did not as forcible bind them all as himself: nay, did not binde him to looke to them, that they should keep holy the day as well as himself, which if he graunt to be true, & yet is not able to bring it to passe, (where the Lord hath giuen him so great authoritie for his owne sake) partly through the frowardnesse of his wife, and partly through the obstinacy of the rest of his familie: his case is to be pittied, and he is rather to be gouerned, then to gouerne: and he might do well *to set vp one of them in his stead*: seeing he doth suffer himselfe wilfully so to be abused, and is contented to be ouer-ruled by them in the chiefest thing.<sup>3</sup>

In this passage, the authors remind the master of the household of his religious duties to his family—that is, to his wife, children, and servants—as well as to God. If it is time for him to pray, so it is for his family. If his conscience bids him to observe the Sabbath punctually, it should equally spur him to bring his family with him. After all, it is chiefly for the edification of his family that God has granted him natural authority over them. If he is incapable of fulfilling this duty, “he is rather to be gouerned, then to gouerne.” That is, a husband who cannot order the little commonwealth of his family so as to

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<sup>3</sup> Cleaver and Dod, *A godly forme of household government*, image 17; emphasis original.

promote true godliness is not truly the governor of his household, but deserves rather to be guided by others.

I have quoted this passage at length because it gives a first sketch of the kind of language that forms part of the context for Milton's divorce tracts. In particular, it indicates something of the complex web of relationships that surround marriage in Puritan writings. Milton's divorce tracts enter a developing seventeenth-century discussion of the need to reform marriage with a proposal for divorce for incompatibility. While his conception of lawful causes for divorce goes further than that of most writers of the time, his framework for marriage is indebted to the language of marriage found in Puritan manuals. Milton is, however, a selective borrower. His argument for divorce hinges on a drastic reconfiguration of the definition of marriage. This redefinition has been quite successful in guiding critical analysis of the divorce tracts. Marriage for Milton, and for Milton critics, is primarily about husband and wife.<sup>4</sup>

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<sup>4</sup>An influential strand of Milton criticism, though aware of alternative formulations in the seventeenth century, has adopted the poet's own categorization of marriage. James Grantham Turner's *One Flesh: Paradisal Marriage and Sexual Relations in the Age of Milton* (Oxford: Oxford University Press, 1987) traces the use of the imagery of Edenic marriage and sexual relations from Augustine to Puritan divines to recreate the context for *Paradise Lost*. In his reading, Milton liberates the mind from the subordination to the flesh in which it was placed by canon law and the writers of marriage manuals. Puritan divines "regard sexual satisfaction as the chief means '(next to an awfull feare of God)' of a achieving 'a kinde of *Heaven upon Earth*'" (75; see also 203-4), but Milton grasps the misery of an unequal marriage. Stephen M. Fallon, in "The Metaphysics of Milton's Divorce Tracts" in *Politics, Poetics, and Hermeneutics in Milton's Prose*, ed. David Lowenstein and James Grantham Turner (Cambridge: Cambridge University Press, 1990), 69-83, also argues that Milton upends the hierarchy of flesh over soul promoted by orthodox thinkers. Fallon's main argument in this essay is that the divorce tracts document Milton's nascent monism and that his privileging of the soul over the body is a rhetorical tactic. Moreover, Fallon is quite sensitive to the increasingly chauvinistic language of the successive divorce tracts: "his humane plea for no-fault divorce for incompatibility is yoked by violence to violence, with the rage of the injured male against the wife who will not be a wife" (78-9).

As I will argue in this chapter, this is a narrower view than found in marriage manuals such as Cleaver's and Dod's and it risks distorting our picture of the language used to discuss marriage in the seventeenth century. In the first part of this chapter, I turn to some overlooked strands of the seventeenth-century understanding of marriage. I begin

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Nonetheless, his argument is also predicated on Milton's definition of marriage. Tracing a different genealogy for the poet's view of marriage from either Turner or Fallon, Thomas H. Luxon, in *Single Imperfection Milton, Marriage and Friendship* (Pittsburgh: Dusquene Universtiy Press, 2005), argues that in the divorce tracts Milton attempts to reform marriage in terms of classical notions of friendship (23-93). Luxon sees a tension between the humanist revival of classical homosocial friendship and the Protestant focus on marriage as the foundation of society (28-32). In this treatment, unhappy marriage for Milton is a defective friendship with an unequal partner. Here too, the focus is on the couple to the exclusion of all others. For similar treatment, see also: John Halkett, *Milton and the Idea of Matrimony: A study of the Divorce Tracts and Paradise Lost* (New Haven: Yale University Press, 1970); Mark Fortier, "Milton, Equity and Divorce" in *Milton, Rights, and Liberties*, ed. Christophe Tournu and Neil Forsyth (Bern: Peter Lang, 2007), 143-153; and Catherine Gimelli Martin, "Dalila, Misogyny, and Milton's Christian Liberty of Divorce" in *Milton and Gender*, ed. Catherine Gimelli Martin (Cambridge: Cambridge University Press, 2004), 53-74; as well as her fuller treatment in *Milton among the Puritans*, where she argues that the relevant difference between Milton and the authors of marriage manuals is over the emphasis of obedience: "Milton's theory of marriage is obviously the opposite of Bunyan's, who like the authors of most Puritan marriage manuals, emphasized wifely obedience, made no allowance for separation even from a "Mr. Badman," and largely restricted mutuality to the marriage bed—for Milton, and utterly joyless 'blessing' without the 'spirit' of mental and emotianl compatibility" (Catherine Gimelli Martin, *Milton Among the Puritans: The Case for Historical Revisionism* (Burlington, VT: Ashgate, 2010), 73). There are of course readings of Milton's divorce tracts that take into account a larger social context. For an analysis of Milton's engagement with the Puritan ideology of gender relations and marriage and the development of his thinking from the divorce tracts to *Paradise Lost*, see David Aers and Bob Hodge, "Rational Burning': Milton on Sex and Marriage," in David Aers, Bob Hodge, and Gunther Kress, *Literature, Language and Society in England 1580-1680* (Dublin: Gill and Macmillan, 1981), 122-51. I am indebted to this essay as well as to Diane Purkiss' more recent essay, "Whose Liberty? The Rhetoric of Milton's Divorce Tracts," in *The Oxford Handbook of Milton*, ed. Nicholas McDowell and Nigel Smith (Oxford: Oxford University Press, 2009), 186-199, for their discussions of Milton's ideal of companionate marriage rescued by divorce in the context of gender relations and women's roles in marriage in the seventeenth-century. Barbara Lewalski in *The Life of John Milton* (Oxford: Blackwell Publishing, 2000) acknowledges in her discussion of *An Answer* and *Colasterion* that Milton's divorce tracts do not sufficiently consider the problems encountered by divorced women and their children (180). Nonetheless, Lewalski reads Milton's desire for a "fit conversing soul" in his wife as a challenge to contemporary gender stereotypes (172). Gordon Campbell and Thomas N. Corns in *John Milton: Life, Work and Thought* (Oxford: Oxford University Press, 2008) briefly mention that the anonymous author of *An Answer* is most convincing in his argument against Milton when he considers the social consequences of divorce (166).



this chapter by reviewing five popular household manuals in order to flesh out the context for marriage in Puritan writings. The manuals provide a rich language for the discussion of marriage. Then, to better understand the metaphorical uses of this language, I turn to Preston's *breast-plate* and John Donne's marriage sermons. With this background, I look at Milton's redefinition of marriage and at his claim for Scriptural support for divorce based on the rule of charity and Christian liberty. In the final section of the chapter, I argue that Milton's developing understanding of liberty and charity grows out of a devaluing of the social bonds and human relationships necessary for education in the virtues, including charity itself. By comparing the only sustained reply to Milton's first divorce tract, the anonymous *An Answer to A Book intituled The Doctrine and Discipline of Divorce* with *Colasterion*, we can unpack the ways in which Milton's insistence on isolating the conversation of two souls as the fundamental requirement for marriage leads to a dehumanized version of both an unfit spouse and an unfit opponent in debate.

As the passage opening this chapter begins to illustrate, to talk about marriage in the seventeenth-century requires talking about the whole family, not just the married couple. A household, Cleaver and Dod remind their readers, is formed of those who govern, namely a husband and wife, and those who are governed, that is to say, children and servants. The governors are however not equal. They are "first the *chiefe governour*,

which is the *Husband*, secondly, a *fellow-helper*, which is the *Wife*.”<sup>5</sup> Having named the roles of all family members, the body of the manual is devoted to describing the duties that each member owes to all the others. The goal of the tract is to bring about a godly management of each family and, in turn, of the entire commonwealth which is formed by, and mirrored in, these households: “An Household is as it were a little Commonwealth, by the good gouernment whereof, Gods glorie may be aduanced, ands the commonwealth which standeth of seuerall families benefited; and all that lieu in that familie receiue much comfort and commoditie.”<sup>6</sup> Thus, it becomes clear that the proper relationship between husband and wife cannot be discussed without considering the repercussions to the entire family and the commonwealth. Cleaver’s and Dod’s tract is of course not the only one to adopt such a stance. Perkins’s *Christian Oeconomie* (1609), as the title suggests, is also concerned with marriage in the context of household management. Much of his text is devoted to the education and rearing of children, the training of servants, and the management of finances as well as the proper relationship between husband and wife. Similarly, William Whately’s *bride-bush*, Thomas Gataker’s *Marriage duties*, and William Gouge’s *Domesticall duties* place the union of a man and a

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<sup>5</sup> Cleaver and Dod, *A godly forme of houshold government*, image 9; emphasis original.

<sup>6</sup> Cleaver and Dod, *A godly forme of houshold government*, image 6; emphasis original.

woman within the context of a large household using language nearly identical to Cleaver's and Dod's or Perkins'.<sup>7</sup>

## **2.1 The Couple and the Community in Puritan Marriage Manuals**

In *A godly forme of houshold government*, Cleaver and Dod describe the goal of household management as twofold: "The gouernment of a Familie tendeth vnto two things specially. First Christian holinesse. And secondly, the things of this life. By the first, God is glorified, by the second, this present life is sustained, in such sort, as God seeth good for vs."<sup>8</sup> The exhortation to each father to bring his family to church seen in the opening quote is placed under the first heading, "Christian holinesse." A master of

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<sup>7</sup> To this list, we could also Thomas Paget in *A religious scrutiny concerning unequall marriage* (1650). Interestingly, Paget advocates divorce in cases of religious difference. In his argument, he also considers the problem of the legal status of the children of such marriages as a fundamental part of the question under discussion.

All quotations from these marriage manuals are from the following editions:

William Perkins, *Christian Oeconomie*, trans. Thomas Pickering. London, 1609. Early English Books Online. British Library (London). April 8, 2010.

[http://proxy.lib.duke.edu:2212/search/full\\_rec?SOURCE=pgthumbs.cfg&ACTION=ByID&ID=99838344&FILE=../session/1282309554\\_21653&SEARCHSCREEN=CITATIONS&SEARCHCONFIG=var\\_spell.cfg&DISPLAY=AUTHOR](http://proxy.lib.duke.edu:2212/search/full_rec?SOURCE=pgthumbs.cfg&ACTION=ByID&ID=99838344&FILE=../session/1282309554_21653&SEARCHSCREEN=CITATIONS&SEARCHCONFIG=var_spell.cfg&DISPLAY=AUTHOR).

William Whately, *A bride-bush. Or, A direction for married persons Plainely describing the duties common to both, and peculiar to each of them*. London, 1623. Early English Books Online. Union Theological Seminary Library (New York, N. Y.). April 8, 2010.

[http://proxy.lib.duke.edu:2212/search/full\\_rec?SOURCE=pgthumbs.cfg&ACTION=ByID&ID=99854638&FILE=../session/1281640062\\_10329&SEARCHSCREEN=CITATIONS&SEARCHCONFIG=var\\_spell.cfg&DISPLAY=AUTHOR](http://proxy.lib.duke.edu:2212/search/full_rec?SOURCE=pgthumbs.cfg&ACTION=ByID&ID=99854638&FILE=../session/1281640062_10329&SEARCHSCREEN=CITATIONS&SEARCHCONFIG=var_spell.cfg&DISPLAY=AUTHOR).

Thomas Gataker, *Marriage duties briefly couched together out of Colossians, 3.18, 19*. London, 1620. Early English Books Online. Henry E. Huntington Library and Art Gallery (San Marino, CA). June 18, 2010.

[http://proxy.lib.duke.edu:2212/search/fulltext?SOURCE=var\\_spell.cfg&ACTION=ByID&ID=D00000998387340000&WARN=N&SIZE=134&FILE=../session/1282309926\\_22812&SEARCHSCREEN=CITATIONS&DISPLAY=AUTHOR&ECCO=N](http://proxy.lib.duke.edu:2212/search/fulltext?SOURCE=var_spell.cfg&ACTION=ByID&ID=D00000998387340000&WARN=N&SIZE=134&FILE=../session/1282309926_22812&SEARCHSCREEN=CITATIONS&DISPLAY=AUTHOR&ECCO=N).

William Gouge, *Of domestical duties eight treatises*, (London, 1622). Early English Books Online. Folger Shakespeare Library (Washington, DC). April 8, 2010.

[http://proxy.lib.duke.edu:2212/search/fulltext?ACTION=ByID&ID=D00000998390470000&SOURCE=var\\_spell.cfg&WARN=N&FILE=../session/1282310358\\_23904](http://proxy.lib.duke.edu:2212/search/fulltext?ACTION=ByID&ID=D00000998390470000&SOURCE=var_spell.cfg&WARN=N&FILE=../session/1282310358_23904).

<sup>8</sup> Cleaver and Dod, *A godly forme of houshold government*, image 8; emphasis original.

the household who fails to promote the edification of those under his government not only deprives his family of necessary religious instruction, but also imperils the wellbeing of the entire community. His family misses part of the service and the devotions of the rest of the congregation are interrupted. However, he is not the only one who is reproached by Cleaver and Dod for this problem. The relationship between each family and the larger community is reciprocal. As the father of the family ought to urge all his household to attend church services for the benefit of the congregation as well as of the family, so is the rest of the congregation under the obligation to question the father about the lateness of his family: “the dispersed and broken coming of housholdes to the Church, is a thing greatly observed of the Lord God, and of his Angels, *which are present at their assemblies*: and it is that which griueth the rest of the Church, and as soon as they see one come in alone, they are ready with grief to ask, Where are the rest? What meaneth this partie to come alone?”<sup>9</sup> The family’s delay is an offense to God, angels, and the congregation. Their absence ought to grieve the entire Church and make each member of the community ask what could have caused them to come separately. Cleaver and Dod connect this exhortation to communal edification to Psalm 42.4, “When I remembered these things, I powred out my very heart, because I had gone with the multitude, and led them into the house of God, with the voice of singing,

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<sup>9</sup> Cleaver and Dod, *A godly forme of houshold government*, image 18; emphasis original.

and praises, as a multitude that keepeth a feast.”<sup>10</sup> The Psalm recalls the gathering of a joyous multitude at the temple, where collective singing and praying become central to the act of worship. The master of a household is reminded not to go alone to church, but to lead his entire family as the Psalmist led the multitude. In the manual, each individual’s edification is placed squarely within a network of obligations that extends beyond the individual’s conscience or even the family circle.

Cleaver and Dod make the connection between marriage and commonwealth explicit in the section on the education of children. The manual presents the dire consequences that follow from parents’ reluctance to discipline and educate their sons and daughters from a tender age. Not only will their children grow up devoid of any virtue, but the entire commonwealth and Church will suffer. Indeed, it is useless to wish for Church reformation when unwilling to reform one’s own family:

[H]ow needfull houshold gouernment is towards children, may appeare by the slender thriuing, and small profiting either of religion or vertue, either in the Church or Common-wealth. Speake men of discipline neuer so much, complaine

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<sup>10</sup> Cleaver and Dod, *A godly forme of houshold government*, image 17. “When I remember these things, I pour out my soul in me: for I had gone with the multitude, I went with them to the house of God, with the voice of joy and praise, with a multitude that kept holyday” (All quotes from the Bible are from: *The Bible: Authorized King James Version*, ed. Robert Carroll and Stephen Prickett (Oxford: Oxford University Press, 1996).) Note: the marginal note in the manual incorrectly identifies the passage as Psalms 24.4. Cleaver and Dod give a second Scriptural reference in the margin next to the question “Where are the rest?”, 1 Cor. 11.10: “For this cause ought the woman to have power on her head because of the angels.” In marriage manuals this Scriptural passage is often used as a proof-text in discussions of wives’ duty to submit to their husband or in the expositions of the husband’s duties to love and guide his wife. For the first type of use, see, for instance, Perkins, *Christian Oeconomie* (Chapters 5 and 12), Thomas Gataker, *Marriage duties*, and William Whately, *bride-bush*, (Chapter 14). Both Gataker and Whately insist that the proper affection of a wife for her husband is one of “loving-fear” and obedience. For the second use, see, in particular, Perkins’ use of 1 Cor. 11 to argue that wife-beating is a form of sacrilege (*Christian Oeconomie*, Chapter 11).

they of the want of Church gouernment neuer so lowd, preach they, teach they neuer so much abroad, vnlesse they will begin discipline in reforming their houses, & guie religion some roome at home, they shall trauell much and profit little. [...] and of all meanes that now may be hoped for, this seemth best: for of particular persons, come families: of families, townes: of townes, prouinces: of prouinces, realms: so that conueying discipline thus from one to another, in time, and that shortly, it would come into the Church.<sup>11</sup>

The individual and the family are the foundation blocks of towns, provinces, and realms.<sup>12</sup> Reformation of Church government, in this model, is best achieved bottom-up, by reforming the constituting members first. Once this is achieved, godliness will spread from private families to the entire commonwealth.<sup>13</sup> Paired with the earlier passage drawn from Psalm 42, this model of reformation presents a symmetry between the whole and its constituent parts. Godly families are necessary for the reformation of the Church, and, in turn, a godly congregation will reinforce household discipline. For Cleaver and Dod, and for the readers hungry for the nine editions *A godly forme of*

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<sup>11</sup> Cleaver and Dod, *A godly forme of houshold gouernment*, image 150.

<sup>12</sup> The idea of the commonwealth as constructed by families can be traced back to Book I of Aristotle's *Politics* and his view of man as a social animal. Margo Todd, in *Christian Humanism and the Puritan Social Order* (Cambridge: Cambridge University Press, 2002), argues that the Puritan conception of the family as the building block of society is based in the reforming ideals of sixteenth century Christian humanists. In particular, she singles out Erasmus, More, and Vives for their influence in England (see, especially, pages 96-117). Todd's analysis is helpful in tracing humanist sources in Puritan marriage manuals even though she downplays the influence of continental Reformed thinkers.

<sup>13</sup> Sylvia Brown reads Cleaver's injunction to reform each household as a coded message to moderate Puritans to work towards a reformation of the Church of England (*Godly Household Government from Perkins to Milton: The Rhetoric and Politics of Oeconomia, 1600-45* (Ph.D. diss., Princeton University, 1994), 60-1). In the first chapter of her dissertation, Brown argues that, between 1600 and 1640, the language of household manuals sustained a godly identity and promoted reformation in an inimical political environment (9-67). In the 1640s, when the establishment of a Presbyterian Church policy in England became a possibility, a generation of Puritans accustomed to reading household manuals took their language of reform from those same manuals (177).

*houshold government* went through, the concept of marriage and family cannot be extricated from the language of community and congregation.

The link between the wellbeing of each family and that of the commonwealth at large is reflected in all details of everyday life. A man's ability to govern his affairs outside of the house will be judged on his ability to manage his own family: "he is reckoned worthy to rule a common-wealth, that with such wisdom, discretion, and iudgement, doth rule and gouerne his owne house."<sup>14</sup> In turn, such skill in household management is developed first in the hierarchical relationship between husband and wife. The husband will never be able to run his household well, if he does not develop a harmonious relationship with his subordinate co-governor:

For the houshold, when their maister and their mistresse, or dame, are at debate, can no otherwise be in quiet and at rest, then a Citie whose rulers agree not, but when it seeth them in concord and quietnesse, then it reiocyeth, trusting that they will be euen so vnto them, as it perceiueth them to be among themselues. [...] And the seruants are not onely merrie therefore, but also they do their seruice the more obediently and cheerefully, shewing reuerence vnto the authority that proceedeth and increaseth of quietnesse and concord. For the husband defend his wiues estimation, with loue and beneuolence: and the wife her husband with loue and obedience. So that vnitie and concord, causeth them to be accounted wise, honest, and virtuous; and they must needs be good, seeing they haue loued so long together.<sup>15</sup>

The twin images of household-as-commonwealth and the commonwealth-built-of-households form an all-encompassing view of social relations in *A godly forme of houshold*

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<sup>14</sup> Cleaver and Dod, *A godly forme of houshold government*, image 87.

<sup>15</sup> Cleaver and Dod, *A godly forme of houshold government*, image 86.

*government*. On the one hand, since the household is a miniature commonwealth, we can learn how a family ought to be managed by learning from the analogy to political organization. Thus, husband and wife can be seen as governors of the family while servants and children as those governed. If the governors agree with each other, the subjects will be able to expect orderly and fair government. But if the governors disagree, the subjects can only expect discord. On the other hand, because the commonwealth is constituted of households which, in turn, mirror its structure, we can judge the abilities of an individual as citizens by his abilities as the governor of a household. The governors of the household will only be accounted “wise, honest, and virtuous” if their marriage is harmonious. The commonwealth, then, is dependent on godly families and godly families are dependent on good marriages. In turn, the relationships between husband and wife, parents and children, masters and servants, ought to reflect the order of a well-governed commonwealth.<sup>16</sup>

Cleaver and Dod are not the only writers who presents such an ideal. Thomas Gataker, in *Marriage duties*, begins his account of marriage with a similar picture. The relationship between husband and wife is the foundation of all society and thus must be

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<sup>16</sup> In the manual, Claver and Dod repeatedly use examples from civil government in their advice. To husbands who wish to strictly rule their wives, they issue the following warning: “Some husbands are wont to say, that they will rule their wiues whatsoever they be, or howsoever they came by them, and that it is in the hand and power of the husband, what, and of what qualities and conditions she shall be. True it is, that a great part of this doth rest and lie in the husband, so that he vnderstand as he ought to do, that marriage is the supreme and most excellent part of all amitie and friendship: and that it farre differeth from tyranny, the which doth compel men to obey” (Cleaver and Dod, *A godly forme of houshold government*, image 105-6).



properly ordered: “[B]ecause this is the fountain from whence the rest flow: and the streames can not flow pure and cleare vnlesse the fountain be first clensed and kept cleane.”<sup>17</sup> Gataker’s argument follows Cleaver’s and Dod’s closely. Marriage is the original source of all social relationships, a fact highlighted by Adam’s being given Eve—a *wife* and not another man—as a helpmeet to remedy his loneliness. In particular, if the relationship between husband and wife is not harmonious, there is little hope that the rest of the household affairs will run smoothly. The reason of “much neglect of dutie in many families, in children towards parents, in seruants toward Master and Mistres” can be found in the lack of agreement between husband and wife: “neglect of dutie and difference betweene them is a meanes to breed a contempt of one or both in those that should be guided by them: making seruants and children to take occasion of libertie and faile in their duty to them, as they faile in dutie either to other.”<sup>18</sup> Gataker warns that lack of harmony in the relationship between husband and wife creates an unruly household. And such disorder potentially leads to a break-down in religious discipline: “where dutie faileth betweene man and w[i]fe it causes a neglect of [...] dutie oft euen to God himself.”<sup>19</sup>

Similarly, William Whately’s *A bride-bush* couches all admonitions against breaking any marriage duty in warnings about possible social repercussions. In the

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<sup>17</sup> Gataker, *Marriage duties*, 3.

<sup>18</sup> Gataker, *Marriage duties*, 4.

<sup>19</sup> Gataker, *Marriage duties*, 5.

second chapter of the manual, on due benevolence, Whately chastises married couples who are “carried forward with the heat and tide of their vnruely appetites” and who “come together in marriage, forgetting or neglecting to receive the Lords good will and blessing.”<sup>20</sup> The consequences of failing to do so go well beyond the couple.

Approaching sex without the proper orientation towards God can hurt the family, the commonwealth, and the Church:

Doth not euery mans priuate wel-fare, and the publike also for the most part, depend in a manner altogether vpon the successe of this societie? The hope of posterity, the stay of old age, the comfort of weaknesse, the support of euery mans house and name, together with the flourishing and populous estate of euery church and common-weale, doth even hang upon the fruit of matrimony. [...] and if many families (as it were seminaries) bee either empty of plants altogether, or vp pestered with crooked and crab-tree plants, how shall the Orchyards of the Church and Commonweale, be stored with good wholesome trees?<sup>21</sup>

The metaphor is no longer that of a fountain from which all the streams of society flow, as in Gataker, but rather that of a seminary.<sup>22</sup> The different image, however, does not have different import. From each married couple, the commonwealth and the Church derive their constituent members. Indeed, Whately warns each husband and wife that though they may have discharged all the duties towards each other, they will still be remiss in the duties of *marriage* if they do not regard the well-being of the other members

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<sup>20</sup> Whately, *A bride-bush*, 16.

<sup>21</sup> Whately, *A bride-bush*, 17.

<sup>22</sup> The image of the seminary could be meant to recall Malachi 2.15: “And did not he make one? Yet had he the residue of the spirit. And wherefore one? That he might seek a godly seed. Therefore take heed to your spirit, and let none deal treacherously against the wife of his youth.”

of the household. That is, even the duty of due benevolence must be undertaken with a clear sense of the possible consequences to their children. Moreover, as in the other manuals, the government of the household is depicted in *A bride-bush* as a miniature state: "The man must be taken for Gods immediate officer of the house, and as it were the King of the family; the woman must account her self his deputy, an officer substituted to him, not as equal, but as subordinate: and in this order they must governe."<sup>23</sup> Having established that the household is a little commonwealth with two governors of different rank, as well as the nursery of the English commonwealth, Whately proceeds to give the same advice proffered by Cleaver and Dod, and Gataker. Discord among the governors of the family will produce rebellion in those governed: "They must therefore so joyne hands in these workes, that their dissention may not blast the fruit of all their endeauours. It is harmfull to nourish as it were a domestick faction in this little common-weale. [...] so shall their discreet concord in government preserue their authority among their people, encrease their loue each to other, and procure amendment in their inferiors."<sup>24</sup>

As a final example, I turn to William Gouge's manual. *Domesticall Duties* is more extensive than any of the marriage tracts considered up to this point.<sup>25</sup> The manual is

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<sup>23</sup> Whately, *A bride-bush*, 89.

<sup>24</sup> Whately, *A bride-bush*, 96-7.

<sup>25</sup> Gouge's view of marriage is particularly interesting given his presence at the Westminster Assembly. Unfortunately, the minutes of the Assembly do not record any participation from Gouge in the debate on

divided into eight treatises, with each successive treatise building upon the previous one. The first section of the first treatise introduces and explains the Scriptural places from which the author will take his precepts. Gouge begins by giving an example of how Paul's syntax teaches the best method to read Scripture and, presumably, Gouge's own text. The very first verse adduced is Ephesians 5.21, "Submitting your selves one to another in the feare of God."<sup>26</sup> This verse illustrates how Paul moves from instructing the faithful on their general duties, that is, duties common to all regardless of calling, to teaching them their particular duties as married people. The form of the verb "submitting," a gerund, creates a link between the general and particular, and thus demonstrates that one depends on the other. Gouge sees this construction as a particular mark of Paul's style of writing and instruction. By creating a link between two verses, the apostle teaches us to understand each precept within the context of the preceding one:

This manner of passing from one point to another, by a *perfect transition* which looketh both wayes, both to that which is past, and to that which commeth on, as it is very elegant, so is it frequent with this our Apostle. Whereby he teacheth vs, so to giue heed to that which followeth, as we forget not that which is past: as we must giue diligent attention to that which remaineth, so we must well retaine that which we haue heard, and not let it slip: otherwise, if (as one nail driveth out

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the directory for marriage. See, *Minutes of the Sessions of the Westminster Assembly of Divines*, ed. Alex F. Mitchell and John Struthers (Edinburgh: William Blackwood, 1897), 7-14.

<sup>26</sup> Gouge, *Of domestical duties*, 2.

another) one precept maketh another to be forgotten, it will be altogether vain to add line unto line, or precept onto precept.<sup>27</sup>

By this example, Gouge emphasizes that the duties of marriage must be understood within the context of the general duties of each member of the couple as a Christian man or woman. Moreover, each lesson in the marriage manual is meant to be read as building upon the previous one and pointing to the next.

Gouge, like most writers of marriage manuals, returns to Ephesians 5 repeatedly. Indeed, as the entire First Treatise of *Domesticall Duties* details, the perfect pattern for the correct relationship between husband and wife can be found in the relationship between Christ and the Church: “All things requisite to ioyne man and wife together, doe fitly concurre betwixt Christ and the Church.”<sup>28</sup> The parallel between Christ and the Church, on one hand, and husband and wife, on the other, runs through and saturates the First Treatise so thoroughly that admonitions against divorce based on the example of Christ’s unshakable love for the Church—“He is not like the hard hearted Iewes, who vpon euerie sleight occasion would put away their wiues. *The Lord hateth putting away.* Though therefore the Church, through her weaknesse, doe depart from him, and play the harlot, *yet returne againe to me, saith the Lord*”—become occasions to remind his

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<sup>27</sup> Gouge, *Of domesticall duties*, 2; emphasis original.

<sup>28</sup> Gouge, *Of domesticall duties*, 117. The language used by writers like Gouge to emphasize that a good Christian marriage is to be understood by the model of the love of Christ for the Church is also used by John Preston and John Donne to argue that the relationship of the soul to Christ (and the Church to Christ) can be understood in terms of the love between a wife and a husband. I will turn to this metaphorical use of the language of marriage in the next section.

readers to love God. Gouge urges his readers to “Learne we by this patterne to cleaue close vnto the Lord, which is a dutie most due to Christ who cleaueth so close to vs, and therefore oft expressed in the Scripture.”<sup>29</sup> For Gouge the language of marriage is inescapably linked with the language of faith in and love for Christ.<sup>30</sup> It is in this context that Gouge begins to develop the attributes of marital love including, with an emphasis similar to Whately’s, due benevolence: “*Loue* is the glue and soader which maketh vs one with Christ: for it is the propertie of loue to vnite those that loue one another in one. [...] He that loueth is well pleased with him whom he loueth, and seeketh also to please him, that they may mutually delight one in another.” In the Second Treatise, this model of marital relationships allows Gouge to condemn adultery as a sin against charity. In the first place, adultery offends the trinity: “Against *each person in the holy Trinitie*: the *Father* (whose couenant is broken) the *Sonne* (whose members are made the members of an harlot) and the *Holy Ghost* (whose Temple is polluted).”<sup>31</sup> Moreover, adultery offends the entire commonwealth, starting with one’s accomplice in sin and one’s spouse, moving on to the possible children of the adulterous relationship, and ending with one’s town, nation, and Church:

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<sup>29</sup> Gouge, *Of domestical duties*, 121; emphasis original. Gouge references Malachi 2.16, a particularly crucial passage in Milton’s argument for divorce. While Gouge, along with the King James translation, renders it as: “The Lord hateth putting away.” Milton, following the Vulgate and Calvin, translates it as: “he who hates let him divorce” (*The Doctrine and Discipline of Divorce*, CPW II:257; see also the editor’s note, n.16). Milton returns to this point of translation in *Tetrachordon* (CPW II:615) and *Colasterion* (CPW II:749).

<sup>30</sup> There is a similar tendency in other Puritan divines’ writings about marriage. However, the sheer length of Gouge’s manual allows him to develop this line of thinking in greater detail than in most other tracts.

<sup>31</sup> Gouge, *Of domestical duties*, 220; emphasis original.

Against ones *neighbour*, as the partie with whom the sinne is committed (for this sinne cannot be committed singly by one alone) the *husband* and *wife* of each partie (who cannot rest contented with any satisfaction) the *children* borne in adulterie (whom they brand with an indelible character of infamie, and depriue of many priuiledges that otherwise they might enioy) the *alliance* and *friends* of each partie (to whom the grieffe and disgrace of this foule sinne reacheth) the *whole family* appertaining to either of them (for this is as a fire in an house) the *towne*, *citie*, and *nation* where such vncleane birds roost (for all they lie open to the vengeance of God for this sinne) and the very *Church of God* (the holy seed whereof is by this sinne hindred).<sup>32</sup>

For Gouge, adultery does not simply offend the injured spouse, but hurts the entire community and destroys the covenant between man and God. It is thus a sin against charity and perverts the bond of neighborly love that holds commonwealth and Church together. It is a sin that perpetuates itself beyond the lives of those who commit it. Their children have “an indelible character of infamie” and the Church is deprived of “the holy seed” to replenish its numbers.

I have quoted the passage above at length in order to highlight the context swept aside by Milton in his discussion of just causes for divorce. As we will see, in Reformed churches, the legal discussions of divorce did indeed focus on allowing divorce only for adultery and thus to seemingly privilege, as Milton complained, the body over the soul, sexual commingling over spiritual conversation. Nonetheless, as we have begun to see, popular discussions of marriage paint a very different picture. For instance, while in the Second Treatise of his manual Gouge recommends due benevolence between spouses as

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<sup>32</sup> Gouge, *Of domestical duties*, 220; emphasis original.

one of the best remedies against the sin of adultery, this advice comes only after having established a rich context for marital sexuality. Rather than being a simple privileging of the carnal over the spiritual, as Milton would have us believe, the discussion of adultery is inevitably linked to the problem of children—that almost unavoidable consequence of sex that is so quickly swept aside in the divorce tracts—as well as to the wider repercussions that follow upon such sin. Indeed, the Puritan bedchamber seemed to have rarely have been inhabited by only husband and wife, at least in the imagination of the writers of marriage manuals. Moreover, when Gouge reminds his readers that marital sex is a powerful remedy against adultery, “[o]ne of the best remedies that can be prescribed to married persons [...] is, that husband and wife mutually delight each in other, and maintaine a pure and feruent loue betwixt themselues, yeelding *due beneuolence* one to another which is warranted & sanctified by Gods word, and ordained of God for this particular end,” the mutual delight afforded by a loving marriage cannot be detached from the mutual delight between Christ and the Church.<sup>33</sup>

This is not to say that there are not moments in Puritan marriage manuals that focus only on the couple, or at least the family, to the apparent exclusion of all larger concerns. In Perkins’ *Christian Oeconomy*, for instance, the family is not only a little Commonwealth, it is, quoting Philem. 1.2, a little Church and Paradise. It recreates a whole world within itself and does not seem to need any connection with the rest of

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<sup>33</sup> Gouge, *Of domestical duties*, 221; emphasis original.



society: “those families wherein this seruice of God is performed, are, as it were, little Churches, yea euen a kind of paradise vpon the earth.”<sup>34</sup> Placing an even stronger emphasis on the couple in the beginning of chapter three of *A bride-bush*, Whately describes a marriage where love reigns to be “a pleasing combination of two persons into one home, one purse, one heart, and one flesh.”<sup>35</sup> For a brief moment in the text, concerns about children, commonwealth, and Church are nowhere to be seen. Indeed, in the same page, a marriage without love is described using language that could well be taken from Milton: “Love is the life and soul of mariage, without which, it differs as much from itself, as a rotten apple from a sound, as a carcasse from a liuing body: yea verily, it is a most vncomfortable society, and no better than a very liuing death.”<sup>36</sup> Similarly, Gataker, when praising love between husband and wife, describes the relationship formed by marriage as the most intimate known to human beings: “behold a neerer coniunction between married persons man and wife, then between children and parents.”<sup>37</sup> These moments, as well as the emphasis on due benevolence in these tracts, seem to warrant James G. Turner’s claim in *One Flesh* that “[t]hese [Gataker, Whately, and Gouge] and other ‘Puritan’ writers, though intensely aware of the horrors of a bad marriage, still write about matrimony as if it is an achievable Paradise [...]. And they still regard sexual satisfaction as the chief means [...] of achieving ‘a kinde of Heaven

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<sup>34</sup> Perkins, *Christian Oeconomy*, 8.

<sup>35</sup> Whately, *A bride-bush*, 31; emphasis mine.

<sup>36</sup> Whately, *A bride-bush*, 31.

<sup>37</sup> Gataker, *Marriage duties*, 32.

*upon Earth.*”<sup>38</sup> Given this reading of these marriage manuals, Milton’s own divorce tracts can be seen as overturning the primacy that copulation is given by Puritan writers. He reclassifies it as “an ‘inferior’ subdivision of the lower category of ‘conversation.’”<sup>39</sup> Thus Milton, in this view, can be read as sharing with these writers a clear sense of what are the constituting elements of marriage, but as choosing to advocate a shift in focus from the physical to the spiritual. But this picture of the discussion over marriage is skewed and dominated by Milton’s own reformulation of what is essential to marriage. As can be seen from the discussion of marriage manuals above, passages that focus on the couple alone are accompanied by, and indeed in authors such as Cleaver and Perkins overwhelmed by, passages that emphasize the interconnection between family, commonwealth, and Church. In contrast to this contextualization of husband and wife found in the marriage manuals, Milton’s divorce tracts, as we will see, focus on the couple alone.

## ***2.2 The Soul’s Love for Christ: John Preston’s Language of Marriage***

Before turning to Milton, I want to look at one more Puritan writer’s discussion of marriage. In this case, however, I will be focusing on a figurative use of the language of marriage and love. The manuals we have looked at up to this point have adopted the language of Ephesians 5 to describe the proper relationship between husband and wife

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<sup>38</sup> Turner, *One Flesh*, 75.

<sup>39</sup> *Loc cit.*

as that between Christ and the Church. Through this Scriptural imagery, they describe each family as a miniature Church as well as a miniature commonwealth. Conversely, this scriptural passage could be used to illustrate individual spiritual development in terms of conjugal imagery. John Preston applies the framework of marriage and love to explain the proper orienting of the soul to Christ. Faith and charity are understood *by means* of the relationship between husband and wife. *The breast-plate of faith and love* is a collection of eighteen sermons on the two topics named in the title: faith, which is given ten sermons, and love, which is given eight sermons. In the first set of sermons of *The breast-plate*, John Preston uses the language of marital love and of marriage contracts to explain what faith in Christ is. The first sermon in the collection uses Rom. 1.17 for its text.<sup>40</sup> The Scriptural affirmation that “the just shall live by faith” causes an anxious voice to exclaim: “but I haue not so strong a faith, I cannot beleuee as I would, and as I should.”<sup>41</sup> The rest of the sermon, and indeed the entire collection, develops around this fear. The goal of *The breast-plate* is to explain what it means to have effectual faith in Christ and how those who “are ingrafted into, and borne of” Christ are saved. Faith is all

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<sup>40</sup> Rom. 1.17: “For therein is the righteousness of God revealed from faith to faith: as it is written, The just shall live by faith.” While Preston does not explicitly mention Luther, the choice of text links the questions in the sermons on faith to a key Scriptural place in the history of the Reformation. See, Heiko Oberman, *Luther: Man between God and the Devil*, trans. Eileen Walliser-Schwarzbart (New Haven, CT: Yale UP, 1989), 164-6.

<sup>41</sup> John Preston, *The breast-plate of faith and love*, (London, 1630), 2. Early English Books Online. Dr. Williams’s Library and the Bodleian Library (Oxford). February 24, 2010. [http://proxy.lib.duke.edu:2212/search/fulltext?ACTION=ByID&ID=D00000449203960000&SOURCE=var\\_spec&WARN=N&FILE=../session/1282334366\\_29696](http://proxy.lib.duke.edu:2212/search/fulltext?ACTION=ByID&ID=D00000449203960000&SOURCE=var_spec&WARN=N&FILE=../session/1282334366_29696). The sermons were first preached in 1625 and printed as a collection in 1630.

that is required for salvation: “it is onely required of thee to come with the hand of faith, and receiue it in the middest of all thy vnworthinesse, whatsoeuer it be, lay hold on the pardon, and embrace it, and it shall be thine.”<sup>42</sup> This image of the unworthy recipient accepting and embracing the pardon for all his sins evolves into the governing trope of *The breast-plate*, the image of the marriage between Christ and the soul: “As the Husband wooes his Spouse, and says thus, I require nothing at thy hands, no condition at all, I doe not examine whether thou art wealthy, or no; whether thou be faire, or no; whether thou be out of debt, or well conditioned, it is no matter what thou art, I require thee simply to take me for thy Husband.”<sup>43</sup> Over and over again, in answering questions about the nature of saving faith, Preston returns to this trope of marriage.<sup>44</sup>

Indeed, the language Preston uses to describe the love between a soul and Christ is the same as that used by the marriage manuals. For instance, if one were to ask, how should I serve Christ? Preston would answer that he do so by keeping His

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<sup>42</sup> Preston, *The breast-plate*, 14.

<sup>43</sup> Preston, *The breast-plate*, 15.

<sup>44</sup> The imagery of marriage is even used in answering such seemingly dry points as whether “*Fides est actus intellectus*, [Faith] is an act of vnderstanding.” On this particular issue, Preston explains that it involves both intellect and the will: “As in a matter of marriage, If one come and tell a Woman, there is such a man in the world that is willing to bestow himself on you, if you will take him, and accept him for your husband: Now (marke what it is that makes vp the marriage on her part:) first she must beleeeue that there is such a man, and that that man is willing to haue her, that this message is true, that it is brought from the man himself, and that it is nothing else but a true declaration of the mans minde. This is an act of her minde or vnderstanding: But will you take him, and accept him for your Husband? now comes the will, and concurrence of these two makes vp the match. [...] If you beleeeue that we deliuer the message from *Christ*, and doe consequently embrace and take him, you are iustified.” The fluid transition between the example of the woman contemplating marriage and the state of the soul moved to belief is typical of *The breast-plate*. The difference between effectual faith and faith as an act of the will is further clarified in the sixth sermon in the collection. There, Preston explains that even devils have a sort of faith, but it is not effectual because it consists only in fear and not love of God.

commandments sincerely and with the proper affection. One must, however, strive to be truthful in his service to God because even “an hypocrite may goe faree in performances, and yet though he doth much, hee may not love much.” Indeed, a truly godly individual will love Christ in the same way a wife loves her husband: “It is true, a man may doe much for Christ, and yet not love him [...]. You know, the wife and the servant, they both serve the husband, and doe much for him, both are alike diligent, yet notwithstandi[n]g there is this difference, the wife doth it out of love.”<sup>45</sup> If one of Preston’s parishioners were to turn to marriage manuals to better understand this model of love, he would find the same language and examples. Cleaver, following Paul, reminds us that marriage is a sign pointing to the union of Christ with the Church. This should be kept vividly before the eyes of both husband and wife: “therefore thou oughtest so much as shall lie in thee, to lift vp thy mind, and to remember how great and worthy an image thou doest represent; and that thy wife shall be vnto thee as the Church, and thou vnto her as Christ; herefore thou shouldest shew thy selfe vnto her, as Christ shewed himselfe vnto his Church.”<sup>46</sup> Moreover, a husband should always remember that his wife’s obedience is unlike that of a servant: “By the *helper*, is signified the vtilitie and profit of the seruice, and by the similitude and likenesse are signified loue and helpfulnesse. For a seruant and he that is hired are insufficient to supply that

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<sup>45</sup> Preston, *The breast-plate*, 79.

<sup>46</sup> Cleaver and Dod, *A godly forme of houshold government*, image 75.

place; there can neither be so much loue, and ability to minister helpe and comfort to a man, as will be found in a faithfull wife."<sup>47</sup> Gataker, rather than focusing of the difference between the love of wife and the outward obedience of a servant, explains the wife's proper relationship to her husband by contrasting true love and subjection with the mere show of a hypocrite. While "hypocrites place religion onely in ceremoniall obseruances," a godly wife will be "faithfull and carefull, in a constant and conscionable performance of such duties as issue and flow from the inward acknowledgement of that superioritie of power and place, that God hath giuen to the husband in regard of the wife."<sup>48</sup> Indeed, her fear of her husband is "like that *feare* that the godly beare vnto God." It is "not a seruile or slauish dread, but a liberall, free and ingenuous feare."<sup>49</sup> The parallel between religious and conjugal love is meant to help illustrate both marriage and a soul's relationship with God.

There is however a difference in emphasis between Preston's use of the imagery of marriage and that in the marriage manuals. While in the Puritan tracts the focus is mainly on the larger context for each marriage with a few passages that concentrate primarily on the married couple itself, in Preston, the emphasis is on the relationship between the individual soul and Christ.<sup>50</sup> The same relentless requirement that each

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<sup>47</sup> Cleaver and Dod, *A godly forme of houshold government*, image 76.

<sup>48</sup> Gataker, *Marriage duties*, 11.

<sup>49</sup> Gataker, *Marriage duties*, 12.

<sup>50</sup> Furthermore, while Preston and the writers of marriage manuals use the same, standard Scriptural places to draw the parallels between civil and mystical marriage (especially, Eph. 5.23-27, 1 Cor.10), their respective

individual be willing to suffer for God that we have seen in *Foure Godly and Learned Treatises* is also to be found in *The breast-plate*. In the latter collection of sermons, however, it is recast in the image of a loving marriage:

A husband that loves his spouse, is exceeding readie to suffer any thing to enjoy her love, he is willing to suffer any displeasure of parents, of friends, to suffer the losse of his estate, he cares not for discredit in the world, hee is ready to breake through thicke and thinne, and to doe any thing, so he may obtaine her love at the last: So if you love the Lord Iesus, you will suffer any thing for his sake.<sup>51</sup>

The passage recalls Ephesians 5.25, "Husbands, love your wives, even as Christ also loved the church." In the Scriptural passage, the love of the husband for his wife is likened to that of Christ for the Church. Preston, however, emphasizes the love of the individual for Christ. Just as the loving husband is willing to undergo privation in order to obtain the love of his wife, each individual must be willing to "suffer any displeasure of parents, of friends, to suffer the losse of his estate" to win the love of Christ. To do otherwise, to put any other love above God would be to display an adulterous love: "You may know whether your love to any creature, to any sport or recreation be adulterous or no. A chaste wife may love many men besides her husband; but if it once begin to lessen her love to her husband, that is an adulterous love: Therefore if you would love the Lord aright, be sure to cut off this, for it breedes a distance betweene

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readings of these passages also shows a different focus. For Preston, the main focus is a moral reading of the relationship between the individual soul and Christ. For Cleaver and Dod, Perkins, Gouge, and Gataker, the emphasis is on the relationship between the Church as a whole and Christ.

<sup>51</sup> Preston, *The breast-plate*, 77.

God and you.”<sup>52</sup> For Preston, any love and concern that one may feel for any creature must be tested to determine whether it diminishes the affection that the soul owes to the Creator. As we will see, the remedies presented in *The breast-plate* to heal any possible estrangement between the soul and God mirror the solutions proposed in the marriage manuals to foster a stronger bond between husband and wife.

There are, however, passages in *The breast-plate* that do show concern for the larger social and political connections between faith and the commonwealth.<sup>53</sup> A striking example of Preston’s engagement with a larger ecclesiastical context is found in the fourth sermon of love. The Scriptural text is Gal. 5.6.<sup>54</sup> This sermon continues the discussion on the properties of true love begun in the third sermon, and describes the two affections that depend on love: anger, which in the context of religion is also called zeal, and fear.<sup>55</sup> The first affection dependent on love, anger, is manifested whenever the object of love is taken away from us or dishonored. Indeed, anger can be used to gauge the strength of our love. Thus, Preston urges his listeners to judge their pious zeal by

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<sup>52</sup> Preston, *The breast-plate*, 107.

<sup>53</sup> For the political aspects of Preston’s sermons, see Christopher Hill’s “The Political Sermons of John Preston,” in *Puritanism and Revolution*, 239-74.

<sup>54</sup> Gal. 5.6: “For in Jesus Christ neither circumcision availeth anything, nor uncircumcision; but faith which worketh by love.”

<sup>55</sup> In the first sermon on love (sermon eleven), Preston specifies that love is an affection, that is one of the “diverse motions and turnings of the will.” More precisely, “Love is nothing else but a disposition of the will, whereby it cleaves or makes forward to some good that is agreeable to it selfe.” While this first definition of love is ambiguous on the meaning of “some good,” it becomes clear in the subsequent discussion that Preston means that we only love what we perceive as good. Thus we have to be taught to love Christ by learning “to looke on him as upon that which is sutable and agreeable to us” (Preston, “Of Love. First Sermon,” in *The breast-plate*, 6; pagination for the sermons of love begins with “The First Sermon”).



measuring their anger at the decay of true religion: "This is a thing that will try your love to the Lord. If you finde that you can heare of the desolation of the Churches, and of the increase and growing of Poperie, and yet you doe not take it to heart to be affected with it, you doe not grieve for it, it is a signe that you want love to the Lord."<sup>56</sup> The second affection, fear, can also be used as a measure of the strength of our love. As well as being angry towards anything that might corrupt true religion, those who love God will also be fearful of his displeasure, "Now when the Lord shall shew some tokens of his wrath, those that love him, and esteeme him, those that prize him, cannot but be affected."<sup>57</sup> If we truly love God, we will fear displeasing and angering him.

How are anger and fear connected? Preston brings the two affections together in two steps. First, he blurs the lines between two types of fear. On the one hand, there is the fear felt by those who love God that the "token of his wrath" represent His displeasure. On the other, there is fear *of* His wrath. While fear of God is first defined as the fear we feel at God's displeasure at our coolness in love, as the sermon develops, the focus shift to the fear of the consequences of God's wrath towards the sins of the whole community. That is, Preston changes the emphasis from each individual's relationship with the Creator to the repercussions derived from living in a commonwealth with those who transgress God's commandments. Thus, his readers are warned that the plague

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<sup>56</sup> Preston, "Of Love. Sermon Four," in *The breast-plate*, 89.

<sup>57</sup> Preston, "Of Love. Sermon Four," in *The breast-plate*, 90.

raging in London in 1625 is the probable results of sins, in particular, idolatry, fornication, and “unworthy receiving of the Sacrament.”<sup>58</sup> Indeed, even the godly are punished for the sins of the other members of the community: “It is not likely that all the people fell into that sinne of *Idolatry*, or into the sinne of *Fornication*, but yet the Lord was offended with the whole Congregation for those that did it.”<sup>59</sup> What can the godly do to stop the anger of God? Here Preston brings together fear and anger. Indeed, the plague rages because the godly have failed to love God strongly enough. The coolness of their anger against idolatry and fornication is as much a cause of God’s punishment as the sins themselves. Recalling Num. 25, Preston reminds his audience how Phinehas’ zeal, his just religious anger, stopped the plague: “Because his love was hot, and his anger was kindled in a holy manner [...]. If the zeale of *Phineas* was the cause of staying that plague, and of withholding the Lords hands, then surely the coldnes of those from whom the Lord lookes for much heate, for much fervency of spirit, whom God expects should stand in the gappe, I say, that is the cause that the Lord goes on in punishing.”<sup>60</sup> Preston thus asks those who have “some fire in them” or “have had some worke of grace

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<sup>58</sup> Preston, “Of Love. Sermon Four,” in *The breast-plate*, 92.

<sup>59</sup> Preston, “Of Love. Sermon Four,” in *The breast-plate*, 92; emphasis original. The proof-text for this part of the sermon is Num. 25, with particular emphasis on verse 11: “Phinehas, the son of Eleazar, the son of Aaron the priest, hath turned my wrath away from the children of Israel, while he was zealous for my sake among them, that I consumed not the children of Israel in my jealousy.” But see also verses 7 and 8: “And when Phinehas, the son of Eleazar, the son of Aaron the priest, saw it, he rose up from among the congregation, and took a javelin in his hand;/ And he went after the man of Israel into the tent, and thrust both of them through, the man of Israel, and the woman through her belly. So the plague was stayed from the children of Israel.”

<sup>60</sup> Preston, “Of Love. Sermon Four,” in *The breast-plate*, 93.

in their hearts wrought by the Spirit of God, that have some sparkes if they were blowne up” to “doe something that the Lord may stay his hand.” These godly people can stop the plague by loving God with proper fear and anger: “shew your love to the Lord in trembling at his judgements, in being zealous for his Names sake.”<sup>61</sup>

But what is this love and how is it achieved? In the first sermon on love, Preston details five kinds of love: first, a love of pity (where we want to protect and preserve that which we love, like a father might pity a sick or vicious son); second, a love of concupiscence (that is, when we desire something merely for the use we make of it); third, what Preston terms love of complacency (that is, when we are pleased with something that appeals to the will and the understanding, like a teacher may love a good student or a father may love a good son); fourth, there is the kind of love found in friendship, which goes beyond the previous three (this is the reciprocal love that friends feel for each other); and finally, the fifth kind of love is the love of dependence. This last kind of love, in particular, is the love we give to God: “when one loues one upon whom all his good depends, so we are said to loue God, wee loue him as one upon whom all our good and happinesse, all our comfort and hope depends.”<sup>62</sup> To love God properly, we have to learn to see all our happiness as dependent on Him. This is not an easy task.

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<sup>61</sup> Preston, “Of Love. Sermon Four,” in *The breast-plate*, 94.

<sup>62</sup> Preston, “Of Love. The First Sermon,” in *The breast-plate*, 9. The first sermon specifies that we love God with the last three loves, complacency, friendship, and dependence, but it is only in describing the very last type of love that Preston gives no other example in the definition other than the love of God. All other four types of loves are defined in terms of relationships between creatures and creation.

God has implanted a natural love in us for those things we perceive as good, for instance, our children or our wealth. Preston subdivides this natural love into two types: vicious and spiritual. Vicious love is sinful love for creation used for our own ends. Spiritual love, on the other hand, raises any natural love we feel towards God and makes it holy. While we may have a natural affection for what we perceive as good, such as our wealth, we need to learn to reorient this affection towards a spiritual love of God and Christ. However, fallen humans are such that they naturally tend toward vicious loves, so much so, that they naturally hate God: "every man by nature hates God, by reason of that opposition and contrariety which is betweene God and every man by nature, for all loue comes from similitude and agreeableness: And therefore where there are two of a contrary disposition, there must needs be hatred. Now the pure nature of God is contrary to us, and therefore every man by nature hates God."<sup>63</sup> Since like is attracted to like, our vitiated nature leads us to love sin and hate God. Therefore, our natures must be broken by the Law and rebuilt by faith and the Gospel before we can begin to feel true spiritual love.

Preston is quite clear that the Gospel itself is not enough for us to learn to love God. Most individuals, when they first hear the Gospel read and explained to them, listen without being sufficiently moved. It is first necessary to prepare men's hearts by humbling and impressing on them the enormity of their sins. It is only through an

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<sup>63</sup> Preston, "Of Love. The First Sermon," in *The breast-plate*, 11; emphasis mine.

encounter with the Law, Preston explains, that the heart can be prepared to receive the Gospel: “then a man begins to looke toward Christ, to looke on him [...], as a widdow that is miserable and poore, indebted and undone, lookes upon her husband that will make her rich and honourable, that will pay all her debts, I say, when a mans heart is thus humbled and broken by the law, by sound humiliation, then he begins to looke towards Iesus Christ.”<sup>64</sup> Once we are made aware of our need for a Redeemer, for a rich husband who will pay our debts, the Gospel can bring us to love God. When the Gospel is preached to someone who has been humbled, then: “hee is willing to take Christ as a Lord, as a husband: when that is done, that Christ hath discovered his will to take them, and they resolve to take him, then there ariseth a holy, a constant conjugall loue wherein they are rooted and grounded.”<sup>65</sup> We thus learn to love what we hate by becoming fully aware of our own sinfulness and of Christ’s unique role as Redeemer. As Preston sums it up: “When these two things are joyned, that a man is humbled, and lookes on Christ as one that is now fit for him: And secondly hee is perswaded that Christ is willing to take him, when this is done, a man receiues Christ by faith: And from this faith this loue issues.”<sup>66</sup> The term conjugal love is not accidental to this description of saving faith and love. Not only must an individual be persuaded that Christ is “fit for him,” but also that He will receive him. That is, the love between soul and Redeemer must be reciprocal as

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<sup>64</sup> Preston, “Of Love. First Sermon,” in *The breast-plate*, 12.

<sup>65</sup> Preston, “Of Love. First Sermon,” in *The breast-plate*, 14.

<sup>66</sup> Preston, “Of Love. First Sermon,” in *The breast-plate*, 14-5.

that between wife and husband. This love is necessary for salvation, "hee that hath it not is in a cursed and damnable condition; he is not in Christ, if he doe not love, that as the Apostle saith, hee that beleeves not shall be damned: we may say as well of love, for there is a tye betweene all these, faith, repentance and love," but it is difficult to attain and sustain, being against our nature.<sup>67</sup>

It is because of this difficulty that in the fourth sermon on love the question on how to strengthen this newly-gained love for God becomes urgent. Preston reminds his listeners that frequent prayers have already been recommended in his earlier sermons as appropriate methods to increase one's love for God. Such prayers should consist of supplications that God show himself to their souls. In addition, Preston now urges that all of those who would strengthen their faith should remove two impediments to their love for God, "strangenes, and uncircumcision of heart, or worldly mindednesse."<sup>68</sup> Strangeness, that is, distance and lack of conversation and companionship, is known to destroy human friendships. Similarly, warns Preston, it can wither the love and friendship we have with God. We must avoid it because "when there growes a strangenesse betweene God and us, wee begin not to know the Lord, there growes an ignorance, and so there is an intermission of those recipocall offices of love betweene us; that even as it is among the Saints, the forsaking of their fellowship looseneth their

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<sup>67</sup> Preston, "Of Love. First Sermon," in *The breast-plate*, 18.

<sup>68</sup> Preston, "Of Love. Sermon Four," in *The breast-plate*, 104.

love, and so stoppeth the intercourse of good duties that should be among them: so it is with the Lord.”<sup>69</sup> Strangeness divides us from God and hinders the “reciprocall offices of love” between the soul and God. We must thus speak to God, that is, pray to Him, as much as possible. Conversation with God “maintaines and increaseth this communion and familiarite betweene the Lord and thee.”<sup>70</sup> Moreover, we must avoid increasing strangeness by preventing any other object of love to come between us and God, that is, we must avoid worldly-mindedness. This is not to say that we may not love anything but God. As we have seen earlier, in the example of the chaste wife who may love other men besides her husband, love of creation is not necessarily worldly-mindedness. But whatever else we may love must never distract us from our friendship with God or prevent us from turning to Him in frequent conversation.

This advice echoes the language of marriage manuals. Whately, to take one example, begins the first chapter of *A bride-bush* by defining the two duties of marriage: “Chastity and due Benevolence. The restraining of themselves from all other persons, and the communicating of themselves to each other.”<sup>71</sup> The bond of marriage is broken only when these two duties are not kept. But while only these are essential to marriage, they are not sufficient to make married life pleasant. Love is also necessary: “their hearts, must be united as well as their Bodies, else their union will prove more

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<sup>69</sup> Preston, “Of Love. Sermon Four,” in *The breast-plate*, 105.

<sup>70</sup> Preston, “Of Love. Sermon Four,” in *The breast-plate*, 106.

<sup>71</sup> Whately, *A bride-bush*, 2.

troublesome than can be imagined."<sup>72</sup> If a married man finds that he does not love his wife, in chapter four, Whately provides a discussion of the means, both natural and spiritual, to promote conjugal love.<sup>73</sup> The chief natural means is cohabitation: "Let them have one house, one table, one chamber, one bed; so shall they with most ease, have also one heart and one soul."<sup>74</sup> The proof-text for this advice is Deuteronomy 24.5.<sup>75</sup> Having provided a paraphrase of the verse, Whately considers his case proved: "so long a time [one year] of nearness and familiarity, might make their loves for ever after firme and indissoluble."<sup>76</sup> That is, conjugal love is made firm by familiarity and weakened by absence. Similarly, Perkins, in *Christian Oeconomie*, draws on the same verse to admonish newly married men that they have a clear duty of cohabitation with their wives, especially during the first year of marriage. Such duty is enjoined in Scripture so as to create firm bond between the married couple: "that they might worke a setled affection one towards another, which afterward vpon no occasion might bee changed."<sup>77</sup> Preston's

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<sup>72</sup> Whately, *A bride-bush*, 31.

<sup>73</sup> Under the heading of spiritual means for a loving marriage, Whately strongly recommends performing religious duties together. He also advises those who are still unmarried to turn to God in prayer for help in choosing a suitable spouse.

<sup>74</sup> Whately, *A bride-bush*, 42.

<sup>75</sup> Deut. 24.5: "When a man hath taken a new wife, he shall not go out to war, neither shall he be charged with any business: but he shall be free at home one year, and shall cheer up his wife which he hath taken."

<sup>76</sup> Whately, *A bride-bush*, 43.

<sup>77</sup> Perkins, *Christian Oeconomie*, 99. Cleaver and Dod, on the other hand, are less sanguine about cohabitation's effectiveness in fostering a peaceful and loving marriage. While it is necessary, it is far from being sufficient: "And therefore the diuell, the enemy of all vnitie, concord and agreement, laboureth by all meanes he can (specially at the first comming of the married folkes to dwell together) to sow dissention and discord, and to cause them not to agree, but to dislike one of the other; against whom they must diligently watch, by feruent and earnest prayer to God, that the diuel preuaile not against them, by such too early disagreement. [...] the husband and wife must be very carefull and diligent, that their first cohabitation and



advice in *The breast-plate* to avoid strangeness from God and to shun adulterous loves translates the language of marriage manuals into that of the union of the soul to God. This is not to say that Preston is consciously patterning his collection of sermons on marriage manuals, but rather to indicate that the blueprint for fostering affection is the same in the religious and in the domestic settings.

Having learned how to strengthen our bond with God, how do we know whether we sincerely love Him in the first place? Preston turns to this question in the first sermon of love in *The breast-plate*. Given the importance of this love for salvation, it is crucial to learn how to examine one's affections and faith to determine whether the soul is properly oriented towards God. With due introspection, this is an easy task. For Preston, while we may deceive others, that is, while we may be hypocrites,<sup>78</sup> we are transparent to ourselves:

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dwelling together be louing, delectable, and friendly, and not separated through any spitefull contention or discord, so shall the whole estate of their marriage be more comfortable, and prosper the better so long as they shall liue" (Cleaver and Dod, *A godly forme of houshold government*, image 102).

<sup>78</sup> In *The breast-plate*, the use of the term "hypocrite" is restricted to those who perform good acts for God, but do not mean them. There is, however, another use for this term in Puritan writing which denotes those who are mistaken or deluded about their status as one of the elect. For this use and the anxiety associated with the possibility of self-deception, see John Stachniewski, *The Persecutory Imagination: English Puritanism and the Literature of Religious Despair* (Oxford: Clarendon Press, 1991), 40-1. In particular, on the issue of saving faith, Stachniewski's account paints a very different picture from Preston's. While Preston insists on the one's love for God is felt clearly and powerfully, Stachniewski shows the difficulties encountered by seventeenth-century individuals attempting to determine whether their calling is effectual. For instance, the conversion narrative of Richard Norwood vividly illustrates the constant fear of its author of being a hypocrite, that is, of deceiving himself. Even in the rare occasions when he might have felt signs of grace, Norwood doubted his ability of distinguishing true faith from self-deception (107-126). Given Stachniewski's evidence, *The breast-plate* stands out for its surprising optimism on the individual's ability to

it is true, thou maist deceive me or another man when thou professt love to God, but in this thou canst not deceive thy selfe; for a man knowes what he loves, love is a very sensible and quick affection. When a man loves any thing, when hee loves his wife, loves his friend, loves his sonne, loves his sport, his recreation, he knowes he loves it, he hath the sense of that love in himselfe. Therefore consider with thy selfe whether thou hast any such stirring affection towards the Lord *Iesus* or no; doest thou feele thy heart so possessed with him? art thou sicke of love, as the Spouse saith in the Canticles, *I am sicke of love*? That is, are you grieved when he is absent? are you glad when you have him? when you can get into his presence? for there is a kinde of painfulnesse in love: and all painfulnesse is of a quicke sense. When it is said, the Church was sicke of love, sicknesse is painfull: And therefore when you want the Lord, when there is a distance betweenne him and you, when he doth not looke on you as he was wont, there will be painfulnesse in it and griefe.<sup>79</sup>

This passage is worth quoting in length because it gives a clear insight into Preston's anatomy of love and faith that is not otherwise evident in his explicit classifications.

While earlier in this same sermon, Preston had differentiated between five kinds of love, it now seems that we can test whether we do posses any or all of these kinds of love in the same way. One knows that he loves a spouse or a child in the same way that he knows that he loves sport or recreation; he feels it it within himself: "he knowes he loves it, he hath the sense of that love in himself."<sup>80</sup> Just as a bride feels the sting of her husband's absence or indifference, so does the soul feel pain if Christ is absent. In this

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recognize his or her effectual faith. By linking faith with love, an apparently transparent emotion for Preston, the collection of sermons down-plays the possibility of self-deception. This seems to go hand-in-hand with the figural language we find in the marriage linking love in marriage with religious love. That the love between creatures may prove different than the love between creation and Creator, especially after the Fall, did not seem worth discussing to Puritan writers we have examined.

<sup>79</sup> Preston, "Of Love. First Sermon," in *The breast-plate*, 24.

<sup>80</sup> Preston, "Of Love. First Sermon," in *The breast-plate*, 24.

passage, Preston returns to his earlier focus on the importance of avoiding strangeness with God. Frequently seeking His presence by means of prayer strengthens our love for Him. Conversely, the strength of our love can be gauged by the pain we feel when we allow a distance to grow between us and Christ. Indeed, if we do not desire to converse with God through prayer, we give clear proof that we are hypocrites: “Sh[a]ll a wife professe love to her husband, and never come where he is, never be within doores, and never be in his companie? So, will you say you love Christ, and not be frequent in prayer, or neglect and slight that duty, seldome converse with him, and seldome speake of him?”<sup>81</sup> For Preston, both kinds of love, that of a wife to her husband and that of the soul to God, are immediately and transparently sensible to the self. Moreover, there is no concern in his text that the conversation between soul and Christ might be different from the conversation between spouses. There is no reflection on whether and how the practices mediating one type of love may differ from those mediating the other.

We find then in *The breast-plate* an insistence that love, both between creatures and between creature and Creator, is a transparent affection which can be fostered with simple and clear remedies. What are the consequences of this assumption? Preston’s discussion of hypocrisy is telling. In his sermons, he rehearses words similar to those of Augustine’s meditation on the difficulty of conversion from Book VIII of the *Confessions*. But, for the Puritan writer, any hesitation in whole-hearted conversion is a sign of

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<sup>81</sup> Preston, “Of Love. First Sermon,” in *The breast-plate*, 26.

hypocrisy and bad faith. In detailing how true love longs for speedy fulfillment, Preston chides those who delay serving God as deficient in effectual faith. Paraphrasing Augustine, he warns that “when a man professeth he loves the Lord, and yet will deferre to come in, saying, I wil serve the Lord perfectly, but not yet, not till my youth be a little more over, not till things be thus and thus with me, then I will; it is certain thou lovest him not: for it is true of every affection, that which is a true and right affection, that which is an hearty affection, it is present.”<sup>82</sup> As he further explains in the next sermon, if we love Christ, we feel constrained to serve him just as “the weight of a stone compelleth it to goe to the center, as the lightnesse of the fire compels it to ascend up.”<sup>83</sup> True love for God leads to immediate and zealous service. Although Preston describes the un-regenerated heart of man as hating God and tending towards sin, he seems unconcerned with the possibility that what fallen individuals love naturally, sin, may prove to have a habitual hold on the soul moving towards faith. Love for God is an all-or-nothing proposition.

What would a description of growth in faith that does not dismiss habitual sin look like? Preston’s text points directly to Augustine’s *Confessions*. In Book VIII, as the narrative approaches the moment of conversion in the garden in Milan, Augustine returns to the difficulty experienced in attempting to free a weak will from sinful habits.

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<sup>82</sup> Preston, “Of Love. First Sermon,” in *The breast-plate*, 27. Preston paraphrases Augustine’s prayer in chapter seven, book eight of the *Confessions*: “Grant me chastity and continence, but not yet” (Augustine, *Confessions*, trans. Henry Chadwick (Oxford: Oxford University Press, 1992), 145).

<sup>83</sup> Preston, “Of Love. Second Sermon,” in *The breast-plate*, 32.

Augustine is guided towards conversion by listening to and reading other conversion narratives. After hearing about Victorinus' conversion from Simplicianus, Augustine strongly desires to follow his example, but finds his will too weak to do so: "I sighed after such freedom, but was bound not by an iron imposed by anyone else but by the iron of my own choice."<sup>84</sup> The irons that enslave him are the habits formed by a life spent in pursuit of temporal goods. Even though Augustine fully realizes the sinfulness of his past life and recognizes the truth he found in Christianity, he does not have the freedom from sin he yearns for. He realizes that he must break the bonds imposed by passions oriented towards sin and strengthened into seemingly necessary habits by time: "The consequences of a distorted will is passion. By servitude to passion, habit is formed, and habit to which there is no resistance becomes necessity. By these links, as it were, connected one to another (hence my term chain), a harsh bondage held me under restraint."<sup>85</sup> There is no question here of hypocritical love for God.<sup>86</sup> At this point in Book VIII, Augustine sincerely desires to dedicate his life to the Church, but he is nonetheless incapable of doing so. But if his desire is sincere, why can he not whole-heartedly turn to

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<sup>84</sup> Augustine, *Confessions*, trans. Henry Chadwick (Oxford: Oxford UP 1992), 140.

<sup>85</sup> *Ibid.*, 140; emphasis mine.

<sup>86</sup> As Jennifer Herdt points out in *Putting on Virtue*, Augustine emphasizes that single minded love of God is impossible to achieve in this life (45-7). In our education in the virtues, we strive to become "enough like God to be capable of this loving relationship with God. My final end is not just external; even though I cannot in this life fully realize that loving union with God, my loving, virtuous activity is even now an expression of the love of God" (55). This is not to say that Preston and other Puritan divines explicitly argued for perfection in their sermons. The extensive advice in *The breast-plate* to improve our love for God implies an awareness of struggle experienced by its audience in their attempts to grow in faith. However, the relentless emphasis on sincere and prompt service to God found in the sermons could easily give the impression that all those who receive grace must be able to clearly recognize divine love in their hearts.

God? The bondage to sinful habit is part of the just punishment to which we are all subject for willingly following our disordered passions. Augustine sees the chains that hold him back from conversion as due to the existence of two (incomplete) wills fighting each other in his soul. One will desires conversion, the other is attached to the old passions. The mind is thus held back: "We are dealing with a morbid condition of the mind, which, when it is lifted up by the truth, does not unreservedly rise to it but is weighed down by habit. So there are two wills. Neither of them is complete, and what is present in the one is lacking in the other."<sup>87</sup> There is no simple rising of the soul to God even when confronted with truth and moved to love Christ. We are held down by the chains of sinful habit. Even though Preston closely paraphrases Book VIII of the *Confessions*, the spontaneous motion he depicts, where the soul acts to serve God under the impetus of faith and love "as the lightness of the fire compels it to ascend," presents a fundamentally different picture from that described by Augustine.

Moreover, as we have seen, Preston's use of Ephesians 5 sets his parallel between conjugal and spiritual love apart from that of the writers of marriage manuals. Preston explains the marriage of Christ with the Church as the union of each individual soul with Christ. This is typical of his writings. In *The breast-plate*, growth in love and faith is the proper activity of each individual heart alone. The Church and its ministers are described as messengers who bring to each soul word of the groom's love. Once this

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<sup>87</sup> *Confessions*, 148.

message has been delivered and accepted, the sermons shift away from any discussion of the role of the community of the Church. For instance, Preston, as Milton, rejects memorized prayers. He insists that the only true prayers are those created by the Holy Spirit in the soul: “prayer is not a worke of the memory, or a worke of the wit. A man that hath a good wit, or a ready invention, or a voluble tongue, may make an excellent praiet, in his owne esteeme, and in the esteeme of others, but this is not to pray. Prayer is the worke of a sanctified heart, it is the worke of GODS Spirit.”<sup>88</sup> Reciting set prayers is not sufficient. Given that frequent prayer is recommended as a way to kindle true love for God, Preston’s parishioners find themselves tasked to relentlessly examine their prayers for sincerity: “But canst thou come to GOD as to a friend? Canst thou come to him as to one whose fauour thou art assured of? Canst thou come to him as to a Father? Except thou canst doe this, know that he regardeth not thy prayers.”<sup>89</sup> Not only must we pray, we must do so with the proper state of mind and, for Preston, the appropriate mental disposition cannot be achieved when reciting memorized prayers. To illustrate the point, Preston draws a clear distinction between the actions of sincere Protestants and the formal deeds of Catholics. Papists’ prayers do not help them to love God because they are but empty motions: “but here is the difference, wee deriue it all from *Christ* by faith, we say that faith doth all.”<sup>90</sup> For Preston, we do not converse with God

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<sup>88</sup> Preston, *The breast-plate*, 105.

<sup>89</sup> Preston, *The breast-plate*, 106.

<sup>90</sup> Preston, *The breast-plate*, 86.

through our words and actions; we do so with our faith and love. In this conception, set prayers cannot be an expression of sincere faith and love.

### **2.3 Knowledge of the Self: Donne's Sermon Preached at the Marriage of Lady Mary**

The distrust of the possibility for a transparent self seen in Augustine can also be found in John Donne's marriage sermons. In the sermon preached at the marriage of Lady Mary, daughter of the Earl of Bridgewater (November 19, 1627), we find a picture of knowledge of the self which is closer to Augustine's than Preston's. The sermon begins with a prayer drawing a set of parallels between a number of unions: Lady Mary and Lord Herbert, the soul and God, then Mercy and Justice in God Himself, and finally the divine and the human in the incarnation.<sup>91</sup> In this opening prayer, we are reminded that God gives marriage a place of honor in Scripture. Indeed, it is the crowning act of creation and the occasion for the first miracle of Christ. However, the body of the sermon itself turns from this positive emphasis to a seemingly negative description of the attributes of marriage. The text for the sermon is Matt. 22.30, "For in the resurrection they neither marry nor are given in marriage, but are like angels of God in heaven." Using this verse, Donne describes marriage as a remedy for defects that will no longer plague us in the resurrection. Marriage is here linked with our fallen and mortal state.

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<sup>91</sup> All quotes from Donne's sermons are from: *The Sermons of John Donne*, ed. George R. Potter and Evelyn M. Simpson, 10 vols. (Berkeley, CA: University of California Press, 1956). Volume and page numbers will be cited in text.



The verse is then split at the comma and each half is expounded separately. Donne begins by reminding his hearers of the three ends of marriage. These are implied in the first half of the verse by way of the negative. That is, since in the resurrection the saints will have no need for marriage, we can deduce the ends of marriage by considering our imperfection in this life. In our final state, there will be no need for a remedy against lust, since each soul will be perfect in itself; there will be no need for mutual help, since each soul will be united with God; and there will be no need for the immortality of the species through children, since there will be true immortality for each soul (VIII:99). Nonetheless, while there will be no need for marriage, we will still retain our affection for those we loved while in this life: "But yet, though Christ exclude that, of which there is clearly no use in heaven, Mariage, [...] yet he excludes not our *knowing*, or our *loving of one another* upon former knowledge in this world, in the next" (VIII:99; underlining mine). Again, Donne's interpretation rests on a negative, Christ "excludes not." This negative is all we have to reassure us that we will be allowed to know each other in the resurrection. The promise that the affections of this life will carry on to the next is based on the absence of a Scriptural verse excluding that hope, and supported by the dignity of marriage in this life. Indeed, even though we do not understand how we will be able to recognize each other, we can trust that we will, "Neither can we say, we shall not, because we know not how we should" (VIII:99).

At this point in the sermon, Donne pauses to explain why we must trust that we will be able to know something in the resurrection, even though we do not yet understand how. The proof of this can be found in the creation of Eve: “*Adam*, who as asleep when *Eve* was made, and neither saw, nor felt any thing that God had done, knew *Eve* upon the very first sight, to be the *bone of his bone*, and *flesh of his flesh*. By what light knew he this?” (VIII:99; emphasis original). This question dominates the second half of the sermon. What does it mean for us to know others? How do we even know ourselves? Here, we are told to trust the promise. Even though we do not know *how* we will know, we must trust that we will know our loved ones in the resurrection. After all, death, like the marriage of Lady Mary and Lord Herbert, is a uniting of families: “to *Moses, Iungeris populis tuis*, Thou shalt dy and be gathered to thy people” (VIII:100). Both marriage and the resurrection gather and re-member what is broken by death. Marriage does not only unite two families into one, but it prevents the breaking apart of the bodies and minds of each spouse: “They that scatter themselves in various lusts, commit wast” (VIII:100). Following lusts, sinning, is to scatter and waste what should be wholly and singly devoted to a productive multiplication that replenishes what death takes away: “Every man is a *naturall* body, every congregation is a *politik* body; The whole world is a *Catholik*, an universal body [...] for the sustentation, and reparation of the world, God hath given *Mariage*” (VIII:100; emphasis original). The language of the sermon see-saws between the scattering and corruption brought on by death and the

reuniting action of the resurrection, prefigured in the marriage being celebrated. On the one hand, we see that the “universal body,” constituted by viewing all the individual natural bodies together, can only be sustained by the union of marriage and the production of children. But this replenishing of the stock of humanity through the successive generations leads in turn to the proliferation of bodies that die and disintegrate. Menacingly, the possibility of bodies, be they natural or political, breaking apart and scattering seems to be always in the background of the sermon. Only the image of marriage contains this chaotic disintegration. The marriage of individuals in this life preserves the social bond in the temporal sphere; the marriage of the soul with God promises the re-remembering of the bodies at the end of time.

Thus, the sermon’s relentless focus on death, a seemingly inappropriate topic for a marriage, is presented as necessary to understand the true end of the union of two individuals. By bringing to life new generations, the couple will reconstitute the social body just as God will reconstitute each natural body. Donne, however, is more attentive to the tensions in his analogies than Preston. While in *The breast-plate* the union of soul and Christ was easily compared to that of husband and wife, in the Bridgewater wedding-sermon, the parallel between marriage and the resurrection proves harder to understand than it appears at first. The resurrection of the body can only be known through faith:

Where be all the splinters of that Bone, which a shot hath shivered and scattered  
in the Ayre? Where be all the Atoms of that flesh, which a *Corrasive* hath eat

away, and other Limbs? In what wrinkle, in what furrow, in what bowel of the earth, ly all the grains of the ashes of a body burnt a thousand years since? In what corner, in what ventricle of the sea lies all the jelly of a Body drowned in the *generall flood?* (VIII:98; emphasis original)

The language of scattering and dispersion gives the momentary illusion that a burnt or decayed body can never be reassembled. Just as we need to strain our mind's eye to view that "universal body" that is dispersed throughout the nations of world, so we are led to imagine searching through each particle of air, each furrow on the ground, and each drop of water in the oceans to find just one natural body that perished long ago. But piecing together a natural body requires more than simply aggregating the molecules from all deceased bodies. How do we know one grain of ash from another, "what cohaerence, what sympathy, what dependence maintaines any relation, any correspondence, between that arm that was lost in Europe and that legge that was lost in Afrique or Asia, scores of years between?" (VIII:98). The answer is that there is no natural "sympathy" to gather the dust into a whole body, "all dies, and all dries, and molders into dust." Only the vision of the Creator is capable of re-assembling each body: "still God knows in what [...] part of the world every graine of every mans dust lies and [...] he whispers, he hisses, he beckens for the bodies of his Saints, and in the twinkling of an eye, that body that was scattered over all the elements, is sate down at the right hand of God, in a glorious resurrection" (VIII:98). By uniting in marriage, two individuals prefigure the "glorious resurrection" promised in Scripture; they give new members to the universal body and give evidence to the Providence of God.

It is because of this, Donne insists, that marriage is to be preferred to single life. Exceptions are only granted to those who are so unfitted for wedded life that marriage would imperil their ability to serve God: "If in a rectified Conscience he knows, that he should be the lesse disposed to religious Offices, for mariage, he does well to abstaine" (VIII:101). But immediately upon giving this exception to the calling of marriage, Donne issues a warning: "he must remember that the world is one *Body*, and *Mariage* the aliment" (VIII:101; emphasis original). To deny the body of the world its aliment is to condemn it to the moldering away so minutely described in the preceding passages of the sermon. Indeed, for most men and women, marriage is not only permitted, but commanded: "for the reparation of the world, which is one *Building*, and *Mariage* the *supply* thereof, to maintaine a *second eternity*, in the succession of children, and to illustrate this *union of our soules to Christ*; we may, and in some Cases, must marry" (VIII:104; emphasis original). The permission to marry, implied only by way of a negative in Matt. 22.30, has now become an imperative; we must marry. How did Donne transition from a permission to a command to marry? The sermon begun by looking at the perfection, both physical and spiritual, promised to the Saints in the resurrection. By comparing our mortal condition to this future perfection, we can find in marriage a mechanism to approach our ideal end. We thus know what the end of marriage is because we know what perfection we will attain once we no longer need it. Knowledge of the ends of marriage is attained through the recognition of our need for marriage.

As the sermon moves to the second half of Matt. 22.30, “but are like angels of God in heaven,” Donne turns to the question of what we can know from this comparison. Having established that in this life “we must not looke for Angelicall perfections” (VIII:105) in ourselves, and that only marriage can alleviate our deficiencies, the sermon turns to the question of what exactly are the perfections of the resurrection. That is, what is the state that we wish to imitate in marriage? We cannot know what angelical perfections are like: “Now, when we would tell you, what those *Angels* of God in heaven, to which we are compared, are, we can come no nearer telling you that, then by telling you, we cannot tell” (VIII:105). This construction, affirming what we can know and then reminding us the limitation of that knowledge dominates the rest of the sermon. In Matt. 22.30, we are compared with angels. What does this comparison tell us? “We know they are *Spirits* in *Nature*, but what the nature of a spirit is, we know not” (VIII:105; underlining mine). In a similar way, we know their office, that they are creatures, and that they are capable of knowledge themselves:

we know they are *Angels* in *office*, appointed to execute Gods will upon us; but, *How* a spirit should execute those bodily actions, that *Angels* doe, in their owne motion, and in the transportation of things, we know not: we know they are *Creatures*; but whether created with this world, (as all our later men incline to think) or long before, (as all the *Greeke*, and some of the *Latin* Fathers though) we know not: [...] we know the Angels know, they understand, but whether by that way, which we call in the Schoole, *Cognitionem Mutatinam*, by seeing all in God, or that which we call *Vespertinam*, by a clearer manifestation of the *species* of things to them, then to use, we know not. (VIII:105; underlining mine)

But we do not know how they execute their office or how they were created or how they have knowledge. The passage is a reminder of the limitation of our knowledge, “we are content to say with S. Augustine, *Esse firmissime credo, quatenus sint nescio*” (VIII:105-6).

While understanding angelic perfection will have to wait until the resurrection, “Then we shall be like them, and know them by that assimilation” (VIII:106), the sermon gives us hope that knowledge can be attained. Like can know like. But this can only be true once we attain a perfected state. In our current sinful imperfection, however, our knowledge of ourselves has limitations: “If by being *like* the Angels, we shall *know* the Angels, we are more than *like* our selves, we are our selves, why doe we not know our selves?” (VIII:106). Donne, like Augustine and unlike Preston, finds the self opaque and dangerously so. It was by a lack of knowledge of the self, and a desire to attain what proved to be dangerous knowledge, that Adam fell:

Why did not *Adam* know, that he had a Body, that might have been preserved in an immortality, and yet submitted his body, and mine, and thine, and theirs, who by this union are to be made one, and all, that by Gods goodnesse shall be derived from them, to certain, to inevitable Death? Why doe we not know our owne *Immortality*, that dwells in us still, for all *Adams* fall, and ours in him; that immortality which we cannot deuest, but must live for ever, whether we will or no? To know this immortality, is to make this immortality, which otherwise is the heaviest part of our Curse, a Blessing onto us, by providing to live in *Immortall happinesse*: whereas now, we doe so little know ourselves, as that if my soule could aske one of those *Wormes* which my dead body shall produce, Will you change with me? that worme would say, No. (VIII:106)

The passage brings together the problem of knowledge derived from the discussion on the second half of the Matt. 22.30 with the images of union, disintegration, and death

derived from the analysis of the first half of the verse. The paragraph begins with the idea of not knowing what is truly immediate to us. As we read the passage, we are temporarily presented with the idea that Adam did not know his very own physicality, "Why did not *Adam* know, that he had a Body." For a moment, it seems that while Adam could recognize Eve as flesh of his own flesh, he did not know his body. But this perception is immediately corrected by shifting the focus on the initial potential immortality of that body. It is then again further corrected by aggregating to that first body the bodies of all the following generations, "his body, and mine, and thine, and theirs, [...] and all." The sentence gradually unfolds to reveal enclosed in Adam's lack of knowledge the unfolding generations that have supplied the second immortality that replaces the original immortality forsaken by Adam. We are now mortal because Adam did not know the meaning of his own potential immortality. However, our mortality turns out to be only an apparent mortality. But in this apparent mortality, we risk re-enacting the first sin through our ignorance of our own true immortality: "Why doe we not know our owne *Immortality*." Our immortality, like Adam's, can prove dangerous if not known. It is only by knowing it, that we can turn it into a blessing. Donne does not resolve the terrifying image of our condition. Even a worm would not exchange his fate for ours. The universal body, formed by the descendants of Adam, mirrored in the union of this marriage which will produce new limbs for it, is composed by natural bodies that will die and be consumed by worms. These bodies themselves, because



Adam could not know the immortality of his body and we cannot truly know the immortality of our souls, will make our eternity, our immortality, worse than the Devil's: "the Devill is a *Spirit*, and a condemned soule a spirit, yet that soule shall have a *Body* too, to be tormented with it, which the Devill shall not" (VIII:107). The self-knowledge that seems so easily attainable to fallen minds in *The breast-plate* is nowhere to be found in Donne's wedding sermon.

## **2.4 Knowing Others: Milton's Divorce Tracts.**

*Nothing is more wrong-headed than calling meaning a mental activity.*<sup>92</sup>

Milton's divorce tracts were received with ridicule, scorn, and indignation. They left few marks in the discussions on marriage in the 1640s besides a convenient target for those who opposed the idea of divorce for causes other than adultery.<sup>93</sup> *The Doctrine and Discipline of Divorce*, his first tract on the issue, was attacked in both Parliament and the Westminster assembly.<sup>94</sup> For instance, William Prynne, in *Twelve considerable serious questions touching church government* (1644), lumps Milton with such unsavory company as those who embrace "Anabaptistiall, Antinomial, Hereticall, Atheisticall opinions, as

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<sup>92</sup> Ludwig Wittgenstein, *Philosophical Investigations*, trans. G. E. M. Anscombe, (Upper Saddle River, NJ: Prentice Hall, 1958), remark 693.

<sup>93</sup> While the tracts failed to persuade either the Westminster Assembly or Parliament of the need to grant divorce for causes other than adultery, they nonetheless sold faster than Milton's earlier political pamphlets. See, Gordon Campbell and Thomas N. Corns, *John Milton: Life, Work, and Thought* (Oxford: Oxford UP, 2008), 164.

<sup>94</sup> Milton published four divorce tracts. These are: two editions of *The Doctrine and Discipline of Divorce* (1643 and 1644), *The Judgement of Martin Bucer* (1644), *Tetrachordon* (1645), and *Colasterion* (1645). I will be focusing on the first edition of *The Doctrine and Discipline of Divorce* and *Colasterion*.

of the souls mortality [and] divorce at pleasure.”<sup>95</sup> The circulation in print of an open argument for divorce is for Prynne one of the sure signs that Independency is a ruse to open “a floud-Gate to let in an inundation of all manner of Heresies, Errors, Sects, Religions, distructive opinions, Libertinisme and lawlesnesse among us.” “Divorce at pleasure” is just one of the many symptoms of social and moral erosion, and thus it must be opposed by all who have “any remainder of right reason residing in their braines,” clearly implying that Milton had forsaken any claim of belonging to this better group. Prynne’s invectives are typical of the response to the divorce tracts. Most of those who mention Milton’s arguments for divorce do so briefly and group him with other sectaries.<sup>96</sup> This is not to say that the question of marriage and how it should be reformed was of no importance in the 1640s. The minutes of the Westminster assembly show a lively discussion on the issue.<sup>97</sup> Moreover, in the matter of divorce, England was

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<sup>95</sup> William Prynne, *Twelve considerable serious questions touching church government sadly propounded (out of a reall desire of unitie and tranquility in church and state) to all sober-minded Christians*. London, 1644. Early English Books Online. Union Theological Seminary Library (New York). May 10. 2010.

[http://proxy.lib.duke.edu:2212/search/fulltext?SOURCE=var\\_spell.cfg&ACTION=ByID&ID=D00000123540530000&WARN=N&SIZE=37&FILE=../session/1282595571\\_2588&SEARCHSCREEN=CITATIONS&DISPLAY=AUTHOR&ECCO=N](http://proxy.lib.duke.edu:2212/search/fulltext?SOURCE=var_spell.cfg&ACTION=ByID&ID=D00000123540530000&WARN=N&SIZE=37&FILE=../session/1282595571_2588&SEARCHSCREEN=CITATIONS&DISPLAY=AUTHOR&ECCO=N).

Milton replies to Prynne’s attack in the first pages of *Colasterion* (CPW II: 722).

<sup>96</sup> We find negative allusions to Milton’s divorce tracts in Herbert Palmer’s *The Glass of Gods Providence* (preached to Parliament on August 13, 1644), Palmer had agreed with Milton in the antiprelatical debate, Daniel Featley, *The Dippers Dipt* (1645), and Thomas Edwards’ *Gangraena* (1646), error number 154, page 29. For Ephraim Pagitt’s and Robert Baillie’s comments on Milton’s arguments for divorce, see Lewalski, *The Life of John Milton*, 202-3. I will discuss the only extended answer to Milton’s tracts later in this section.

<sup>97</sup> See, *Minutes of the Sessions of the Westminster Assembly of Divines*, ed. Alex F. Mitchell and John Struthers (Edinburgh: William Blackwood, 1897), 7-14. For a discussion of Milton’s divorce tracts in the context of the Westminster Assembly, see Sharon Achinstein, “‘A Law in This Matter to Himself’: Contextualizing Milton’s Divorce Tracts,” in *The Oxford Handbook of Milton*, ed. Nicholas McDowell and Nigel Smith (Oxford: Oxford University Press, 2009), 174-85. Achinstein sees Milton’s divorce tracts as playing into the hands of

in a unique situation. When Milton entered the debate on marriage and divorce, English law on the subject had remained virtually unchanged since the end of Elizabeth's reign. Divorce with right to remarry (divorce *a vinculo*) was not allowed for any cause.<sup>98</sup> It was however possible to be granted a separation (divorce *a mensa e thoro*) without the right to remarry. The legal status-quo made the English church stand out from its continental counterparts. There, a number of Reformed thinkers had argued for divorce with right to remarry for cases of desertion as well as adultery. The unusual severity of English law on the matter of divorce and the fact that practice, as well as lay and ecclesiastical opinion, diverged strongly from legal theory in cases of adultery and desertion would have made Milton's argument in favor of divorce *a vinculo* potentially successful if he had restricted himself to these two cases.<sup>99</sup>

This is not however how he chooses to argue. In *The Doctrine and Discipline of Divorce*, Milton takes for granted an agreement on divorce for adultery. Given this starting point, the task of the tract is to show that divorce for simple incompatibility also

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the Presbyterian faction at the Assembly, who could use his argument for individual freedom to emphasize the dangers posed by sectarians.

<sup>98</sup> This was of course in theory. In some cases of adultery, the innocent *husband* would remarry. I follow Lawrence Stone, *Road to Divorce: England 1530-1987* (Oxford: Oxford University Press 1990), on the history of divorce. See, in particular, pages 304-8.

<sup>99</sup> A law allowing divorce with right to remarry in line with continental Reformed Churches had a broad base of support. Notably, William Laud, in 1605, married Charles Blount Earl of Devonshire to Lady Rich, the guilty party in a case of separation *a mensa e thoro* for adultery (Stone, *Road to Divorce*, 307).

has a Scriptural foundation.<sup>100</sup> The key biblical passages to overcome are Matthew 5.32 and Matthew 19.6-9, whose surface meaning clearly forbids divorce for causes other than adultery.<sup>101</sup> In particular, Matthew 19 seems to revoke the Old Testament allowance for divorce found in Deuteronomy 24.1.<sup>102</sup> According to the passage from Matthew, Moses allowed divorce not because it is inherently just, but as an imperfect remedy for worse sins. Milton argues that to read these key New Testament verses as forbidding divorce in cases other than adultery is to read carnally. Those who do so see only the surface meaning while remaining blind to the spiritual teachings. To correctly interpret these passages, we need to understand the intention behind Jesus' admonition and be guided by the rule of charity. In forbidding divorce, "the Canon Law and her adherents, not consulting with charitie, the interpreter and guide of our faith, but resting in the meere element of the Text" are consorting with the devil so that "all inordinate licence might abound" (*CPW* II: 236). How does reading by the rule of charity differ from the

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<sup>100</sup> The exact statement of what Milton means by incompatibility is found in the first chapter of the tract: "That indisposition, unfitnes, or contrariety of mind, arising from a cause in nature unchangeable, hindering and ever likely to hinder the main benefits of conjugall society, which are solace and peace, is greater reason of divorce then naturall frigidity, especially if there be no children, and that ther be mutuall consent" (*CPW* II:242).

<sup>101</sup> Matthew 5.32: "But I say unto you, That whosoever shall put away his wife, saving for the cause of fornication, causeth her to commit adultery: and whosoever shall marry her that is divorced committeth adultery."

Matthew 19.6-9: "Wherefore they are no more twain, but one flesh. What therefore God hath joined together, let not man put asunder. He saith unto them, Moses because of the hardness of your hearts suffered you to put away your wives: but from the beginning it was not so. And I say unto you, Whosoever shall put away his wife, except it be for fornication, and shall marry another, committeth adultery: and whoso marrieth her which is put away doth commit adultery."

<sup>102</sup> The relevant passage is Deuteronomy is: "When a man hath taken a wife, and married her, and it come to pass that she find no favour in his eyes, because he hath found some uncleanness in her: then let him write her a bill of divorcement, and give it in her hand, and send her out of his house."

standard interpretation of Jesus' words in Matthew 19?<sup>103</sup> Milton argues that if we follow charity, we will see that Jesus could not have meant to forbid divorce. After all, he promised to fulfill rather than repeal the Law. Moreover, "hee hath taught us to love and extoll his Lawes, not onely as they are his, but as they are just and good to every wise and sober understanding" (CPW II:297-8). That is, there is no Scriptural law that is inexplicable to right reason or harmful to faithful Christians. Since the Deuteronomy divorce law provides a reasonable relief to those stuck in an unhappy marriage, it would be against right reason to have this remedy taken away. More importantly, since all the commandments in Scripture were written by divine charity, "as without charity God hath given no commandment to men, so without it, neither can men rightly beleve any commandment giv'n [and] wee cannot safely assent to any precept writt'n in the Bible, but as charity commends it to us" (CPW II:340), we must rely on charity for their correct interpretation. Any reading of Scripture that offends charity and right reason cannot be correct. Faced with a clear commandment against divorce, Milton argues that since the surface meaning of the prohibition seems to run counter to the expression of divine charity embodied in the gift of marriage, we need to understand the intent behind the institution of marriage in order to correctly interpret Christ's words. The task of the

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<sup>103</sup> Theodore L. Huguelet, in "The Rule of Charity in Milton's Divorce Tracts," *Milton Studies* 6 (1974): 199-214, argues that Milton could have derived his reliance on the rule of charity from the analogy of charity proposed by Augustine, Erasmus, and Reformed theologians, including Calvin. Nonetheless, Huguelet sees Milton's own formulation of the rule as being ultimately based on his application of the Ramistic method to Scripture. I will return to Milton's understanding of charity in comparison with Augustine's later in the chapter.

interpreter is to return to the original institution of marriage in Genesis to help understand the prohibition stated in Matthew. Having refocused the question, Milton then reorders the ends of marriage to turn spiritual compatibility into the essential element of a valid union. Genesis 2.18, "And the LORD God said, It is not good that the man should be alone; I will make him an help meet for him," becomes the defining scriptural passage in the divorce tracts' understanding of marriage.

How does focusing on Genesis 2.18 advance Milton's argument? To an imagined interlocutor who insists that Jesus, in Matthew 19, warned clearly that what "God hath joined together, let no man put asunder," Milton now asks, but "when is it that God may be said to joyn" (*CPW* II:328)? Is it "[w]hen the parties and their friends consent? Not surely; for that may concuree to leudest ends, or is it when Church-rites are finisht? Neither; for the efficacy of those depends upon the presupposed fitness of either party. Perhaps after carnal knowledge? Lest of all: for that may joyn persons whom neither law nor nature dares joyn" (*CPW* II:328). Temporarily leaving the word "fitness" unexplained, Milton argues that to hold that a marriage is not valid until after consummation would be to make mere carnal knowledge the fundamental essence of marriage. That would be indeed to read Jesus' words carnally rather than spiritually. In the context of this passage, "presupposed fitness" points to the requirement that a marriage be consummated before it is considered valid. However, referring back to Genesis, Milton now turns to a different kind of "fitness." A marriage is truly a marriage

only “when the minds are fitly disps’d and enabl’d to maintain a cherfull conversation, to the solace and love of each other, according as God intended and promis’d in the very first foundation of matrimony, *I will make a help meet for him*” (CPW II:328). That is, a true helpmeet is a wife who will join her husband in conversation that is spiritual as well as physical.<sup>104</sup> Milton uses the narrative of the creation of Eve to argue that the divine intent in instituting marriage, and indeed in creating women, is to furnish men with a companion.<sup>105</sup> Thus, only those couples who can “maintain a cherfull conversation” are truly joined in matrimony as defined by its foundation in Genesis, “[t]he rest whom either disproportion or deadnes of spirit, or something distastfull & avers in the immutable bent of nature renders unconjugal, error may have joyn’d; but God never joyn’d against the meaning of his own ordinance” (CPW II:328).<sup>106</sup> The physical union of a husband and wife who are not joined by a compatibility of minds is a legal marriage, but a spiritual act of adultery.

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<sup>104</sup> Diane Purkiss argues that however, for Milton, conjugal conversation need not be among equals. A wife “is seen also as a holiday for the husband from the rigours of masculinity” (“The Rhetoric of Milton’s Divorce Tracts,” 191).

<sup>105</sup> Genesis 2.18 was of course a standard text for discussions of marriage. Milton’s conclusion is, however, *sui generis* in emphasizing companionship and in almost ignoring the importance of reproduction and child rearing. For a comparison between Milton’s emphasis on the temporal primacy of Scriptural commandments in establishing companionship as the essence of marriage and Puritan and Reformed writer’s focus on reproduction, see Halkett, *Milton and the Idea of Matrimony*, 16-17.

<sup>106</sup> The image of error joining such a couple in corrupted marriage takes on a stronger resonance in the second edition where, in the dedicatory letter to Parliament, Milton couples custom with error: “Custome being but a meer face, as Eccho is a mere voice, rests not in her unaccomplishment, until by secret inclination, shee accorporat her selfe with error, who being a blind and Serpentine body without a head, willingly accepts what he wants, and supplies what her incompleatnesse went seeking. [...] And these two between them would persecute and chase away all truth and solid wisdom out of humane life” (CPW II: 223). In this address, the image of Custom joining with Error to deprive human life of truth and wisdom stands as an allegorical precursor to the mismatched marriage of those whom “error may have joyn’d.”

Milton's definition of what it means to join in matrimony deserves further attention. The strategy of the passage is to catch the reader in a set of questions, each of which is presented as logically related to the ones preceding and following. These questions aim at pin pointing the specific instant in which "God hath joyn'd" a man and woman in matrimony. If we agree to the premise of the first question, *when* has God joined in marriage, the others follow inexorably. Is it at the gathering of friends, at the Church service, or in the marriage bed that God can be said to have joined the two? Each of these options is discarded as soon as it is proposed. Each seemingly proper act of union, the bringing together of the families, the formal joining in a Church, and finally the physical union of the newlyweds, is shown to have potentially corrupt or ineffectual uses. For Milton, it is clear that in each of these cases, the apparent joining is merely a custom or a necessity, and therefore, it cannot be sufficient to create the spiritual union that God had intended for Adam when He gave him Eve as a helpmeet. What can create such a union? That happens "when the minds are fitly dispos'd and enabl'd to maintain a cherfull conversation" (CPW II:328; emphasis mine). There is of course a striking difference between the insufficient human unions discarded by Milton up to this point and the perfect spiritual union he proposes as the true end and only effectual seal of marriage. Each event in the first category is portrayed as occurring at once, in a single moment of time. On the other hand, "cherfull conversation" has to be maintained over the course of the couple's entire wedded life. Why does this difference matter? In this



passage, Milton is able to discard each traditional marker of marriage by slicing it away from its social context. The meeting of family and friends to celebrate the union loses its meaning because it is considered as separate from its purpose, it could be *any* meeting and thus not indicative of a union blessed by God. Similarly, the marriage service is in itself devoid of the appropriate meaning because it is taken in isolation, rather than as the final step in an ongoing forming of a legal and religious bond between the two individuals being married. Finally, the newlyweds' consummation of their marriage is again taken as a mere sexual encounter, and thus potentially sinful, rather than as a step in a sequence of acts and promises. In this paragraph, Milton transfers the *making* of a true marriage from the recognized acts that are usually understood to fulfill both a promise and a contract to the sustaining of an ongoing conversation.

For Milton, it is this spiritual conversation which both defines a true union and fulfills the natural yearning of the soul. In describing the reasons why a marriage can survive adultery or permanent frigidity, but not spiritual and mental discord, Milton pleads that "all ingenuous men will see that the dignity & blessing of marriage is plac't rather in the mutual enjoyment of that which the wanting soul needfully seeks, then of that which the plenteous body would jollily give away" (*CPW* II:252). This line of argument seems to be at the core of what critics have found to be unique and liberating in Milton's treatment of marriage and divorce. Indeed, in this picture, Milton is hailed as attempting, but failing, to liberate marriage from the grips of slavery to the mere flesh.

Stephen Fallon's discussion is a good example of this tendency: "While contemporary marriage-theorists write of the importance of companionship as well as of procreation and the marriage debt, Milton alone closely anatomizes the interrelationship of spirit and body, and alone argues that a union of minds is *essential* to the couple's becoming one flesh, a process that others describe in purely physical and sexual terms."<sup>107</sup> While it is true that Milton is uniquely eloquent in detailing the unhappiness caused by mental incompatibility in a marriage, there has been an overly hasty dismissal of Puritan marriage manuals and a consequent misinterpretation of Milton's argument vis-à-vis these works.<sup>108</sup> While none of the manuals reviewed at the beginning of this chapter explicitly elevate spiritual compatibility over the sexual and procreation duties of marriage, they describe a marriage between disagreeing spouses in terms that resemble those found in the divorce tracts. Even Milton's argument that ill-matched marriage could drive an individual to religious despair (*CPW* II: 247) does not stray far from the standard fare of marriage manuals. Manuals and sermons in the late sixteenth- and early

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<sup>107</sup> Stephen M. Fallon, "The Metaphysics of Milton's Divorce Tracts," 69.

<sup>108</sup> What is strikingly unique to Milton's argument is the willingness to allow for a higher law in marriage than that of male domination: "Not but that particular exceptions may have place, if she exceed her husband in prudence and dexterity, and he contentedly yeeld, for then a superior and more naturall law comes in, that the wise should govern the lesse wise, whether male or female" (*CPW* II:589). Cleaver and Dod, for instance, explicitly argue that even though a wife may be wiser than her husband, she should nonetheless submit to him: "True it is that some women are wiser and more discreet then their husbands [...]. Yet still a great part of the discretion of such women shall rest in acknowledging their husbands to be their heads" (Cleaver and Dod, *A godly forme of houshold government*, image 101). John Donne expresses a sentiment similar to Cleaver's in his sermon for the Nethersole marriage (II: 346). For a reading of Milton's "superior and natural law" and its implications for his political thought, see David Aers and Bob Hodge, "Milton on Sex and Marriage," 129-32.

seventeenth-centuries created a close affinity between the language of sexual love in marriage and the language of religious experience and, as we have seen, dedicated considerable space to the question of how to nurture love between husband and wife.<sup>109</sup>

I belabor this point not because I wish to imply that Puritan manuals offered a vision of marriage that is necessarily preferable to Milton's, but rather because these manuals depict a rich social context for marriage. By connecting the language of conjugal relationships with a concern for children, household, commonwealth, and Church, Puritan divines come to sketch an outline of the interdependence between marriage and community. This language is missing in Milton's tracts. As it is often noted in discussion of the divorce tracts, most writers of marriage manuals give the same list of the three ends of marriage that are found in the book of common prayer and that Milton includes in *The Doctrine and Discipline of Divorce*, "Godly society, next civill, and thirdly, that of the mariage-bed" (CPW II:268). However the most notable difference between Milton and the other writers on the subject is not that he rearranges the list to

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<sup>109</sup> Cleaver's and Dod's *A godly forme of houshold government* gives a striking example of this in the chapter on the duties of the husband towards the wife. In advising men that they choose a "meet, fit, and honest mate," Cleaver reminds them that much depends on their choice: "As he that will plant any thing, doth first consider the nature of the ground in the which he mindeth to plant: euen so much more ought a man to haue respect to the condition of the woman, out of whom he desireth to plant children, the fruites of honestie and welfare" (*A godly forme*, image 49). The language of reproduction describing the woman's body as the ground in which her husband planted his children was of course commonplace. But Cleaver, two short paragraphs later, uses the same imagery in describing a wife's mind. This time, the husband is planting spiritual seeds: "he that hath married a wife that is irreligious or forward, if he shall vse like diligence to instruct and order her minde, if he diligently and courteously apply himself to weede away by little and little the noisome weeds out of her mind, both by wholesome precepts, and by Christian conversation; it can not be but in time he shall feele the pleasant fruite thereof to both their comforts" (*A godly forme*, image 50).

place “the marriage-bed” last, but rather that he takes the list seriously.<sup>110</sup> While the works of such writers as Perkins and Cleaver do include passages emphasizing the importance of due benevolence, the organization and focus of the overall manuals clearly indicate that their understanding of marriage cannot be reduced to the fulfillment of sexual and reproductive duties. For these writers, we cannot understand marriage if we only look at these three ends as they function within the union of two people alone, as if they were cut off from others. To talk about marriage is to talk about an entire web of social relations and therefore statements about what is good in marriage require a justification that takes into account these wider concerns. This difference in focus between Milton and these writers can help to bring into relief the assumptions behind the divorce tracts. The task of the rest of this chapter is to uncover these assumptions and to attempt to trace the consequences for Milton’s understanding of social relationships.

As we have seen at the beginning of this chapter, the writers of marriage manuals rarely discuss the respective duties of husband and wife without connecting marriage to the creation of a family, involving both children and servants, and the sustaining of the commonwealth and Church. For instance, Cleaver and Dod open their

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<sup>110</sup> John Donne, for instance, also deems controlling lust to be the least important, though placed first in his list, of the three ends of marriage: “Let him then that takes his wife in this first and lowest sense, *In medicinam*, but as his Physick, yet make her his cordiall Physick, take her to his heart, and fill his heart with her, let her dwell there, and dwell there alone” (wedding-sermon for Margaret Washington (May 30, 1621), *The Sermons of John Donne*, III:244).

manual not by considering husband and wife alone, but rather by seeing them as “[t]he governours of a family, be such as haue authoritie in the familie by Gods ordinance, as the father and the mother, maister and mistrisse” (emphasis mine). In *The Doctrine and Discipline of Divorce*, on the other hand, Milton focuses on the relationship between husband and wife to the exclusion of all other concerns.<sup>111</sup> This allows him to reshape what counts as an explanation of how and when a marriage is made. While English law on divorce may have focused on the marriage bed, most manuals focus on the social ties that were born of that physical union, ties that extend well beyond the daily conversation of husband and wife. Because of this, these writers would not answer Milton’s question of when two individuals are united by God just by looking at the wedding day. The explanation has to begin much earlier. Perkins, to take an extreme example, dedicates over a third of his manual to questions such as what is the marriage contract, what levels of affinity or consanguinity make marriage impossible, why polygamy is not allowed, why contagious diseases ruin the union, and to problems of consent and insanity.<sup>112</sup> For Perkins and the other writers of marriage manuals, marriage

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<sup>111</sup> Milton does connect the reformation of marriage with the reformation of the commonwealth when it is rhetorically advantageous to do so (CPW II:431). Nonetheless, his principal line of argument deals only with the couple.

<sup>112</sup> In a passage that would dismay Milton, Perkins distinguishes between perpetual insanity and madness that only comes in fits. The first kind makes marriage impossible and the betrothal invalid as consent cannot be freely given. The second kind of madness does not hinder marriage as long as “it was manifestly knowne, that the said parties were both in their right wits, before they plight their troth each to the other” (*Christian Oeconomie*, 75). For Perkins, not only do husband and wife need not be of one mind to remain married, but as long as the marriage is contracted while both partners can give free consent it will stand even if one of them loses his or her mind.

begins with a promise which cannot be separated from issues of consent, both of the man and woman but also of their parents, and is enmeshed in questions of consanguinity and familiar relations. Indeed, Perkins asks the same question that Milton sets out to exploit in *The Doctrine and Discipline of Divorce*. In Chapter VIII of *Christian Oeconomie*, he imagines an interlocutor wondering: "How God that is in heauen, should bring and ioyn together man and wife vpon the earth?" The answer, contrary to Milton's approach, is to remind his readers that we are neither in Heaven nor in Eden: "I answere, that he doth it not immediately by himselfe, as he brought *Euah* vnto *Adam*, but in & by some solemne and lawful meanes. And this meane, is that great and ancient power and prerogative of parents. And the law of God hath giuen them this power, not in ciuill contracts and compositions alone, but euen in the beginning and accomplishing of marriages." Perkins' answer is of course formulated to take into account the running disagreement between Reformed divines and the Catholic Church on whether the consent of parents is necessary for the marriage contract to be valid. But it is more than a pointed reply to papist arguments. In it, Perkins acknowledges that since the Fall, husband and wife are not brought together directly by God as Adam and Eve were, but rather that God effects the union through "some solemne and lawful meanes."<sup>113</sup> That is,

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<sup>113</sup> Arthur E. Barker reads the divorce tracts as forcing Milton to come to terms with and recognizing the limits imposed by the Fall on liberty. True Christian liberty can only be obtained by those few whose heart and reason, like Milton's, have been regenerated by the Spirit. Positive law cannot impinge on the liberty of the righteous under the pretext of restraining license and sin (*Milton and the Puritan Dilemma, 1641-1660* (Toronto: The University of Toronto Press, 1942), 115-7). Following Barker, I would argue that the difference

“meanes” based on human laws and customs become the vehicle for divine agency in marriage.

I will turn to my second point of comparison for Milton’s theory of marriage. The most sustained reply to Milton’s divorce tracts is the anonymous *An Answer to A Book intituled The Doctrine and Discipline of Divorce* (1644).<sup>114</sup> The *Answer* is a point-by-point reply to the first edition of *The Doctrine and Discipline of Divorce*. In particular, it attacks Milton’s definition of the ideal foundation of marriage, spiritual conversation. In the divorce tracts, love is defined as the desire for spiritual conversation, “this pure and

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between Perkins’ and Milton’s discussion of when the union of husband and wife can be said to have truly taken place is due to Milton’s insistence that laws be made for the elect few rather than for those whose reason has not been regenerated by the Spirit. Indeed, to do otherwise, is to drive the elect towards sects and schisms: “[S]eeing that sort of men who follow Anabaptism, Familism, Antinomianism, and other fanatic dreams, → (if we understand them not amisse) [added in second edition] ← be such most commonly as are by nature addicted to a zeal of Religion, of life also not debaushd, and that their opinions having full swinge, do end in satisfaction of the flesh, it may come with reason into the thoughts of a wise man, whether all this proceed not partly, if not chiefly, from the restraint of some lawfull liberty, which ought to be giv’n men, and is deny’d them” (CPW II: 278). Of course, Milton is not above contradicting himself. While, as Barker argues, Milton claims the regenerate husband’s unhindered right to decide when to divorce regardless of the consequences for those who are not of the elect, he also insists that only a husband who is “a thing heroically virtuous” will be able to remain faithful to an unpleasing wife. In this vein of argument, Milton insists that laws ought to be made “for the common lump of men [...], though not to their sins, yet to their unsinning weakness” (CPW II:253-4). I will return to Barker’s argument in greater detail later in the chapter.

<sup>114</sup> All quotes from *An Answer* are from: William Riley Parker, *Milton’s Contemporary Reputation* (New York: Haskell House Publishers, 1940), a collection of seventeenth century responses to Milton’s writings. Page number will be indicated in text and refer to original pagination. Sara J. van den Berg and W. Scott Howard identify the publisher of *An Answer* as the printer George Miller (“G. M. Revealed: Printer of the First Attacks on *The Doctrine and Discipline of Divorce*,” in *Milton Quarterly* 38 (2004): 242-52). Van den Berg and Howard note that Miller is also the publisher of Palmer’s *The Glass of Gods Providence*. The licenser of *An Answer* was Joseph Caryl. He not only licensed the anonymous pamphlet, but also endorsed its message. Milton counter-attacked Caryl in *Colasterion* (see CPW II:727). For a discussion of this exchange and of the different exegetical approaches between Milton and Caryl, see Dayton Haskin, *Milton’s Burden of Interpretation* (Philadelphia: University of Pennsylvania Press, 1994), 75-6.

more inbred desire of joining to it self in conjugall fellowship a fit conversing soul (which desire is properly call'd love) *is stronger then death*" (CPW II: 251). For Milton, the lack of conversation can drive the injured spouse to adultery or loss of faith, "it drives many to transgresse the conjugall bed, while the soule wanders after that satisfaction which it had hope to find at home, but hath mis't. Or els it sits repining even to Atheism" (CPW II: 269). The reply in *An Answer* accuses Milton of confusing mental with physical conversation. The Answerer is willing to grant that if a wife does not prove a suitable conversational partner, the husband is welcome to "look abroad" for this form of companionship as long as "he meddles not with her bodie" (32). However, if Milton insists that lack of conversation at home causes him to "lust unlawfully after the bodies [instead of minds] of other mens Wives," then he is making a mistake of categories. For the Answerer, the idea of spiritual conversation is simply nonsense: "We have heard that Angels converse with one another as they are Spirits; but for Husbands and Wives, though they ought not to love in word only, but in deed and in truth with the affections of the heart, yet we know no conversing with one another, but is by words and actions" (32). That is, Milton's argument is best suited to Donne's "Creatures, that have not so much a Body as *flesh* is, as *froth* is, as a *vapor* is, as a *sigh* is."<sup>115</sup>

Milton replies to *An Answer* in 1645 with *Colasterion*. His dismissal of the Answerer's criticism that "we know no conversing with one another, but is by words

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<sup>115</sup> *The Sermons of John Donne*, VIII:106.



and actions” is typical of the rhetoric of the tract. Milton gives no answer to the argument itself, but rather dismisses the author as incapable of understanding what is meant by conversation of the mind and how it might affect marriage. The Answerer’s unfit “chopps” are not capable of savoring the true meaning of such a spiritual union, which affects him “like a generous Wine, only by overworking the settl’d mudd of his fancy, to make him drunk, and disgorge his vileness the more openly” (CPW II:747). The Answerer is simply the wrong kind of person to understand Milton’s ideal of marriage: “All persons of gentle breeding (I say gentle, though this Barrow grunt at the word) I know will apprehend and bee satisfy’d in what I spake, how unpleasing and discontenting the society of body must needs be between those whose minds cannot bee sociable” (CPW II:747).<sup>116</sup> While Milton skirts the issue, the *Answer*’s objection does point to a central question in the divorce tracts. In his arguments, Milton focuses on descriptions of unfit marriage partners. What do these descriptions indicate about his understanding of human relationships? Why does Milton devalue the Answerer’s “words and actions”?

I started this section with an epigraph taken from Wittgenstein’s *Philosophical Investigations*. It is remark 693: “Nothing is more wrong-headed than calling meaning a mental activity.” Fergus Kerr, in chapter two of *Theology after Wittgenstein*, connects this

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<sup>116</sup> For Luxon, *Colasterion* dramatizes a conversation with an unfit partner. The tract is seen as a “kind of a rudely articulated bill of divorcement” (*Single Imperfection*, 59).

remark with Wittgenstein's critique of the view of language that stems from a devaluing of the embodied nature of human beings.<sup>117</sup> For Wittgenstein, this understanding of language is closely connected with the problem of other minds. This problem has two levels. On the first level, we have an image of a mind with thoughts, wants, and desires locked inside a body. Kerr begins his discussion of this view with the opening of the *Philosophical Investigations* and its recounting of Augustine's reflections on language acquisition in the first book of the *Confessions*.<sup>118</sup> Wittgenstein sees Augustine's story of how he learnt how to speak as identical to a description of how one may learn a foreign language.<sup>119</sup> This picture of language learning represents the infant as knowing his wants before, and independently of, knowing a language. The infant struggles to find ways to communicate these wants to the grown-ups around him and acquires language by observing how adults *name* objects that he desires. In other words, the child is effectively learning how to translate his mental language into a spoken language. The

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<sup>117</sup>*Theology after Wittgenstein* (Oxford: Basil Blackwell, 1986); see, in particular, page 42. Descartes' *Meditations* are the main precursor to the modern version of this conception of language, but Kerr traces a similar understanding to writers prior to Descartes. In particular, he focuses on Augustine, Aquinas, and Gregory the Great. Gregory provides the important image of the self as isolated behind the wall of the body (79-80).

<sup>118</sup>"When they (my elders) named some object, and accordingly moved towards something, I saw this and I grasped that the thing was called by the sound they uttered when they meant to point it out. Their intention was shewn by their bodily movements, as it were the natural language of all peoples: the expression of the face, the play of the eyes, the movement of other parts of the body, and the tone of voice which expresses our state of mind in seeking, having, rejecting, or avoiding something. Thus, as I heard words repeatedly used in their proper places in various sentences, I gradually learnt to understand what objects they signified; and after I had trained my mouth to form these signs, I used them to express my own desires" (*Philosophical Investigations*, remark 1, quoting Augustine's *Confessions*; emphasis mine).

<sup>119</sup>*Theology after Wittgenstein*, 39. Kerr points to remark 32: "And now, I think, we can say: Augustine describes the learning of human language as if the child came into a strange country and did not understand the language of the country; that is, as if it already had a language, only not this one. Or again: as if the child could already *think*, only not yet speak. And 'think' would here mean something like 'talk to itself.'"

fundamental act of this learning how to speak is that of learning to name, that is, learning to make connections between objects and the appropriate words in the spoken language. What Wittgenstein does with the passage from the *Confessions* and the example of the builders in the *Investigations* is to dispel the idea that naming is a simple activity that we do naturally, without initiation into a complex practice. In fact, to name something is not simple at all, it involves already knowing a number of things:

[Naming] is natural in the sense that it depends on certain physical capacities to handle things, focus the eyes, repeat an action, distinguish one thing from another, and the like. Such biological desires and powers are cultivated and reinforced by practice, so they become 'second nature' to any creature with (more or less) our physical and psychological constitution; but it takes a great deal of education—rousing the infant's interest, teaching it to discriminate among its perceptions etc.<sup>120</sup>

In Augustine's picture, as read by Wittgenstein, naming objects, i.e., giving ostensive definitions, in our own private mental language is an act that can be done by the individual alone prior to learning a shared language.<sup>121</sup>

Wittgenstein reminds us that this cannot be right. Thoughts and meaning do not exist in our heads privately and independently of a shared language. By choosing Augustine as the text on which to base his remarks at the very beginning of the

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<sup>120</sup> *Theology after Wittgenstein*, 71.

<sup>121</sup> *Ibid.*, 73. I want to pause to note that whether the reading of Augustine that Wittgenstein presents in the *Investigations* is correct or not is besides the point. As Kerr points out, Wittgenstein selects this passage and gives this reading of it because this picture of language learning, and the related picture of the self as existing independently of culture and community, comes to dominate Western thinking (42). For a reading of language learning in the *Confessions* that takes into account Augustine's understanding of divine illumination, see Alasdair MacIntyre, *Three Rival Versions of Moral Enquiry: Encyclopaedia, Genealogy, and Tradition* (Notre Dame, IN: University of Notre Dame Press, 1990), 84.

*Investigations*, Wittgenstein demonstrates the difficult-to-resist appeal of the conception of meaning as a mental activity, transparently known to the self, but hidden from others unless communicated via the medium of language. Kerr paraphrases and explains remark 693 as saying that “to think of meaning as some essentially occult state or act inside one’s consciousness, radically inaccessible to anyone else, is, residually, and all the more insiduously for that, to succumb to the appealing thought that the self is concealed inside the man.”<sup>122</sup> In a 1930 lecture, Wittgenstein explains the idea in this way:

This simile of ‘inside’ or ‘outside’ the mind is pernicious. It is derived from ‘in the head’ when we think of ourselves as looking out from our head and of thinking as something going on ‘in our head’. But we then forget the picture and go on using the language derived from it. [...] Would it be possible to communicate more directly by a process of ‘thought reading’? What would we mean by ‘reading thought’? Language is not an indirect method of communication, to be contrasted with ‘direct’ thought-reading. Thought-reading could only take place through the interpretation of symbols and so would be on the same level as language. It would not get rid of the symbolic process. The idea of reading a thought more directly is derived from the idea that thought is a hidden process which it is the aim of the philosopher to penetrate. But there is no more direct way of reading thought than through language. Thought is not something hidden; it lies open to us.<sup>123</sup>

What Wittgenstein describes in this lecture is the idea that we know our thoughts and ourselves, but that the self is enclosed in a physical shell that shields and isolates us from others. Language is part of the shell, and thus, it is mere exterior. If we could

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<sup>122</sup> *Theology After Wittgenstein*, 42.

<sup>123</sup> *Wittgenstein’s Lectures Cambridge 1930-1932*, ed. Desmond Lee (Blackwell: Oxford, 1980). Quoted in *Theology after Wittgenstein*, 44.

somehow by-pass this verbal shell— words as approximating the meaning hidden inside our heads—we could then know others as we know ourselves, and so achieve true intimacy. We could know each other as spirits do, as one angel might know another: “In questioning the validity of this (often hidden) object of comparison, Wittgenstein invites us to remember ourselves as we really are. Once and for all, that is to say, we need to give up comparing ourselves with ethereal beings that enjoy unmediated communion with one another.”<sup>124</sup>

The fundamental problem with this idea of “thought reading” is that it leads to, and reinforces, the second level of the problem of other minds. In moments of miscommunication, when we realize that we have misunderstood what someone said, their gestures, or the expression on their face, we might be led to believe that the normal, rather than exceptional, state of affairs is one in which the thoughts of others are hidden from view.<sup>125</sup> This problem of occasional miscommunication tends to distract us from the fact that ordinarily, in most daily activities, we understand each other perfectly well. And this distraction, if allowed to dominate our conception of others, can be catastrophic. Other people then become puzzling objects whose intentions I must figure out from the clues found in their actions and expression: “It is as if I watched certain

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<sup>124</sup> *Theology after Wittgenstein*, 45.

<sup>125</sup> *Ibid.*, 78. Here Kerr introduces Gregory’s image of human communication from his *Morals on the Book of Job*: “We stand, as it were, behind the wall of the body, sheltered from the eyes of others in the recesses of our mind; but when we wish to reveal ourselves we come forth, with speech as the gateway in order to show our inner selves” (quoted in *Theology After Wittgenstein*, 80). In this picture, the self is safely hidden inside the body and it reveals itself only when it wills to do so through speech.

privileged objects in my environment and had to infer or guess from their surfaces what was going on inside.”<sup>126</sup> The only way I can hope to interpret the “surfaces” of people is to draw, by analogy with my own case, a connection between their behavior and the state of mind hidden inside their bodies: “I see many eyes but I cannot be certain that they are not all blind, never mind whether they are watching me. [...] The solipsist is surrounded by creatures whose kinship with himself he has to deduce by interpreting the noises they emit.”<sup>127</sup> While we know our own selves directly and transparently, we know others only by inference.<sup>128</sup> But since we view ourselves as hidden inside our own minds and allowing ourselves to be known only when we willfully decide to do so, we are then led to suspect that what we see of others need not, in our ordinary, daily interactions, correspond with their true intentions. Their thoughts and the true meaning of their words are hidden from us by the walls of the body, spoken language, and custom. If we could only break down these walls and speak as one spirit to another, then we would really know each other.

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<sup>126</sup> *Theology after Wittgenstein*, 81.

<sup>127</sup> *Ibid.*, 81.

<sup>128</sup> Marjorie Grene makes this point clearly in *The Knower and the Known* (Berkeley: University of California Press, 1974). In the Cartesian and empiricist traditions, “[t]hrough their actions, expressions, and statements, I know others. [...] so I know [a friend] through the clues to his existence, to his mind, which his behaviour affords me” (86). That is, I can know others only by external clues, like a forensic detective. To this view Grene opposes one that seems to be deeply indebted to Wittgenstein, though she does not directly draw on his work until much later in the book. For Grene, I cannot know others by analogy with myself. Indeed, I am dependent on others for any self-knowledge that I might have. If I would attempt to know myself independently, “I should have to detach myself from myself, to be not myself but another. In fact, it is our *self*-knowledge which comes more often than not at second hand, from the reflected impact of ourselves on others. [...] True, I am ‘within’ my own experiences and not someone else’s; but this ‘insideness’ in mere subjectivity, not knowledge” (86).

Milton's divorce tracts display an understanding of communication similar to that critiqued by Wittgenstein. There, Milton argues that the terrible loneliness felt by the unhappy husband, who seems condemned to live the existence of reprobate, would disappear if he could only find a fit-conversing soul to share his thoughts. In *Tetrachordon* (1645), Milton points to the text of Genesis 2.18 to explain that the helpmeet created by God for Adam is "another self, a second self, a very self it self" (CPW II: 600). In *The Doctrine and Discipline of Divorce*, he describes the daily companionship with one who is not a fit "second self" as constant reminder of his unfulfilled hopes in marriage: "but here the continuall sight of his deluded thoughts without cure, must needs be to him, if especially his complexion incline him to melancholy, a daily trouble and paine of losse in some degree like that which Reprobates feel" (CPW II:247). In both cases, a wife is represented as a personification of the husband's self. In her presence, he is forced to confront "the continuall sight of his deluded thoughts" materialized in his home. Milton portrays the ideal marriage as a spiritual conversation between spouses where the husband's self is reflected in this second self. But Donne, like Wittgenstein, reminds us, "If by being *like* the Angels, we shall *know* the Angels, we are more then *like* our selves, we are our selves, why doe we not know our selves?"<sup>129</sup> Milton, by insisting that a good marriage consists in finding "another self, a second self, a very self it self" with whom to communicate soul to soul and not by the Answerer's words and actions, is skirting the

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<sup>129</sup> *The Sermons of John Donne*, VIII:106.

problem that to communicate and create meaning at all, even within ourselves, we are ineluctably immersed in words, actions, and — that most unwelcome Miltonic horror — custom. If we return to Milton's question of "when is it that God may be said to joyn" two people in marriage (*CPW* II:328), we can now see that his discarding of all markers of marriage is fundamentally connected with his view of human and social relationships and the mediation of custom. Marriage ceremonies, promises of betrothal, and the coming together of families are seen as mere shells that have no real meaning unless accompanied by a fitting mental and spiritual state. Worse yet, to engage in such customary acts without the proper mental state is a form of idolatry and hypocrisy. Those who do rely on habit and custom cannot participate in the conversation of the souls. They take the walls and exterior shells for reality.

What is problematic about this image in Milton's tracts is that it tends to dehumanize others when their exterior does not match what we take to be the correct corresponding interior. More precisely, for Milton, a wife is a true help-meet only when her husband finds in her a sympathetic spiritual response. If that is missing, she becomes an empty cipher. We can see this emptying of others in the language used to describe an unfit wife in *The Doctrine and Discipline of Divorce*, as well as the in other divorce tracts. In chapter three, Milton complains that canon law privileges physical incompatibility over spiritual and mental differences. There, he describes the law as being "more mov'd at the disappointing of an impetuous nerve, then at the ingenuous



grievance of a minde unreasonably yoakt" (*CPW II:249*). The husband's mind, for Milton did not grant wives the right to obtain a divorce to remedy their grievances, is "unreasonably yoakt" to a nothing—there is no object to "yoakt." The other presumably unhappy mind, the wife's, disappears from the sentence. Only the unhappy husband's mind is "yoakt" against reason, that is, unreasonably, but also against the very nature of the mind. Similarly, one who has "spent his youth unblamably" and hopes to find joy in marriage, but chooses the wrong partner, finds himself "bound fast to an uncomplying discord of nature, or, as it oft happens, to an image of earth and fleam" (*CPW II:254*). A wife who is not of the same nature as the husband, she is "an uncomplying discord," is found to be no more than "an image of earth and fleam"; she is more like the body of Adam molded from dirt before God breathed life into his nostril than a real human being. In these moment, we see that a wife who is not capable of being Milton's "second-self" is doomed to be no self at all. She is only an empty surface, and a potentially deceiving one at that. Indeed, if those opposed to divorce were to argue that the unhappy husband should have taken the time to get to know his future wife better before committing to an unalterable step, Milton would reply that it is easy to mistake lack of conversation for modesty: "When as the sober man honouring the appearance of modestie, and hoping well of every sociall vertue under that veile, may easily chance to meet, if not with a body impenetrable, yet often with a minde to all other conversation inaccessible" (*CPW II:250*). In the sentence we see that even if the husband can penetrate

the body of his wife, she nonetheless may have a mind that cannot be reached by any means, it is “to all other conversation inaccessible.”<sup>130</sup> While her body is available to her husband, she turns out to be nothing more than an image, a penetrable body whose mind may as well not exist since it is not to be reached.

Milton’s plea for a spiritual companion in marriage is in line with the one of the strands of thinking in Puritan marriage manuals. In the address to Parliament added to the second edition of *The Doctrine and Discipline of Divorce*, Milton positions his argument for divorce within the understanding of Protestant marriage as a partnership aimed at reforming the commonwealth one family at the time. However, through the adversarial rhetoric of *Colasterion* and the language privileging mind over body throughout the divorce tracts, Milton strips of dignity the aspects of marriage that do not rise to the ideal of a spiritual conversation. Daily life, sex, the bearing and raising of children all become so much “cattell” (CPW II:251). Promises of betrothal, marriage contracts, and marriage services lose their ability to create a marriage bond. What is troubling about Milton’s view of marriage promises and contracts, as we will see below, is that if they are found to have been made to someone who does not fulfill the poet’s expectations,

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<sup>130</sup> Milton’s demand that a husband have access to both body and soul of his wife reflects the advice found in marriage manuals. Cleaver and Dod seem to propose a similar view of the proper relationship between husband and wife: “The husband ought not to be satisfied with the vse of his wiues body, but in that he hath also possession of her will and affections: for it sufficeth not that they be married, but that they be well married, and liue Christianly together, and be very well contented” (Cleaver and Dod, *A godly forme of houshold government*, image 82). For Cleaver and Dod, to live “Christianly” together as husband and wife presupposes a husband’s “possession of her will and affections.”

they are said to have never been valid. Such marriage becomes an empty husk, such wife a mere idol; they are erased from existence. The anonymous Answerer touches on a fundamental problem in Milton's vision of marriage when he insists that wives and husbands converse by ordinary words and actions. While Milton insists that these words and actions are meaningless—or worse yet, a form of hypocrisy—if they are not validated by certain mental states, Wittgenstein reminds us that their meaning is independent of such interior confirmation. As Fergus Kerr explains in recapitulating Wittgenstein's attack on the idea that meaning is a mental activity: "[t]he metaphysically dictated doctrine that everything that people do and say, if it is to be worthy of their dignity as self-conscious and autonomous intellectual entities, must issue from thought and will (supposed, to be sure, to be interior, invisible and private), is an illusion that has to be deflated once and for all."<sup>131</sup> Milton's divorce tracts exemplify a possible outcome of such an illusion. Having stripped his unfit wife of selfhood, this hoped-for second self turns out to be but an image of earth and the disappointed husband finds himself in the condition of a reprobate, one who lives devoid of faith and hope, and barred from the bonds of charity. Being married to an image turns the husband's daily life into a series of hypocritical acts, rote prayers with no meaning addressed to a dead idol.

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<sup>131</sup> *Theology after Wittgenstein*, 115.

These meaningless daily actions described in the divorce tracts resemble those denounced in Preston's *breast-plate*.<sup>132</sup> As we have seen, Preston defines hypocrisy as a lack of sincerity and love: "hypocrisy is to doe the outward act without inward sincerity. Now to doe a thing in love is to doe it in sincerity. And indeed there is no other definition of sincerity, that is the best way to know it by: A man that doeth much to God, and not out of love, all that he doth is out of hypocrisie." Love must accompany each action if we want to avoid being hypocrites. Both Preston and the writers of marriage manuals prescribe closeness and conversation as means to foster this essential love. There is, however, a potential tension between the requirement for sincere love and the method recommended by Puritan divines for attaining such love. Conversation with someone we do not love—or whom we naturally hate, as Preston argues regarding man's orientation towards God—can be seen as hypocritical in itself. The divorce tracts register this tension. In *Colasterion*, in particular, we can see Milton directly responding to the standard advice given to unhappy husbands. To the Milton's complaint that an unfit wife makes marriage impossible, the Answerer replies that a husband ought to patiently bear the faults of his wife, and help her to correct her mistakes.<sup>133</sup> Relying on

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<sup>132</sup> Milton makes the comparison between hypocrisy in marriage and in religion directly in *Tetrachordon*: "Therefore God who hates all feigning and formality, where there should be all faith and sincereness, and abhors the inevitable discord, where there should be greater concord, when thro' another's default, faith and concord cannot be, counts it neither just to punish the innocent with the Transgressor, nor holy, nor honourable for the sanctity of Marriage, that should be the union of peace and love to be made the commitment, and close fight of enmity and hate" (CPW II:631).

<sup>133</sup> What it means for a husband to bear the wife's faults in practice seems to vary rather drastically from this ideal of Christian patience. Perkins is fairly typical in insisting that the husband's power of the wife does not

Eph. 5.25, "Husbands, love your wives, even as Christ also loved the church, and gave himself for it," the Answerer argues that husbands are commanded by Paul to love their wives by "passing by and healing the faults and infirmities of their Wives, as Christ gave himself" (6). This is how we are meant to understand love in marriage: "such love as is there required ought to hide and passe by faults, disagreements of minde, contrariety of disposition, &c." (6). Milton's reply in *Colasterion* does not deny the parallel between Christ and a patient husband, but rather argues against the notion that Christ is willing to bear with the faults of the Church. Milton insists that the verse in Ephesians supports divorce: "For if the husband must bee as Christ to the Wife, then must the wife bee as the Church to her husband. If ther bee a perpetual contrariety of minde in the Church toward Christ, Christ himself threat'ns to divorce such a Spouse, and hath often don it. If they urge, this was no true Church, I urge again, that was no true Wife" (CPW II:732). Christ, having found the Church to display "a perpetual contrariety of minde," divorces her. The argument in this passage is in exact parallel with the one *The Doctrine and Discipline of Divorce*. Just as a wife who is perpetually at odds with her husband has

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extend to physical punishment for her faults. If he is incapable of restraining a particularly stubborn wife with verbal admonitions, the husband ought to call on a magistrate to intervene. However, Perkins proceeds to note that while a husband who is married to "a wife so stubborne and peeuish, must beare it, if it may be borne, as the portion of his crosse laid vpon him by God," nonetheless, "if he be impatient [i.e. if he strikes her], he may in some sort be pardoned and pitied, but he is not wholly excused." Whately, perhaps acknowledging that the theory professed in other manuals does not seem to agree with what is condoned in practice, goes further and actually recommends wife-beating for particularly willful cases.

never been joined in matrimony as defined by Genesis, a faulty Church was never a true Church.

What does Milton mean by the Church in this passage? As Cedric C. Brown argues in "Milton and the Idolatrous Consort," by invoking the specter of idolatry and false religion in the divorce tracts, Milton strengthened his case by playing upon the widespread fear of Catholicism.<sup>134</sup> In this reading, the divorced Church then recalls both the false Church of Rome and the Laudian Church of England. To an audience sympathetic with the familiar anti-Catholic arguments as well as with the Presbyterian and Independent claims against Episcopal church policy, Milton's image of Christ divorcing the corrupted Church would have been a rhetorically powerful move. But what are the consequences of this ideal of separation? Such line of argument indicates the need for unrelenting reformation. By way of comparison, we can look at John Donne's interpretation of the same verse. In his use of this Scriptural passage in two different sermons, Donne interprets the Spouse of Christ both generally, as the true Church in its entirety, and particularly, as each faithful soul. In both senses, the union between Christ and the Spouse is described as unbreakable. We find his use of the first sense in his first sermon at Saint Dunstons (April 11, 1624). Here, Donne reminds his listeners that "[t]he union of Christ to the whole Church is not expressed by any

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<sup>134</sup> *Criticism*, 35 (1993), 419-39. Brown points out that the Queen's impeachment in 1643 made the issues of Catholicism and idolatry into a convenient foil for Milton's argument.

metaphore, by any figure, so oft in the Scripture, as by this of *Mariage*" (IX:82). But the difference between civil marriage and this mystical marriage is that "there in that union with Christ to the whole Church, neither husband, nor wife can ever die; Christ is immortall [and] the Church is immortall too; for as a Prince is the same Prince, when he fights a battaile, and when hee triumphs after victory: so the militant, and the triumphant Church is the same Church" (IX:82). The image in Donne's sermon is clearly one of continuity. The Church that Christ married has always been the same Church and will continue to be so, though perfected, in its triumph after the second coming. A similar interpretation is found in the wedding-sermon for Margaret Washington (May 30, 1621). There, Donne considers the spiritual marriage between Christ and an individual soul. Again, he draws the parallel with civil marriage explicitly: "he hath married it *in aeternum*, for ever; which is the third and last Circumstance in this spirituall, as it was in the secular marriage" (III:253). In both versions of the image, Donne insists that marriage between Christ and His Spouse is eternal. The Church of Eph. 5.25 is the true Church.<sup>135</sup> For Milton, on the other hand, the language of the same verse is taken to refer to any particular Church that may turn out to be "no true Church." His use of the verse calls for an endless evaluation and pruning of both the Church and of marriage.<sup>136</sup>

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<sup>135</sup> Similarly, the authors of marriage manuals read the Church married by Christ in Eph. 5 as representing the true congregation of the godly. Preston also reads the verse as indicating the true marriage between Christ and the regenerate soul.

<sup>136</sup> In the second edition of *The Doctrine and Discipline of Divorce*, this need for constant vigilance and reformation is presented at the very beginning of the address to the Parliament and Assembly: "And

Once faults or differences between Christ and the Church or husband and wife become irreparable, the entire history and identity of either spouse or specific Church becomes suspect. As *The Doctrine and Discipline of Divorce* argues, a wife whom a husband can no longer love was never a true wife, she was never joined to him God into one flesh. Similarly, a Church that has decayed from its apostolic purity was never a true Church. Constant reformation on these terms demands the obliteration of the past whenever a present fault is discovered.

What are the consequences of this conception? Milton had already argued in print that the Church of England was no true Church. In *Animadversions* (July, 1641), he argues against Bishop Joseph Hall's *A Defence of the Humble Remonstrance* (April, 1641). With this pamphlet, Milton joins the debate between Hall and the five proponents of Presbyterian Church polity who wrote under the pseudonym Smectymnuus.<sup>137</sup> The structure of *Animadversions* is similar to that of *Colasterion*. In both tracts, Milton quotes his opponent and then replies to the quote, often insultingly. In answering Hall's accusation that the five divines of Smectymnuus are "like ill bred sons" who "spit in the

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[Custom and Error] betweene them would persecute and chase away all truth and solid wisdome out of humane life, were it not that God, rather than man, once in many ages, calls together the prudent and Religious counsels of Men, deputed to repress the encroachments, and to worke off the inveterate blots and obscurities wrought upon our mindes by the subtle insinuating of Error and Custome" (*CPW* II:234). The insidious infiltration of error into human life through custom is only held back by the reforming agency of God who inspires the calling together of "prudent and Religious counsels of Men."

<sup>137</sup> The five authors of Smectymnuus are: Stephen Marshall, Edmund Calamy, Thomas Young, Matthew Newcomen, and William Spurstowe. For an overview of the controversy, see Barbara K. Lewalski, *The Life of John Milton*, 128-34 .



face of your Mother the Church of England," Milton distinguished between the true mother Church and the corrupt Church of England: "Wee acknowledge, and believe the Catholick reformed Church, and if any be dispos'd to use a trope or figure, as Saint *Paul* once did in calling her the common Mother of us all, let him doe as his owne rhetorick shall perswade him" (CPW II:727). Milton allows any who so desire to speak respectfully of the universal reformed Church by calling it their Mother, but he also reminds his readers that this is but a trope, a rhetorical style. Indeed, we should beware of being coaxed into an unthinking obedience by believing a turn of phrase: "but marke Readers, the crafty scope of these Prelates, they endeavour to impresse deeply into weak, and superstitious fancies the awefull notion of a mother, that hereby they might cheat them into a blind and implicite obedience to whatsoever they shall decree, or think fit" (CPW II:727-8). Milton here explicitly brings up the ghost of Catholicism by accusing Hall of trying to trick English Protestants into "implicite obedience" and believing "superstitious fancies." To fall for this trick would be to give up the ground gained by the Reformation:

So that we who by Gods speciall grace have shak'n off the servitude of a great male Tyrant, our pretended Father the Pope, should now, if we be not betimes aware of these wily teachers, sink under the slavery of a Female notion, the cloudy conception of a demy-Iland mother, and while we think to be obedient sonnes, should make ourselves rather the Bastards, or the Centarus of their spirituall fornications. (CPW II:728)

The passage recalls the Pauline language of the son of the bondmaid and that of the free woman from Galatians 4.22-39. To accept the Church of England as our true mother

Church is to refuse the gift of freedom that divine grace has granted through the Reformation by giving up our Christian liberty. The rhetoric of the bishops is seen as attempting to convince us to “sinke under the slavery” of Episcopalian Church discipline by disguising that slavery under a mask of filial obedience.

In the early 1640s, Milton’s argument against Episcopal Church government based on Christian liberty found a ready and sympathetic audience. However, using the same tactic in the divorce tracts forces Milton to argue that the liberty he demands is based on virtue and not license. In particular, we see the tracts mounting a defense of husbands who have made poor choices in marriage partners. One incorrect decision does not impute an otherwise virtuous life. For instance, in *Tetrachordon*, Milton describes the cause of a bad marriage as being rooted in one bad choice, made in one brief instant:

if we do but erre in our choice the most unblamable error that can be, erre but one minute, one moment after those mighty syllables pronounc’t which take upon them to joyn heavn and hell together unpardonably till death pardon, this divine blessing that lookt but now with such a human smile upon us, and spoke such gentle reason, strait vanishes like a fair skie and brings on such a scene of cloud and tempest, as turns all to shipwrack without havn or shoar but to ransomles captivity. (CPW II: 600-1)

The blameless husband’s error is located in one precise instant and unrelated to his otherwise virtuous life. Indeed, the more virtuous, the more likely to be deceived: “The sobrest and best govern'd men are least practiz'd in these affairs; and who knowes not that the bashfull mutenes of a virgin may oft-times hide all the unlivelines and naturall

sloth which is really unfit for conversation" (*The Doctrine and Discipline of Divorce*, CPW II:249). Poor choice in marriage partner is not a symptom of poor judgment or of unwillingness to reflect properly upon the state of matrimony, the usual diagnosis proposed in Puritan marriage manuals. Rather, Milton views such a mistake as the error of "but one minute" which leads to a lifetime of torment, "till death pardon."<sup>138</sup> Like the Lady in *A Maske*, who blamelessly follows Comus to his palace while hoping to find her brothers, the sinless husband stumbles on a "scene of cloud and tempest" while searching for a "divine blessing." But unlike the Lady, the husband who does discover the unfitness of the wife is not granted a way out of his imprisonment.

Given this predicament, to deny the regenerate husband the possibility of divorce based on a literal reading of Matthew 5 and 19 is to pervert the principle of charity that underlies all of Scripture. Indeed, in the Address to Parliament, Milton insists that a prohibition against divorce has Satanic origins: "What greater weakening, what more subtle stratagem against our Christian warfare, when besides the grosse body of real transgressions to encounter; wee shall bee terrify'd by a vain and shadowy menacing of faults that are not: When things indifferent shall be set to over-front us,

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<sup>138</sup> Annabel Patterson argues that, in the divorce tracts, Milton is forced to contemplate his own error in judgment in selecting an ill-suited spouse ("No Meer Amatorious Novel," in *Politics, Poetics, and Hermeneutics in Milton's Prose*, ed. David Loewenstein and James Grantham Turner (Cambridge: Cambridge University Press, 1990), 85-101, see esp. 91-5). Similarly, Stephen Fallon reads Milton's self-representation as a blameless Christian in the divorce tracts as always on the verge of disintegrating under the pressure of demonstrating the (theological) despair-inducing quality of a bad marriage (*Milton's Peculiar Grace: Self-Representation and Authority* (Ithaca, NY: Cornell University Press, 2007), 110-32).

under the banners of sin, what wonder if wee bee routed, and by this art of our Adversary, fall into the subjection of worst and deadliest offences" (CPW II:228; emphasis mine). Christian liberty should not be restricted in "things indifferent." The frustration of the hope for wedded happiness risks leading those who are unhappily yoked to seek solace elsewhere. Moreover, marriage with an unfit partner can prove dangerous in and of itself. To demonstrate this, Milton appeals to the case most likely to receive support from his readers by arguing that marriage between spouses of different religion can warrant divorce if the unbelieving spouse offends the conscience of the Christian one:

Another caution was put in this supposed command, of not bringing the beleever into *bondage* heerby, which doubtles might prove extreme, if Christian liberty and conscience were left to the humor of a pagan staying at pleasure to play with, or to vex and wound with a thousand scandals and burdens, above strength to bear: If therefore the conceived hope of gaining a soul, come to nothing, then charity commands that the beleever be not wearied out with endlesse waiting under many grievances sore to his spirit; but that respect be had rather to the present suffering of a true Christian, then the uncertain winning of an obdur'd heretick. The counsell we have from S. Paul to hope, cannot countermand the moral and Evangelick charge we have from God to feare seducement, to separate from the misbeleever, the unclean, the obdurate. (CPW II:267)

Referring to 1 Cor. 7.12, Milton argues that Paul advises us to attempt to convert an unbelieving spouse for only as long as there is concrete hope of conversion and granting that the Christian spouse not be seduced from true religion.<sup>139</sup> To suppose that Paul had

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<sup>139</sup> The King James version of the verse reads: "But to the rest speak I, not the Lord: If any brother hath a wife that believeth not, and she be pleased to dwell with him, let him not put her away." Milton translates the

meant to enslave Christian liberty to the whims of an unbeliever even to the point of risking “that the believer be [...] wearied out with endless waiting under many grievances sore to his spirit” is an outrage against charity.<sup>140</sup> Since charity does not deny just remedies in indifferent matters, if we find ourselves in a marriage that might destroy our faith, we are allowed to “separate from the misbeliever, the unclean, the obdurate.” Milton insists that while a man of special calling and virtue may attempt to withstand inordinate temptations that may come his way in an unfortunate marriage, most men will do better to remove the temptation and divorce.<sup>141</sup> More importantly, while one may freely and voluntarily attempt to pardon an adulteress or convert an unbelieving spouse, he should never be coerced to do so by law: “For God loves not to plow out the heart of our endeavours with over-hard and sad tasks. God delights not to make a drudge of vertue, whose actions must be all elective and unconstrain'd. Forc't vertue is as a bolt overshot it goes neither forward nor backward, and does no good as it stands” (CPW II: 342). Actions are only truly virtuous when they are not forced by law.

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Greek as follows: “If a brother have an unbelieving wife, and she joyne in consent to dwell with him” (CPW II:267), thus emphasizing a mutual agreement in continuing the marriage.

<sup>140</sup> In a later passage in *The Doctrine and Discipline of Divorce*, Milton cites Paul in support of the rule of charity. To rightly interpret any passage of Scripture, we must follow Paul’s “divine hymne” in 1 Cor. 13, “charity beleeveeth all things,” which teaches us that “charity is the high governess of our beleefe, and that we cannot safely assent to any precept writt'n in the Bible, but as charity commends it to us” (CPW II:340).

<sup>141</sup> At this juncture in the tract, Milton ropes in Perkins as an unlikely supporter. He uses the authority of the Puritan divine to differentiate between special and general calling. The editor of the *Complete Prose Works* cites the third chapter of *Christian Oeconomie* as Milton’s reference on this point.

For Milton, this voluntary virtue is the crucial difference between Christian liberty and servitude under the Law.

How far does such virtuous freedom extend? In *Milton and the Puritan Dilemma: 1641-1660*, Arthur E. Barker sees a widening scope for Milton's application of Christian liberty in the 1640s. Barker argues that in the divorce tracts Milton moves towards an unorthodox interpretation of Christian liberty and expands it to apply beyond indifferent things.<sup>142</sup> In the matter of marriage, both Moses and Christ "wished believers to be free from human authority."<sup>143</sup> Moreover, the rule of charity itself, which becomes Milton's fundamental exegetical rule, dictates that "man's good becomes the fundamental rule not merely for human but for divine law. [...] the consequence is the freeing of the individual from external control."<sup>144</sup> Barker sees *Tetrachordon* as the key text for Milton's developing understanding of liberty. There, Milton comes to believe that "no ordinance, human or from heaven, can bind against the good of man."<sup>145</sup> In particular, the explication of Gen. 1.27 in this tract signals a clear break from the more

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<sup>142</sup> *Milton and the Puritan Dilemma*, 106. To exemplify the orthodox understanding of Christian liberty, Barker summarizes Calvin's view in the *Institutes* into three points. First, "the law of works is abrogated by the gospel of faith, [...] though the moral part of the Law is still in force, and teaches, exhorts, and urges us to good." Second, while mankind is incapable of fulfilling the Law, the elect "follow God's guidance in the Law as the spontaneous result of grace." Third, "[a]ll things concerning which there is no gospel prohibition [i.e., indifferent] are sanctified to the Christian's use" (101).

<sup>143</sup> *Ibid.*, 106. Barker here quotes *Tetrachordon* on Matt. 19.8: "Although they can know when they please, that Christ spake only to the Conscience, did not judge on the civil bench, but alwaies disavow'd it" (*CPW II*: 661).

<sup>144</sup> *Ibid.*, 110.

<sup>145</sup> *Ibid.*, 111.

limited view proposed in the anti-prelatical pamphlets. The passage from *Tetrachordon* is worth quoting in full:

For albeit our first parent had lordship over sea, and land, and aire, yet there was a law without him, as a guard set over him. But Christ having cancell'd the hand writing of ordinances which was against us, *Coloss. 2.14.* and interpreted the fulfilling of all through charity, hath in that respect set us over law, in the free custody of his love, and left us victorious under the guidance of his living Spirit, not under the dead letter; to follow that which most edifies, most aides and furdurs a religious life, makes us holiest and likest to his immortall Image, not that which makes us most conformable and captive to civill and subordinat precepts; whereof the strictest observance may oftimes prove the destruction not only of many innocent persons and families, but of whole Nations. Although indeed no ordinance human or from heav'n can binde against the good of man; so that to keep them strictly against that end, is all one with to breake them.  
(CPW II:587-8)

In this passage, Christian liberty is presented as superior to pre-lapsarian liberty. The guidance of the Holy Spirit and the fulfilling of the Law through charity have given us the freedom “to follow that which most edifies, most aides and furdurs a religious life, makes us holiest and likest to his immortall Image.” Thus, whenever following laws would prove “against the good of man,” there is no commandment against breaking them. As Barker argues, the move from the understanding of the good of man in the anti-prelatical tracts to that found in this passage is telling. In the earlier pamphlets, “[i]t could reasonably be assumed (since even Bodin had admitted it) that the reformed government would conduce to civil good; but since God had prescribed one right discipline, moderating arguments from considerations human and civil could be thrown

out.”<sup>146</sup> In the divorce tracts, however, what God has prescribed has to be deduced against the letter of the Gospel itself. To do so, Milton has to place Christian liberty “over law, in the free custody of his love, [...] not under the dead letter.”

What is important about the divorce tracts is not the specific conclusions that Milton comes to regarding the dissolution of unhappy marriages. Rather, it is his working through his understanding of reason, charity, and Christian liberty through the kind of systematic exegesis that is not found anywhere else in his writings until *De Doctrina Christiana*. We need to ask then, what are the consequences of subordinating civil law and Scriptural interpretation to Milton’s understanding of the good of man? As we have seen in the previous chapter, for Milton, thanks to divine grace, the regenerate individual need not rely on habit to develop *phronēsis*. Indeed, habit and custom are dangers to be avoided as they dull reason and enslave us to actions and modes of life that are hypocritical.<sup>147</sup> To rely on custom is to rely on others, on institutions, and on historically developed modes of life. For Milton, virtuous acts are made by each independent individual who discovers for himself what rule is given by Scripture on how to behave in a given situation. Moreover, as we have seen in *Colasterion* and in

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<sup>146</sup> *Milton and the Puritan Dilemma*, 110.

<sup>147</sup> For a reading of the divorce tracts as not opposed to habit, see Paul Cefalu, *Moral Identity in Early Modern English Literature* (Cambridge: Cambridge University Press, 2004), 166-7. Cefalu reads Milton as explicitly distinguishing between custom, which “puffs up unhealthily a certain big face of pretended learning” and “the wholesome habit of soundness and good constitution” (quoting from *The Doctrine and Discipline of Divorce*, CPW II: 223). I agree that Milton uses the *language* of Aristotelian habituation, but what a good habit would look like is nowhere to be found in his writings.



*Animadversions*, we cannot rely on the Church—be it the Church of England or the proposed Presbyterian Church—to guide our growth in virtue. In these pamphlets, any given Church may turn out to be a false bride of Christ, whom He will divorce. How then do we learn what we ought to do in any given situation? The divorce tracts present one solution in the example of Christ’s teaching. There, Milton interprets Jesus’ mode of instruction to the Pharisees as a doctrine akin to the Aristotelian mean: “Wherin we may plainly discover how Christ meant not to be tak’n word for word, but like a wise Physician, administring one excesse against another to reduce us to a perfect mean” (CPW II: 282-3). Christ, as a wise physician, discerns whether someone errs in defect or excess with respect to a given virtue (exercises right judgment, *phronēsis*), and administers a correction in the opposite direction.

How are we then to follow His example and properly exercise right reason? How do we know how far we are from the mean and how to approach it? After all, Aristotle warns that “how far and to what extent someone must deviate [from the mean] before becoming blameworthy it is not easy to determine by reason, because nothing perceived by our sense is easily determined; such things are particulars, and judgement about them lies in perception” (*Nicomachean Ethics*, 1109<sup>b</sup>).<sup>148</sup> Learning how to exercise *phronēsis*

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<sup>148</sup> Aristotle clarifies why we do not deliberate about particulars, i.e. “matters of perception,” in Book III, Chapter iii. See, in particular, 1113<sup>a</sup>. MacIntyre, in *Whose Justice? Which Rationality?*, shows that there are two ways in which, according to Aristotle, we can fail to apply right reason correctly: “we may fail to identify the characteristics of a particular which are relevant to the actions what we should be about to perform either for lack of experience or from inadequate *epistēmē* [scientific knowledge], so that we do not

requires learning how to be virtuous, and, conversely, growing in virtue requires the exercise of right reason. Moreover, as we have seen in the previous chapter, Aristotle argues that growth in the virtues and in right reasoning imply a certain kind of polity. It is only in human relations that embody the virtues that we can begin and complete our education and learn how to deliberate correctly. This is not to say that the *polis* we live in has to be perfect. However, its constitution, as MacIntyre points out in *Whose Justice? Which Rationality?*, has to provide a sufficiently developed framework of justice so that we can begin our ethical education.<sup>149</sup> An individual disconnected from the *polis* is more like a wild animal than a human being. He cannot hope to learn how to employ right reason and become a virtuous person. In turn, virtuous individuals are the kind of citizens necessary for a just *polis*. As we have seen, the language of the Aristotelian connection between individual and society is found in Puritan marriage manuals. But there, it is intermixed with an ideal of the family as the isolated locus for reformation that is alien to Aristotelian thinking.<sup>150</sup> Milton echoes this language in his address to Parliament in the second edition of *The Doctrine and Discipline of Divorce*:

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understand the universal, the concept of the form which *this* particular exemplifies" (92). Here MacIntyre refers to *Nicomachean Ethics* 1131<sup>a</sup>11-25.

<sup>149</sup> Here, I am following MacIntyre, *Whose Justice? Which Rationality?*, chapter six, esp. 90-99. In this chapter, MacIntyre argues that for Aristotle, a fundamental lack of justice in a *polis* would impede the growth of the kinds of human relationships that are essential for the development of virtuous citizens.

<sup>150</sup> For this reading of the marriage manuals, I am indebted to MacIntyre's reading of Aristotle.

Advise yee well, supreme Senat, if charity be thus excluded and expulst, how yee will defend the untainted honour of your own actions and proceedings: He who marries intends as little to conspire his own ruine, as he that swears Allegiance: and as a whole people is in proportion to an ill Government, so is one man to an ill mariage. [...] For no effect of tyranny can sit more heavy on the Commonwealth, then this houshold unhappines on the family. And farewell all hope of true Reformation in the state, while such an evill as this lies undiscern'd or unregarded in the house. On the redresse whereof depends, not only the spiritfull and orderly life of our grown men, but the willing, and carefull education of our children. (CPW II 229-30)

Milton here explicitly draws a parallel between family and commonwealth. The dissolution of a marriage contract is no different than rebelling against a tyrant. Moreover, the cause of the Reformation is dependent on the reformation of each family. As long as “such evill as this lies undiscern'd or unregarded in the house” the entire commonwealth will suffer since the spiritual life of men as well as the education of children is dependent on a well-ordered household. As we have seen in Barker's discussion of the development of Milton's thought, in the anti-prelatical pamphlets, the spiritual life of citizens is dependent not only on their private judgment exercised in line with Christian liberty, but also on the implementation of the correct form of Church polity. In the early tracts, Milton argues that we can find such polity clearly described in the Bible and exemplified in the Scottish Presbyterian Church.<sup>151</sup> However, when arguing for divorce, Milton can neither rely on the plain sense of Scripture nor in the

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<sup>151</sup> In Chapter II of *The Reason of Church Government*, Milton points to epistles of Paul to Timothy and Titus.

practice of any other Church. As Barker argues, Milton emphasizes the good of man and the rule of charity as the ultimate criteria for biblical interpretation.

Here we see a clear break with Aristotle. Milton perceives the good of man as the good of the individual detached from society. The divorce tracts insist that promoting the good of the individual will naturally lead to the good of the commonwealth. But this is quite different from Aristotle's understanding of the connection between citizens and society. In the *Nicomachean Ethics* and the *Politics*, what is truly, rather than just apparently, good for the citizen of the *polis* cannot be discovered by considering the citizen as an individual independently of his social context. Man as a rational creature is social. Milton, when arguing that covenants do not hold when they do not fulfill their end, insists that it is against charity to forbid divorce when the sought-for "solace" is not found in marriage: "neither can it be of force to ingage a blameles creature to his own perpetuall sorrow, mistak'n for his expected solace, without suffering charity to step in and doe a confest good work of parting those whom nothing holds together, but this of Gods joyning, falsly suppos'd against the expresse end of his own ordinance" (*CPW* II:245). To forbid divorce is to condemn a "blamles creature" to "perpetuall sorrow." The concern for the commonwealth and children found in the Address to Parliament is no longer emphasized. Charity steps in to aid the blameless individual and the benefits to wife, children, and commonwealth are assumed to automatically follow. Therefore, for Milton, the good of the individual considered in isolation from society is the primary

concern of civil laws. It is not surprising then that the Answerer asks about the fate of the children left in the “bellies” of divorced wives (9). Milton’s rule of charity applies to them only as a secondary consequence. Charity is of course not a virtue that Aristotle would have recognized.<sup>152</sup> Nonetheless the formation of any such virtue could not be envisioned in either the *Nicomachean Ethics* nor in the *Politics* independently of the *polis*. To say that man is a social animal means that we simply cannot regard the social web as external to our understanding of the individual; the *polis* is not built of individual men, it is built of citizens.

I have brought Aristotle’s understanding of the necessity of the *polis* for the development of virtue and right reason to begin to sketch the consequences of elevating Milton’s understanding of the good of man as an individual to the role of key hermeneutical tool. The rule of charity that guides the divorce tracts insists on the sufficiency of the regenerate individual’s encounter with Scripture for the discernment of virtuous action. What does a fuller account of charity than Milton’s look like? To see how Milton is restricting the definition of charity in these tracts, we need to turn from an Aristotelian to a Christian understanding of the virtues. I will first look at Augustine’s understanding of that what it means for Christians to be part of the Church and then

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<sup>152</sup> In the *Nicomachean Ethics*, the virtue that comes closest to charity is friendliness: “Complete friendship is that of good people, those who are alike in their virtue: they each alike which good things to each other in so far as they are good, and they are good in themselves. [...] Each of them is good without qualification and good for his friend, since good people are both good without qualification and beneficial to each other” (1156<sup>b</sup>). But, unlike charity, friendliness creates a bond only between similarly virtuous individuals.

turn to Aquinas' account of charity. For my reading of Augustine, I follow David Aers' *Salvation and Sin*.<sup>153</sup> Like Aristotle, Augustine imagines the life of the wise man as social: "The philosophies [*sic*] hold that the life of the wise man should be social; and in this we support them much more heartily. [For] how could that City [of God] have made its start, how could it have advanced along its course, how could it attain its appointed goal, if the life of the saints were not social?"<sup>154</sup> In the same chapter of *The City of God*, Augustine links the necessarily social nature of Christian life with the ills and misery which permeate any human relationship, especially family life: "who are, in general, more friendly, or at any rate ought to be, than those within the walls of the same house? And yet, is anyone perfectly serene in that situation, when such grievous ills have so often arisen from the secret treachery of people within these walls?"<sup>155</sup> But a meaningful Christian life for Augustine cannot occur outside of a social setting with all its vexations and flaws. As Aers argues in *Salvation and Sin*, regardless of the flaws of the Church, Augustine reminds us that we cannot simply retreat into ourselves. The Church is a divine gift and the life of a Christian is lived in the Church.

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<sup>153</sup> *Salvation and Sin: Augustine, Langland, and Fourteenth-Century Theology* (Notre Dame, IN: University of Notre Dame Press, 2009).

<sup>154</sup> *The City of God*, trans. Henry Bettenson (New York: Penguin, 2003), 858.

<sup>155</sup> *Ibid.*, 858. As Aers points out, the Catholic Church into which Augustine converted is not without faults: "Against the Donatists' fantasies of a pure Church, Augustine insisted that the Church in its pilgrimage has wrinkles and spots, unlike the bride of Christ in her final form (Eph. 5.25-27). Just as Augustine's language resists dichotomization of visible and invisible Church, so it resists any simple, unqualified identification of the city of God and the Catholic Church" (*Salvation and Sin*, 7).

Indeed, Augustine repeatedly returns to the understanding of the Church as a vehicle of grace: “In his preface to *On Christian Teaching* Augustine insists that Christians, however replete with divine gifts, must accept that the Holy Spirit teaches through human mediations.”<sup>156</sup> In particular, for Augustine, the approach to Scripture proposed by Milton in the divorce tracts would demonstrate a clear lack of charity. Indeed, to insist in believing that we do not need the mediation of the Church to interpret Scripture is to succumb to pride.<sup>157</sup> In his preface to *On Christian Teaching*, Augustine replies to those critics who claim that there is no need for exegetical rules and that correctly interpreting Scripture is a gift from God. To dispel this belief, Augustine turns to language learning:

My argument is with Christians who congratulate themselves on a knowledge of the holy scriptures gained without any human guidance and who—if their claim is valid—thus enjoy a real and substantial blessing. But they must admit that each one of us learnt our native language by habitually hearing it spoken from the very beginnings of childhood, and acquired others—Greek, Hebrew, or whatever—either by hearing them in the same way or by learning them from a human teacher.<sup>158</sup>

Augustine reminds his critics that we do not despise this ordinary method of language-learning even though the apostles learnt all languages instantaneously through the inspiration of the Holy Spirit (Acts 2.1-4). Similarly, we must accept that we need to learn from others in the Church without pride and, in turn, teach what we know without

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<sup>156</sup> Aers, *Salvation and Sin*, 11.

<sup>157</sup> *Loc. cit.*

<sup>158</sup> *On Christian Teaching*, trans. R.P.H. Green (Oxford: Oxford University Press, 1997), 4.

jealousy.<sup>159</sup> To learn from and to teach others is a divine gift in itself: “the human condition would be wretched indeed if God appeared unwilling to minister his word to human beings through human agency.”<sup>160</sup> This is a gift precisely because it builds the bonds of love necessary for human life in its full social sense. If we did not need to learn from one another, “there would be no way for love, which ties people together in bonds of unity, to make souls overflow and as it were intermingle with each other, if human beings learned nothing from other humans.”<sup>161</sup> Augustine then, as Wittgenstein, reminds us that the conversation of the soul that Milton craves is found in the ordinary interactions with others. It is in the act of humans teaching one another that “souls overflow and as it were intermingle.” But a conception of charity that insists in locating the work of grace in the individual as separate from others leads Milton to ignore the importance of these bonds.

Why are such bonds important? As we have seen earlier, Augustine in the *Confessions* describes the chains of carnal habits that arise from a distorted will. This is the consequence of original sin. As MacIntyre points out, for Augustine, before the Fall, the will was oriented towards God; after the Fall, only divine grace and our assent to it can overcome the chains of sin.<sup>162</sup> Aquinas, as we have seen in the first chapter, finds in Augustine’s concept of the distorted will and the subsequent subversion of justice the

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<sup>159</sup> *On Christian Teaching*, 5.

<sup>160</sup> *Ibid.*, 5.

<sup>161</sup> *Ibid.*, 5-6.

<sup>162</sup> *Whose Justice? Which Rationality?*, 157.



necessity for the work for the infused virtue of charity. Only when we recognize our defective will, can we receive faith, hope, and charity through grace: “It is only in the kind of knowledge which faith provides, the kind of expectation which hope provides, and the capacity for friendship with other human beings and with God which is the outcome of charity which can provide the other virtues with what they need to become genuine excellences, informing a way of life in and through which the good and the best can be achieved.”<sup>163</sup> What is this way of life?<sup>164</sup> It is first of all a life in a community which aims at a common good, much in the way of the Aristotelian *polis*. But, unlike the Aristotelian *polis*, Aquinas’ version of such a community allows for the possibility of forgiveness for the transgression of the rules of the community. What is crucial is that forgiveness is not a short-circuiting of justice, but rather it presupposes that the guilty party acknowledge his or her fault and be willing to accept the justice of the punishment meted out by law. Forgiveness only comes into play once the injured party agrees to forgive by exercising the virtue of charity.<sup>165</sup> In this account, forgiveness presupposes justice and, conversely, charity is the form of justice.<sup>166</sup> Thus, for Aquinas, adding charity to the Aristotelian virtues fundamentally changes their end: “Its inclusion alters the conception of the good for man in a radical way; for the community in which the good is achieved has to be one of reconciliation. It is a community with a history of a certain

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<sup>163</sup> *Three Rival Versions*, (140).

<sup>164</sup> In this reading of Aquinas, I am following MacIntyre, *After Virtue*, 174-5.

<sup>165</sup> *After Virtue*, 174.

<sup>166</sup> See, *Summa* IIa-IIae.23.8.

kind."<sup>167</sup> Forgiveness is thus dependent on a given conception of justice embodied in a given community with a certain kind of history. This account of charity and justice is fundamentally different from the one we find in Milton's divorce tracts. For Milton, charity promotes Christian liberty above all. And, as Barker argues, it is a version of liberty that is independent of all forms of coercion and external control. The problem is that in his account, charity and forgiveness are separated from a shared understanding of justice. Indeed, in the divorce tracts, charity flows to the injured and blameless party. But what of the wife? She is left with the kind of forgiveness and charity that we grant enemies. To the Answerer's fifth argument that one "Christian ought to bear the infirmities of another, but chiefly of his Wife," Milton answers: "I grant, infirmities, but not outrages, nor perpetual defraudments of truest conjugal society, not injuries and vexations as importunate as fire. [...] Charity indeed bids us forgive our enemies, yet doth not force us to continue friendship and familiarity with those friends who have behaved or unworthy towards us; but is contented in our peace with them, at a fair distance" (CPW II:731).

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<sup>167</sup> *After Virtue*, 174.

### 3. Justice, Interpretation, and the Process of History in Milton's Regicide Tracts

With the dissolution of royal government and the outbreak of the Civil War in 1642, a series of pamphlets were published arguing, on the one side, for the legitimacy of Parliamentary resistance to the king and, on the other, for the king's need to defend his prerogative against Parliament's "unlawful" encroachment. The debate over whose actions, Parliament's or the king's, were "lawful" and "just" hinged in part on formulating the precise nature of the relationship between sovereign, Parliament, and the people. Is the king's power derived directly from God or is it bestowed through the mediation of the people's consent? If the latter, how is this consent communicated and can it be withdrawn? Finally, where does the ultimate sovereignty reside in England? Both Parliamentary and royalist apologists proposed answers to these questions in pamphlets designed to address the argument between king and Parliament following the Militia Ordinance of 5 March 1642. Insisting that it was acting according to the central principle of natural law, that is, to preserve *salus populi* or the safety of the people, Parliament declared its right to raise a militia to defend the realm without the king in a *Declaration or Remonstrance of the Lord and Commons in Parliament*: "if his Majesty should refuse to joyne with us therein, the two Houses of Parliament being the supreame Court and highest councill of the Kingdome, were enabled by their owne

authority to provide for the repulsing of such imminent, and evident danger.”<sup>1</sup> The *Remonstrance* does concede that the power to raise an army is not normally vested in the two Houses alone, it is in the king *with* Parliament. But by the “fundamentall Laws of this Kingdome,” whenever the Commonwealth is “deprived of the fruit of that trust which was in part reposed in” the king, the two Houses of Parliament may take over functions traditionally exercised by the sovereign to avert an imminent danger.<sup>2</sup> The *Remonstrance* argued that if Parliament shirked its duty to raise a militia in times of grave danger, the kingdom would “returne to its first principle, and every man left to do what [is] aright in his own eye, without either guide or rule.”<sup>3</sup> As we will see, in stating this principle, the *Remonstrance* states a claim used repeatedly by Parliamentary apologists. Parliament is acting according to the “fundamental laws of the kingdom,” its actions are “lawful,” even though it illegally appropriates the king’s legal and customary power to raise and command military forces. Arguing over whether Parliament’s claims are “lawful,” the authors considered in this chapter come to

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<sup>1</sup> England and Wales, Parliament, *The declaration or remonstrance of the Lord and Commons in Parliament assembled with divers depositions and letters thereunto annexed* (London, 1642), 3. Early English Books Online. British Library (London). December 10, 2010.

[http://gateway.proquest.com.proxy.lib.duke.edu/openurl?ctx\\_ver=Z39.88-2003&res\\_id=xri:eebo&rft\\_id=xri:eebo:citation:13459946](http://gateway.proquest.com.proxy.lib.duke.edu/openurl?ctx_ver=Z39.88-2003&res_id=xri:eebo&rft_id=xri:eebo:citation:13459946). By warning about “imminent, and evident danger,” the *Remonstrance* taps into widespread fears of Catholic uprisings in England spurred by the newsbooks’ exaggerated reports of the violent rebellion in Ireland. For the wider context of the Irish rebellion and the Militia Ordinance, see Austin Woolrych, *Britain in Revolution:1625-1660* (Oxford: Oxford University Press, 2002), 192-218. Ironically, by deploying the language of *salus populi* in 1642, Parliament was adopting the rhetoric that Charles I had used in the 1620s in order to raise revenue by royal prerogative alone. For the origins of the phrase *salus populi suprema lex esto* in Roman legal philosophy and its use by Parliamentary writers, see Quentin Skinner, *Vision of Politics* (Cambridge: Cambridge University Press, 2002), II:326.

<sup>2</sup> *Remonstrance*, 15.

<sup>3</sup> *Loc. cit.*

elucidate the relationship between natural law and the customary and “artificial” aspects of political association. In doing so, they wage a rhetorical battle over the interpretation of Scripture, history, and English laws. John Milton revives this battle in 1649 to write in defense of the execution of Charles I. As I will argue in the last section of this chapter, the burden of his regicide tracts is to teach their readers how to interpret according to the kind of right reason that is developed by virtuous individuals. For Milton, such readers are not bound by traditional and historical frameworks and the violent rhetoric of a text such as *Eikonoklastes* is an expression of the tension between Milton’s persuasive and educative aims.

### **3.1 Resistance, the Law, and the King: What Are the Bonds of Justice?**

The royalist position was defended vocally by Henry Ferne, who joined the argument in 1642 with *The Resolving of Conscience*. Ferne was the royalist chaplain who would preach the last sermon the king would hear before his trial in 1649.<sup>4</sup> In *The*

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<sup>4</sup> Ferne’s *Resolving for Conscience* as well as Dudley Digges’ *An Answer to a Printed Book* are two of the most important responses to the Parliamentarian Henry Parker’s *Observations*, perhaps the most important pamphlet of the period. I will turn to Parker’s writings below. I start with Ferne’s pamphlet before turning to Parker’s *Observations* because it clearly sets out the royalist position on the origin and extent of sovereign power. On Ferne’s contribution to royalist theories of power, and on his sermon to the king of November 29, 1648, see John M. Wallace, *Destiny His Choice: The Loyolism of Andrew Marvell* (Cambridge: Cambridge University Press, 1968), 12-4, 40-3. The title of Ferne’s work is meant to remind the readers that passive disobedience to a ruler is only allowed in cases when the king’s commands clearly contradict divine law. That is, a subject’s conscience has to firmly know that the king is ordering to act unlawfully. As J. P. Sommerville points out in *Politics and Ideology in England, 1603-1640*, there were three elements to the standard royalist position on the grounds for disobedience to a king. First, only in the case the royal command directly contradicted divine law, could a subject refuse to obey his sovereign. Second, there could be no room for doubt that the king’s command was against God’s law strictly interpreted. And, thirdly, a

*Resolving of Conscience*, Ferne articulates the argument against armed resistance to the king and warns that Parliament is attempting to draw “a poore people [...] into Arms against the duty and allegiance they owe to their Prince by the Laws of God and man,” on the strength of its “high esteeme with all” and its “pretended defence of those things that are most deare unto us, Religion, Liberties, Laws.”<sup>5</sup> The main thrust of the pamphlet is to expose the sophistry of the Parliamentary position and to show that no subject can conscientiously support armed resistance against the king under any circumstances. Ferne’s central aim is to resolve the reader’s conscience on two main points. First, in general, he denies the possibility of lawful violent resistance to any ruler.<sup>6</sup> Second, in the particular case of Charles, he argues that the king has not behaved as a tyrant who ought be resisted and that thus Parliamentary resistance is founded on specious grounds.

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subject could never resist actively, but only passively (*Politics and Ideology in England, 1603-1640* (London: Longman, 1986), 34-5). This third point is a cornerstone of early Stuart political theory. For James I’s statements on this subject, see *Basilicon Doron* and *The Trew Law of Monarchies* in King James VI and I, *Political Writings*, ed. J. P. Sommerville (Cambridge: Cambridge University Press, 1994), 21, 78.

<sup>5</sup> Henry Ferne, *The Resolving of Conscience* in Joyce Lee Malcolm, ed., *The Struggle for Sovereignty: Seventeenth Century English Political Tracts* (Indianapolis: Liberty Fund, 1999), I:182.

<sup>6</sup> Throughout the pamphlet, Ferne demonstrate an awareness of the accusation, such as that voiced by Milton in *Of Reformation touching Church Discipline in England* (1641), that by forbidding all resistance to a monarch, he might encourage tyranny on the part of the king (*Resolving*, 183). He insists that this is a false imputation “laid upon the Divines of this Kingdom & upon all those that appear for the king in this cause, that they endeavour to defend an absolute power in him, and to raise him to an Arbitray way of government” (*Resolving*, 183). While royalist writers do argue that it is unlawful to violently rebel against the king, Ferne insists that his argument does not encourage tyranny since he allows passive disobedience to commands that contradict divine law and established positive law: “we may & ought to deny obedience to such commands of the Prince, as are unlawfull by the law of God yea, by the established Laws of the Land” (*Resolving*, 183).

Turning first to the general question of resistance, Ferne begins by arguing that a subject cannot violently attack his monarch even when directly threatened: “Personall defence is lawfull against the sudden and illegall assaults of [...] the Prince himself thus far, to ward his blowes, to hold his hands, and the like: not to endanger his person, not to return his blows, no; for though it be naturall to defend a man’s self, yet the whole Common-wealth is concerned in his person [the king’s].”<sup>7</sup> As we will see, Parliamentary writers claimed a right of self-defense derived from natural law. To counter this argument, Ferne reiterates the point made by James I, amongst others, that private subjects never have the right to rebel against the sovereign. More specifically, since the safety of the entire kingdom is at stake when the king is under attack, Ferne argues that rebellion against the king is a strike against the “order which is the life of a Commonwealth.”<sup>8</sup> Ferne turns to the analogy between the physical body and the body politic to defend this line of reasoning. For Parliament to violently rebel against the king is like one part of the body to be “set against the Head and another part of the same body”; the well-being of the entire body is put in danger by such violence.<sup>9</sup> Here, Ferne uses one of the standard images for government to show that any argument for violent resistance based on the right of self-defense needs to be understood as against the subjects’ own interests since it dissolves the peace and stability of the commonwealth

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<sup>7</sup> Ferne, *Resolving*, 187; emphasis mine.

<sup>8</sup> *Loc. cit.*

<sup>9</sup> *Loc. cit.*

itself. While passive “Personall defence may be without all offence, and does not strike at the order and power that is over us,” armed rebellion “cannot be without many unjust violences, and does immediately strike at that order which is the life of a commonwealth.”<sup>10</sup> That is, the right of individual violent self-defense is curtailed by the need to consider the good of the entire commonwealth. For Ferne, the interests of the commonwealth are concentrated in the person of the king just as the interests of a physical body are concentrated in its head. The image of the body politic with the king as its head was of course an old one by the time of the Stuart monarchy, but what I want to point out at this point is Ferne’s use of this image to identify the interests of each subject with those of the king via the interest of each member of the body politic with the good of the commonwealth.

In response to Ferne’s formulation of the good of the commonwealth, the Presbyterian minister Charles Herle produced two answers to the *Resolving of Conscience*. In his second and longer reply, *A Fuller Answer to a Treatise Written by Doctor Ferne* (29 December 1642), Herle begins by explaining that England is not ruled by the king alone. The English monarchy is truly a mixed form of government comprised of king and two houses of Parliament.<sup>11</sup> Herle presents a corporate view of English government: on the

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<sup>10</sup> *Loc. cit.*

<sup>11</sup> “England’s is not simply a *subordinative* and *absolute*, but a *Coordinative*, and *mixt Monarchy*. [...] here the *Monarchy*, or *highest* power is itself *compounded* of 3 *Coordinate Estates*, a *King*, and two *Houses* of Parliament; unto this *mixt* power no *subordinate* authority may in any case make *resistance*” (Charles Herle, *A Fuller Answer to a Treatise Written by Doctor Ferne* in Joyce Lee Malcolm, ed., *The Struggle for Sovereignty: Seventeenth*



one hand, each member of Parliament, individually, is to be considered a subject of the king, and thus inferior to his sovereign, but, on the other hand, when all the members of Parliaments are considered collectively, as constituting the two Houses, they are not inferior to the monarch. Thus, according to Herle, Ferne's arguments against the lawfulness of subjects rebelling against the king are not applicable to the situation in England. The Parliament is not a subject of the king, "because the King is a part, and so hee should be *subject* to himself: no, nor are the *two Houses* without him *Subjects*; every member *seorsim*, taken *severally*, is a *Subject*, but all *collectim* in their *Houses* are not."<sup>12</sup> How is it possible for members of Parliament to be both subject to, when considered individually, and coordinate with, when considered collectively, the power of the king? Herle here draws a crucial distinction. It is not the king's writ calling Parliament that "unsubjects" them, but rather it is by nature of the very constitution of the English commonwealth originally consented to by the people and the king: "it was the *consent* of both *King* and *people*, in the first *coalition* or *constitution* of the *Government*, that makes them in their severall *Houses* *coordinate* with his *Majesty*, not *subordinate* to him."<sup>13</sup> This original and fundamental consent is necessary to constitute a given form of government.

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*Century English Political Tracts* (Indianapolis: Liberty Fund, 1999), I:228). According to Tuck, in *Philosophy and Government*, Herle's focus on the role of the mixed constitution of England is a feature common to Presbyterian writers (Richard Tuck, *Philosophy and Government: 1572-1651* (Cambridge: Cambridge University Press, 1993), 234-5).

<sup>12</sup> Herle, *A Fuller Answer*, 228-9; emphasis original.

<sup>13</sup> *Ibid.*, 229; emphasis original.

While *that* societies must be organized under a government to ensure their safety is “God’s institution and morall,” the specific form of government and the given distribution of power is agreed upon by each people to be governed.<sup>14</sup> It is therefore not surprising that a member of Parliament may be, at once, both subject to and coordinate in power with the king. Herle, unlike the writers we will consider below, does not describe how governments were first formed by the people. The focus of his argument is to demonstrate how supreme power in a commonwealth can be coordinately shared by Parliament and the king and that this coordinate power of the houses is founded, as is the power of the king, on an original act of consent.

To make this claim, Herle has to counter the analogies used by royalist writers to formulate the relationship between subjects and ruler. In Ferne’s writing, we have briefly seen one of the standard images, the commonwealth represented as a body with the king as its head. Two other images were commonly used: the king as husband with the subjects, collectively, as his wife; and the king as father with the subjects as his children. Herle turns to this last analogy to counter Ferne’s use of the image of the body politic. To better explain the double nature of a member of Parliament, as both a subject and coordinate sovereign power, Herle likens the king and the Parliament to a father

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<sup>14</sup> *Ibid.*, 231. Herle quotes Fortescue to support his claim that the specific arrangement of power in a given state is agreed upon and given by the people: “*Hance potestatem à populo efluxam Rex habet* (as Fortescue before) the qualification of the power is an *efflux* of the people’s *consent*, as the power itself (as the Doctor tells us) an *efflux* of God’s *Providence*; and to say truth, he himself acknowledges as much, confessing, *That no particular forme of government is, jure divino, it must be then humano sure, from the people’s consent!*” (231-2; emphasis original).

and son jointly holding lands in trust: “a *Father* and a *Sonne* are by a deed of *enfoement* jointly entrusted with *certain Lands* to uses, the *Sonne* is still *subordinate* to the *Father* as a *Sonne*; but as *Foefee*, in the *trust*, he is not *subject* but *coordinate* and joint with him.”<sup>15</sup> The legal trust gives the son a new identity as foefee. And, crucially for Herle’s argument, this legal identity is not dependent on the father’s authority. This reinforces the claim that it is not king’s writ that “unsubjects” the members of Parliament, but rather the legal framework of the trust itself. Moreover, the example of a legal trust on “certain Lands” develops into a tirade addressed to the House of Lords, whose members should uphold their traditional role as co-sharers in the political power of England. The Lords are the “*Conciliarii nati*,” the born councilors of the State, and in them “their shares both of *trust and interest* in this *Supremacy* of power in Parliament, the very *constitution* itself of the government hath *invested* their very *blood* with.”<sup>16</sup> For the members of the House of Lords, their “trust and interest” in government is hereditary, acquired and preserved by their “*Fathers* with so much of their care [...] and so much of their *bloud*,” and to be passed on through their own blood.<sup>17</sup> Herle counters the royalist claims of patriarchal monarchy with the claims of hereditary trust. By blindly obeying the tyrannical rule of the king, the members of the Lords betray the trust vested in their own families and preserved by their fathers. Using the language of legal trusts, allows Herle to create a

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<sup>15</sup> Herle, *A Fuller Answer*, 230; emphasis original.

<sup>16</sup> Herle, *A Fuller Answer*, 230-1; underlining mine.

<sup>17</sup> *Ibid.*, 231; emphasis original.

model not only for the relationship between Parliament and king, but also for that between Parliament and subjects. In the analogy of the lands held on trust, both the king and Parliament are in the same legal relationship with the subjects.

Moreover, the language of a legal trust allows Herle to redirect to his advantage a term used in Ferne's own argument. In the title page of *Resolving of Conscience*, Ferne uses the language of trust to introduce the question of whether active resistance is ever lawful: "Whether upon such a Supposition or Case, as is now usually made (The King will not discharge his trust but is bent or seduced to subvert Religion, Laws, and Liberties) Subjects may take Arms and resist?"<sup>18</sup> Here, the opposition is between a king who will "discharge his trust" and one who will act tyrannically to "subvert Religion, Laws, and Liberties." But what exactly is the king's trust according to Ferne? As Richard Tuck argues in *Natural Rights Theories*, the language of trust could prove dangerous for royalist writers. If the king held sovereign power in trust from the people, it could be argued that the people could reclaim such power whenever the trust was not fulfilled. That was, after all, the distinction between trust and alienation.<sup>19</sup> In *Resolving of Conscience*, Ferne attempts to contain this dangerous implication. The king does indeed hold his power by trust, but not from the people: "Seeing some must be trusted in every State, 'tis reason the highest and final trust should be in the higher or supreme Power

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<sup>18</sup> Ferne, *Resolving*, 179; emphasis mine.

<sup>19</sup> Richard Tuck, *Natural Rights Theories: Their Origin and Development* (Cambridge: Cambridge University Press, 1979), 146-7.

with whom next to himself God hath intrusted the whole Kingdom, all other have power and trust, having it under him as sent by him.”<sup>20</sup> This passage uses the term “trust” in two distinct, but closely intertwined, senses. On the one hand, it establishes that the kingdom has been entrusted to the king directly from God. With this move, Ferne accounts for the revocability implicit in the concept of a trust by insisting that only God can hold the king accountable. Moreover, since all other power in the commonwealth derives from the king’s own trust, the king has the right to revoke it at will.

On the other hand, the passage registers the use of the language of trust made by the advocates of resistance by acknowledging that “some must be trusted in every State.” In doing so, Ferne relies on his description of the mutual trust between king and Parliament that precedes this passage. There, Ferne begins by arguing that the primary duty of the king is to ensure the safety of the Commonwealth.<sup>21</sup> In England, safety is provided by the fundamental laws of the land and by the balance of the king’s negative voice with that of the two houses of Parliament.<sup>22</sup> Each Estate (king, Lords, and

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<sup>20</sup> Ferne, *Resolving*, 205; emphasis mine.

<sup>21</sup> See: Ferne, *The Resolving of Conscience*, 202. This much was agreed upon by writers on both sides of the debate. For Herle’s version of this argument, see *A Fuller Answer*, 232.

<sup>22</sup> Ferne, *Resolving*, 202. The language of the fundamental laws of England had been primarily used by Parliamentarian authors to justify action against the king’s authority. The term “fundamental law” was used to invoke the idea that there were fundamental liberties which the law of England existed to promote. In case of emergency, Parliament could act against the letter of the law in order to follow preserve these liberties. The seminal study of the ancient constitution and the fundamental law of England, the two terms sometimes used interchangeably, is J.G. A. Pocock, *Ancient Constitution and the Feudal Law: A Study of English Historical Thought in the Seventeenth Century: A Reissue with a Retrospect* (Cambridge: Cambridge University

Commons) has a negative voice in the enacting of legislation and no two Estates can pass a law without the approval of the third.<sup>23</sup> This balanced structure gives the English Parliament its “excellent temper” and prevents the “distractions and convulsions of the whole Commonwealth, as the distempers in a naturall body.”<sup>24</sup> The safety of the commonwealth is preserved by keeping the three elements of the legislative power in balance. In particular, denying the king his negative voice in legislation would impair his ability to discharge his trust and safeguard the well-being of the commonwealth. Thus a question of royal prerogative, negative voice, is recast in terms of the safety of the kingdom. With this understanding of the balance of the three estates, Ferne turns to the question of trust between king and the two Houses. Here, the focus of the passage shifts from the question of how the king may discharge his trust to the question of the two

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Press, 1957, 1987). See in particular, pages 48-9 for Parliament’s evolving use of the term “fundamental law.” For the appeal to the language of the fundamental law in times of emergency or “necessity,” see Glenn Burgess, *The Politics of the Ancient Constitution: An Introduction to English Political Thought, 1603-1642* (University Park: Pennsylvania State University Press, 1993), 222-5.

<sup>23</sup> Ferne, *Resolving*, 202. Here Ferne argues against the calls for denying the king his negative voice in Parliament. On the quick change in the Parliamentary position on the king’s negative voice, see Quentin Skinner, *Vision of Politics* (Cambridge: Cambridge University Press, 2002) II:326-32. That in England legislative power is in normal times placed in king and Parliament acting together is granted by Parliamentary writers. Even in the Declaration of 19 May 1642, Parliament still officially accepted that “this Nation hath intrusted certain hands with a Power to provide in an orderly and regular way, for the good and safetie of the whole, which power, by the Constitution of this Kingdome, is in his Majestie and in his Parliament together” (Edward Husbands, T. Warrant T., and R. Best, *An Exact Collection* (London, 1643), 207; quoted in Skinner, *Vision of Politics* II:329). Moreover, Skinner points out that the language of the Three Estates of Parliament was adjusted to indicated king, Lords, and Commons (rather than Commons, Lords Temporal, and Lord Secular) after the exclusion of the bishops in February 1642 (*Vision of Politics* II:329, n. 129).

<sup>24</sup> Ferne, *Resolving*, 202.

Houses trusting the king and of the king trusting the two Houses. While the balance of the three “powers of denying” is for the security of the entire commonwealth, it is also “for the security of each State against other, of the Commons against the King and Lords, of the Lords against them: and must the King trust only, and not be trusted? Must not he also have his security against the other, which he cannot have but by Power of denying?”<sup>25</sup> The Parliament’s arguments against the king’s prerogative are thus recast in terms of an unreasonable lack of trust. That is, Parliament is asking the king to surrender his right to a negative voice in the legislative process without any equivalent guarantee on the part of the other Estates. It is an abuse of the trust that the king has in them and it is reflected in their attempts to shake the trust that the people have in the king: “the principles now taught to render their Prince odious to his people under the hateful notions of Tyrant, Subverter of Religion, and Laws, a Person not to be trusted.”<sup>26</sup> Thus, while Ferne uses the language of (simple) trust between subjects and the sovereign as well as between Parliament and king, he subordinates it to the language of legal trust between God and king. In this use, Parliament’s power is dependent on the divinely sanctioned royal power.

Herle’s analogy between the relationship of king and Parliament and that of father and son holding a land trust jointly is meant to counter Ferne’s formulation of

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<sup>25</sup> Ferne, *Resolving*, 202; emphasis mine.

<sup>26</sup> *Ibid.*, 214; emphasis mine.

sovereign power as a divine trust. Moreover, it also grounds the notion of sovereign power, and the possibility of rebelling against it, in terms of customary and historically informed structures. This allows Herle to accuse the royalist of giving a formulation of sovereign power which breaks the bonds of justice in the commonwealth. To flesh out the logic of Herle's move, I briefly turn to Coke's discussion of land trusts and to his use of the language of trust in defining the role of Parliament with respect to the king's legislative power. In the first part of *The Institutes of the Laws of England*, Coke elucidates the term "use" of land by specifying that: "an use is a trust or confidence reposed in some other, which is not issuing out of the land, but as a thing collateral, annexed in privities to the estate of the land, and to the person touching the land, *scilicet*, that *cesty que use* [the beneficiary] shall take the profit, and that the terre-tenant [the trustee] shall make an estate according to his direction."<sup>27</sup> That is, the property is transferred to the trustee, who then becomes the legal owner of the land in trust of the beneficiary (*cesty que use*).<sup>28</sup> Originally, a trust was simply a formalized confidence devised to circumvent

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<sup>27</sup> Lib. 3, Cap. 8. Sect. 464. Edward Coke, *The first part of the Institutes of the laws of England, or, A commentary upon Littleton*, ed. Charles Butler (Philadelphia: Robert H. Small, 1853), vol. 2. *The Making of Modern Law*. Gale. 2011. Gale, Cengage Learning. December 15, 2010. <http://galenet.galegroup.com.proxy.lib.duke.edu/servlet/MOML?af=RN&ae=F100339225&srcht=a&ste=14>. On the issue of the adoption of the term "trust" after the *Statute of Uses 1535* to denote what had previously been called a use, see J. H. Baker, "The Three Languages of the Common Law," *McGill Law Journal* 43 (1998): 10.

<sup>28</sup> The term is an abbreviation of *cestui a qui oes le feffement fut fait*, that is, "the person for whose benefit the feoffment was made." The Old French "oes" degenerated to "use" in English law or, at times, the expression is changed to "cestui que trust" (*The Collected Papers of Frederic William Maitland*, ed. H. A. L. Fisher, 3 vols. (Cambridge: Cambridge University Press, 1911), III:343, n. 1).



restrictions on the transfer of land.<sup>29</sup> As Coke goes on to explain, the beneficiary would originally have no enforceable right, *jus*, to the land: “So as *cesty que use* had neither *jus in re*, nor *jus ad rem*, but only a confidence and trust, for which he had no remedie by the common law, but for breach of trust his remedie was only by subpoena in chancerie.”<sup>30</sup> The beneficiary was seen as having a right not in the land itself, but rather in the person of the trustee, in whom he reposed “confidence and trust.”<sup>31</sup> But by the time Coke is writing, the “trust and confidence” of a beneficiary is a recognized claim upon the person of the trustee that can be defended in the court of Chancery.<sup>32</sup>

How does this compare to the language of trust used by Ferne and Herle in their discussion of sovereign power? Coke uses the formula “trust and confidence” in his

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<sup>29</sup> See, Stuart E. Prall, “The Development of Equity in Tudor England,” *The American Journal of Legal History* 8 (1964):10.

<sup>30</sup> Lib. 3, Cap. 8. Sect. 464. Coke, *The first part of the Institutes*. The history and the development of *uses* is a complex subject outside the scope of the present argument. For a sketch of some of the pressures on the development of *uses*, see J. H. Baker, “English Law and the Renaissance,” *The Cambridge Law Journal* 44 (1985): 48.

<sup>31</sup> More precisely, *jus ad rem* indicated a proper right to the land recognized by common law and therefore adjudicated, in case of a dispute, in common law courts. On the other hand, *ad personam* would indicate a claim on the person which could be enforced by recourse to a prerogative court, such as Chancery (Prall, “The Development of Equity in Tudor England,” 18).

<sup>32</sup> The question of jurisdiction of the court of Chancery, and other prerogative courts, with respect to the jurisdiction of common law courts had a long history of dispute by the time of Coke’s writing. Alan Cromartie points to Christopher St. Germain, in *A Dialogue Betwixt a Doctor of Divinity and a Student of the Common Laws of England* (1528), as insisting that the equity court of Chancery could not undo a finding of the common law court. Here, the meddling of Chancery is seen as inappropriate appeal to natural law: “[a]ppeals to natural law were out of place in questions that the judges [in common law courts] had decided, because decision by the bench had taken natural law into account” (“The Constitutional Revolution: The Transformation of Political Culture in Early Stuart England,” *Past and Present* 163 (May, 1999): 82. For a history of the dispute, see Prall, “The Development of Equity in Tudor England,” 1-19. Of particular interest, is Henry VIII’s willingness to restrict the jurisdiction of the Chancery through the Statute of Uses in 1536 in order to “eliminate the Use entirely because it denied him his feudal rights of escheat, forfeiture, wardship, and marriage” (10).

discussion of Parliament in the fourth part of the *Institutes*. In a general discussion of what causes Parliaments to fail in fulfilling their function, Coke puts disagreement between monarch and either House as the first cause of failure. As an example of the importance of concord between king and Parliament, he cites the example of Edward III:

So essential is the kings good will towards his commons that it was one of the petitions of the commons to the king, that he would require the archbish. and all others of the clergy to pray for his estate, for the peace and good government of the land, for the continuance of the kings good will towards his commons: whereunto the thrice noble king assented with these effectuall words, The same prayeth the king: and many times the like petitions for the lords. How the king in all his weighty affairs had used the advice of his lords and commons, (so great a trust and confidence he had in them.) Alwaies provided, that both lords and commons keep them within the circle of the law and custome of the parliament.<sup>33</sup>

The king's trust of the Commons is essential to the functioning of Parliament and to the good of the commonwealth. And indeed, in this excerpt, we find Edward III attesting to his "trust and confidence" in both Lords and Commons. The added clause, that the king extends his trust only so far as "both lords and commons keep [their advice] within the circle of the law and custome of the parliament," is left without immediate comment in this section of the *Institutes*. However, the first chapter of the fourth part of the *Institutes* is in itself a setting in writing of what constitutes "the law and custome of the Parliament" — a setting down that both comments on and is supported by the historical

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<sup>33</sup> Edward Coke, *The fourth part of the Institutes of the laws of England: concerning the jurisdiction of courts*, (London: W. Clarke, 1817), 35. *The Making of Modern Law*. Gale. 2011. Gale, Cengage Learning. December 15, 2010.  
<http://galenet.galegroup.com.proxy.lib.duke.edu/servlet/MOML?af=RN&ae=F100535417&srcht=a&ste=14>; emphasis mine.

records of law and acts of Parliament. What is the role of this historical accumulation of law? J. G. A. Pocock had originally argued in *The Ancient Constitution and the Feudal Law* that Coke's, and consequently most common lawyers', conception of the law as immemorial focused on its unchanging nature.<sup>34</sup> In Coke's thought, "the identification of past and present was complete, and the possibility that the idea of custom might give rise to ideas of law being in continuous development was altogether suppressed."<sup>35</sup> This original statement is clarified and partially revised by Pocock in his 1986 *Retrospect*. Here, in response to criticism that his original description of the "common-law mind" over-emphasizes the myth of an immemorial constitution, Pocock clarifies the notion of custom as held by common lawyers: "the notion of custom, which could imply adaptation, was employed to imply preservation [...]. Yet my intention seems to me now (and has long seemed) to have been to state less that the whole body of law was held to be immemorial than any element in it could be held immemorial at will."<sup>36</sup> This revision of Pocock's original reading of Coke and the idea of the ancient constitution has been elaborated by both Glenn Burgess, in *The Politics of the Ancient Constitution*, and by Richard Helgerson, in *Forms of Nationhood*. Burgess emphasizes Pocock's concession that

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<sup>34</sup> For Pocock, the idea of the an ancient constitution proved attractive to both common lawyers and Parliamentary writers alike because a body of law in existence since time immemorial could not have been legislated by any king and therefore could not be changed by a king (J. G. A. Pocock, *The Ancient Constitution and the Feudal Law*, 51).

<sup>35</sup> *Ibid.*, 45.

<sup>36</sup> Pocock, *The Ancient Constitution*, 275. Here, Pocock is responding, in particular, to Richard Tuck's criticism of his original view of the ancient constitution as not taking into account the influence of continental, and particularly French, legal theory (274).

custom could be viewed as evolving to argue that Coke's view did allow for historical development of the law: "English law had been tested by several generation of fine minds, added to and altered, so that the end product was perfectly fitted to the needs of the nation. [...] when Pocock says that the common lawyers view of law as evolving custom was paradoxical in that it implied both evolution and immutability he mistook the fact that Coke tried to graft Fortescue's historical simplicities onto complex historical views that he espoused elsewhere for a more universal problem."<sup>37</sup> In Burgess' view, Coke does not lack a picture of historical change. Finally, Richard Helgerson argues in *Forms of Nationhood* that the preponderance of precedents and the appeal to varied authorities in Coke's *Institutes* is the embodiment of the idea that common law "dates back to time out of mind, but it has been revealed in many cases, many statutes, and many books, of which Littleton is only one."<sup>38</sup> From this debate over common lawyers'

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<sup>37</sup> Glenn Burgess, *The Politics of the Ancient Constitution*, 73.

<sup>38</sup> Richard Helgerson, *Forms of Nationhood: The Elizabethan Writing of England* (Chicago: University of Chicago Press, 1992), 97. Chapter two of *Forms of Nationhood* presents a helpful treatment of Coke and common law with respect to the reception of Roman law on the continent. In particular, Helgerson picks up the argument over the status of English common law vis-à-vis civil law begun with Maitland's claims about the reception of Roman civil law in the Rede Lecture for 1901, "English Law and the Renaissance," and subsequently challenged by Baker in "English Law and the Renaissance" (see, especially, page 50). For Helgerson, the claim made by seventeenth-century common lawyers that English law was special and that it particularly protected the subject against tyranny, unlike Roman civil law, has its origins in John Fortescue's *De Laudibus Legum Angliae* (1470) (*Forms of Nationhood*, 65-9). While England resisted the reception of Roman law, it did receive "a Roman idea of the form in which the law should present itself" (69). It is in response to this idea, and in opposition to Bacon's claim that the writing of the law belongs to the monarch, that Coke writes the *Reports* (1600-15) and the *Institutes* (1628-44) (*Forms of Nationhood*, 69-77). While the first part of Coke's *Institutes* presents itself as a commentary on Littleton's *Tenures* (1482), Coke includes what is noticeably absent from Littleton, precedents and reports of cases as essential part of the commentary (*Forms of Nationhood*, 90-3). While common law may be traced back as the law of the land for "time immemorial" it has also "been tested by several generations of fine minds, added to and altered, so that the end product

understanding of historical development, what is clear is that in all of these formulations the crucial fact about common law is that it is not dependent on the legislative power of the sovereign. It is rather dependent on custom, either as an unchanging, unwritten, immemorial constitution revealed through court cases or as a historically developing body of law produced by the judgments of the courts over time. Crucially, to return to the passage from Coke quoted above, the relationship of trust between king and Parliament was adjudicated by a body of laws that had reference outside the will of the sovereign and an unverifiable divine trust.

While in Coke's formulation, the relationship between king and Parliament can only be understood by studying the cumulative framework of legal precedent, in Ferne's version, the appeal to a trust from God to the sovereign excludes the possibility of an appeal to established custom or law.<sup>39</sup> And indeed, Herle is quick to point out the

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was perfectly fitted to the needs of the nation. In addition the laws themselves embodied a wisdom [to be understood by lawyers through the acquisition of the "artificial reason" of the law] superior to the natural reason of any individual mind" (*Forms of Nationhood*, 73). On the issue of the reception, see also Baker, in "English Law and the Renaissance," who, on the other hand, argues against the distinction between continent and England in terms of the reception of Roman law in "English Law and the Renaissance." Baker sees a shift in the mode of law writing—in which precedents are increasingly recorded—in both the continent and England in the sixteenth century: "On the Continent the change is marked by the increasing publication of *decisions*, and in England—where law reporting had passed through an earlier stage—by the greater decisiveness of reports such as Plowden's and Coke's. It is also reflected in the English textbooks. Littleton relied on reason and common learning, and disdained to cite precedents. Sir William Staundford (1509-58), holding the same judicial office as Littleton less than a century later, wrote books so crammed with references and quotations that he seemed incapable of venturing an opinion unless it could be derived from someone else" (59).

<sup>39</sup> Ferne, as typical of royalist writers, relies heavily on Romans 13, and especially Romans 13.1 ("Let every soul be subjects unto the higher powers. For there is no power but of God: the powers that be are ordained

absolutist consequences of this understanding of royal power: "It was but a while since good *Pulpit stuff* with *Court-Doctors*, *That safety being the end of Government, and the King the only by God solely entrusted with it, he was not bound by or to any human Lawes in the managing it to that it's end; he was to use whatever the result of his owne judgement concluded fit and conducing thereunto.*"<sup>40</sup> That is, the king fulfills his divine trust as long as he acts to guard the safety of the kingdom. In Herle's hostile formulation, this understanding of

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by God"), for his argument against rebellion (see, for instance, pp. 185, 189, 193, 195, 197, 199, and 203). His reading of the verse is summed up in a clear passage in the first section of *The Resolving of Conscience*: "[I]f Conscience be perswaded he [the Prince] does not hold himselfe within those bounds so fixed [by Law], can it be perswaded that the people may re-assume that power they never had [Ferne denies that sovereign power originally resided in the people]? Or take that sword out of his hand that God hath put into it? No, Conscience will look at that Power as the Ordinance of God, and that abuse of that Power as a judgment and scourge of God upon the people, and will use not Arms to resist the Ordinance under pretence of resisting the abuse, but cut cries and prayers to God, petitions to the Prince, denials of obedience to his unjust commands, denials of Subsidies, aids, and all fair means that are fit for Subjects to use, and when done all, if not succeed, will rather suffer than resist" (206). Here, Ferne is rehearsing Lutheran arguments for obedience to sovereign powers which found its way into England in the sixteenth-century especially through the works of Tyndale, Barnes, and Melancthon (see, Quentin Skinner, *The Foundations of Modern Political Thought*, 2 vols. (Cambridge: Cambridge University Press, 1978), II:65-108). In particular, Tyndale, in *The Obedience of a Christian Man*, uses Paul's language (*Foundations*, II:66-7). All of these writers follow Luther's idea that while a subject should not obey a ruler's commands if they contradict divine law, the subjects cannot actively resist their lawful prince (*Foundations*, II:70). In opposition to Lutheran strictures against rebellion, Calvinist resistance theory, broadly speaking, came to argue that in case even a legitimate ruler proved tyrannical, inferior magistrates could resist the tyrant (this is the thrust of Skinner's argument in *The Foundations of Modern Political Thought*, vol. II, especially part 3). As we will see, this position will be advocated by Presbyterian writers during the Civil Wars and Milton will have to contend with it in his regicide tracts when justifying the execution of the king in the face of wide-spread opposition in the House of Commons. The 1640 *Constitution and canon ecclesiasticall* gave official church sanction to Ferne's view "THE most High and Sacred order of Kings is of Divine right, being the ordinance of God himself, founded in the prime Laws of nature, and clearly established by expresse texts both of the old and new Testaments" (*Constitutions and canons ecclesiasticall; treated upon by the Archbishops of Canterbury and York, presidents of the convocations for the respective provinces of Canterbury and York, and the rest of the bishops and clergie of those provinces; and agreed upon with the Kings Majesties licence in their severall synods begun at London and York.* (London, 1640), page 12. Early English Books Online. December 10, 2010.

[http://gateway.proquest.com.proxy.lib.duke.edu/openurl?ctx\\_ver=Z39.88-2003&res\\_id=xri:eebo&rft\\_id=xri:eebo:citation:99835843](http://gateway.proquest.com.proxy.lib.duke.edu/openurl?ctx_ver=Z39.88-2003&res_id=xri:eebo&rft_id=xri:eebo:citation:99835843)).

<sup>40</sup> Herle *A Fuller Answer*, 232; italics original.

the role of the king as a trustee for the commonwealth allows any royalist theorist who embraces it to claim that the trust between sovereign and God supersedes all other legal or promissory commitments on the part of the king:

*he was not bound to keepe any Oath he took to the people to be ruled therein by Law; there could be no commutative justice between him and them, only distributive from him to them, so that all they had was his, to the very parings of their nails, his Oath was but a peece of his Coronation show, he might take it today and breake it tomorrow without perjury, because he was under a former and higher obligation to God (by whom only he was trusted, and to whom only accountable) to use whatever means he should thinke conducing to the end for which he had it only from God: that the Salus populi committed only by God, and solely to Him, was a Law between God and him only.<sup>41</sup>*

In this passage, Herle depicts a breakdown of justice. By claiming to be accountable only to God, the king places himself outside of the confines of commutative justice that bind each of his subjects to one another.<sup>42</sup> While the king is to be trusted by his subjects, he cannot be held accountable through the system of justice because sovereign power is directly entrusted from God. According to Herle, the royalist position removes all reciprocal relationships between subjects and king. The absolutist tyrant described by the version of royalist propaganda in Herle's argument divides society into two

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<sup>41</sup> Herle, *A Fuller Answer*, 232. Henry Parker, in *The case of shipmony briefly discoursed* (published on Nov. 3, 1640, the opening of the Long Parliament), leveled the same accusation to royalist writers (Henry Parker, *The case of shipmony briefly discoursed, according to the grounds of law, policie, and conscience and most humbly presented to the censure and correction of the High Court of Parliament*, Nov. 3. 1640, 33-4. Early English Books Online. Huntington Library and Art Gallery (San Marino, CA). December 10, 2010. [http://gateway.proquest.com.proxy.lib.duke.edu/openurl?ctx\\_ver=Z39.88-2003&res\\_id=xri:eebo&rft\\_id=xri:eebo:citation:99849230](http://gateway.proquest.com.proxy.lib.duke.edu/openurl?ctx_ver=Z39.88-2003&res_id=xri:eebo&rft_id=xri:eebo:citation:99849230)).

<sup>42</sup> Aristotle's definition of commutative justice clarifies Herle's accusation: "When people associate with one another for the purpose of exchange, however, this kind of justice [commutative]—reciprocity in accordance with proportion, not equality—is what binds them together, since a city is kept together by proportionate reciprocation. For people seek to return either evil for evil—otherwise they feel like slaves—or good for good—otherwise no exchange takes place, and it is exchange that holds them together" (1133a).

incommensurable segments. On one hand, we find the king, capable of dealing distributive justice to his subjects, and on the other hand, we find all the subjects, who can enter reciprocal contracts and promises with each other, and are thus governed by commutative justice, but who cannot expect to be in a relationship of commutative justice with the king. Herle is left asking whether the king “owes no duty to man at all?”<sup>43</sup> What disappears from view in this version of the royalist stance is the framework of justice based on the accrual of custom and law as presented by Coke.

Clearly, Herle’s portrayal of the royalist position is deeply hostile; those who wrote in defense of Charles’ policies did not argue that the king was free to act in opposition of established law as a matter of course. The king was bound to follow the law unless the safety of the state, *salus populi*, required him to do otherwise. This can be seen throughout *The Resolving of Conscience*. For Ferne, the coronation oath places “a great obligation” upon the king; it is not “*but a peece of his Coronation show, he might take it today and breake it tomorrow without perjury.*”<sup>44</sup> Nonetheless, Ferne gives no remedy, other than passive resistance, to the subjects of a ruler who tyrannically breaks his promises. Moreover, some royalist formulations of the king’s power did, as Herle

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<sup>43</sup> Herle, *A Fuller Answer*, 233.

<sup>44</sup> Ferne, *Resolving*, 199. In his 21 March 1610 speech, James I makes a similar point by asserting that in a settled kingdom, “the King becomes to be *Lex loquens*, after a sort, binding himselfe by a double oath to the observation of the fundamentall Lawes of his Kingdome” (*Political Writings*, 183). Here, James is both conceding that a king is bound, “after a sort,” by his oaths, but, at the same time, he quotes a maxim of Justinian’s *Institutes* to claim that the king is *lex loquens* (for James I’s and Lord Chancellor Ellesmere’s use of this saying, see Helgerson, *Forms of Nationhood*, 84, especially note 34).



accuses, exclude the possibility of delimiting the king's power by law, as seen in

Attorney-General Heath's statement in the Five Knights' case that the king

is the head of the same fountain of justice, which your Lordship administers to all his subjects. All justice is derived from him, and what he doth, he doth not as a private person, but as the head of the commonwealth, as *justicarius regni*, yea, the very essence of justice under God upon earth is in him. And shall we generally, not as subjects only, but as lawyers, who govern themselves by the rule of the law, not submit to his command, but make enquires whether they be lawful, and say that the King doth this or that in course of justice? [...] who shall call in question the actions or the justice of the king, who is not to give any account of them?<sup>45</sup>

In this statement, no subject, including lawyers, may question the legality of the king's actions. Indeed, the only way for subjects to "govern themselves by the rule of the law" is to obey the king without question. This line of argument, describing the king as the "fountain of justice" and thus not to be questioned, is for Herle and, as we will see, for Henry Parker, a dangerous excuse for tyranny. A king who is not bound by laws cannot be a just ruler.

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<sup>45</sup> Samuel Rawson Gardiner, ed., *The constitutional documents of the Puritan Revolution, 1625-1660* (Oxford: Clarendon Press, 1889), 60; underlining mine. This passage is partially quoted in Glenn Burgess in *The Politics of the Ancient Constitution*. Here, Burgess argues that under James I there was a "Jacobean consensus" in which kings were seen as "having an ordinary, legal prerogative—this they exercised through the common law because it was part of that law. But they also had an absolute prerogative, they were also God's lieutenants on earth, and in these capacities they could act outside the common law" (89; see also 140 and 144-5). This consensus fell apart when Charles I and his Attorney-General Heath extended royal prerogative to legal territory previously considered protected by common law. For an opposing view, see J. P. Sommerville, "The Ancient Constitution Reassessed" in R. Malcolm Smuts, ed., *The Stuart Court and Europe: Essays in Politics and Political Culture* (Cambridge: Cambridge University Press, 1996), 64. Sommerville does not see evidence for a "Jacobean consensus" on the issue of royal prerogative and traces the debates that became prominent during Charles reign to the reign of James I.

### 3.2 Henry Parker and the Origins of Government

Ferne's *Resolving of Conscience* is written in reaction to Henry Parker's *Observations* and it is in Parker's highly influential pamphlet that we find the connections between law, justice, and the right to rebel against a tyrant worked out in detail.<sup>46</sup> Parker's *Observations* is, in turn, a reply to *His Majesties answer to [...] The declaration, or remonstrance of the Lords and Commons, the 19 of May, 1642*. The immediate issue behind both the king's *Answer* and Parker's *Observations* was the Militia Ordinance of 5 March 1642.<sup>47</sup> Insisting that it was acting according to the central principle of natural law, that of *salus populi* or the safety of the people, Parliament declared its right to raise a militia to defend the realm without the king, "if his Majesty should refuse to joyne with us therein, the two Houses of Parliament being the supream Court and highest councill of the Kingdome, were enabled by their owne authority to provide for the repulsing of such imminent, and evident danger."<sup>48</sup> The *Remonstrance* does concede that the power to

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<sup>46</sup> Austin Woolrych sums up the accepted view of the importance of the *Observations*: "It was the most influential and widely discussed statement of radical parliamentarian theory in all the proliferating pamphlet war of 1642" (*Britain in Revolution*, 223). On Henry Parker's role in shaping the Parliamentary position, see, for instance, Michael Mendle, *Henry Parker and the English Civil War: The Political Thought of the Public's "privado"* (Cambridge: Cambridge University Press, 1995), 100-1; Victoria Kahn, *Wayward Contracts: The Crisis of Political Obligation in England, 1640-1674* (Princeton: Princeton University Press, 2004), 174-5; Glenn Burgess, *The Politics of the Ancient Constitution*, 187, 229-30; and Richard Tuck, *Philosophy and Government*, 226-3.

<sup>47</sup> For a discussion of the two editions of the *Observations*—the shorter *Some Few Observations*, printed in June 1642, and the fuller, *Observations upon some of his majesties late answers and expresses*, printed in July 1642, both anonymous—and their attribution to Henry Parker, see Mendle, *Henry Parker and the English Civil War*, 70-89. For the importance of the Militia Ordinance in the development of Parliamentary rhetoric, see Tuck, *Philosophy and Government*, 224-32.

<sup>48</sup> *The declaration or remonstrance of the Lord and Commons in Parliament assembled with divers depositions and letters thereunto annexed* (London, 1642), 3. Early English Books Online. British Library (London). December

raise an army is not normally vested in the two Houses alone, it is in the king *in* Parliament. But by the “fundamentall Laws of this Kingdome,” whenever the Commonwealth is “deprived of the fruit of that trust which was in part reposed in” the king, the two Houses of Parliament may take over the executive power to avert an imminent danger.<sup>49</sup> Indeed, as the *Remonstrance* goes on to argue, if Parliament shirked its duty to raise a militia in times of grave danger, the kingdom would “returne to its first principle, and every man left to do what [is] aright in his own eye, without either guide or rule.”<sup>50</sup> That is, the actions of Parliament are not against the law because they are the necessary steps to prevent the dissolution of government in England. Countering these arguments, the king’s *Answer* to the *Remonstrance* is an attempt to reject both the immediate as well as the legal grounds for Parliament’s actions. It begins by denying the existence of any urgent threat to the realm and proceeds to remind Parliament that it

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10, 2010. [http://gateway.proquest.com.proxy.lib.duke.edu/openurl?ctx\\_ver=Z39.88-2003&res\\_id=xri:eebo&rft\\_id=xri:eebo:citation:13459946](http://gateway.proquest.com.proxy.lib.duke.edu/openurl?ctx_ver=Z39.88-2003&res_id=xri:eebo&rft_id=xri:eebo:citation:13459946). The warning against imminent danger is repeated throughout the *Remonstrance* of May 19<sup>th</sup>. Indeed, in its third section, Parliament goes on to argue that it has to raise a militia without the king’s approval in order to guarantee the safety of the king himself: “the Kingdome hath bin of late, and still is in so eminent danger both from enemies abroad, and a Popish and discontented partie at home, that there is an urgent and inevitable necessity of putting his Maiesties subjects into a posture of defence, for the safeguard both of his Maiesty, and his people” (14). For the origins of the phrase *salus populi suprema lex esto* in Roman legal philosophy and its use by Parliamentary writers, see Skinner, *Vision of Politics*, II:326.

<sup>49</sup> *Remonstrance*, 15.

<sup>50</sup> *Loc. cit.*

cannot enact legislation without the king.<sup>51</sup> Crucially, the *Answer* denies Parliament's legislative authority. While Parliament is indeed the highest court in the realm and it can thus decide any case brought before it, it does not have power to *make* laws without the king's assent.<sup>52</sup>

Parker's rejoinder to the king's *Answer* steps back from the immediate argument over the militia and focuses on the constitutional challenge posed to Parliament by the royalist position. The opening of the *Observations* is, therefore, a general discussion of Royal and Parliamentary power.<sup>53</sup> Parker begins by asking what the origin of political power is. While all power ultimately originates from God, the choice of a particular form of government is left to each nation, "God is no more the author of Regall, then of Aristocraticall power, nor of supream, then of subordinate command," and the laws that organize all modes of government are not divine ordinances, but "the Pactions and agreements of such and such politique corporations."<sup>54</sup> Thus, Parker argues, both

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<sup>51</sup> *His Majesties answer to a book, intituled, The declaration, or remonstrance of the Lords and Commons, the 19 of May, 1642* (Cambridge, 1642), 5-8. Early English Books Online. Trinity College Library (Cambridge). December 10, 2010. [http://gateway.proquest.com.proxy.lib.duke.edu/openurl?ctx\\_ver=Z39.88-2003&res\\_id=xri:eebo&rft\\_id=xri:eebo:citation:12229709](http://gateway.proquest.com.proxy.lib.duke.edu/openurl?ctx_ver=Z39.88-2003&res_id=xri:eebo&rft_id=xri:eebo:citation:12229709).

<sup>52</sup> *His Majesties answer to a book*, 19-20.

<sup>53</sup> Parker had given a more direct rejoinder to the royalists accusations in the king's answer to the declaration of May 19, 1642 with his *Some Few Observations*. For the differences between this earlier tract and the *Observations*, see Mendle, *Henry Parker and the English Civil War*, 82-5.

<sup>54</sup> Henry Parker, *Observations upon some of His Majesties late answers and expresses* (London, 1642), 1. Early English Books Online. (British Library, London). December 10, 2010. [http://gateway.proquest.com.proxy.lib.duke.edu/openurl?ctx\\_ver=Z39.88-2003&res\\_id=xri:eebo&rft\\_id=xri:eebo:citation:12684134](http://gateway.proquest.com.proxy.lib.duke.edu/openurl?ctx_ver=Z39.88-2003&res_id=xri:eebo&rft_id=xri:eebo:citation:12684134).

Richard Tuck draws a clear distinction between the view of "natural rights theorists" and Presbyterian Civil War writers on the origin of sovereign power: "While the natural rights theorists from Grotius onwards believed that any form of *dominium* was constituted by a transfer by humans of their own natural rights of

Parliament and the king derive their power from the people. This move allows Parker to claim that, when properly considered, Parliament's political and legislative power has the same origin as the king's: "Parliaments have the same efficient cause as monarchies, if not higher, for in the truth, the whole Kingdome is not so properly the Author as the essence it selfe of Parliaments."<sup>55</sup> Here Parker introduces a theme he will return to repeatedly: the power of Parliament is founded on its representative nature.<sup>56</sup> It is not immediately clear from this first formulation of the idea of representation, the kingdom as the "essence" of Parliament, what is the exact nature of the relationship between

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*dominium* over themselves and alien objects, the Presbyterians believed that the developed social forms of *dominium* were constituted by God as correlatives of his commandments, and in particular the commandments to punish evildoers and to honour parents" (*Natural Rights Theories*, 144). This kind of classification overly emphasizes the differences between writers who share much common ground. In general, Tuck's account in *Natural Rights Theories* and in *Philosophy and Government* is intent in fitting Henry Parker in a line of thinkers, starting with Grotius, who make a clear break with medieval accounts of natural law and right. Focusing on this narrative, Tuck emphasizes Parker's accounts of representation, the electoral nature of Parliament, and rights. Conversely, this leads Tuck to view Parker's communitarian account of slavery, to which I will turn below, as an "unwillingness" to "accep[t] individual inalienable rights," which in turn has to be explained away by a view of Parker as "theoretically and professionally committed to support the Army leaders" (*Natural Rights Theories*, 147). For an account of natural rights that stresses the debt that Grotius—the author whom Tuck identifies as forming a novel understanding of natural rights and natural law based on self-preservation—owed to medieval thinkers, see Brian Tierney, *The Idea of Natural Rights*. In particular, Tierney argues that the idea of a duty of self-preservation and self-love can be traced back through Aquinas to Augustine in a way that bares a close resemblance to Grotius' formulation, even though Grotius adapted this inherited tradition in a way appropriate to an early modern Protestant audience. Moreover, in Grotius's writing, as in that of medieval writers, the duty of self-preservation does not exclude the duty to live in harmony with others (for Tierney's engagement with Tuck's reading of Grotius, see *The Idea of Natural Rights* (Grand Rapids, MI: William B. Eerdmans Publishing, 1997), 319-324). My reading of Parker is indebted to Tierney's account of this tradition.

<sup>55</sup> Parker, *Observations*, 5.

<sup>56</sup> For a discussion of the early modern concept of representation, see Christopher Hill, "Covenant Theology and the Concept of 'A Public Person'" in *The Collected Essays of Christopher Hill*, 3 vols. (Amherst, MA: University of Massachusetts Press, 1986), III:300-324.

Parliament and the people. As we will see below, Parker routinely hides the gap between the original source of political power (the members of the commonwealth) and the entity that wields it (either Parliament or the king). But, at this point, it suffices to note that Parker finds in representation and implied consent the bases for the authority of Parliament's legislative and sovereign power.<sup>57</sup> Finally, in this first sketch of the origin of power, Parker emphasizes that both king and Parliament must govern according to the law of *salus populi*, and, in particular, that the very institution of royal power is based on the original need to organize a government for the safety of the people: "his dignitie was erected to preserve the Commonaltie, the Commonaltie was not created for his service: and that which is the end is farre more honorable and valuable in nature and policy, then that which is the meanes."<sup>58</sup>

Having established the origins of sovereign power in general terms, Parker turns to a narrative of the history of the first foundation of government. After the Fall, the nature of mankind grew so sinful that laws, and a sovereign to enforce those laws, became necessary for the establishment and preservation of society: "Man being depraved by the fall of *Adam* grew so untame and uncivill a creature, that the Law of

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<sup>57</sup> Parker, *Observations*, 12-4.

<sup>58</sup> Parker, *Observations*, 3. The language of *salus populi* was wielded by royalist and parliamentarian writers alike. Jonathan Scott points out that "the polemical contest between parliament and the king was not solely, or even principally, focused upon justifications of resistance. Rather it involved the competing claims of each to be that institution of state charged with taking action for the public peace and safety in a situation of extreme necessity" (Jonathan Scott, *England's Troubles: Seventeenth-Century English Political Instability in European Context* (Cambridge: Cambridge University Press, 2000), 150).

God written in his brest was not sufficient to restrayne him from mischeffe, or to make him sociable.”<sup>59</sup> Because of original sin, the law of nature, present in each man’s heart, is no longer sufficient to guide man’s social behavior. Laws need to be codified, interpreted, and enforced. This requires the establishing of a form of government:

therefore without some magistracy to provide new orders, and to judge of old, and to execute according to justice, no society could be upheld, without society men could not live, and without laws men could not be sociable, and without authority somewhere invested, to judge according to Law, and execute according to judgement, Law was a vaine and void thing, it was soon therefore provided that laws agreeable to the dictates of reason should be ratified by common consent, and that the execution and interpretation of those Lawes should be intrusted to some magistrate, for the prevention of common injuries betwixt Subject and Subject.<sup>60</sup>

In this compact narrative, Parker depicts both the first appointing of magistrates and the duty of these magistrates to codify, interpret, and execute laws. The passage presents, by necessity, an imagined history of the origins of government. This means that, at each step of the narrative, Parker focuses on what must have happened by (what he sees as) logical necessity. But because this is an imagined history, this means that any given necessity, “without laws men could not be sociable,” can be answered in the narrative by a bare rational solution, divested of problems of agency or specific historical detail, “it was soon therefore provided that laws agreeable to the dictates of reason should be ratified by common consent.” In particular, Parker presents the need for laws and

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<sup>59</sup> Parker, *Observations*, 13.

<sup>60</sup> *Ibid.*, 13; emphasis mine.

magistrates based on the idea that without them there can be no society. This leaves open the question: who does the “instructing” to the magistrates if a society cannot be assembled before the existence of magistrates? In the passage, the use of passive verbs makes it difficult to pin-point the function of “common consent” in the formation of government. Is “common consent” the instigating force behind the very idea that laws and magistrates should be instituted or is it only necessary for the ratification of laws? More generally, how does consent, both original and ongoing, function in the *Observations*?

To see the answer these questions, we turn to Parker’s account of the formation of representative bodies. In the narrative of the first formation of government, a two-fold picture of Parker’s understanding of sovereign authority and representation emerges. First, his narrative shows that the source of all laws, justice, and political power within a commonwealth is the people as a whole, rather than the king, and that, at the same time, this very same people is an ever present threat to stability. Second, in his narrative Parker argues that the authority of justice fundamentally inherent in the people is most safely expressed through a representative body such as Parliament, which becomes identified with the community as a whole by virtue of representation. I say most safely because the threat to stability posed by the people themselves needs to be contained and representative assemblies can serve this purpose by acting as a counter-balance to the king’s sovereign power and thus providing an orderly process through which the



community's grievances against the ruler can be addressed. Starting with the first facet of this view of government, we see that Parker argues that the original establishment of magistrates proves not to be sufficient to contain all the consequences of corrupted human nature. Kings and magistrates, wielding unchecked power, become tyrants. And tyrants are almost as dangerous to self-preservation as the original state of nature: "man was yet subject to unnaturall destruction, by the Tyranny of intrusted magistrates, a mischief almost as fatall as to be without all magistracie."<sup>61</sup> While it is easy to devise laws to curb the appetites of tyrannical rulers, these laws have little effect without any means to enforce them. Indeed, this problem proves more intractable than the initial establishing of laws: "long it was ere the world could extricate it selfe out of all these extremities, or finde out an orderly meanes whereby to avoid the danger of unbounded prerogative on this hand, and to excessive liberty on the other: and scarce has long experience yet fully satisfied the mindes of all men in it."<sup>62</sup> For Parker, the solution to the problem of tyranny proves so difficult to find that even long experience in it has not convinced everyone of its efficacy. Therefore, this solution, once hit upon, should not be lightly discarded. Moreover, in the *Observations* the problem of tyranny always lurks in the background of orderly society. The passage of time has only made rulers more adept and refined in their methods of oppression. But, strikingly, Parker's conclusion is not

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<sup>61</sup> Parker, *Observations*, 13.

<sup>62</sup> *Ibid.*, 14.

that subjects are now more likely to be enslaved by their tyrannical rulers, but rather that few nations will allow absolute monarchy: "In the infancy of the world, [...] man was not so actificiall [sic] and obdurate in cruelty as now [...]. But since, Tyranny being growne more exquisite, and policy more perfect, [...] few Nations will indure that thraldome which uses to accompany unbounded & unconditionate royalty."<sup>63</sup>

By what means can a tyrant be stopped? At first, the only remedy was violent rebellion. These rebellions, causing turmoil and bloodshed, often only accomplished the exchange of one tyrant for another.<sup>64</sup> In the final turn of Parker's imagined history, we find the creation of representative bodies, such as the English Parliament. Here, Parker counters the royalist claim that monarchy is the most stable and safe form of government, by noting that while the earlier forms of popular representation, "Ephori, Tribuni, Curatores, &c," may have been almost as bad as the tyrants they were supposed to control, peaceful representative assemblies such as the English Parliament are much more stable than simple monarchy: "till some way was invented to regulate the motions of the peoples moliminous body, I think arbitrary rule was most safe for the world, but now since most Countries have found out an Art and peaceable Order for Publique Assemblies, whereby the people may assume its owne power to do itself right without disturbance to it selfe, or injury to Princes, he is very unjust that will oppose this Art and

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<sup>63</sup> *Ibid.*, 14.

<sup>64</sup> Parker, *Observations*, 14.

order.”<sup>65</sup> Representative assemblies are seen as giving the people a way to “do itself right” without resorting to violence. Moreover, in this formulation of the function of Parliaments, we see that the prince’s power is also safeguarded. What is striking in this account is that we have a shift in focus from controlling the power of tyrants to controlling the people’s “moliminous” –massive and ponderous–body. That is the people, who in Parker’s account are the very source of justice and political authority, are represented as a cumbrous and menacing entity in need to be contained and controlled. The implied attack on the royalist position is clear. Any king attempting to curtail Parliament’s power risks his own overthrow.

The second aspect of Parker’s view of representation, the identification between a representative assembly and those who are represented, emerges in the narrative of the *Observations* as an inevitable consequence of the chaotic nature of direct democracy. In Parker’s account, Parliament is invested, “by vertue of election and representation,” with the very same power which originates in the people and, in earlier times, was wielded by assemblies of the entire community: “that Princes may not be now beyond all limits and Lawes, nor yet left to be tried upon those limits and laws by any private parties, the whole community in its underived Majesty shall convene to do justice.”<sup>66</sup> Representative bodies such as Parliament are made to stand in for “the whole body of

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<sup>65</sup> *Ibid.*, 14-5; emphasis mine.

<sup>66</sup> Parker, *Observations*, 15.

the community." The need for representation is due to the very practical concern that "the vastnesse of [the people's] owne bulke may not breed confusion."<sup>67</sup> Here again, we see that the people as a whole are a cause of troublesome confusion. Almost each step in the formation of governments can be traced back to the need to control the unruly multitude. Finally, once the need for a representative body is established, the representative body is identified with the whole community and it holds its power with the same "underived Majesty" as the body politic at large.<sup>68</sup> Indeed, the identification between the subjects and their representatives becomes so perfect by the end of the paragraph that discord between the two turns into form of blasphemy: "the people upon causelesse defamation and unproved accusations have beene so prone to withdraw themselves from their representations, and yet there can be nothing under Heaven, next to renouncing God, which can be more perfidious and more pernicious in the people than this."<sup>69</sup> The move is striking. On the one hand, it counters royalist arguments that, if rebellion against the king is lawful, then so is rebellion against Parliament. On the other hand, by firmly identifying the community as a whole with Parliament as its representative body, it turns any disagreement between "the people" and Parliament

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<sup>67</sup> *Ibid.*, 15.

<sup>68</sup> Scott, following Mendle, argues that Parker is claiming for Parliament the kind of absolute power he denies to the king (*England's Troubles*, 150) and that the Leveller response to this claim turns against Parliament the language used by Parker and other Parliamentarian writers against the king (269-74). See also, Mendle, *Henry Parker and the English Civil War*, 87.

<sup>69</sup> Parker, *Observations*, 15-6.

into the sinful result of listening to “causelesse defamation and unproved accusations.”<sup>70</sup>

In Parker’s narrative, dissent between the people and Parliament cannot be justified.

What is the role of the king? After all, England is a monarchy, and Parker agrees that while in normal times, the power to enact laws is in the king and Parliament together, in times of emergency, “if the King will not joyne with the people [to act for their safety], the people may without disloyalty save themselves.”<sup>71</sup> That is, Parliament, embodying the people’s inherent sovereignty, can act without the consent of the king in matters essential to the safety of the commonwealth. Bypassing the royalist claim that an individual may not resist a magistrate with force under the plea of self-defense, Parker insists that it is evident “to the clearest beames of humaine reason” that even a private person “may defende himself by force, if assaulted, though by the force of a Magistrate” and that thus it is not possible to claim that “whole nations being exposed to enmity and hazard, being utterly uncapable of flight, must yeeld their throats and submit to Assassinate, if their King will not allow, them defence.”<sup>72</sup> Rather than argue whether any given individual may resist a sovereign, Parker places the act of self-defense in the nation as a whole, represented and personated in Parliament. That the king could deny

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<sup>70</sup> Parker’s use of the term “people” moves as easily between “the peoples moliminous body” which must be controlled, and the “whole community” convening to “do justice” which, in his formulation, is identical to Parliament. In these shifts, he is not alone. For instance, as Marchamont Nedham concisely puts it: “when we mention people we do not mean the confused promiscuous body of the people” (quoted in Christopher Hill, “The Poor and the People,” *The Collected Essays of Christopher Hill*, III:251).

<sup>71</sup> Parker, *Observations*, 16.

<sup>72</sup> *Ibid.*, 17.

this right is for Parker a sign that he has been under the influence of malignant counselors who have flattered him for their own gain by painting a picture of royal prerogative that is out of proportion with the light of reason.<sup>73</sup> The rest of the pamphlet is dedicated to dismantling the similes used by courtiers to falsely flatter the king. That kings are “called Gods, Fathers, Husbands, Lords, Heads, &c.” is but a way to “illustrate some excellency in Princes by way of similitude, but must not in all things be applyed, and they are most truly applyed to Subjects, taken *divisim*, but no *conjunctim*.”<sup>74</sup> Here again, as in the argument for self-defense, Parker distinguishes between the relationship between each subject, taken singularly, and the king, *and* the relationship between all the subjects, taken collectively, and the king. Each simile is analyzed in turn and found faulty when applied to the entire commonwealth. In particular, the marriage simile cannot work between king and subjects because “the wife is inferiour in nature, and was created for the assistance of man [...], but it is otherwise in the State betwixt man and man, for that civill difference which is for civill ends, and those ends are, that wrong and violence may be repressed by one for the good of all not that servilitie and drudgerie may be imposed upon all, for the pomp of one.”<sup>75</sup> Rather than being inherent in nature, like the difference between husband and wife, the difference between a magistrate and

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<sup>73</sup> *Ibid.*, 17-8.

<sup>74</sup> Parker, *Observations*, 18.

<sup>75</sup> *Ibid.*, 19.

any given subject is only an expedient to enforce the order necessary for the well-being of the entire community.

Thus, one of the main aims of the *Observations* is to demonstrate that, when understood properly, the natural relationship between subjects and king forbids arbitrary rule. More precisely, because kings derive their power from their subjects, Parker argues that the idea that subjects could bindingly contract themselves into slavery to their own king without any remedy is against both reason and the laws of Nature:

[T]he safetie of the people is to bee valued above any right of his, as much as the end is to bee preferred to the meanes; it is not just nor possible for any nation so to inslave it selfe, and to resigne its owne interest to the will of one Lord, as that that Lord may destroy it without injury, and yet to have no right to preserve it selfe: For since all naturall power is in those which obay, they which contract to obay to their owne ruine, or having so contracted, they which esteeme such a contract before their owne preservation are felonious to themselves, and rebellious to nature.<sup>76</sup>

The right of a people to “preserve itself” is inherent in the logic that the means (i.e., the king) is to be preserved only in so far as it promotes the well-being of the end (i.e., *salus populi*). For Parker, the right of rebellion is a law of logic. This is a theme that he returns to in his later writings. In *Jus Populi* (1644), Parker extends his analysis of power, the

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<sup>76</sup> *Ibid.*, 8. For Parker’s debt to the language of slavery in the Justinian Digest in this passage, see Quentin Skinner, “John Milton and the Politics of Slavery” in Graham Parry and Joad Raymond, eds., *Milton and the Terms of Liberty* (Cambridge: D. S. Brewer, 2002), 11.

origin of government, and the right of rebellion begun in the *Observations*.<sup>77</sup> The tract begins with a summary of the three main points from the *Observations*: “1 Princes derive their power, and prerogatives from the people. Secondly, Princes have their investitures merely for the people benefit. Thirdly, In all well-formed States the Laws, by which Princes claim, do declare themselves more in favour of liberty then Prerogative.”<sup>78</sup> Parker reasserts that these three claims are “fundamentals” of government and that he enters the fray only “for the weaker sort of peoples sake, lest multitudes of opponents should sway them, and effect that by number, which cannot be done by weight.”<sup>79</sup> From the beginning of the tract then, Parker claims that the Parliamentary case is clear to “the judgement of wise men,” but that tyrannical arguments may seduce the multitude. Indeed, as in the *Observations*, one of the tasks of *Jus Populi* is to analyze and dismantle the similes for royal power found in marital and paternal rule as well as in the despotic rule of master over slaves. In particular, Parker begins his discussion of the proper relationship between the rights of the prince and those of the people by quoting 1 Corinthians 11.8-9, “for the man is not

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<sup>77</sup> As the full title indicates, *Jus Populi, or, A discourse wherein clear satisfaction is given as well concerning the right of subjects as the right of princes*, the tract delineates the extent of the rights of subjects along with those of the sovereign (Henry Parker, *Jus Populi* (London, 1644). Early English Books Online. (British Library, London). December 10, 2010. [http://gateway.proquest.com.proxy.lib.duke.edu/openurl?ctx\\_ver=Z39.88-2003&res\\_id=xri:eebo&rft\\_id=xri:eebo:citation:11914448](http://gateway.proquest.com.proxy.lib.duke.edu/openurl?ctx_ver=Z39.88-2003&res_id=xri:eebo&rft_id=xri:eebo:citation:11914448).

For a discussion of Parker’s use of Bodin and Grotius, see Mendle (130-2). Mendle shows how Parker argues against Bodin’s notion of paternal power (130) while, at the same time, adopting Bodin’s views against slavery to counter Grotius’ arguments for voluntary enslavement to a sovereign power (132).

<sup>78</sup> Parker, *Jus Populi*, 1; emphasis original. Quentin Skinner traces the classical origins of Parker’s claims that royal prerogative means enslaving the members of the commonwealth and that a king’s greatness is directly proportional to his subjects’ greatness, and that this greatness, in turn, is depended on their freedom to Sallust and Tacitus (“John Milton and the Politics of Slavery,” 9).

<sup>79</sup> Parker, *Jus Populi*, 1.



of the woman; but the woman of the man. Neither was the man created for the woman; but the woman for the man.” Having recalled the language of marriage with this Scriptural passage, Parker does not reproduce the royalist simile in reverse—that is, he does not posit the king as wife and the people as husband, as he will do later in the pamphlet—but instead uses it to defend the structure of his own argument in opposition to the falsely seducing rhetoric of his opponents: “There cannot be therefore any to pick rules more properly pressed then these: nay without offering some contradiction to the Spirit of God, we cannot reject the same form of arguing in the case of a people, and their Prince.”<sup>80</sup> What we must learn from 1 Corinthians 11 is a form of reasoning. Thus, Parker opens the tract by presenting his own method of biblical hermeneutics as conforming “to the Spirit of God” and as a corrective to the misleading language and scriptural interpretation of the royalist writers and divines.

In particular, one of Parker’s targets is Henry Ferne and his use of the marriage simile.<sup>81</sup> In *Conscience Satisfied* (1643), Ferne replies to the various answers to his earlier *Resolving of Conscience* and centers the third part of his argument on the analogue of marriage:

as if in Matrimony (for the King is also *sponsus Regni*, and wedded to the kingdom by a Ring at his Coronation) the parties should agree, upon such and such neglect of duties, to part asunder; or children (for the king is also a Father of the kingdom, and the body politique owes to him *naturall obedience*, 24. H.8. c. 12)

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<sup>80</sup> Parker, *Jus Populi*, 2; emphasis mine.

<sup>81</sup> Parker argues extensively against Ferne in *Jus Populi*, see page 55-7.

should condition with their Parents upon such and such usage to be acquitted of their duty and obedience; what our Saviour said of their light & unlawfull occasion of Divorce, *non fuit sic ab initio*, it was not so from the beginning, when God at first joined man and woman, may be said of such a reserved power of resistance, it was not from the beginning, when at first Rulers and Kings were Fathers, for so they are still called in the fift Commandment, not to be resisted or abdicated by their children, their subjects.<sup>82</sup>

This passage combines the language of matrimonial bond with that of paternal rule.

Jesus' warning against Deuteronomic divorce that *non fuit sic ab initio* is extended to cover kingship via the original institution of fathers as kings.<sup>83</sup> For Ferne, this Scriptural verse can be read as an injunction to look at the origin and first institution of marriage and, more generally, of all social relationships to understand their correct constitution. Indeed, the passage shifts from the marital to the paternal analogy for monarchy in order to avoid Jesus' allowance for divorce in the case of adultery in Matthew 19. To Ferne's *ab initio*, Parker opposes his own "*origo* or first production of Civill Authority."<sup>84</sup> Parker's *origo* includes both the history of sovereign power, through a review of classical histories alongside Scripture, as well as its cause, the people. As in the *Observations*, Parker does not deny the royalist claim that all power is originally from God, but he

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<sup>82</sup> Henry Ferne, *Conscience satisfied. That there is no warrant for the armes now taken up by subjects. By way of reply unto severall answers made to a treatise formerly published for the resolving of conscience upon the case. Especially unto that which is entituled A fuller answer* (Oxford, 1643), 12. Early English Books Online. (British Library, London). December 10, 2010. [http://gateway.proquest.com.proxy.lib.duke.edu/openurl?ctx\\_ver=Z39.88-2003&res\\_id=xri:eebo&rft\\_id=xri:eebo:citation:99871360](http://gateway.proquest.com.proxy.lib.duke.edu/openurl?ctx_ver=Z39.88-2003&res_id=xri:eebo&rft_id=xri:eebo:citation:99871360).

<sup>83</sup> Ferne is using Matthew 19:8-9: "He saith unto them, Moses because of the hardness of your hearts suffered you to put away your wives: but from the beginning it was not so. And I say unto you, Whosoever shall put away his wife, except *it be* for fornication, and shall marry another, committeth adultery: and whoso marrieth her which is put away doth commit adultery."

<sup>84</sup> Parker, *Jus Populi*, 2.

insists that royalist writers are reading Scripture incorrectly, and fraudulently at that. This misinterpretation arises when the idea of the divine origin of power is taken to exclude human participation: "For tis not by us questioned whether powers are from God or no; but whether they are so extraordinarily from God, as that they have no dependence upon humane consent."<sup>85</sup> To prove that there is a need for human consent in the establishing of all sovereign power, Parker repeats the argument of the *Observations* that the origin of government is to be found in the Fall and the subsequent need for men to be restrained from their vicious tendencies if they are to live in society. In *Jus Populi*, Parker expands his earlier discussion of the consequences of sin on forms of government by comparing human society with those of angels and devils. Neither have real governments nor subjection. Where there is either no sin, or nothing but sin, government is not necessary. More precisely, Parker here distinguishes between the different angelic ranks, which indicated a difference in "excellence" and "honour," and the ranks in human society, which are due to differences in political power.<sup>86</sup> In human society fallen nature leads to the need of government. Thus, we see that "subjection, or rather servile subjection, such as attends humane policy amongst us, derives not it self from Nature, unless we mean corrupted nature."<sup>87</sup> Through these considerations, Parker arrives at a distinction between the order, such as that found amongst angels, which is

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<sup>85</sup> *Ibid.*, 2.

<sup>86</sup> Parker, *Jus Populi*, 3.

<sup>87</sup> *Ibid.*, 3.

naturally from God and political power and jurisdiction, which became necessary only after the Fall.

Indeed, for Parker, no specific form of government is commanded in Scripture. In fact, the example of Abraham, an example of the patriarch-king in royalist writings, is brought into the tract not to discuss the origins of monarchy, but rather to introduce the importance of choice and liberty in human government.<sup>88</sup> While there might have been “in nature some majority or precedence due either from *Lot* to *Abraham*, or from *Abraham* to *Lot*,” upon the occasion of disagreement amongst their servants, rather than the one submitting to the other, “they rather resolved upon a dissociation.”<sup>89</sup> Parker goes on to insist that, even though the parting proved harmful to Lot, it was not sin to opt for liberty over continued union with Abraham:

the question is not whether it was prejudicial, or no, to esteeme the priviledge of an Independent liberty before the many other fruits and advantages of a well framed principallitie: but whether it was sin against God, or no, and a transgression against the constitution of power, to pursue that which was most pleasing, before that which was likely to prove more commodious. I conceive that freedome being in itself good, and acceptable to Nature, was preferred before Government, which was also good, and more especially commendable, but God had left the choice indifferent, and arbitrarie, and therefore there was no scandal or trespasse in the choice.<sup>90</sup>

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<sup>88</sup> Filmer is particularly fond of Abraham as an example of an early king. In *Patriarcha*, he mentions him as having the power to declare war and ratify peace agreements (Robert Filmer, *Patriarcha and Other Writings*, ed. Johann P. Sommerville (Cambridge: Cambridge University Press, 1990), 7). In *The Originall of Government*, he uses Abraham to argue against Hobbes' discussion of consent (192) as well as against Hobbes' interpretation of the covenant between God and the people of Israel in *Leviathan* (196; 205).

<sup>89</sup> Parker, *Jus Populi*, 5. Parker here refers to Genesis 13.8-12.

<sup>90</sup> Parker, *Jus Populi*, 5; emphasis mine.

This passage provides an illustration of Parker's principle that the choice of form of government is left up to each nation. There is no *a priori* Scriptural command towards one form of government over another. Both "freedom" and stricter "Government" are, in themselves, good. And since God has "left the choice indifferent, and arbitrarie," no argument basing itself on the *after-fact* that Lot's separation from Abraham proved injurious can negate that the two patriarchs could divide without sinning. How does Parker's notion of the arbitrary nature of the form of government compare with other seventeenth century's accounts of the same idea?

In the idea of "indifferent, and arbitrarie" choice in the foundation of government, Parker is echoing the theory of permissive natural law.<sup>91</sup> This idea, medieval in origin, was part of a division of natural law into two kinds, immutable commands and permissive or suppositional laws. Two sixteenth- and seventeenth-century uses of this idea help to clarify Parker's account of government formation. First, in Francisco Suárez's formulation, while commands, such as the Decalogue, are immutable, permissive laws cover those things, such as liberty and common property, that can be altered by human laws.<sup>92</sup> In particular, in the important case of liberty, we can see that while by nature men are free, they can lose that liberty. That is, while the law of nature allows for liberty, there is no immutable right to it.<sup>93</sup> The question, for

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<sup>91</sup> In the following discussion of Suárez and Grotius, I follow Brian Tierney, *The Idea of Natural Rights*, 301-42.

<sup>92</sup> *Ibid.*, 306.

<sup>93</sup> *Ibid.*, 306.

Suárez, is under which circumstances can this right be alienated? For instance, can a conqueror enslave a population without breaking any laws of nature? To understand his answer to this question, Tierney turns to Suárez's discussion of the origins of states. In the background of this formulation of the formation of government, Tierney finds the medieval concept of corporations: "[t]he subtext of much early modern writing on the origin of state was the doctrine of medieval corporation law asserting that a group of scattered individuals had no inherent jurisdiction but that such a power did inhere in the same persons united into a corporate body."<sup>94</sup> Thus, a group of people can come together and by an act of agreement form a political body. The problem remains of how the political body can have sovereign powers which do not inhere in the individual subjects, such as capital punishment. For Suárez such power is innate in human nature, but does not manifest itself until humans form societies.<sup>95</sup> In this, we find a different type of suppositional law: "a law that came into play only as a result of some preceding human act."<sup>96</sup> Since sovereign power derives from a permissive law, the community can alienate it and yield it to a ruler. Once this power is granted to the ruler, the people cannot reclaim it.<sup>97</sup> But this does not simply mean that a conqueror can tyrannically enslave a population. Suárez insists that while, for the good of the community, a ruler

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<sup>94</sup> Tierney, *The Idea of Natural Rights*, 309.

<sup>95</sup> *Ibid.*, 309-10.

<sup>96</sup> *Ibid.*, 311.

<sup>97</sup> *Ibid.*, 312.

can deprive given citizens of liberty or property, he must have just cause.<sup>98</sup> Indeed, if a ruler begins to behave tyrannically, the community as a whole, under the right to self-defense, can licitly depose him.<sup>99</sup> Hugo Grotius, also developing this medieval notion of double natural law, traces the idea of sovereign power a step further back than what we have just seen in Suárez. Political powers, such as capital punishment, which for Suárez exist *only* in the corporate body, are, for Grotius, inherent in the individual.<sup>100</sup> Grotius' view that no one can yield a power that he does not have leads him to conclude that for full sovereign power to be present in the community, it had to be first in the individuals.<sup>101</sup> Tierney notes that while Grotius' statement that all powers of the commonwealth are inherent in the individual before political association may seem very individualistic, his overall treatment of political association is more nuanced.<sup>102</sup> A community is not a simple collection of independent individuals. In Grotius' work, we find that "individual rights could flourish only in a well-ordered society; but a society could flourish only if the individual members cared, not only for their own well-being, but for that of their fellow members and of the whole community. Grotius does not confront us with isolated individuals facing an omnipotent state but with human

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<sup>98</sup> *Ibid.*, 313.

<sup>99</sup> Tierney, *The Idea of Natural Rights*, 314. More precisely, in the case of a tyrant who comes to the throne without legal authority, each individual citizen can depose or kill him. But for a legal ruler who persistently acts tyrannically, the agreement of the community is necessary before he can be deposed (Tierney, 314). It is worth adding that Suárez's condemnation of divine right and patriarchal theories of kingship led to the burning of his work in London in 1613 (Sommerville, *Politics and Ideology*, 63).

<sup>100</sup> *Ibid.*, 333.

<sup>101</sup> Tierney, *The Idea of Natural Rights*, 334.

<sup>102</sup> *Ibid.*, 334-5.

persons, sociable by nature, bound by ties of friendship and mutual support, each acknowledging a duty to respect the rights of others.”<sup>103</sup> But ultimately, Grotius concludes that people can absolutely yield all their rights to a ruler and bind themselves into slavery.<sup>104</sup>

Thus, the idea of permissive laws and the indifference in choice of form of government could be used both to justify rebellion against a tyrant and to claim that a people could bind itself into slavery. As we have seen, Parker’s own solution is to deny that we can enslave ourselves to a tyrant. But we have also seen that he denies that private subjects can licitly rebel against Parliament.<sup>105</sup> In the *Observations*, Parker arrived at this conclusion by focusing on the nature of Parliament as a representative body; in *Jus Populi*, he supports his discussion of representation with a more developed discussion of consent. The notion of consent emerges through Parker’s reading of the example of Abraham and Lot. This story demonstrates that the need for original consent and choice in establishing a form of government is supported by Scripture. This original

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<sup>103</sup> *Ibid.*, 336.

<sup>104</sup> *Ibid.*, 336.

<sup>105</sup> Michael Mendle and Jonathan Scott see Parker as transferring absolute power from the king to Parliament (Mendle, *Henry Parker and the English Civil War*, 86-8; and Scott, *England’s Troubles*, 150). Indeed Parker does deny that “private subjects” can licitly rebel against rulers, including Parliament. But, as we will see in the discussion on slavery below, Parker draws a distinction between being ruled by the arbitrary will of an unchecked monarch and being ruled by the laws made by a Parliament. Unsurprisingly, the royalist warnings that Parker’s arguments for rebellion against the king could be turned against Parliament itself proved to be correct. Cromwell, in a letter to Robert Hammond written on November 25, 1648, invoked the principle of *salus populi suprema lex* to argue against the treaty of Newport and to ask “whether this army be not a lawful power, called by God to oppose and fight against the king upon some stated grounds” (*The Writings and Speeches of Oliver Cromwell*, ed. W. C. Abbott, 4 vols. (Cambridge, MA: Harvard University Press, 1937), I: 677-9, quoted in Woolrych, *Britain in Revolution*, 426).



freedom of choice does not, however, extend past the foundational moment in the history of a commonwealth. That there is an a freedom in choice of government when a people first organizes its form of rule is not in and of itself a justification of rebellion: “I speak not this to unsettle any form of Government already founded, and composed, nor against the constitution it self, or intention of framing associations: tis sufficient for my purpose, if it be proved, that before such foundation or composition every man be left free, and not abridged of his own consent, or forced by any Law of God to depart from his freedome.”<sup>106</sup> Here, I want to draw attention to the difference between Parker and Milton on this particular point. As we will see, in *The Tenure of Kings and Magistrates* (1649), Milton takes the argument that there is no Scripturally mandated form of government a step further than Parker does. In this pamphlet, he argues that “since the King or Magistrate holds his autoritie of the people, both originaly and naturally for their good in the first place, and not his own, then may the people as oft as they shall judge it for the best, either choose him or reject him, retaine him or depose him though no Tyrant, merely by the liberty and right of free born Men, to be govern’d as seems to them best” (CPW III:206). For Milton, unlike for Parker, “the liberty and right of free born Men” allows them to dismantle even established forms of Government at their pleasure.

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<sup>106</sup> Parker, *Jus Populi*, 5-6.

On pages 7-10, Parker proceeds to quickly and decisively answer a series of absolutist arguments based on Scriptural reasoning. Early in this series of arguments and answers, Parker reiterates his point that he does not oppose monarchy under all conditions, but rather that since “God did not create so vast a distance betwixt man and man, as betwixt man and other irrationall creatures [...] there was not at first the same reason of subjection amongst the one as the other,” and so while “we except nothing against order, or a milde subjection, amongst men: we only say that such servility as our Adversaries would now fain patronize in Gods name, was never introduced by God, Nature, or any good men.”<sup>107</sup> This distinction between “milde subjection” and “servility” becomes crucial to Parker’s writing. In particular, the structure of the argument of *Jus Populi* makes it difficult to seriously entertain the possibility of a political arrangement in which a people binds itself into absolute servitude to a prince. This is not because Parker does not raise this possibility, “if a Nation by solemne oath, or otherwise has ingaged it self to submit to the will of a Prince absolutely, affirmatively reserving no priviledges, but tacitly renouncing all immunities except onely at discretion [of the ruler], I shall not seek to destroy such agreement,”<sup>108</sup> but rather because this statement comes after a discussion of sovereign power as being fundamentally tied to the power and well-being

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<sup>107</sup> Parker, *Jus Populi*, 8; emphasis mine. The absolutist argument that Parker is responding to with these lines is one based on an analogy between Adam’s sovereignty of creatures and a King’s rule: “Man in his innocence received dominion over the creatures immediately from God; and shall we deny that the most noble, and excellent government over men [is] from God, or say that it is by humane constitution?” (8).

<sup>108</sup> Parker, *Jus Populi*, 17.

of the people. This is because political power flows directly from the people to the ruler and it is directly proportional to the strength of the subjects. To demonstrate this point, Parker starts with a distinction between natural and moral causes of sovereign power, and then uses this distinction in two ways: first to give an account of a monarch's physical power and honor as naturally and directly proportionate to the power in the people he governs, and then to restrict the "moral principle" behind monarchy to "the Commission, or indeed that form of qualification by which one Prince differs from another in extent of Prerogative."<sup>109</sup> The ruler's power is dependent on the ongoing consent of the people:

The honour and splendor of Monarchs (two main ingredients of dominion) are after a physicall manner derived, the more glorious and noble the people is, the more glorious and noble the chief of the people is; and this honour and glory is such as flows from the people without wasting itself, in the act of flowing. In the like manner puissance, and force, it has a naturall production from the people (and this is another principall ingredient of Empire) the more strength there is in such or such a Nation, the more strong is he who commands that Nation: and yet that puissance which by perpetuall consent passes into the supreme Commander, does not so passe from the people, but that it retains its ancient site, and subject of inherence.<sup>110</sup>

In his reading of the Scriptural example of Abraham and Lot, Parker had found the need for consent by each individual at the foundational moment of a form of government,

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<sup>109</sup> Parker, *Jus Populi*, 17.

<sup>110</sup> *Ibid.*, 16-7. Indeed, even in the case of conquest, the eventual consent of the people is found to be necessary. In answering the argument for absolute monarchy by right of conquest, Parker argues that "[there] is no reason we should be now remedilessly opprest, because our Ancestors could not defend themselves against your oppression" (15). Moreover, conquest itself ultimately has to acquire legitimate power by consent of the conquered, "neither was any Conquest ever yet accomplisht without some subsequent consent in the party conquered" (13-4).

“every man [must] be left free, and not abridged of his own consent.” Here, in considering the source of political power, Parker argues that a “perpetuall consent” of the people is necessary in sustaining a prince’s sovereignty; a king’s power is supported by the ongoing consent of the people.

What is the nature of this ongoing consent? Parker clarifies how both honor and power are transferred by the people to the king with two similes. He first compares the relationship between subjects and ruler with that of husband and wife, and then in turn explains this marital relation in astronomical terms: “The woman is coruscant by the rayes of her husband, borrowing resplendence like the Moon from the Suns aspect, without losse or diminution to the fountain and cause of that coruscance. In the same manner Princes derive honour and power from their Subjects, yet drain not at all the source which derives it.”<sup>111</sup> In this simile, Parker inverts the standard royalist image of the king as husband and the people as wife.<sup>112</sup> As in the *Observations*, here too, Parker argues that if a king loses the consent of the people, he loses his power. However, in *Jus Populi*, the nature of this transfer of power is elaborated in more detail than in the earlier tract. In the parallels between political power, marriage, and the sun and the moon, we also see the dual form which transfer of power takes. It is both natural and customary. The king’s power is derived through consent from the power of his subjects both as the

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<sup>111</sup> Parker, *Jus Populi*, 17.

<sup>112</sup> This point is made by Victoria Kahn, who argues that Parker in *Jus Populi* first inverts the standard marital metaphor for the political contract and then rejects it altogether (*Wayward Contracts*, 102-3).

moon's natural "borrowing" of light from the sun and as a wife's customary "borrowing" of the "rayes of her husband." At the same time, the astronomical model hides by which means political power is transferred. As in his description of the creation on laws in the *Observations*, in *Jus Populi*, Parker's metaphor for political association is constructed around processes that obscure human agency. In the *Observations*, as we saw, Parker argues that when humans came to live together in societies, "laws agreeable to the dictates of reason" were "provided," but does not specify by whom; in *Jus Populi*, Parker represents the ruler's power as borrowed from the people just as the light of the moon is borrowed from the sun, but does not explain how a political transfer of power may differ from a celestial one.

Given the repeated insistence in both the *Observations* and in *Jus Populi* that marital power is not a useful model for sovereign power, it is surprising that Parker uses the image of marriage to explain the relationship between subjects and king. In her recent *Wayward Contracts*, Victoria Kahn turns to Parker's marital imagery in *Jus Populi* to argue that it contradicts the account of political association developed in the *Observations*. For Kahn, Parker is acutely concerned with the "arbitrary" and "artificial" nature of the political contract. She argues that in the *Observations* Parker had come to understand political association as contractual and, therefore, artificial and arbitrary.<sup>113</sup>

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<sup>113</sup> Kahn, *Wayward Contracts*, 100.

In her account, by using the comparison of political association with marriage in *Jus Populi*, Parker betrays a resistance to his own insight:

From an argument about the divine and natural subordination of wife to husband, Parker moves to a conception of marital relations as socially and politically constituted [...] in *Jus Populi* Parker exposes the radical implications of his own contractual model of obligation. His diametrically opposed interpretations of the marriage analogy imply that marriage cannot be the natural term that grounds our understanding of political obligation. Rather, all contracts—including marriage—are civil artifacts, that is, a matter of negotiation and consent, with everything that that implies for political resistance and divorce. Parker's resistance to this insight about marriage replicates the tension between will and legitimacy in other contemporary instances of the language of contract.<sup>114</sup>

Kahn's reading is sensitive to Parker's focus on consent and custom. However, her depiction of the Parker's eventual rejection of the marriage analogy is worded in starker terms than those used in *Jus Populi*. This, in turn, distorts her reading of the relationship between nature and custom depicted in the pamphlet. For Parker, marital power is somewhere between "mere order," as found amongst angels and devils, and political "Jurisdiction." Indeed, what Parker objects to is the use of marital power as a justification for *arbitrary* and *absolute* political power as *natural*. In *Jus Populi*, a wife's inferiority to her husband is due to nature, but it is regulated by customs and laws. Thus, while the husband may naturally rule over his wife, his power is constrained by the laws of his nation: "in all nations the power of Husbands is regulated by the publick

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<sup>114</sup> Kahn, *Wayward Contracts*, 103.

civill power.”<sup>115</sup> If a wife does not willingly obey her husband, the husband can turn to the arbitration of an external judge: “recourse must be had to an impartiall judicature, where either party may be indifferently heard.”<sup>116</sup> As we have seen, Parker repeatedly downplays the power relationships implicated in the formation of crucial political institutions, such as laws, by representing them as the result of “natural” or inevitable processes. His discussion of marriage is no exception: a wife ought to willingly obey her husband because “Nature teaches wives to look upon their husbands interests, as their own.”<sup>117</sup> At the same time, his comparison of political association with marriage demonstrates that for Parker a contract like marriage is not simply arbitrary. This can be seen in his conclusion that there is little in marital power to support the case for arbitrary monarchy: “so much concerning *Maritall power*, and to shew that nothing can be rightly extracted out of it, for the licensing of arbitrary rule in the State.”<sup>118</sup> However, this is not because marriage itself is merely arbitrary, but rather because it is governed by custom and laws.<sup>119</sup> The brief treatment of marriage in *Jus Populi* is in agreement with

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<sup>115</sup> Parker, *Jus Populi*, 31.

<sup>116</sup> *Ibid.*, 32.

<sup>117</sup> *Ibid.*, 32.

<sup>118</sup> *Ibid.*, 32; emphasis original.

<sup>119</sup> A similarly nuanced understanding of custom and laws can be found in Samuel Rutherford discussion of what it means to say that government is established by the law of nature in *Lex, Rex* (1644). (Samuel Rutherford, *Lex, rex The law and the prince* (London, Oct. 7, 1644). Early English Books Online. (British Library, London). December 10, 2010.

[http://gateway.proquest.com.proxy.lib.duke.edu/openurl?ctx\\_ver=Z39.88-2003&res\\_id=xri:eebo&rft\\_id=xri:eebo:citation:11913877](http://gateway.proquest.com.proxy.lib.duke.edu/openurl?ctx_ver=Z39.88-2003&res_id=xri:eebo&rft_id=xri:eebo:citation:11913877).

The tract begins by agreeing that, as Romans 13.1 attests, all power in general is from God (1). However, Rutherford’s answer to the question of how political power, in particular, is formed differs from both

the picture of marriage found in the Puritan household manuals discussed in chapter two.

Victoria Kahn's reading of Henry Parker's attack on absolute rule in chapter four of *Wayward Contracts* is part of a larger analysis of early modern conceptions of political obligation. Parker is read in the context of a new discourse of contract, and in particular of contracts binding the individual into voluntary servitude, arising in the seventeenth

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Parker's and the royalist position. "All civill power," Rutherford explains, "is immediately from God in its root. In that, 1. God hath made man a sociall creature, and one who inclineth to be governed by man; then certainly, he must have put this power in mans nature [...]. 2. God and nature intendeth the policie and peace of mankind, then must God and nature have given to mankinde, a power to compasse this end; and this must be a power of *Government*" (2). In this discussion, Rutherford is very close to Suárez's formulation, whom he quotes: "Politick power of Government, agreeth not to man, singly, as one man, except in that root of reasonable nature; but supposing that men by combined in societies [...], it is naturally, that they joyn in a civill societie, though the manner of Union in a politick body; [as] Suarez saith, That a power of making Laws, is given by God as a property flowing from nature" (2). Thus, for Rutherford, saying that all power is from God, does not deny that "the Communitie orderly convened, as it includeth all the Estates civill, have hand, and are to act in choosing their Rulers" (59). Indeed, answering Maxwell's argument in *Sacro-sancta regum majestas* that by analogy to nature, where the better creatures rule over the inferior, we should see that monarchy is a divinely mandated form of government, Rutherford rejects reasoning based on simple analogies to the animal world. Government is indeed natural, but the specific form is decided by each people: "We teach that Government is naturall, not voluntary; but the way and manner of Government is voluntarie: all societies should be quickly ruined, if there were no Government: but it followeth not therefore, *God* hath made some *Kings*, and that *immediately*, without the intervening consent of the people, and *ergo*, it is no arbitrary to the people to choose one supreme Ruler, and to erect a *Monarchie*, or to choose moe Rulers, and to erect and *Aristocracie*. It followeth no way. It is naturall to men to expresse their minde in human voices; Is not speaking of this or that language, *Greeke* rather than *Latine*, (as *Aristotle* saith) [...] by humane institution? It is naturall for men to eat; *ergo*, election of this or that meat is not in their choise. What reason is in this consequence?" (66). Just as we need food to nourish us and language to express our thoughts, we also need a form of government for our own good, "God hath given to every societie a faculty of preserving themselves, and warding off violence and injuries" (66), but whether we speak Latin or Greek, whether we eat one food or another, whether we establish a monarchy or a democracy is not dictated by divine law. The comparison between language and government allows Rutherford to illustrate what it means for a natural power—given to humans by God—to only express itself once humans join in society. While every individual is naturally prone to learning a language, it is only by being in the society of other humans that he or she may actually learn to speak a given language.



century. This new discourse is part of a shift in both legal reality and in political theory. Starting with the legal framework, Kahn traces a shift in jurisdiction of economic contracts in late Tudor England from ecclesiastical courts to common law courts.<sup>120</sup> This was first accomplished in cases dealing with sale and transfer of property. While cases involving debt used to be adjudicated in ecclesiastical courts, starting with St. German's *Doctor and Student*, they become increasingly regarded as under the jurisdiction of common law courts as cases of breach of promise.<sup>121</sup> In this shift, Kahn sees an increasing emphasis on intention in legal theory dealing with contracts and an accompanying "secularization of conscience."<sup>122</sup> Kahn posits that, in the seventeenth century, this secularization of conscience was reflected in the growing arguments over political obligation, subjections, and the legal status of loyalty oaths.<sup>123</sup> How far can political obligation be taken? Can we bind ourselves into slavery? Kahn compares Parker to Grotius. Parker, unlike Grotius, "for whom slavery was the logical extreme of contract," sees "slavery and contract as incompatible."<sup>124</sup> Grotius joins an Aristotelian "social view of human nature" with a "new psychology of political obligations," in which fear and

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<sup>120</sup> Kahn, 42.

<sup>121</sup> *Ibid.*, 44. This change in theoretical understanding of economical contracts was codified into legal reality by Slade's Case in 1602 (Kahn, 45).

<sup>122</sup> Kahn, 43. The topic of "secularization of conscience" is a too large to be handled within the scope of this dissertation, but for a different analysis than Kahn's, see Charles Taylor, *A Secular Age* (Cambridge, MA: Harvard University Press, 2007).

<sup>123</sup> *Ibid.*, 7-8.

<sup>124</sup> *Ibid.*, 103.

self-interest serve as motives for cooperation.<sup>125</sup> In Kahn's account, Grotius' innovation is to take the logic of the right to self-preservation to its logical conclusion and to posit the possibility of voluntary servitude: "the slave contract followed from the notion that one has property in one's person and that one may enter into a contract for reasons of self-preservation."<sup>126</sup> For Parker, on the other hand, "it is a contradiction of our nature and our right of self preservation to bind the will absolutely—hence the right of resistance, a right based on both conscience and the calculation of self-interests."<sup>127</sup> In Kahn's account, the passage in which Parker concedes that a people may irrevocably bind themselves, is a concession to irrational behavior in *Jus Populi*: "In making this concession, Parker once again exposed one of the dilemmas at the heart of contract: that of reconciling will and legitimacy, the free exercise of discretion with the constraints of reason—or unreason. This is the problem of voluntary servitude, a problem, Parker has vainly argued, that has no right to exist."<sup>128</sup>

This reading of Parker's unwilling encounter with "the problem of voluntary servitude" is dependent of a view of all contracts as "civil artifacts, that is, a matter of negotiation and consent." Kahn's analysis, however, avoids paying attention to such

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<sup>125</sup> *Ibid.*, 60, 61.

<sup>126</sup> *Ibid.*, 62. Kahn traces a further development in Grotius' thought in which he comes to "feel that necessity and fear were servile and base motives, characteristics of comic lowlife rather than of rational political subjects. In this view, voluntary servitude was no longer the logical extension of the political contract but its irrational other" (63).

<sup>127</sup> *Ibid.*, 103.

<sup>128</sup> *Ibid.*, 104.

statements as those made by Parker when he says that he does not mean to upset settled forms of government. While contracts are indeed civil artifacts, they are not the kind of civil artifacts that can be taken apart without potentially catastrophic risk. Indeed, as we have seen earlier, the king's refusal to call Parliament is in part problematic for Parker because it risks returning to the pre-representative times in his history of government when the abuses of a king would lead to violent rebellion. It is this risk of rebellion that makes the need for consent so important. If the people return to civil war, the king loses the fundamental power of protection, the power for which kingship was created in the first place: "To do the office of a Protector, is the most proper, and therefore the most excellent, and incommunicable prerogative of a King, yet, even that power by which he is made capable of protecting, issues solely from the adherence, consent, and unity of the people."<sup>129</sup> That is, there is no power or prerogative that a king has which does not flow from the ongoing consent of his people. It is thanks to these considerations that Parker can label the idea of a people bidding themselves to servitude as most unlikely and unnatural: "I onely say such agreements are not the effects of Nature, and tis not easie to imagine how right reason should ever mingle with such a moral principle, as gave being to such an agreement, especially when it renders the Prince, who for honour and power has his perpetuall dependence upon the people, yet more honourable and powerfull in

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<sup>129</sup> Parker, *Jus Populi*, 17.

reputation of others than the people, and that by the expresse grant of the people.”<sup>130</sup> For Parker, the ongoing consent of the people is both the foundation of and it is preserved by a just and peaceable form of social life.

### **3.3 Slavery and Breaking the Bonds of Justice**

Servility, for Parker, is not only unlikely and unnatural, it damages the commonwealth. Parker uses Aristotle’s distinction in the *Politics* between paternal, marital, and servile relationships to argue that the latter is inappropriate in the government of a commonwealth. Reminding the reader that the end of all government is the good of the people governed, Parker points out that “[s]ervile power is tolerated, because it tends to the safety and good of him that is subject to it; but as *Aristotle* holds, 3. *Pol.* c. 4, the master in protecting his servant does not look upon his servants ends herein, but his own, because the losse of his servant, would be a losse to his family.”<sup>131</sup> While servile power may be for the good of the servant, it is only so incidentally and not essentially. Thus, this type of rule cannot be tolerated in a commonwealth “because it is incompetent with liberty, provided onely for slaves, and such as have no true direct interest in the State.”<sup>132</sup> Parker’s move here is to take Aristotle’s exclusion of slaves,

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<sup>130</sup> *Ibid.*, 17-8.

<sup>131</sup> Parker, *Jus Populi*, 28. Here, Parker seems to be referring to Book III, chapter 6 (rather than 4) of *The Politics*, in which Aristotle distinguished between the rule of the master over his slaves, in which “is exercised primarily with a view to the interest of the master, but accidentally considers the slave,” and the rule of the head of the household over wife and children, which is “exercised in the first instance for the good of the governed or for the common good of both parties” (1278<sup>b</sup>-1279<sup>a</sup>).

<sup>132</sup> Parker, *Jus Populi*, 28.

laborers, and artisans from active participation in the *polis*— they could not be citizens— and to deduce from it that a servile form of government cannot be the correct relationship between king and subjects in a commonwealth.<sup>133</sup> The original, created human freedom inherent in each subject cannot be subsumed into serving an end that is against his own good: “Servility and slaverie (if it be rightly defined) is that odious and unnaturall condition, which subjects and necessitates a man to a false end, or to such an end, as God and Nature in his creation never did intend him for.”<sup>134</sup> Moreover, not only does servile rule violate the true end of the subjects, but it also deviates from the king’s own “true excellence and perfection of that publick divine end, for which they were ordained.”<sup>135</sup> To demonstrate this point, Parker first argues that slavery in private households is detrimental to the commonwealth (16-18) and then uses this groundwork to argue against arbitrary royal government.<sup>136</sup> At the beginning of this argument, Parker again turns to Aristotle for his definition of a slave and uses this definition to argue against despotic rule in the household.<sup>137</sup> This form of rule is, in a sense, no proper

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<sup>133</sup> Parker does, however, also make an appeal to the sovereign’s self interest by arguing that a Prince who governs for his subjects will never lack the means to be powerful, as demonstrated by the example of Elizabeth: “Therefore does *Aristot.* 8. *Ethic.* c. 10. Maintain, that Kings do not regard their own particulars, but the community of their Subjects; because there is a self-sufficiencie, and perfection in good Kings whilest they cannot be said to want that, which their subjects have. Queen *Elizab.* By her publick actions doubted not to win her Subjects hearts, and being possessed of her Subjects hearts, she doubted not but to command bother their hands and purses, and what else could she want to make her truly great and glorious?” (29).

<sup>134</sup> Parker, *Jus Populi*, 30.

<sup>135</sup> *Ibid.*, 30.

<sup>136</sup> *Ibid.*, 36-42.

<sup>137</sup> “A slave (according to Aristotle) is he, who is so wholly his Lords, as that he hath no propertie remaining in himself: he only lives, or hath a being to his Lord; but is as dead, nay nothing to himself” (36). Parker does

government at all: "This power gives the Lord an absolute, arbitrarie interest in the slave; and it cannot be called Jurisdiction, because it proposeth no ends of Justice in it selfe."<sup>138</sup> Like Herle, Parker sees arbitrary rule as violating the principles of justice in a commonwealth. But in using Aristotle, Parker has to contend with the philosopher's assumption that certain people are natural slaves.<sup>139</sup> On one level, this claim can be quickly answered in the negative: no man may be held in slavery to his own detriment. The question still remains, however, of whether in certain cases a master's arbitrary rule may not in fact be in the best interest of the slave. That is, whether some men are so servile by nature as to need the direction of an absolute master.

In the subsequent pages, Parker systematically presents arguments answering this question in the negative. In the first place, a slave is left "utterly disinherited of himself, and subject to his masters sole ends: Now that which tends not to the preservation, is not naturall, but violent, and consequently, to be abhorred."<sup>140</sup> Here Parker re-affirms the idea that each creature seeks its own self-preservation. However, since a slave is but an instrument of the master, his or her own natural desire for self-

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not give a reference to the passage of Aristotle to which he is referring. However, his wording is reminiscent of *The Politics*, Book I, Chapter 4 (1253<sup>b</sup>-1254<sup>a</sup>). The context of this section of *The Politics* would be relevant to Parker's argument. Just before this section, in Chapter 3, Aristotle introduces his discussion by considering how political rule differs from household management: "For some are of the opinion that the rule of a master is a science, and that the management of a household, and the mastership of slaves, and the political and royal rule, as I was saying at the outset, are all the same" (1253<sup>b</sup>17-20).

<sup>138</sup> Parker, *Jus Populi*, 36.

<sup>139</sup> Aristotle raises this question at the very end of Chapter 3 in Book I of *The Politics*.

<sup>140</sup> Parker, *Jus Populi*, 37.

preservation has to be subsumed into the ends and desires of the master, thus potentially going against the order of nature.<sup>141</sup> Moreover, in slavery, not only is each servant's interest in himself violated, but the entire's commonwealth's interest in each subject is usurped by the master's claim, that is, "Servile Government does not only shew it self iniurious and violent in devesting the propriety of those which are subjected to it, but also the more publike and sublime propriety; which the Common-wealth, the Society of Mankind, nay God himself has in the parties enslaved."<sup>142</sup> In this section of *Jus Populi*, Parker supports his argument for the right to self-defense by using, without explicitly citing it, Aristotle's argument against self-harm. In the final section of his discussion of justice in Book 5 of *The Nicomachean Ethics*, Aristotle considers the question of whether someone can *voluntarily* be treated unjustly and, in particular, whether it is possible to commit injustice towards oneself. To clarify the question, Aristotle considers the problem of suicide: "A person who cuts his throat in a fit of anger is doing this voluntarily, contrary to correct reason, and the law does not allow this; so he is acting unjustly. But towards whom?" (1138<sup>a</sup>10-13). For Aristotle, the answer is clear; the injustice is not towards the self, who has acted voluntarily, but towards the *polis*: "Surely

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<sup>141</sup> As Aristotle put it in Book I, Chapter 4 of *The Politics*, "a slave is a living possession, and property a number of such instruments; and the servant is himself an instrument for instruments" (1253<sup>b</sup>31-5).

<sup>142</sup> Parker, *Jus Populi*, 37. In reading this part of Parker's argument against natural slavery, I disagree with Victoria Kahn who sees Parker as arguing that a natural slave "is a contradiction in terms because slavery 'rob[s men] of that natural interest which they have in themselves'" (103; emphasis mine; emendation due to Kahn). Kahn's focus agrees with Tuck's reading of Parker as developing a primitive version of individual rights. But these readings tend to downplay Parker's emphasis on the community's interest in the individual.

towards the city, not himself, since he suffers voluntarily, and no one voluntarily suffers injustice? This is why the city imposes a penalty, and a kind of dishonor attaches to the person who has done away with himself, on the ground that he has perpetrated an injustice against the city" (1138<sup>a</sup>13-6).<sup>143</sup> The logic of Aristotle's argument against suicide is in the background of Parker's demonstration that a master's absolute rule over his slaves injures the entire community: "If the lord may destroy his slave at pleasure, then he may destroy that, which in part is belonging to another: then the condition of a slave is worse than of a beast, or any inanimate Cattel; and this is most unnaturall, and publikely detrimentall."<sup>144</sup> Moreover, while the concept that we may not destroy that which belongs to others can be read, as Aristotle does, to condemn suicide, the logic of slavery makes it so that nothing restrains a master from killing a slave since the slave becomes the *exclusive* property of the master, divesting the community of its stake in the

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<sup>143</sup> Terence Irwing, in his notes on Aristotle's *Nicomachean Ethics*, clarifies this point: "The specific form of 'dishonor' (*atimia*) that Aristotle has in mind is the loss of status of a free citizen [...] and hence the withdrawal of civil rights" (238). Having injured the *polis*, the suicide loses his status as a member of the political community. Aristotle's argument against suicide was followed by Aquinas in the *Summa*: "I answer that, It is altogether unlawful to kill oneself, for three reasons. First, because everything naturally loves itself, the result being that everything naturally keeps itself in being, and resists corruptions so far as it can. Wherefore suicide is contrary to the inclination of nature, and to charity whereby every man should love himself. Hence suicide is always a mortal sin, as being contrary to the natural law and to charity. Secondly, because every part, as such, belongs to the whole. Now every man is part of the community, and so, as such, he belongs to the community. Hence by killing himself he injures the community, as the Philosopher declares. Thirdly, because life is God's gift to man, and is subject to His power, Who kills and makes to live. Hence whoever takes his own life, sins against God, even as he who kills another's slave, sins against that slave's master, and as he who usurps to himself judgment of a matter not entrusted to him. For it belongs to God alone to pronounce sentence of death and life, according to Deuteronomy 32:39, 'I will kill and I will make to live'" (II-II:64.5, Aquinas, *Summa Theologiæ*, translated by Fathers of the English Dominican Province and re-issued by Cambridge University Press, 2006). Calvin, on the other hand, rejected this line of reasoning (Jeffrey R. Watt, "Calvin on Suicide," *Church History* 66 (September 1997): 470-1).

<sup>144</sup> Parker, *Jus Populi*, 37.



slave's person: "by these Rules [do not destroy what belongs to others], no man may abuse himself: yet these restrain not from abusing slaves; these deny not, but a lord may have a more confined power over his slave, than he has over himself. *Seneca* would not admit, that the masters right in the slave should derogate from the right of himself in himself, much lesse of others."<sup>145</sup> This is a crucial move in *Jus Populi*. It explains why Parker sees arbitrary rule as being fundamentally incompatible with justice. By denying the interest that the community may have in the slave, the master removes the slave from the bonds of justice.

I want to pause here to point out what is at stake in this description of slavery and its relationship, or lack thereof, to justice. For Parker, justice is simply not possible when a certain class of humans, slaves, is under the arbitrary rule of a particular person, their master. It is not just that the master may rule violently and therefore unjustly, though Parker will address that case as well, it is that justice simply cannot be found in the master-slave relationship. By removing the slave from the rule of law, servitude renders the slave dead to justice. To a certain extent, Parker is following Aristotle by

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<sup>145</sup> Parker, *Jus Populi*, 37. The rules alluded to in this sentence are mentioned by Parker in the previous lines: "Sic utere tuo, ne noceas alieno: sic utere privato, ne noceas publico" (37). Here Parker seems to be paraphrasing the common maxim of property law: "*Prohibetur ne quis faciat in suo quod nocere possit alieno: et sic utere tuo ut alienum non laedas*" (quoted by Coke, "William Aldred's Case" in *The Reports of Sir Edward Coke, Knt. In Thirteen Parts* (1826), 107. HeinOnline. December 10, 2010. <http://www.heinonline.org.proxy.lib.duke.edu/HOL/Page?collection=beal&handle=hein.beal/reporcoke0005&id=153>).

linking justice with life in the *polis*, under its laws.<sup>146</sup> In Book I of *The Politics*, Aristotle describes a man who either cannot or does not need to live in a State as being “either a beast or a god” (1253<sup>a</sup>29). In the *polis*, a man can grow in virtue and then he “is the best of animals, but, when separated from law and justice, he is the worst of all [...]. But justice is the bond of men in states; for the administration of justice, which is the determination of what is just, is the principle of order in political society” (1253<sup>a</sup>32-3, 37-40). Aristotle also makes it clear that natural slaves are such because they cannot participate in the life of the *polis* directly, they are defective as humans and, to a certain extent, resemble animals more than freemen. A natural slave is someone who “participates in reason enough to apprehend, but not to have [it]” (1254<sup>b</sup>22-23).<sup>147</sup> Such people cannot participate in the bond of justice because they do not participate in reason enough to be fully part of the *polis*.<sup>148</sup> Why does this matter? In chapter two, I argued that Milton’s reasoning in the divorce tracts is symptomatic of an understanding of our relationships with others that is very similar to that of the skeptic as presented by

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<sup>146</sup> In this account of Aristotle’s conception of justice, I am following MacIntyre, *Whose Justice? Which Rationality?*, especially pages 95-99.

<sup>147</sup> Aristotle does distinguish between animals and natural slaves. In the sentences immediately following the one quoted in the text, he goes on to clarify: “Whereas the lower animals cannot even apprehend reason, they obey their passions” (1254<sup>b</sup>23-4; emphasis mine). But this difference does not seem to translate strongly in practice: “indeed the use made of slaves and of tame animals is not very different; for both with their bodies minister to the needs of life” (1254<sup>b</sup>24-5).

<sup>148</sup> The connection between reason and justice is made clear Book VI of the *Nicomachean Ethics*. See also, page 97 in MacIntyre, *Whose Justice? Which Rationality?*, as well as: “For Aristotle, [...] justice properly so-called is exercised between free and equal citizens of one and the same *polis*, and although justice may be at stake in certain limited ways in other relationships—in commercial or military treaties or in relationships to wives, children, and slaves—by and large the scope of justice is defined by the boundaries of this particular *polis*” (*Whose Justice*, 146; emphasis mine).

Wittgenstein. Wittgenstein's work is also illuminating in trying to understand the logic behind Parker's argument on slavery and justice. To explain the connection, I will build on the discussion on skepticism from the previous chapter to include Wittgenstein's discussion of the idea of a private language.

In Part 4 of *The Claim of Reason*, Cavell discusses Wittgenstein's work on private language from the later remarks of *The Philosophical Investigations*. The strand of discussion that I want to focus on begins with Wittgenstein's remarks on the idea that a sensation may be private.<sup>149</sup> Remark 258 introduces Wittgenstein's example of how a (rudimentary) private language might work. He describes a hypothetical situation in which "I want to keep a diary about the recurrence of a certain sensation. To this end I associate it with the sign 'S' and write this sign in a calendar for every day on which I have the sensation."<sup>150</sup> One of the goals of this remark is to show what a private language would have to be. That is, that a private language is not merely a secret language, like a made up one between children, but rather a language that no one other

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<sup>149</sup> Following Cavell, I will focus on the series of remarks beginning with the discussion of pain in §244.

<sup>150</sup> The remark is worth quoting in full as it unfolds the attempt to create an entry in a private vocabulary, including an attempt to formulate a private ostensive definition: "Let us imagine the following case. I want to keep a diary about the recurrence of a certain sensation. To this end I associate it with the sign 'S' and write this sign in a calendar for every day on which I have the sensation. — I will remark first of all that a definition of the sign cannot be formulated. — But still I can give myself a kind of ostensive definition. — How? Can I point to the sensation? Not in the ordinary sense. But I speak, or write the sign down, and at the same time I concentrate my attention on the sensation — and so, as it were, point to it inwardly. — But what is this ceremony for? for that is all it seems to be! A definition surely serves to establish the meaning of a sign. — Well, that is done precisely by the concentration of my attention; for in this way I impress on myself the connexion between sign and the sensation. — But "I impress it on myself" can only mean: this process brings it about that I remember the connexion *right* in the future. But in the present case I have no criterion of correctness. One would like to say: whatever is going to seem right to me is right. And that only means that here we can't talk about 'right'" (Ludwig Wittgenstein, *Philosophical Investigations*, remark 258).

than me could understand. Cavell calls this getting into the mood of the fantasy of a private language where “I could not, in principle, give [a] person the meaning (or the use) of the sign in such a way that *he* could use it.”<sup>151</sup> If, on the other hand, another person could have a use for the private mark ‘S,’ the description given in §258 furnishes that person with all he or she may need to use the same mark in their own calendar. But how does someone else know what this private sensation is? Cavell puts it this way: “Whether you have really appreciated the quality of the sensation of mine which so interest me, or understand why I take such an interest in it, is a matter generally of who we are and what our relationship is. I may have great difficulty in describing it for you, but that itself may contribute to your appreciation of it.”<sup>152</sup> Cavell’s claim that one’s difficulty in describing a sensation to another may be part of what helps the other understand it is dependent on Wittgenstein’s description of how we learn the meaning of sensation words, such as ‘pain,’ in the first place. In remark 244, Wittgenstein clarifies how words refer to sensations: “how does a human being learn the meaning of the names of sensations?—of the word ‘pain’ for example. Here is one possibility: words are connected with the primitive, the natural, expression of the sensation and used in their place. A child has hurt himself and he cries; and then adults talk to him and teach him exclamations and, later, sentences. They teach the child new pain-behaviour” (§244). The

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<sup>151</sup> Stanley Cavell, *The Claim of Reason: Wittgenstein, Skepticism, Morality, and Tragedy* (Oxford: Oxford University Press, 1979), 347.

<sup>152</sup> *Ibid.*, 348-9.

original writer of the mark 'S' can appreciate his own sensation marked by 'S' only in so far as he can work towards sharing it with others. That is, both Wittgenstein and Cavell depict our apprehending—rather than simply having—our own sensations as forming *pari passus* with our learning language and shared behavior.

How is the idea of a private language related to slavery? In these remarks, we are asked to distinguish between privacy and subjectivity. What matters about a sensation is not that it is private or unique: “The importance about my sensation is *that* I have it. The uniqueness in question points not to some necessary difference between my sensation and yours (for there may be no significant difference between them), but to the necessary difference between being you and being me, the fact that we are two.”<sup>153</sup> The fantasy of a private language is presented by Cavell as a relentless focus on the idea that what matters about a sensation is that it is fundamentally mine and no one else can have it. But this is exactly what Wittgenstein denies in what Cavell calls one of the morals of the *Investigations*: “The fact, and the state, of your (inner) life cannot take its importance from anything special in it. However far you have gone with it, you will find that what is common is there before you are.”<sup>154</sup> To put this another way, the *Investigations* refuse to let us insist that we have a private, and therefore privileged, position with respect to others. And in turn, this restores a dignity to the other that the fantasy of private

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<sup>153</sup> Cavell, *The Claim of Reason*, 356.

<sup>154</sup> *Ibid.*, 361.

language risks to take away. More specifically, in the context of arguments about slavery, Wittgenstein's uncovering of the problems of the arguments for private language shows that justice cannot apply to me in a privileged way while excluding certain others. To see this better, we need to clarify the distinction between privacy and subjectivity and then turn to Wittgenstein's remarks on aspects and on his description of the body as a picture of the soul. The picture of Wittgenstein's remarks on privacy sketched by Cavell in the fourth part of *The Claim of Reason* is meant in part to dismantle the confusion between being different individuals and privacy. This is what he calls the difference between being separate, a necessary part of being embodied, and being separated. More precisely, Cavell diagnoses the problem of skepticism on this respect as a confusion about the idea of knowing. The skeptic feels that each subject is in a privileged position with respect to his own sensations and that this position is *necessarily* exclusive. The idea of privacy "is an impression of necessary secrecy and that secrecy and privacy share the idea of excludedness or exclusiveness."<sup>155</sup> Cavell here looks at the statement of the skeptic that while I can only know what others feel indirectly through what others do and say, for instance cry out in pain, the other person actually and directly knows his or her own sensation: "And not only *does* he know, he *must*. My *necessary* failure of knowledge is his *necessary* success."<sup>156</sup> The problem with his idea,

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<sup>155</sup> Cavell, *The Claim of Reason*, 366.

<sup>156</sup> *Ibid.*, 366.

Cavell points out, is that it speaks of knowing in the wrong way. What would it mean for someone to know that they are in pain? They have the sensation. But that is not the same as knowing: "Perhaps we are forced to the concept of knowledge here, hence employ a forced concept of knowledge, because we do not quite know how to speak of the other's aliveness to himself, his being together with himself, *by* himself, in as it were a private place, a place he has to himself."<sup>157</sup> In chapter two, I quoted Marjorie Grene's version of the idea of being present to oneself as distinguishing between knowledge and subjectivity. Her formulation is helpful in understanding what Cavell is discussing: "True, I am 'within' my own experiences and not some one else's; but this 'insideness' is mere subjectivity, not knowledge. To suffer pain, to feel cold, is immediate and unquestioned, and 'within', but it *is* simply, it is not knowledge. To *know* is to interpret clues of which I am only subsidiarily aware."<sup>158</sup>

Our embodied experience leads the skeptic to view the body as hiding what is inside. In this state of mind, the body is a wall or a veil hiding the soul from view. Cavell takes this to indicate that when we think of the body as a veil, we get a sense that "there is something we cannot see, not merely something we cannot know."<sup>159</sup> This is

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<sup>157</sup> *Ibid.*, 367.

<sup>158</sup> Marjorie Grene, *The Knower and the Known*, 86.

<sup>159</sup> Cavell, *The Claim of Reason*, 368.

something that Wittgenstein is trying to get us to see differently.<sup>160</sup> In section four of the second part of *The Philosophical Investigations*, Wittgenstein shifts the focus from “I know that he is pain” to “I believe that he is suffering,” or, “I believe that he is not an automaton.” What would I be trying to convey with these statements? In which situations would I utter them? The statements alone do not make sense. Wittgenstein puts it this way: “My attitude towards him is an attitude towards a soul. I am not of the opinion that he has a soul.”<sup>161</sup> What does this mean? Wittgenstein asks us to imagine what it means to understand the idea that a soul can exist after death: “Now do I understand this teaching?—Of course I understand it— —I can imagine plenty of things in connexion with it. And haven’t pictures of these things been painted? And why should such a picture be only an imperfect rendering of the spoken doctrine? Why should it not do the *same* service as the words? And it is the service which is the point.”<sup>162</sup> It is following this series of questions that Wittgenstein tells us that the “human body is the best picture of the human soul.”<sup>163</sup> With this remark, Wittgenstein gets to the point that the human soul is not hidden, but rather visible in the body. The body, like the picture, does the same service. As Cavell glosses this passage, if I fail to see another’s soul, it is not because the body is hiding it: “The block to my vision of the

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<sup>160</sup> Cavell takes the expression “the body is a veil” to be a symbolical expression of a fragmented myth of the relationship between body and soul. He thus sees Wittgenstein’s approach as “an attempt to replace or to reinterpret these fragments of this myth” (368).

<sup>161</sup> Wittgenstein, *Philosophical Investigations*, 178.

<sup>162</sup> *Ibid.*, 178.

<sup>163</sup> *Ibid.*, 178.



other is not the other's body but my incapacity or unwillingness to interpret or to judge it accurately, to draw the right connections. The suggestion is: I suffer a kind of blindness, but I avoid the issue by projecting this darkness upon the other."<sup>164</sup> This kind of blindness is not congenital, but rather it "could be thought of as a kind of illiteracy; a lack of education."<sup>165</sup> Cavell specifies what he means by "kind of blindness" by developing Wittgenstein's example of the duck-rabbit. Body and soul are like two aspects of the duck-rabbit: it is not so much a matter of having to get through or beyond the one to reach the other, but rather they are two aspects, which are at the same level. By analogy, "[w]e may say that the rabbit-aspect is hidden from us when we fail to see it. But what hides it is then obviously not the picture (that reveals it), but our (prior) way of taking it, namely in its duck-aspect. [...] So we might say: What hides the mind is not the body, but the mind itself—his his, or mine his, and contrariwise."<sup>166</sup> That is, it is not a necessary blindness, like the idea of a necessary privacy in the skeptic's image of the self, but something that could, if we cared to, be overcome.

If it is not our bodies that separate us, what is it then? Cavell, explaining the idea of the mind hiding the mind, puts it this way: "If something separates us, comes between us, that can only be a particular aspect or stance of the mind itself, a particular *way* in which we relate, or which are related (by birth, by law, by force, in love) to one

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<sup>164</sup> Cavell, *The Claim of Reason*, 368; emphasis mine.

<sup>165</sup> *Ibid.*, 369.

<sup>166</sup> *Ibid.*, 369.

another — our positions, our attitudes, with reference to one another. Call this our history. It is our present.”<sup>167</sup> This is not to say that our relationships, the ways in which we relate and are related, are something that we need to go beyond in order to get to some essential identity — we do not see beyond the duck to see the rabbit. But rather that we can let one relationship take over all others. It is by perceiving relationships that we grasp aspects, as Wittgenstein shows in the *Philosophical Investigations*: “what I perceive in the dawning of an aspect is not a property of the object, but an internal relation between it and other objects.”<sup>168</sup> Thus, when Cavell talks about the call for seeing individuals as human, say around the issue of slavery, he asks: “But must a human being be something in addition, as it were, to being the person he or she is — say a master or a slave, or a parent or a child, a writer, a weaver, a stranger? If there are special ways of treating persons under such titles, that is because there are ways of behaving peculiar to holding them. Is there some special way of behaving peculiar to human beings as such?”<sup>169</sup> In considering these questions, Cavell interprets the calls for seeing individuals as humans as calls for justice. Cavell describes the call for seeing slaves as human beings as a call for justice because what the slave-owner is missing is not knowledge: “[h]e may know roughly everything about human beings that I know. [...] What he really believes is not that slaves are human beings, but that some human beings are slaves. [...] this

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<sup>167</sup> *Ibid.*, 369.

<sup>168</sup> Wittgenstein, *Philosophical Investigations*, 212.

<sup>169</sup> Cavell, *The Claim of Reason*, 372.

man *sees* certain human beings *as* slaves, takes them for slaves. He need not claim that all such persons ought to be in slavery, merely that it is all right if some are."<sup>170</sup> What are the implications of this formulation? Here again the example of the duck-rabbit becomes relevant. The slave-owner does not need to know anything more about the slaves than he already knows, but rather he needs to see that a certain relationship holds between the slaves and justice, that is, that the slaves are relevant to the world of justice. The slave owner is "missing something about [...] his connection with these people [the slaves], his internal relationship with them."<sup>171</sup> That is, he fails to acknowledge, to use Cavell's term, that a certain group of people are to be counted within the realm of justice. The slave-owner "will appeal to history, to a form, or rather to a way, of life: this is what he does. He believes exactly what justice denies, that history and indefinite difference can justify his social difference of position. He need not deny the supremacy of justice [...]. He need deny only that certain others are to be acknowledged as falling within this realm."<sup>172</sup> And here we find a return of the problem of the fantasy of a private language that Cavell delineated earlier in Part 4 of *The Claim of Reason*. For the slave-owner the slaves are fundamentally separated from him: "he takes himself to be private with respect to them, in the end unknowable by them."<sup>173</sup> Because of this, because there is something incommunicable between himself and the slaves, he can

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<sup>170</sup> *Ibid.*, 375.

<sup>171</sup> *Ibid.*, 376.

<sup>172</sup> Cavell, *The Claim of Reason*, 376.

<sup>173</sup> *Ibid.*, 376.

excuse his position that justice does not apply to them in the same way that it applies to him.

Aristotle would not have objected to this last statement. In both the *Politics* and the *Ethics*, slaves are a different kind of humans from free citizens. Justice does not extend to them; its scope includes only the encounters between members of the same *polis*. But as we have seen, Henry Parker, in *Jus Populi*, insists that the bonds of justice tie together all members of a commonwealth and brings this notion to bear against the Aristotelian idea that some people are natural slaves. Justice is abused in the Greek conception of slavery and thus a prince attempting to rule despotically has no proper jurisdiction, or political power, over his subjects.<sup>174</sup> Moreover, Parker argues that slavery, and arbitrary government, leads to acts of abuse towards the slaves: "Arbitrary Government does not only rob slaves of that naturall interest which they have in themselves, and States of their publike Interests which they have both above lords and slaves; but it is often a very strong incentive to cause an abuse of that usurped Interest."<sup>175</sup> Parker illustrates this claim with the example of the Roman Vedius Pollio, who used to feed the slaves who displeased him to his lampreys.<sup>176</sup> The Emperor Augustus, witnessing Vedius Pollio's orders to throw a slave who broke a crystal glass into the lampreys' pond, commands the pond filled with dirt and all of Pollio's glasses

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<sup>174</sup> Parker, *Jus Populi*, 36-7.

<sup>175</sup> *Ibid.*, 38.

<sup>176</sup> Parker, *Jus Populi*, 38. The story is from: Cassius Dio, *Roman History*, vol. VI, chapter 54 (Cambridge: Loeb-Harvard University Press, 1917).

broken. Parker comments that, while this action was commendable, it did not solve the fundamental problem because the memorable example of Veditus Pollio is only one of the “thousands that might be produced.”<sup>177</sup> Slavery, in and of itself, turns both masters and slaves into something less than human.<sup>178</sup> Indeed, Parker argues that the existence of absolute servitude is a sign of a barbaric society: “the extreme rigour of arbitrary servitude was scarce ever entertained by any, but barbarous people.”<sup>179</sup> In the case of Veditus Pollio, the correct solution would have been for Augustus to put all servants under the protection of laws. For Parker, servitude ceases to be slavery the moment the servant is protected by law: “where slaves are under the protection of other Laws than their lords wills, and where they are truly parts and members of the State, and so regarded; they cease to be slaves.”<sup>180</sup> In that case, masters “might not have been any longer incited thereby to such prodigious degrees of inhumanity. By the same reason also, as this unbridled License make lords more insulting, it makes those that are insulted over the more vindicatives, false, and dangerous. Many horrid Stories might be

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<sup>177</sup> Parker, *Jus Populi*, 38.

<sup>178</sup> Quentin Skinner, in “John Milton and the Politics of Slavery,” points to Parker’s thinking on servitude in the *Observations* as being along the same lines as Tacitus and Sallust in arguing that subjects living in a state of servitude will be incapable of great exploits and thus of being good citizens (9). In this section of *Jus Populi*, Parker extends this idea to argue that servitude does not only harm the slave, but that it harms the master as well.

<sup>179</sup> Parker, *Jus Populi*, 40-1. This argument would have sounded familiar to a reader versed in the disputes over the treatment of the native people of the Americas. As Brian Tierney points out, Las Casas had argued that the invading Spaniards could be considered as barbarian themselves because of their cruelties (*The Idea of Natural Rights*, 277). Parker goes on to enumerate the multiple laws set up to protect slaves in ancient times (18). Both Athens and Rome erected altars of mercy that could be used by slaves as places to voice their complaints and “almost all Nations had the like places for recourse of oppressed Captives” (18).

<sup>180</sup> Parker, *Jus Populi*, 39.

produced, to prove, that the cruelty of lords has always been retaliated with infidelity, hatred and desperate revenge of slaves.”<sup>181</sup> Here, the clear threat to masters from rebelling and vindictive slaves is reminiscent of the constant threat of violent resistance to despotic rulers that we have seen in the *Observations*. Both domestic and political despotic rule are inherently prone to violent overthrow.

### **3.4 Persuasion, Interpretation, and the Problem of Consent**

Having established that both private slavery and despotic political rule are intolerable in a just commonwealth, Parker turns again to Biblical history to demonstrate that royal power varies from kingdom to kingdom and from time to time. That is, a survey of Scripture reveals that no given form of political organization is divinely mandated. In particular, Parker focuses his argument to demonstrate that absolute power is not granted directly by God. Indeed, the first form of government was mild and limited.<sup>182</sup> When there were but a few people on the earth, government was truly

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<sup>181</sup> Parker, *Jus Populi*, 38-9.

<sup>182</sup> Here again, Parker argues that history demonstrates a gradual corruption of human nature and government after the Fall: “The nature of Man-being depraved by the fall of *Adam*, miseries of all sorts broke in upon us in throngs, together with sin; insomuch that no creature is now so uncivill and untame, or so unfit either to live with, or without societie, as Man. [...] In some respects, Man is more estranged from Politicall union than Devils are” (42-3). Thus Parker draws a clear distinction between human nature as it was created and as it is now: “When *Aristotle* says, that *Men doe associate by instinct of Nature, for ends of honestie, as they are communicative creatures, as well as necessitie and safetie*: He rather intimates *what we should be, than what we are*; and tells us *what we were created, rather than what we are being now lapsed*” (43; italics original). Thus not only was human nature marred by original sin, but our ability to join in society has been declining ever since. This means that, as Parker moves chronologically through biblical history, he will be able to point to worse and worse forms of government.

paternal as it was limited to those within the same family.<sup>183</sup> It is important to note that for Parker, paternal rule is not meant to be the source and pattern of absolute rule, but rather it is an example of limited and gentle government—the opposite of the royalist position which, as exemplified by the writings of James I and Filmer, claimed that fathers originally had a right of life and death over the members of their household.<sup>184</sup> What prompts a change from this limited form of government to more absolute ones? Parker imagines that the power of a ruler would have remained limited if the territory of his rule had also continued to be small. Ruling over a larger number of subjects requires more discretion of power. However, fear of violence, and in particular, of invasion from other peoples prompted families to join with other families and form larger kingdoms.<sup>185</sup> After this observation, Parker turns to the story of Nimrod, a favorite royalist example of rule by right of conquest. In *Patriarcha*, for instance, Filmer points to Nimrod as the first monarch and argues that he created his empire by violence and conquest with no consent from the conquered people.<sup>186</sup> The royalist use of the example of Nimrod emphasizes that the very first monarchy was based on violence and thus denies the role of the subjects' consent. Parker is unwilling to concede this point. As he argued in the

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<sup>183</sup> Parker, *Jus Populi*, 43-4.

<sup>184</sup> Patriarchal theory found its way into the *Convocation Book of 1606* and thus seeped into early seventeenth-century sermons and writings, including John Donne's *Pseudo-Martyr* (Somerville, *Politics and Ideology*, 30-1).

<sup>185</sup> Parker, *Jus Populi*, 44.

<sup>186</sup> For Filmer, while Nimrod was the rightful ruler of his own family, "[y]et against right did he enlarge his empire by seizing violently on the rights of other lords of families, and in this sense he may be said to be the author and first founder of monarchy. And all those who attribute unto him the original of regal power do hold he got it by tyranny or usurpation, and not by any due election of the people or multitude, nor by any paction with them" (*Patriarcha and Other Writings*, 8).

*Observations*, no ruler can have power over his people without some form of consent. In the case of Nimrod, Scripture does not specify how he acquired his power: “it is left utterly uncertain, whether *Nimrod* laid his foundation upon force, or consent; whether he did by his tongue or his sword drive and hunt men out of Woods and the wilde Recesses into Towns and Cities: for that force by which he did prevail, can hardly be supposed to be it self wholly forced.”<sup>187</sup> In Parker’s rendering of the story of Nimrod, the speech of the ruler is as important to his power as the sword. Indeed, the sword is never sufficient on its own since even if force allowed him to rule, his own force alone could not compel all others; some kind of persuasion is necessary. Moreover, the structure of the passage itself makes it difficult to extricate force from eloquence. The reader is first given the options of “force, or consent” for the basis of Nimrod’s power, but Parker then doubts that we can distinguish “whether he did by his tongue or his sword drive and hunt men.” In the parallel structure of the two clauses, we find tongue in the latter one in the position held by force in the first one.

A careful reader of Parker’s argument should however be suspicious of Nimrod’s use of rhetoric to create consent to his expansion of his kingdom. As we have seen earlier, Parker begins *Jus Populi* by stating that one of his purposes is to counter the false hermeneutics of royalist writers; specious scriptural interpretation along with seducing rhetoric is designed to teach English subjects to be docile to a tyrannical king.

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<sup>187</sup> Parker, *Jus Populi*, 44; underlining mine.



Parker returns to this theme immediately after his account of Nimrod. He turns to 1 Samuel 8.10-20, the narrative of Israel's request of being ruled by kings rather than by judges, to demonstrate how royalist writers since James I have misinterpreted this Scriptural passage to justify the actions of tyrants.<sup>188</sup> This biblical passage, according to Parker's reading, does not outline what kings are allowed to do as a matter of right, but it is rather a warning to the Israelites of the likely abuses that a king will impose on them: "our Royallists, offer apparant violence to Scripture, when they will make God to call the usuall rapine and insolence of Kings, *Jus Regis*; whereas indeed, the word in the Original signifieth nothing but *Mos Regis*."<sup>189</sup> The royalist reading of 1 Samuel 8 is as violent as Nimrod's tongue and used to the same purpose. Throughout *Jus Populi*, Parker repeatedly attacks royalist readings of Scripture. In particular, he offers his own interpretation of Romans 13 as more faithful to the intention of the text than the

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<sup>188</sup> "So Samuel told all the words of the LORD to the people who asked him for a king. And he said, 'This will be the behavior of the king who will reign over you: He will take your sons and appoint *them* for his own chariots and *to be* his horsemen, and *some* will run before his chariots. He will appoint captains over his thousands and captains over his fifties, *will set some* to plow his ground and reap his harvest, and *some* to make his weapons of war and equipment for his chariots. He will take your daughters *to be* perfumers, cooks, and bakers. And he will take the best of your fields, your vineyards, and your olive groves, and give *them* to his servants. He will take a tenth of your grain and your vintage, and give it to his officers and servants. And he will take your male servants, your female servants, your finest young men, and your donkeys, and put *them* to his work. He will take a tenth of your sheep. And you will be his servants. And you will cry out in that day because of your king whom you have chosen for yourselves, and the LORD will not hear you in that day.' Nevertheless the people refused to obey the voice of Samuel; and they said, 'No, but we will have a king over us, that we also may be like all the nations, and that our king may judge us and go out before us and fight our battles.'"

<sup>189</sup> Parker, *Jus Populi*, 46. The warning was particularly necessary because the Israelites had been governed by divinely appointed judges and had never experienced the need to frame laws that would restrain a king: "that case and freedom which the people then found under Gods immediate Substitutes, was not procured by any further Right or law, [...] but from a Regulation above; because it was impossible for their chief lord to oppresse, or do injustice, or to direct his thought to particular ends, contrary to theirs" (45).

royalists' literal reading.<sup>190</sup> Parker, in a move that resembles Milton's approach to Matthew 5.32 and Matthew 19.6-9 in the divorce tracts, begins his exposition of Romans 13 by focusing on the immediate context of the epistle. Since Paul wrote during the Roman Empire, it is necessary to understand the specific limits to the power of the emperor and of the Senate to understand to what extent Paul expected subjects to obey the instituted powers.<sup>191</sup> Thus, any reading of the passage requires an understanding of the history of Roman government. Moreover, Parker argues that we do not consult Scripture in the same manner for everything:

If our controversies were *in credendis*, or about things that did exceed the compass of humane understanding, scripture might justly be opposed to policy: but when wee are treating of worldly affaires, wee ought to bee very tender how we seek to reconcile that to Gods law, which we cannot reconcile to mans equity: or how we make God the author of that constitution which man reaps inconvenience from.<sup>192</sup>

While in matters of belief that are beyond "humane understanding," "mans equity" cannot be placed ahead of Scripture, in "worldly affaires," we must not accuse God of

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<sup>190</sup> Romans 13.1-5 is what Parker called the "main shelf-Anchor of our Adversaries" (*Jus Populi*, 55) and was a common place of royalist writings: "Let every soul be subject to the governing authorities. For there is no authority except from God, and the authorities that exist are appointed by God. Therefore whoever resists the authority resists the ordinance of God, and those who resist will bring judgment on themselves. For rulers are not a terror to good works, but to evil. Do you want to be unafraid of the authority? Do what is good, and you will have praise from the same. For he is God's minister to you for good. But if you do evil, be afraid; for he does not bear the sword in vain; for he is God's minister, an avenger to execute wrath on him who practices evil. Therefore *you* must be subject, not only because of wrath but also for conscience' sake." This focus on Romans 13 can be traced back to Luther's emphasis on this Scriptural passage as the foundation of our understanding of political duty, see: Quentin Skinner, *The Foundations of Modern Political Thought* II:12-9. The literal meaning of the passage made it a strong resource for royalist writers who could counter any argument from nature and reason with Paul's own words.

<sup>191</sup> Parker, *Jus Populi*, 56.

<sup>192</sup> *Ibid.*, 57.

imposing a “constitution which man reaps inconvenience from.” That is, human reason and equity can be used to supplement Scripture in matters of sovereignty and government. Thus, in their insistence that the Pauline prohibition cannot be contradicted by reason, the royalists “lurke between scripture and reason, and to remain in a kind of transcendent posture, as that they may be confined neither to the one, nor to the other, nor yet to both.”<sup>193</sup> But ultimately, for Parker, since power derives from the people, arbitrary rule is not allowed because it would derive from self-enslavement and self-enslavement is a kind of agreement to self-destruction. In particular, Paul could not have commended absolute rule since, even in Roman times, the people could not have enslaved themselves: “no man will say, that the people had any power to destroy it selfe: and what end could the people have (if that Law might bee said to bee the peoples act) in enslaving themselves, or giving away the propriety of themselves?”<sup>194</sup>

Dudley Digges’s *The Unlawfulness of Subjects Taking up Arms against their Sovereign in What Case Whatsoever* (1643) is part of the royalist response to Parker’s *Observations*.<sup>195</sup> *The Unlawfulness* stands out from other royalist apologia by arguing against Parker that subjects can indeed enslave themselves and renounce their original liberty: it is but a “pretence” that the people “may justly use their native liberty, and

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<sup>193</sup> Parker, *Jus Populi*, 57.

<sup>194</sup> *Ibid.*, 66.

<sup>195</sup> Digges had also helped to author an earlier rebuttal of the *Observations* with Falkland and Chillingworth, *An Answer to a Printed Book, Intituled Observations* (1642). Richard Tuck has shown that Digges belonged to the Tew Circle, for whose members the “*Observations* immediately became one of the prime targets” (*Natural Rights Theories*, 146).

resume their originall power, if civill constitution, which were agreed upon for their good, be not effectuall to that end, but prove disadvantageous to them."<sup>196</sup> Digges begins his pamphlet by justifying the need for his rebuttal of the *Observations* by reminding his reader, much in the vein of Ferne, Herle, and Parker, that "the greater part of mankind, as in other matters, so in this present case, are easily prevailed upon, to make truce with conscience, and eagerly prosecute what appears most profitable."<sup>197</sup> For Digges, the majority of subjects in any commonwealth are dishonest and incapable to see the full consequences of their actions.<sup>198</sup> Because of this, the multitude "hath been tempted to catch at empty happinesse, and thereby have pulled upon themselves misery and destruction."<sup>199</sup> In particular, two principles have been responsible for leading the people astray. The first is the idea that the original liberty that is inherent in every man allows subjects to rebel whenever their government is perceived as curtailing this native freedom. Digges agrees that in the state of nature freedom was the birth-right of mankind. But he quickly points out how little this freedom amounts to: "This Freedom

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<sup>196</sup> Dudley Digges, *The unlavfulnessse of subjects taking up armes against their soveraigne in what case soever together with an answer to all objections scattered in their severall bookes : and a prooffe that, notwithstanding such resistance as they plead for, were not damnable, yet the present warre made upon the king is so, because those cases in which onely some men have dared to excuse it, are evidently not now, His Majesty fighting onely to preserve himselfe and the rights of the subjects* (Oxford, 1643), 1; emphasis mine. Early English Books Online. Huntington Library and Art Gallery (San Marino, CA). December 10, 2010.

[http://gateway.proquest.com.proxy.lib.duke.edu/openurl?ctx\\_ver=Z39.88-2003&res\\_id=xri:eebo&rft\\_id=xri:eebo:citation:12264849](http://gateway.proquest.com.proxy.lib.duke.edu/openurl?ctx_ver=Z39.88-2003&res_id=xri:eebo&rft_id=xri:eebo:citation:12264849).

<sup>197</sup> Digges, *Unlawfulnessse*, 1. For a useful analysis of this text, see Glenn Burgess, "Repacifying the Polity," 209. Burgess sees Digges' language in this text as "distinctly Hobbesian."

<sup>198</sup> *Ibid.*, 1-2.

<sup>199</sup> *Ibid.*, 2.

was an unlimited power to use our abilities, according as will did prompt. The restraint of which would questionlesse have beene very grievous, but that experience did demonstrate, it was not so delightfull to do what ever they liked, as it was miserable, to suffer as much as it pleased others to inflict."<sup>200</sup> It is thus clear that the restraint of natural freedom need not be perceived as painful, but rather as arising necessarily from a clash of desires; the pleasure of one curtails the delight of another. Indeed, in this description, the state of nature is one of constant fear: "This was their unhappy condition, amidst feares and jealousies, wherein each single person look't upon the world as his enemy, and doubted (as formerly *Cain*, when he was excommunicated and cut off from the civill body) lest the hand of every man might be upon him."<sup>201</sup> The analogy between the state of nature and the curse placed upon Cain, the founder of the first city, creates an image in which even those who are aggressors towards others long for constraints and laws. Here, the state of nature is implicitly depicted as fundamentally unstable. Cain is cut off from the natural society of his family and he longs to rejoin others. This is mirrored whenever a government disintegrates. Then, "an insupportable and generall calamity will quickly unite multitudes into a people again."<sup>202</sup>

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<sup>200</sup> *Ibid.*, 2-3.

<sup>201</sup> *Ibid.*, 3.

<sup>202</sup> Digges, *Unlawfulness*, 3.

For Digges, whenever a government dissolves, there is an almost-automatic reforming of the commonwealth under a ruler.<sup>203</sup> He does not, however, consider by which means this is done. Men in the state of nature quickly perceive the dangers inherent in the absence of government and strive to unite into a body politic. Since all the evils of the state of nature are due to division, the evident “cure was to make themselves one, because no body is at variance with it self.”<sup>204</sup> For Digges, the standard image of the state as a body gives a divided multitude a principle by which to cure its own ills. Because in a physical body each member strives for the well-being of the whole, a people in a state of nature—where each fights against all others—will remedy its enmity by uniting into a body politic. How is this formation of a body politic achieved? Digges imagines the multitude as desiring to form an actual body, but “[t]here being no way to effect this naturally, they reduce themselves into a civill unitie, by placing over them one head.”<sup>205</sup> For this union to work, each member in the body politic has to surrender his will to the will of the ruler. However, this joining of wills is not unproblematic. The will of each individual commands, but cannot be commanded.<sup>206</sup>

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<sup>203</sup> Parker also repeatedly returns to the question of what happens when the crown is in escheat. But he does so to bring attention to the idea that power is inherent in the people and not granted by God.

<sup>204</sup> Digges, *Unlawfulness*, 4. Indeed, in a passage reminiscent of Milton’s discussion of humors in his reply to the Answerer in *Colasterion*, Digges returns to the image of the Commonwealth as a body and argues that most change, even when genuinely attempting to improve the form of government, is likely to damage the political body: “This tampering with the Body to reduce it to perfect health, hath overthrown many excellent constitutions, and such kind of physicke proves the most dangerous disease” (*Unlawfulness*, 19).

<sup>205</sup> Digges, *Unlawfulness*, 4.

<sup>206</sup> For Digges commanding the will would involve an infinite regression and so the will cannot be forced to will what is necessary for political contracts: “Because the wills of men, though the fountains of all

In particular, the will of individuals who do not want to submit to the ruler cannot be instructed to desire such subjection. Thus, the union of wills can only be achieved “in a politique sense.”<sup>207</sup> What does this entail? The political joining of wills “signifies the giving up of every mans particular power into his [the ruler’s] disposal, so that he [the ruler] may be inabled to force those who are unwilling upon some private ends, to be obedient for the common good; otherwise they would enjoy the benefits of others faith in observing lawes, and the advantages of their owne violations and breaches.”<sup>208</sup> In Digges’ version of the history of state formation, what is crucial to social life is not laws and their enforcement, the reason for all sovereign power in Parker, but rather the union of wills.<sup>209</sup> Here, the will of each individual is subsumed to the “common good” at the foundational moment of the state. That is, the formation of society is dependent on absolute surrender.

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voluntary actions, yet are not themselves the objects of choice; (for we cannot will to be willing, (this would be infinite) but to performe what is commanded) and so are not capable of being obliged by compacts” (4).

<sup>207</sup> Digges, *Unlawfulness*, 4.

<sup>208</sup> *Ibid.*, 4.

<sup>209</sup> Digges does not deny the subject the right to make judgments. As Sarah Mortimer argues, all that Digges requires of the subject is to not act upon judgments which contradict the ruler’s. Presenting an unusually permissive position, Digges argues that the subject is free to judge in matters of religion and conscience. In his account, this freedom, if understood correctly, cannot prove dangerous to the state since Christianity commands obedience to rulers (*Reason and Religion in the English Revolution: The Challenge of Socianism* (Cambridge: Cambridge University Press, 2010), 99-101). Victoria Kahn, on the other hand, sees Digges’ writing—especially with Falkland and Chillingworth—as attempting to obscure the “ever-present possibility of dissent” (*Wayward Contracts*, 105).

The second principle that is used to lead the multitude to rebel against the king is that of self-preservation. The absolute contracting of the individual will to the sovereign inevitably runs against the urge of self-preservation of particular subjects. According to Digges, those who advocate this right to self-preservation claim that “the law of nature will defend us, whomsoever we kill, though the King, in our owne defence.”<sup>210</sup> However, while self-defense is a “native right,” we have given it up when we “made our selves sociable parts in one body.”<sup>211</sup> Digges defends this surrendering of the right to self-defense through a probabilistic argument; it is more likely that we will not be harmed as members of a state than as independent individuals in the state of nature.<sup>212</sup> Alongside this argument based on self-interest, Digges proposes a rather different reason for obedience: “honesty and religion strickly bind them to preserve their faith intire, and this contract inviolable.”<sup>213</sup> While the will cannot be compelled to keep the social contract, “honesty and religion” do so. This is not the last place where Digges both argues from the advantages of the social compact and, at the same time, urges that we must keep the contract even when it is against our best interest, i.e., that self-preservation does not trump obedience. Later in the pamphlet, Digges responds to Herle’s answers to Ferne’s writings. In particular, he addresses the claim that the law of nature allows for self-preservation and that thus we are allowed to resist a tyrant. To

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<sup>210</sup> Digges, *Unlawfulness*, 5.

<sup>211</sup> *Ibid.*, 5.

<sup>212</sup> *Ibid.*, 6.

<sup>213</sup> *Ibid.*, 6.



this, he counters Paul's injunction in Romans 13 and argues that if we are ruled by an unjust king, "we ought not to be tempted to impatience, but should rather rejoice, that God hath enable us to stand out his fiery trial."<sup>214</sup> Indeed, even a tyrant can be seen as instrument to perfect the subjects' Christian virtue: "[b]ad rulers (if we doe not imitate, whome we condemne, and neglect our duty, because they perform not theirs) are but unhappy instruments of our greater glory."<sup>215</sup> However, to this standard argument against rebellion, Digges adds an argument based on self-interest: "such Christian submission doth most commonly produce peace and plenty in our streets."<sup>216</sup> As Victoria Kahn argues: "Digges's *Unlawfulness* dramatizes the tension between conscience and calculation, law and right. In arguing for an irrevocable political contract, he both appeals to the subject's self-interest and condemns self-interest in favor of an argument from conscience."<sup>217</sup> But this tension in Digges's writing also indicates that he imagines people in the state of nature as fundamentally different creatures than the subjects in a society. While Digges warns that removal of the sovereign will mean an instantaneous return to all against all, he also argues that those very same individuals that are only a contract away from violence should be capable to form a compact which serves justice and to which they will adhere even against their self-interest. What

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<sup>214</sup> Digges, *Unlawfulness*, 101.

<sup>215</sup> *Ibid.*, 101.

<sup>216</sup> *Ibid.*, 101.

<sup>217</sup> Kahn, *Wayward Contracts*, 107.

Digges's pamphlet leaves unanswered is how these conscientious individuals are supposed to be formed under the government of a tyrant.

Digges not only opposes the possibility of rebellion, he also argues that sovereign power must be concentrated in one absolute ruler. Once the social contract has been entered into, as in the case of England, any attempt to set up a second governing power, such as the Parliament, is an attempt to break the commonwealth apart. Those who do so "thereby dissolve the sinews of government."<sup>218</sup> Moreover, in England there is no legal justification for Parliamentary opposition to the king. According to the law, "not the two Houses, but the King alone is sworne to protect us" and only the king can decide, and undertake, what means are necessary for the safety of the commonwealth.<sup>219</sup> The coronation oath itself is for Digges a sign that the sovereign power is placed in the king alone. Moreover, the king's absolute power is not an abuse of justice, as Parker would have it, but rather the most equitable form of justice possible:

Though what is truly the right of any one, doth not cease to be so naturally by anothers sentence to the contrary; yet after positive constitutions, upon a Judges decision, he can challenge no title to it, because by his owne deed, and consent, he passeth it away in that judiciary determination. And equity and prudence both dictate, that it was a most honest and reasonable agreement, as conducing to publique peace, and the quiet of mankind, that persons publikely constituted and more unconcerned in the decisions, should put an end to all debates. Because otherwise the controversie was not likely to be ended, but with one of the parties; For each man out of naturall favour (the strongest corruptive of judgement) inclining to his owne Interest, there was nothing left but force to

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<sup>218</sup> Digges, *Unlawfulness*, 7.

<sup>219</sup> *Ibid.*, 8.

determine it. There cannot be a more unhappy administration of Justice, then when strength is made the measure of right, and when all Iudges are bribed, as passing sentence to their owne advantage.<sup>220</sup>

Part of what each individual contracts into by being a member of society is the surrender of his own absolute rights to the public good upon the decision of a proper judge. For instance, the right to dispose of one's property is surrendered to the king for the protection of the kingdom. This surrendering of the one's rights is done unconditionally; we may not judge for ourselves whether the greater good is actually being served, but we rather have to submit to a judge. This is a demand of justice, since interested parties would not give impartial judgments.

As the third section of the *Unlawfulness* goes to great pains to demonstrate, true justice can only be found in accordance to the king's interpretation of law: "the King is the fountain of all justice [...]. The King hath supream power in all civill causes, and is *super omnes*, over all persons, over the body politique; all jurisdictions are in him; the materiall sword of right belongs to him, and whatsoever conduces to peace, that the people committed to his charge may lead peaceable and quite lives."<sup>221</sup> Directly countering the Parliamentarian arguments that absolute monarchy is a violation of justice, Digges argues that the king is the source of all law and hence of all justice. For Digges then, unlike Parker and Herle, justice can obtain even though the king is not

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<sup>220</sup> Digges, *Unlawfulness*, 8.

<sup>221</sup> *Ibid.*, 74-5; underlining mine.

restricted by positive laws. The fundamentally unequal relationship between the king and the subjects is not problematic in Digges's view, but rather it is what constitutes justice in the kingdom. More precisely, while Digges admits that such a king may at times be unjust, this occasional injustice is on the whole better for a commonwealth than the strife and threat of civil war that always occur whenever subjects believe that they can hold the king accountable to law. Moreover, if the king is held to be the final judge in all cases, there would be at least a way to settle all disputes without violence, and justice would be served better even though any given decision may be unjust.<sup>222</sup> Indeed, for Digges, what creates injustice in England is the attempt to create a balancing power outside of the king's.

How have the Parliamentary writers managed to seduce English subjects to rebel against the king? The problem is one of incorrect, and willfully self-interested, reasoning based on faulty analogy. Digges does grant that there are and have been commonwealths in which the king is bound by laws and in which he may be deposed by either the people or other magistrates for not following them. Sparta was one such example. There, the Ephors could take for themselves the "sword of Justice" if the king was found to be in breach of his duties. But this is not the case in England, where the "civill constitutions, and [...] their owne oath" show that the king may not be deposed.<sup>223</sup>

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<sup>222</sup> Digges, *Unlawfulness*, 29.

<sup>223</sup> *Ibid.*, 31.

Even though we might be convinced that a different form of polity would be more advantageous, if we take the liberty to rebel against the king out of mere desire to improve the commonwealth, rather than on sound legal ground, then “there were no such a thing as Justice, our oaths would be of no force against Interest; profit would be the measure of our actions, and we must conclude all right what ever was advantageous.”<sup>224</sup> Keeping our oaths to the king is dictated by the demands of justice. In particular, Digges turns to the specific instance of the Oath of Supremacy. The focus of his discussion of this oath is the text of the oath itself. He argues that the “words [of the Oath of Supremacy] are so expresse, that not any colourable glosse can be invented to excuse the violation of this solemne Sacrament.”<sup>225</sup> The oath is then reproduced in its entirety and Digges emphasizes that no concern for the intention or original context of the oath can take away from the duty to obey the literal meaning of the words. To those

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<sup>224</sup> Digges, *Unlawfulness*, 31. For Digges, power concentrated in one ruler is often to the best advantage of the entire commonwealth. However, fallen human nature is such that each individual, driven by personal greed, will often focus more on his own short term desires to the expense of long term stability and benefits to the state: “men naturally desire to live most happily, and are easily tempted to contribute their endeavours to any change, which they fancy for the better; though in right it ought not to be so” (16-7). The social contract is meant to be a guard against such dangerous fancies. But more severely, Digges insists that rebellion is not to be allowed even if it would bring about an improvement in government:

“notwithstanding some forme might be proposed, which were really more perfect, because our faith once given to the present government, cannot be recalled; this civill union is as fast tyed as the marriage knot, we are bound to take it for better or worse. And if otherwise, States would probably be shorter liv’d then men, as having their foundations on the sands, that is, on the inconstant wills of the people, who are blowne about with every winde of contrary discourses” (17) This passage weaves together two reasons against rebellion. We are told that the civil compact is like the marriage union; it cannot be broken even if a better union could be found. And, moreover, we can see that such an unbreakable tie is necessary because the wills of men are inconstant and can easily fall prey to “contrary discourses.” That is, we have to be compelled to stay within the present form of government because we are all too likely to mistake change for improvement.

<sup>225</sup> Digges, *Unlawfulness*, 60; emphasis mine. Interestingly, Digges places more emphasis on the Oath of Supremacy, a bone of contention with Irish Catholics, than on the Oath of Allegiance, which would have served is argument just as well.

who might object that “this Oath is taken in opposition to the Pope, to exclude the Supremacy usurped by him for many years,” Digges replies that “[t]hey speake truth, but not all the truth” since the oath both denies the supremacy of the Pope and asserts the supremacy of the king.<sup>226</sup> The original intent of the oath does not matter.

Having contracted ourselves into this commonwealth and having sworn oaths that ask us to submit to the king, we have to adhere them even if the king turns tyrant. Rebellion is never lawful in England: “ It is an unhappy condition we shall live in, if he or they should be Tyrants, and take delight in our oppression. But we cannot helpe it, God out of his dominion might thus dispose of our fortunes and lives, and he declares his pleasure so to do, and therefore we must choose the least evill, which is not to resist, and by endeavouring to save our goods or bodies, to loose our soules.”<sup>227</sup> Following this line of reasoning, Digges goes on to advocate obedience to the commands of a tyrant which are not directly against the laws of God. Not only can we not actively rebel against the ruler, we have to actively obey. The example he gives is that of paying taxes: “If our patience in submission to his precept be chargeable, we make God our debtor; all the taxes and tributes are put upon his accompt, and he will returne them in as plentifull measure, as if we had spent so much charitably, (and we cannot lay out our

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<sup>226</sup> *Ibid.*, 60.

<sup>227</sup> *Ibid.*, 40; emphasis mine. This statement agrees with the standard formulations of non-resistance theory. Here, Digges could be adapting Luther’s reading of Romans 13 in *Temporal Authority*, in which he argues that even a tyrannical ruler cannot be actively disobeyed. See, Quentin Skinner, *The Foundations of Modern Political Thought*, II:15-7.

estate better.) The Magistrate is Gods receiver, as well as the poore."<sup>228</sup> Since all rulers have their power from God, paying taxes to a tyrant is part of our Christian duty, and our obedience to that duty will be rewarded as if we had given the money in charity.<sup>229</sup> Digges maintains this point even in the face of his own admission that there are extreme cases in which, when faced with a particularly cruel tyrant, the commonwealth suffers more by obedience than by rebellion.<sup>230</sup> This is not to say that the king does not have a duty to keep his oaths or to guard the welfare of the commonwealth. But for Digges, a duty on the part of the king does not give a corresponding right of enforcement to the subjects: "let us not therefore break our duty, because Kings performe not theirs. If we

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<sup>228</sup> Digges, *Unlawfulness*, 40.

<sup>229</sup> Later in the pamphlet, Digges gives a rather different reason for paying taxes to Charles. Since the Norman Conquest, all subjects in England hold land in fee from the King and he can take it back at will and thus we have no right to refuse our property to him (118). Digges returns to the issue of the Conquest repeatedly again in *The Unlawfulness*. The importance of conquest theory in seventeenth century political theory has been a matter of debate. Pocock, in *The Ancient Constitution*, argues that common lawyers and antiquarians denied that the Norman Conquest was a conquest at all, but rather viewed William as having claimed the crown under English laws and defending his right by trial of battle (53). For different reasons royalist writers, according to Pocock, were also reluctant to place much emphasis on the Conquest, especially during the Interegnum, since it "proved to be a mingling of force and covenant" (164). John M. Wallace in *Destiny His Choice* challenges Pocock's reading of the royalist aversion for Conquest theory. While it may have looked imprudent to claim the possibility of a right by conquest in the 1650s, royalist had been much more willing to appeal to the Norman Conquest during the Civil Wars (22-3). More recently, J.P. Sommerville has argued that while most absolutists, like common lawyers, placed little emphasis on the Norman Conquest—that is, like Coke, they were willing to admit that it had happened, but the passage of time and accrual of customary limitations to royal power had made it impossible to derive the extent of the sovereign's power based on the original rights of William—those who wanted to derive the limitations of sovereign authority from the transference of power from subjects to ruler had to argue against the possibility that William ruled by right of conquest (*Politics and Ideology in England*, 66-9).

<sup>230</sup> For Digges this is a very unlikely situation, but one that he explicitly never rules out. When he argues against rebellion based on the interests of the commonwealth, he turns to *probabilistic* reasoning. See, for example, his argument against resisting the King in the opening section of the pamphlet: by "obliging our selves not to resist publique authority [...] it is *most likely* we should be lesse exposed to injuries" (6; emphasis mine).

live under a bloody Prince, or covetous, or intemperate, or weake, or one that persecutes the most godly professors, let us call to minde our own sins, which have deserved greater castigations.”<sup>231</sup> But what if the king’s tyranny destroys the entire commonwealth? This for Digges is a very unlikely event: “It is in our power to kill our selves, and yet we are not afraid of our selves, because there is a naturall dearnessse implanted in us, which secures every one from selfe-wrong: we have as little cause to be troubled, that it is in his power to make himself no King, by destroying his subjects.”<sup>232</sup> Since a king is only king in so far as he has subjects, we should no more fear him than we would fear our own self. Parker’s example of Veditius Pollio’s treatment of his slaves in *Jus Populi* seems to be designed to answer this kind of reasoning. While for Digges, both charity and justice amount to obedience to the king, for Parker, blind obedience to a tyrant is a dereliction of our duties to the other members of the commonwealth and a break in the bonds of justice.

### **3.5 Milton, the History of the Church, and Tyranny**

*A mighty hunter thence he shall be styled  
Before the Lord, as in despite of Heav’n,  
Or from Heav’n claiming second sovranty.*<sup>233</sup>

*But what more oft in nations grown corrupt,  
And by their vices brought to servitude,  
Than to love bondage more than liberty,*

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<sup>231</sup> Digges, *Unlawfulness*, 104.

<sup>232</sup> Digges, *Unlawfulness*, 119.

<sup>233</sup> *Paradise Lost*, XII.33-5.



*Bondage with ease than strenuous liberty.*<sup>234</sup>

In the early 1640s, rather than directly joining the arguments over the source and authority of political power, Milton focused his polemical writings on the expansion of liberty in the domestic sphere and the reformation of Church government. But these early pamphlets also labor to connect domestic and Church discipline with the political well-being of England. In particular, in *Of Reformation*, Milton counters the call of “no bishop, no king” by arguing that the bishops of the Church of England weaken the king’s power by corrupting English subjects.<sup>235</sup> Bishops, insulting “the people of God,” discourage their parishioners from the study of virtue: “thus the people vilifi’d and rejected by them, give over the earnest study of vertue, and godlinesse as a thing of greater purity then they need” (CPW I: 547-8). Milton depicts an exodus of godly Englishmen pushed out of the country by the “mis-rule and turbulency of the *Prelats*” (CPW I:588). Bishops “have unpeopl’d the Kingdome by expulsion of so many

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<sup>234</sup> *Samson Agonistes*, 268-72.

<sup>235</sup> In *Of Reformation*, we still find praises of monarchy: “But what greater debasement can there be to Royall Dignity, whose towring, and stedfast heighth rests upon the unmovable foundations of Justice, and Heroick vertue, then to chaine it in a dependance of subsiting, or ruining to the painted Battlements, and gaudey rottenesse of Prelatry, which want but one puffe of the Kings to blow then down like a past-bord House built of *Court-Cards*” (CPW I:582-3). Blair Worden argues that such praise of the king is “disingenuous” (*Literature and Politics in Cromwellian England: John Milton, Andrew Marvell, Marchmont Nedham*, (Oxford: Oxford University Press, 2007), 163). Worden’s assessment, however, seems to sidestep how consistent the praise of a mixed monarchy is in *Of Reformation*. Towards the end of the pamphlet, Milton turns to Polybius to support his argument for a commonwealth governed by a balanced constitution. There, he describes a “free, and untutor’d *Monarch*” ruling over England, supported not by bishops, but by a Presbyterian church government: “if Conformity of Church *Discipline* to the Civill be so desir’d, there can be nothing more parallel, more uniform, then when under the Sovereigne Prince *Christs* Vicegerent using the *Scepter of David*, according to *Gods Law*, the *godlies*, the *wisest*, the *learnedest* Minister in their severall charges have the instruction and disciplining of *Gods people* by whose full and free Election they are consecrated to that holy and equall *Aristocracy*” (CPW I:599-60).

thousands" and have "hamstrung the valour of the Subject by seeking to effeminate us all at home" (CPW I:588). Those who instead remain in England are encouraged by their own Church to sloth and idolatry, because the virtuous activity that ought to characterize true subjects has been forbidden by bishops: "Well know every wise Nation that their Liberty consists in manly and honest labours, in sobriety and rigorous honour to the Marriage Bed, which in both Sexes should be bred up from chaste hopes to loyal Enjoyments; and when the people slacken and fall to loosenes, and riot, then doe they as much as if they laid downe their necks for some wily Tyrant to get up and ride" (CPW I:588). In a clear link between domestic and public liberty, a link turned into a near-threat to Parliament in the second edition of *The Doctrine and Discipline of Divorce* (CPW II 229-30), Milton connects the corruption of Church discipline with the creation of corrupt subjects better-fitted for tyranny than for virtuous civic life. But what are Milton's conceptions of liberty and tyranny? For parliamentary writers such as Parker and Herle, the notion of liberty is firmly connected with rule by law, which, unlike rule by the arbitrary will of the sovereign, enables just relationships between subjects and rulers. As we will see, Milton to a certain extent adopts this framework of justice and rule by law, but strips it of its foundations in historical development.

This is not to say that Milton does not include historical narratives in his polemical pamphlets. The opening of *Of Reformation* begins with a history of the Church. Moreover, his use of ecclesiastical history in this tract demonstrates the same kind of

engagement with historical development that we will find in his later political writings. Here, as in the divorce tracts, Milton draws his readers' attention to the origins of the institution. To understand marriage, we must understand its first instance in Eden; to understand the correct form of church policy, we must understand the first foundation of the Church. The opening lines of *Of Reformation* create a parallel between the life of Christ and the history of the Church:

after the story of our Saviour *Christ*, suffering to the lowest bent of weaknesse, in the *Flesh*, and presently triumphing to the highest pitch of *glory*, in the *Spirit*, which drew up his body also, till we in both be united to him in the Revelation of his Kingdome: I do not know of any thing more worthy to take up the whole passion of pittie, on the one side, and joy on the other: then to consider first, the foule and sudden corruption, and then after many a tedious age, the long-deferr'd, but much more wonderfull and happy reformation of the *Church* in these later days. (CPW I:519; emphasis original)

The passage creates its governing parallel through the unspoken use of the description of the Church as the body of Christ. The histories of the suffering of both the incarnate Christ and the Church are worthy of our meditation and both provoke the same emotions. The story of "our Saviour *Christ*, suffering to the lowest bent of weaknesse," and the story of the corruption and recent reformation of the Church both arouse "the whole passion of pittie, on the one side, and joy on the other." Moreover, the parallel between the two stories serves as an interpretive guide to the history of the Church throughout the opening section of the pamphlet. In particular, the passage models two central principles of the pamphlet. First, it emphasizes a distinction between flesh and spirit. Milton's language, on the one hand, highlights the suffering and weakness

experienced by Christ through the incarnation, “suffering to the lowest bent of weakness, in the *Flesh*.” While, on the other hand, the “highest pitch of *glory*” is attained in the Spirit and only consequently through this spiritual glory does the body also triumph over its previous weakness.

The second principle that is introduced in this passage and that characterizes the rest of the opening section of *Of Reformation* is the construction of multiple overlapping temporalities. Both stories, of Christ’s incarnation and of the development of the Church, are placed in indeterminate time. Christ is depicted “suffering” and “triumphing” before the eyes of “every man Christianly instructed” (CPW I:519). It is only once we reach the past-tense, “drew up,” that the passage places Christ’s resurrection in the past. However, as soon as that is done, the reader is brought forward in time by the clause “till we in both be united to him in the Revelation of his Kingdome.” The conjunction “till” indicates an extension of the action in the forgoing clause up to the time of the second coming. Up to this point in the passage, “his body” refers to Jesus’ physical body, but the turn at “till” brings in the second meaning of the mystical body of Christ, the Church. The extension in time of “drew his body also” becomes clear in the drawing up of the body of the Church and of its members who are both united *now* into the mystical body of Christ through the Scriptural “Revelation of his Kingdome” and will be, each one of them, united in body and spirit at the time of the resurrection. Within this one sentence in the opening of the pamphlet, Milton both sketches out and collapses

the history of the Church from its foundation at the time of the incarnation, through its history of decline and reformation, and finally to its triumphal moment at the resurrection of the dead.

Both the distinction between body and soul, and the construction of multiple temporalities is reinforced by Scriptural echoes. In particular, the suffering of the flesh and the triumphing of the spirit described in Milton's passage recall verses 42-4 of 1 Corinthians 15: "So also *is* the resurrection of the dead. It is sown in corruption; it is raised in incorruption:/ It is sown in dishonor; it is raised in glory; it is sown in weakness; it is raised in power:/ It is sown in a natural body; it is raised a spiritual body. There is a natural body, and there is a spiritual body" (underlining mine). Paul's description of the resurrection of the dead is mirrored in Christ's suffering "weaknesse, in the *Flesh*" and attaining "*glory, in the Spirit.*" But whereas Paul speaks of two bodies, one natural and one spiritual, Milton simply distinguishes between body and spirit. Moreover, the language of sowing and planting, latent in the echo of 1 Corinthians 15, becomes explicit a few lines later in Milton's description of the corruption of the Church:

Sad it is to thinke how that Doctrine of the *Gospel*, planted by teachers Divinely inspir'd, and by them winnow'd, and sifted, from the chaffe of overdated Ceremonies, and refin'd to such a Spiritual height, and temper of purity, and knowledge of the Creator, that the body, with all the circumstances of time and place, were purifi'd by the affections of the regenerat Soul, and nothing left impure, but sinne. (CPW I:519; italics original)

Here the biblical allusions multiply. The image of sowing from 1 Corinthians 15 is linked to that of the parables from Matthew 13 of the sower (Matthew 13.3-8), and that of the

wheat and the tares (Matthew 13.24-30), as well as to that of the parable of the wheat and the chaff from Matthew 3. Along with the images of planting common to the Matthew passages, 1 Corinthians 15 is recast in these lines as a description of the “regenerat Soul” purifying the body. The “mystery” of the spiritual and natural bodies of Paul’s text is turned into a hierarchy of soul and body in Milton’s passage.

Milton uses these Scriptural echoes to collapse temporal distinctions. The still on-going history of the Church is narrated in language associated with the eschaton. Milton’s use of the imagery from Matthew reinforces the identification of different points in time in ecclesiastical history by, on the one hand, the use of the past tense in most verbs in the passage and, on the other hand, the mixing of the language of verses in Matthew that deal with the spread of the Gospel with those that describe the second coming. The passage begins by narrating what appears to be a history of the primitive Church. The “*Doctrine of the Gospel*” was “planted by teachers Divinely inspir’d.” But immediately, we find that these very same teachers had to winnow and sift their doctrine “from the chaffe of overdated Ceremonies.” From the primitive Church, the passage jolts the reader to the Reformation. Moreover, the imagery in the passage mixes the Parable of the Sower with the burning of the chaff of Matthew 3. This indicates another shift in time. The separation of the wheat and chaff in Matthew 3.12 is set clearly

in the future.<sup>236</sup> But the use of the past tense for the verbs in the passage, while appropriate for a history of the Church, creates the latent impression that a perfect discerning of the difference between wheat and chaff had already been obtained in the primitive Church or, by parallel, in the Reformed church. In this passage, Milton links the parable of planting the seeds of the “word of the kingdom” (Matthew 13.19) with that of the tares and wheat (Matthew 13.24-30) as well as with that of the chaff and wheat of Matthew 3. What is the combined effect of these temporal shifts? The passage creates a double-layered history within one sentence. On one level, Milton narrates the history of the Church from foundation to the corruption of the later Catholic Church. On the second level, he presents the decline of the English Church from the Reformation to its present level of corruption. This joining of the two historical periods creates the impression that the teachers of the primitive church had, from the very beginning, to refine and purify church doctrine. However, the Scriptural echoes from Matthew create the opposite image. One in which the Church has already, at different points in history, achieved the kind of discernment to be expected only in the members of the Church triumphant. That is, on the one hand, the passage claims that it is possible to obtain a Church discipline where there is “nothing left impure” — with a belated concession of

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<sup>236</sup> Matthew 3.12: “Which hath his fanne in his hand, and will make cleane his floore, and gather his wheate into his garner, but will burne vp the chaffe with vnquenchable fire” (Geneva Bible). The commentary for the Geneva edition rules out the possibility that this is a goal attainable in the present: “The triumphs of the wicked shall end in euerlasting torment.”

“but sinne” — and, on the other hand, that *from the beginning* the doctrine of the Church required purification from “overdated Ceremonies.”

The opening of the pamphlet, having seen the body — of the Church and of doctrine — purified by “the affections of the regenerat soul,” moves on to deny the need of the body itself: “*Faith* needing not the weak, and fallible office of the Senses, to be either the Ushers, or Interpreters, of heavenly Mysteries, save where our Lord himself in his Sacraments ordain’d” (CPW I:519-20). The mediation of the senses is not necessary to faith. Indeed, the fallible nature of the senses can too easily slide back into sin and idolatry:

that such a Doctrine should through the grossnesse, and blindnesse, of her Professors, and the fraud of deceivable traditions, drag so downwards, as to backslide one way into the Jewish beggary, of old cast rudiments, and stumble forward another way into the new-vomited Paganisme of sensuall Idolatry, attributing purity, or impurity, to things indifferent, that they might bring the inward acts of the *Spirit* to the outward, and customary ey-Service of the body, as if they could make *God* earthly, and fleshly, because they could not make themselves *heavenly*, and *Spirituell*. (CPW I:519-20)

Thus, a passage that started by describing the incarnation as the model for interpreting Church history ends by warning about the horrors of making “*God* earthly, and fleshly.” The refining attained by the teachers of the Gospel and the triumph attained by Christ after his weakness in the flesh is undone by attempts to re-incarnate God in earth and flesh. Moreover, here Milton indicates his view of how ceremonies and images are incorrectly used. In the passage, “sensual Idolatry” is an attempt to make what should be spiritual and internal, “the inward acts of the Spirit,” external and physical, “the



outward, and customary ey-Service of the body." External acts of worship—"joining the body in a formall reverence" (CPW I:521)—and "things indifferent" are presented as imperfect and dangerous physical realizations of internal acts. Not only are such physical representations unnecessary, they prove to be dangerous. Indeed, the main thrust of the argument in *Of Reformation* is to denounce the bishops' use of "sensuall Idolatry" to corrupt the purity of doctrine achieved by the Reformation, which in turn leads to individual and civic corruption. Superstitious forms of worship corrupt the souls of parishioners: "out of question from pervers conceiting of *God*, and holy things, she [the soul] had faln to believe no *God* at all, had not custom and the worme of conscience nipt her incredulity hence to all the duty's of evangelicall grace instead of the adoptive and cheerfull boldness which our new alliance with *God* requires, came Servile, and thral-like fear" (CPW I:522; italics original). The process of turning God into earth and flesh produces a parallel process of "over-bodying" the soul (CPW I:522), which, thinking that it can meet God in the flesh, no longer strives to reach Him spiritually. Moreover, a fleshy soul that is accustomed to worship a fleshy God risks reenacting a version of the Fall, "she had faln to believe no *God* at all," and it is only the remnant of conscience and custom that keeps it from turning, as it would if it were honest, atheist. Servile fear then becomes the only motivation for religious observance.

Milton returns to the problem of idolatrous ceremonies throughout the pamphlet. Over and over again, the primitive Church is brought forward as a

touchstone to evaluate the worth of the discipline of the current Church. And indeed, Milton calls to the Fathers of the Church to witness what the Laudian bishops have turned into: "What would ye say now grave Fathers if you should wake and see unworthy Bishops, or rather no Bishops, but Egyptian task-masters of Ceremonies thrust purposely upon the groaning Church to the affliction, and vexation of *Gods* people?" (CPW I:545). The bishops of the Laudian Church fail to be pastors and instead become "Egyptian task-masters" who turn their flocks into slaves in the service of empty ceremonies and physical idols:

Thus then did the Spirit of unity and meeknesse inspire, and animate every joint, and sinew of the mysticall body, but now the gravest, and worthiest Minister, a true Bishop of his fold shall be revil'd, and ruffl'd by an insulting, and only-Canon-wise Prelate, as if he were so slight paltry companion: and the people of *God* redeem'd, and wash'd with *Christs* blood, and dignify'd with so many glorious titles of Saints, and sons in the Gospel, are now no better reputed then impure ethnicks, and lay dogs; stones & Pillars, and Crucifixes have now the honour, and the almes due to *Christs* living members; the Table of Communion now become a Table of separation. (CPW I: 547-8)

In this passage, Milton returns to the language of the mystical body of the Church that opens *Of Reformation* and is the guiding image of the pamphlet. Instead of the dead and enslaving bodies of the idolatrous services and stone idols imposed by the Laudian bishops, Milton depicts the primitive church as a true mystical body which is made alive by the "Spirit of unity and meeknesse." In the opening passage analyzed earlier, the Spirit of Christ raises the weak body to glory. In this passage the same image is revived. The members of the Church should meet together in unity at the "Table of Community"

following the promptings of the Spirit, but they are instead divided by the closing away of the altar. Alms that should be used to nourish the members of the mystical body of the Church are spent on physical decorations of churches, on their “stones & Pillars.” The very creation of the physical edifice of the church becomes a means of keeping its members apart.

Not only do the bishops corrupt Church services, they also discourage English subjects from other forms of devotion and study on Sundays:

this I am sure they took the ready way to despoile us both of *manhood* and *grace* at once, and that in the shamefullest and ungodliest manner upon that day which Gods Law, and even our own reason hath consecrated, that we might one day at least of seven set apart wherein to examin and increase our knowledge of God, to meditate, and commune of our Faith, our Hope, our eternall City in Heaven, and to quick’n, withal, the study, and exercise of Charity. (CPW I:589)

For Milton, the *Book of Sports* is designed to destroy both domestic and religious virtue at once. With it, the bishops “despoile” the subjects of both “*manhood* and *grace*.” The passage models the difference between active virtue and passive vice. On the one hand, we have an active set of verbs for the subjects who have, following divine law, used their reason to consecrate the Sabbath so as to dedicate that day to “examin and increase our knowledge of God, to meditate, and commune of our Faith, our Hope, our eternall City in Heaven, and to quick’n, withal, the study, and exercise of Charity.” In keeping the Sabbath, the virtuous subject is actively working towards a perfection of virtue. On the other hand, in the subsequent lines describing the effects of *The Book of Sports*, the agency is given to the bishops: “at such a time that men should bee pluck’t from their

soberest and saddest thoughts, and by *Bishops* the pretended *Fathers of The Church* instigated by publique Edict, and with earnest indeavour push't forward to gamin, jiggin, wassailing, and mixt dancing is a horror to think" (*CPW* I:589; underlining mine).<sup>237</sup> In Milton's description, the participation in Sunday recreations becomes a violent corruption of subjects who would instead be occupied with "their soberest and saddest thoughts." They are "pluck't" away from their prayers and "push't forward" into games and dances. The bishops do not merely allow Sunday sports, but they rather force their parishioners to participate in them.

When published, the *Book of Sports* was introduced by a royal declaration. Milton is, however, careful to treat it as a creation of the bishops. This attempt to protect his

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<sup>237</sup> In reissuing the *Book of Sports*, Charles included in his declaration his father's original statement from 1618 stating that his subject in 1633 "did suffer in the same kind, though perhaps not in the same Degree" in being debarred from "Lawful Recreations" as his father's subjects. James I's rationale for the *Book of Sports* presents a mirror image of Milton's view: "The report of this growing amendment amongst them, made us the more sorry, when with our own Ears we heard the general Complaint of our People; that they were barred from all Lawful Recreations, and Exercise upon the Sundays after Noon, after the ending of all Divine Service, which cannot but produce two Evils: The one the hindring of the Conversion of many, whom their *Priests* will take occasion hereby to vex, perswading them that no honest Mirth or Recreation is Lawful or Tolerable in Religion which the King professeth, and which cannot but breed a great discontentment in our Peoples hearts, especially of such as are peradventure upon the point of turning: The other Inconvenience is, that this Prohibition barreth the Common and Meaner sort of People from Using such Exercises, as may make their Bodys more able for War, when we, or our Successors, shall have occasion to use them. And in place thereof sets up Tipling and filthy Drunkenness, and breeds a number of idle and discontented Speeches in their Ale-houses. For when shall the Common-people have leave to exercise, if not upon the Sundays and Holy-days, seeing they must apply their labour, and win their Living in all Working-days?" (*The Book of Sports, As set forth by K. Charles the I. with Remarks* (London, 1710), 1-2. Eighteenth Century Collections Online. (William Clark Memorial Library, UCLA). December 10, 2010. [http://find.galegroup.com.proxy.lib.duke.edu/ecco/infomark.do?&contentSet=ECCOArticles&type=multipa ge&tabID=T001&prodId=ECCO&docId=CW101511465&source=gale&userGroupName=duke\\_perkins&version=1.0&docLevel=FASCIMILE](http://find.galegroup.com.proxy.lib.duke.edu/ecco/infomark.do?&contentSet=ECCOArticles&type=multipa ge&tabID=T001&prodId=ECCO&docId=CW101511465&source=gale&userGroupName=duke_perkins&version=1.0&docLevel=FASCIMILE)).

In James' declaration, Puritan dislike is used by Catholic priests to prevent conversions to the official religion and it also prevents subjects from practicing sports that would prepare them for war and keep them away from drunken and idle speech.

criticism of the bishops from an accusation of attacking the king is typical of Milton's strategy throughout the pamphlet. At this early date, he is still invoking the king's support on Church reformation. By February 1649, the date of publication of *The Tenure of Kings and Magistrates*, the political situation however has changed drastically. The king has been tried and executed against the objections of Presbyterian ministers and large sections of the population. In particular on January 18<sup>th</sup>, 1649, a group of forty-seven Presbyterian ministers signed *A Serious and Faithfull Representation to the General Council of the Army* to protest Charles' trial.<sup>238</sup> *A Representation* is addressed to the General Council of Officers as the illicit power behind both Pride's Purge and the king's trial. The Presbyterian ministers attack the General Council on three main grounds. Their first point is that the army leadership receives its authority from the full Parliament and that they, "in reference to the Power of Magistracy, are but private persons."<sup>239</sup> Thus, neither the Council nor the Rump Parliament have sufficient authority to legitimize the trial. Their second complaint centers on Church discipline. The Presbyterian ministers fear

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<sup>238</sup> In the *Second Defence* (1654), Milton depicts his decision to write *The Tenure* as prompted by the writings of "certain Presbyterian ministers, formerly bitter enemies of Charles, but now resentful that the Independent parties were preferred to theirs and carried more weight in Parliament" (CPW IV.i.626). A. E. Barker notes that, along with *A Representation*, Milton is also responding to *A Vindication of the Ministers of the Gospel* and to Prynne's *Briefe Memento to the Present Unparliamentary Iunto*. *A Representation* is, however, the most influential Presbyterian pamphlet on the king's trial, prompting answers not only from Milton, but also from Samuel Richardson, *An Answer* (January 27, 1649) and John Goodwin, *Obstructors of Justice* (May 30, 1649) (*Milton and the Puritan Dilemma*, 142, n. 30).

<sup>239</sup> *A Serious and faithfull representation of the judgments of ministers of the Gospel within the the province of London contained in a letter from them to the general and his councill of war* (London, 1649), 5. Early English Books Online. (Union Theological Seminary Library, N.Y.). December 10, 2010. [http://gateway.proquest.com.proxy.lib.duke.edu/openurl?ctx\\_ver=Z39.88-2003&res\\_id=xri:eebo&rft\\_id=xri:eebo:citation:16412151](http://gateway.proquest.com.proxy.lib.duke.edu/openurl?ctx_ver=Z39.88-2003&res_id=xri:eebo&rft_id=xri:eebo:citation:16412151).

that, under the pretence of stopping the spread of Catholicism in the Laudian Church, the army is now intent on tolerating all sects: “instead of preserving the Truth and purity of Religion and the Worship of God; we feare you are opening a door to desperate and damnable Errors and Heresies against the Truth of God, and to many licentious and wicked practises against the worship and ways of God.”<sup>240</sup> Third, the writers of *A Representation* accuse the army leadership of being forsworn of the oaths and vows they took to preserve the life of the king. Referring to the text of the Solemn League and Covenant, which, in its third article, explicitly includes a vow to safeguard the king,<sup>241</sup> the writers of the pamphlet insists on the validity of this oath: “In all which obligations, though the matter of them ay be in part, of Civil concernment, yet the bond and tye of an Oath and Covenant is Religious, sacred, and inviolable. Which though some may esteem no more then an *Almanack out of date*, yet we look upon it as the Oath of GOD, in whose Name we have sworn, and who will certainly require it at our hands.”<sup>242</sup>

The argument of the *Tenure* is designed to defend the legitimacy of the regicide against such accusations and to convince its readers to support the new government. The opening begins by connecting the opposition to the regicide with the subjects’ inability to reason correctly and freely: “If Men within themselves would be govern’d by

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<sup>240</sup> *Serious and faithfull representation*, 7.

<sup>241</sup> Samuel Rawson Gardiner, *The Constitutional Documents of the Puritan Revolution*, 269.

<sup>242</sup> *Serious and faithfull representation*, 6-7.

reason, and not generally give up thir understanding to a double tyrannie, of Custom from without, and blind affections within, they would discern better, what it is to favour and uphold the Tyrant of a Nation" (CPW III:190). Like the political pamphlets of Ferne, Herle, Parker, and Digges, the *Tenure* depicts its audience as easily swayed by specious arguments. To such gullible readers, Milton opposes men "govern'd by reason" who can "discerne better" than those led by "blind affections." In the pages immediately following this opening, Presbyterian preachers who first instigated the war against the king and now oppose the Rump and the king's trial are anatomized to demonstrate that they too surrendered "thir understanding to a double tyrannie." Since they are "but slaves within doors, no wonder that they strive so much to have the public State conformably govern'd to the inward vitious rule, by which they govern themselves" (CPW III:190). The king's trial becomes a test of his subjects' virtue. Those who oppose it demonstrate publicly their own "inward vitious" character. In particular, the Presbyterian writers' arguments against the Rump's actions demonstrate their inability to follow through the consequences of their own actions. The war against the king, which they supported, has as its most likely outcome a change of government: "If God and a good cause give them Victory, the prosecution wherof for the most part, inevitably draws after it the alteration of Lawes, change of Government, downfal of Princes with thir families; then comes the task to those Worthies which are the soule of that enterprise, to be swett and labour'd out amidst the throng and noise of Vulgar and

irrational men" (CPW III:192). The real work of the rebellion is not the fighting of the battles of the war itself, but rather the reconstructing of the government. Here Milton distinguishes between the "Worthies," who will undertake this labor, and "Vulgar and irrational men," who will oppose it by "contesting for privileges, customes, forms, and that old entanglement of Iniquity, thir gibrish Lawes, though the badge of thir ancient slavery" (CPW III:192-3). In these pages, Milton does not simply argue that Charles' trial was a necessary outcome of Parliamentary victory in the Civil Wars. But rather, the basis of government itself has to be reformulated. England must undertake the "alteration of Lawes" and "change of Government."

These opening passages give a first view of Milton's understanding of tyranny. Quentin Skinner, in "John Milton and the Politics of Slavery," sees continuity between Milton's and Henry Parker's accounts of liberty and slavery. For Skinner, Milton and the apologists of the English republic draw their conceptions of a free state from a classical framework indebted to Roman legal and political theory.<sup>243</sup> In particular, Milton's insistent invectives against those who oppose the regicide are a manifestation of his fear that "rendered abject and ignoble by tyranny of the Stuarts, the English may no longer

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<sup>243</sup> Quentin Skinner, "John Milton and the Politics of Slavery," in *Milton and the Terms of Liberty*, ed. Graham Parry and Joad Raymond (Cambridge: D.S. Brewer, 2002), 1-22, and especially 12-5. On Milton's debt to classical sources, see also Martin Dzelzainis, "Milton's Classical Republicanism" in *Milton and Republicanism*, ed. David Armitage, Armand Himy, and Quentin Sinner (Cambridge: Cambridge University Press, 1995), 3-24.



be able to summon the qualities needed to take advantage of their new-found liberty."<sup>244</sup> And indeed, the first mention of tyranny in the pamphlet is not a depiction of Charles as a tyrant. The fundamental tyranny, which supports a tyrannical king, is the vicious rule of corrupted individuals, the "a double tyrannie, of Custom from without, and blind affections within." But there is a fundamental difference between Parker and Milton. In the *Tenure*, we find, "customes" paired up with "gibrish Lawes" to form "the badge of thir ancient slavery." Laws and custom, rather than being represented as limiting royal power, are here singled out as keeping subjects under the rule of a tyrant. The "gibrish Lawes" helped to habituate English subjects into servitude. This is strikingly different from the position that Presbyterian and Parliamentarian writers had argued in the early 1640s. As we have seen, in their writings, a tyrant was an absolute ruler who could not be held accountable by laws or magistrates. This was represented as a fundamental breakdown of justice within the commonwealth. In Herle's words, Charles was a tyrant because royalist writers insisted that he "owe[d] no duty to man at all."<sup>245</sup> (233). In 1642, in *An Apology*, Milton gives a similar view of a tyrant: "But their doctrine was plainly the dissolution of law which only sets up sov'ranty, and the erecting of an arbitrary sway according to his privat will, to which they would enjoyne a slavish obedience without law; which is the known definition of a tryant, and a tyranniz'd people" (CPW I:946;

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<sup>244</sup> Quentin Skinner, "John Milton and the Politics of Slavery," 19.

<sup>245</sup> Herle, *A Fuller Answer*, 233.

emphasis mine). This language is still mirrored in the *Tenure*, where Milton objects that “to say Kings are accountable to none but God, is the overturning of all Law and government. For if they may refuse to give account [...] we hold then our lives and estates, by the tenure of his meer grace and mercy, as from a God, and not a mortal Magistrate, a position that none but Court Parasites or men besotted would maintain” (CPW III:204). Thus, the *Tenure* contains two opposing views of the law. On the one hand, laws are seen as a restraint on the king and, on the other hand, they are depicted as “gibrish Lawes” that help to enslave the English subjects.

What is the connection between law, tyranny, and slavery in the *Tenure*? Like the other writers examined above, Milton constructs an imagined history of the creation of government to show the proper relationship between laws, ruler, and subjects. In the *Tenure*, we see that the original freedom of men is self-evident:

No man who knows ought, can be so stupid to deny that all men naturally were born free, being the image and resemblance of God himself, and were by privilege above all the creatures, born to command and not to obey: and that they liv'd so. Till from the root of *Adams* transgression, falling among themselves to doe wrong and violence, and foreseeing that such courses must needs tend to the destruction of them all, they agreed by common league to bind each other from mutual injury, and joyntly to defend themselves against any that gave disturbance or opposition to such agreement. (CPW III:198-9)

As in the divorce tracts, Milton here turns to Genesis to understand how to organize political, as well as, domestic society.<sup>246</sup> In doing so, he blurs the line between the pre- and post-lapsarian nature of man. All the writers, royalist, Parliamentary, and Presbyterian alike, considered above, would agree that after the Fall, but prior to the formation of political communities, “all men naturally were born free.” But for those writers, that freedom amounted to unrestrained violence. Milton, on the other hand, downplays the connection between original liberty and violence. Freedom is found in “all men” and it is a reflection of the “the image and resemblance of God himself.” In the first sentence, the effects of the Fall are not visible and the reader is lead to imagine a moment in which men “born to command and not to obey [...] liv’d so.”<sup>247</sup> If we take this moment to be life in Eden, then the shift introduced in the next sentence with “till” should refer to the Fall. Instead what we encounter is not the Fall itself, but its consequences: “Till from the root of *Adams* transgression.” The construction of the sentence creates a gap between the Fall itself and the need to surrender our original freedom to prevent violence. This gap extends the native freedom and dominion of the first men to post-lapsarian times.<sup>248</sup>

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<sup>246</sup> The similarity between the divorce and regicide tracts was originally pointed out by A. E. Barker, *Milton and the Puritan Dilemma*, 144-6.

<sup>247</sup> On the other hand, in Book XI of *Paradise Lost*, the first vision of other humans granted to Adam by Michael is that of Cain’s murder of Abel: “Adam, now ope thine eyes, and first behold/ The effects which thy original crime hath wrought/ In some to spring from thee, who/ [...] / from that sin derive/ Corruption to bring forth more violent deeds” (XI.423-428).

<sup>248</sup> William Poole, in *Milton and the Idea of the Fall*, argues that, in the 1643-44 polemics over divorce and censorship, Milton’s writing develops to encompass a double view about the Fall. In particular, Poole points

Milton's subsequent narrative of the formation of government follows a well-worn path. Its general outline is very similar to that of Parker's history in the *Observations*. Kings and magistrates are elected as authorities "that might restrain by force and punishment what was violated against peace and common right" (CPW III:199). Subsequently, laws, coronation oaths, and representative bodies, such as Parliament, are developed to curb the absolute power of kings (CPW III:199-200).<sup>249</sup> What is striking, however, in Milton's account is the lack of emphasis on the possible dangers posed by the dissolution and re-formation of governments. As we have seen earlier, Parker focuses on the difficulty of setting up a just form of government.<sup>250</sup> In the *Observations*, absolute kingship is a first attempt to contain within social bounds fallen human nature. But the consequences of original sin are felt in this institution as well. Absolute rulers become tyrants and their subjects turn to violent rebellion. The best

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out that in the divorces tracts, we find Milton's first depictions of Adam's and Eve's pre-lapsarian marriage as normative for contemporary, post-lapsarian marriage, while, at the same time, we find an insistence that mosaic divorce has to be allowed because of the consequences of the Fall (*Milton and the Idea of the Fall* (Cambridge: Cambridge University Press, 2005), 132-136).

<sup>249</sup> For the analogous narrative in Parker, see *Observations*, 13. In *Eikonoklastes*, Milton changes this narrative. In response to the King's claim that Parliament may not make laws without him, Milton retorts: "Yet he professes to hold his Kingly right by Law; and if no Law could be made but by the great Counsel of a Nation, which we now term Parliament, then certainly it was a Parliament that first created Kings, and not onely made Laws before a King was in being, but those Laws especially, wherby he holds his Crown" (CPW III:467).

<sup>250</sup> This feature is even more prominent in royalist writing. For instance, Digges, in *The Unlawfulness*, does not deny that we have an innate freedom: "Though liberty be our birthright, yet it must not be made the cloake of sin, it takes not off those bonds with which God hath tyed up our hands from fighting against the supream power" (44). As we have seen earlier, for Digges, the original liberty that we had in the state of nature was more a curse than a blessing since it meant that we lived in constant fear of violence from all others. The only solution to this problem is be bound by a civil contract.

solution to this problem, that of balancing the power of the king with laws and of instituting representative bodies, is found only after a long history of violence and uprisings. For Parker, given the difficulty of reaching this solution, the balance of powers should not be lightly discarded. On the other hand, in Milton's description of the origin of government, the possibility of social life without the constraints of laws or magistrates is left open. While the original agreement to come together in "common league" is necessary to prevent "mutual injury," the members of the first commonwealth surrender their natural "authority and power of self-defence and preservation" to magistrates or a king "for ease, for order, and least each man should be his own partial Judge" (CPW III:199). Parker's repeated insistence on the unsociability of men is not present in Milton's account. Milton depicts men in the state of nature as capable of a form of justice. Rulers are appointed so that they may "execute, by vertue of this intrusted power, that justice which else every man by the bond of nature and of Cov'nant must have executed for himself, and for one another" (CPW III:199; emphasis mine). While Parker emphasizes the impossibility of administering justice without law and magistrates in post-lapsarian times, "without some magistracy to provide new order, and to judge of old, and to execute according to justice, no society could be upheld,"<sup>251</sup> Milton's narrative leaves open the possibility of justice without kings, magistrates, or laws even after the Fall.<sup>252</sup>

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<sup>251</sup> Parker, *Observations*, 13.

This lack of emphasis on the dangers that might follow the dissolution of government in the *Tenure* goes hand in hand with Milton's insistence on the legitimacy of the right to change government. More precisely, Milton oscillates between two arguments. On the one hand, he constructs in detail an argument defending the right to depose kings who become tyrants. He does this both by biblical exegesis, arguing that Romans 13 only requires obedience to good kings,<sup>253</sup> and by a use of three of the standard Parliamentary arguments developed the early 1640s. That is, first, he argues that the power of kings and magistrates derives from the people and it is given to them only in trust and for the good of the people (*CPW* III:202). Second, the idea that a king holds his kingdom by right of inheritance would amount to turning each of his subjects into "the Kings slave, his chattell, or his possession that may be bought and sould"

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<sup>252</sup> There is, however, a strong similarity between Milton's description of the development of checks on kings—the movement from unfettered kingship, the bond of laws, and finally, the bond of oaths enforced by representative assemblies—and Parker's. In the narrative of the foundation of government in *The Tenure*, the passage describing the formulation of the first laws, echoes Parker's language in the *Observations*. Both pamphlets make it difficult to discern who frames the laws. In Milton's version, once it becomes clear that unfettered kings can prove tyrants, "they who now by tryal had found the danger and inconveniences of committing arbitrary power to any, invented Laws either fram'd, or consented to by all, that should confine and limit the authority of whom they chose to govern them" (*CPW* III:199-200; emphasis mine). As the virtuous readers in *Areopagitica* are purified by "trial" (*CPW* II:515), the first legislators learn "by tryal" the dangers of arbitrary power. However, the laws that they invent are "either fram'd, or consented to by all." Similarly, in the description of coronation oaths, a further check on arbitrary power, laws are depicted as being made by a rather vague, "they the people": the King "upon those termes and no other, receav'd Allegiance from the people, that is to say, bond of Covnant to obey them in execution of these Lawes which they the people had themselves made, or assented to" (*CPW* III:200; emphasis mine).

<sup>253</sup> "Therefore Saint *Paul* in the forecited Chapter tells us that such Magistrates he meanes, as are, not a terror to the good but to the evil; such as beare the sword in vaine, but to punish offender, and to encourage the good. If such onely be mentiond here as powers to be obeyd, and our submission to them onely requir'd, then doubtless those powers that doe the contrary, are no powers ordain'd of God, and by consequence no obligation laid upon us to obey or not to resist them" (*CPW* III:210).

(CPW III:203), but since the people considered collectively are superior than the king considered singly, this must be manifestly false. Finally, he concludes that for the coronation oaths to be more than “meer mockeries,” kings must be accountable to the people as well as to God (CPW III:204). On the other hand, immediately following this line of reasoning, Milton expands his claim that we may depose tyrants to argue that a people may change their sovereign at will. This is proved by re-iterating the first of the three arguments above and by reasserting the natural liberty of all men: “since the King or Magistrates holds his autoritie of the people, both originally and naturally for their good in the first place, and not his own, then may the people as oft as they shall judge it for the best, either choose him or reject him, retaine him or depose him though no Tyrant, merely by the liberty and right of free born Men, to be govern’d as seems to them best” (CPW III:206).<sup>254</sup>

The *Tenure* defends the Rump Parliament’s trial and execution of the king in the name of liberty. More drastically, Milton argues that the freedom to abolish tyrannical rulers and re-organize the government is the very essence of a free nation: “And surely they that boast, as we doe, to be a free Nation, and not have in themselves the power to

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<sup>254</sup> This right does not, of course, extend to the Irish. In his *Observations Upon the Articles of Peace*, Milton accuses the King of attempting to establish a “pernicious and hostile Peace” with Ireland when he agreed “to disalliege a whole Feudary Kingdome from the ancient Dominion of *England*” (CPW III:307; emphasis original). For a reading of Milton’s view of Ireland and Irish Catholicism in the context of his other political writing, see Mary C. Fenton, in *Milton’s Places of Hope: Spiritual and Political Connections of Hope with Land* (Burlington, VT: Ashgate, 2006). She argues that Milton’s view of Ireland in the *Observations* is part of his larger understanding of the expansion of the boundaries of true religion as part of the practice of Charity (66-72).

remove, or to abolish any governour supreme, or subordinate, with the government it self upon urgent causes, may please thir fancy with a ridiculous and painted freedom, fit to coz'n babies; but are indeed under tyranny and servitude" (CPW III:236-7).<sup>255</sup> The only true freedom in a nation is that which allows the subjects to remove not only the king (or any other oppressing governor), but to also reconstruct the form of government altogether. But while the royalist writers of the early 1640s and the Presbyterian ministers of *A Representation* raise the image of a return to an anarchical state of nature upon the dissolution of a given form of government, Milton, instead, produces the image of an orderly, but free household. Subjects who cannot change their government when they find it tyrannical, lack "that power, which is the root and sourse of all liberty, to dispose and *oeconomize* in the Land which God hath giv'n them, as Maisters of Family in thir own house and free inheritance" (CPW III:237). We thus see that while earlier in the pamphlet, Milton had declared that "who in particular is a Tyrant cannot be determin'd in a general discours, otherwise then by supposition; his particular charge, and the sufficient proof of it must determin that" (CPW III:197), the "general discours" of *The Tenure* argues that any king or magistrate who cannot be deposed at will is a tyrant and his subjects are slaves. How does this type formulation of tyranny compare

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<sup>255</sup> Milton returns to this figure of the infantilized nation in *Eikonoklastes*. Responding to Charles's discussion of the nineteen propositions, he answers: "if the Kingdom shall tast nothing but after his chewing, what does he make of the Kingdom, but a great baby" (CPW III:469). For a discussion of Milton's attack on the image of the king as farther through his emphasis on "aristocratic" rule by the heads of households in the political tracts, see Su Fang Ng, *Literature and the Politics of Family in Seventeenth-Century England* (Cambridge: Cambridge University Press, 2007), 58-75.



with that proposed by Parker and Herle in the early 1640s? As we have seen, for Parker, the essential problem of despotic rule is based on a curtailing of justice and appropriation by the despot of the interest that each member of the community has in himself and in each other member. What is Milton's conception of justice? And what is the role of the community in his political writing?

### **3.6 Law, Tyranny, and Educating the Rabble**

While the *Tenure* responds to Presbyterian opposition to the trial of the king by claiming a right to depose any tyrant, *Eikonoklastes* has to counter *Eikon Basilike's* successful portrayal of Charles as a pious king violently and unlawfully deposed. Milton has to convince his readers that the regicide was necessary in order to ensure the well-being of the commonwealth. As A. E. Barker originally pointed out, Milton's argument in the regicide pamphlets "is the political application of the argument developed in the divorce tracts, that the end of all law, whether divine or human, is the good of man."<sup>256</sup> The divorce tracts advocate that this goal is achieved by laws that allow for individual liberty, on the part of husbands at least, in deciding when to terminate a marriage. On the surface level, the regicide pamphlets argue along similar lines. As we have seen, in the *Tenure* Milton strenuously argues that the people have a right to depose a ruler at will. However, in *Eikonoklastes*, Milton has to account for the fact that the English people's reception of *Eikon Basilike* proves their inability to correctly choose their form of

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<sup>256</sup> *Milton and the Puritan Dilemma* (144).

government. In this later pamphlet, he repeats the concern that his readers are easily swayed by his opponents' writings. Specifically, the English people are prone to be overawed by the king's book because, unaccustomed to judging arguments by the light of their own reason, they base their opinions on the weight of authority. While "any wise Man" or "any knowing Christian" would not be persuaded by the "Cleric elocution" of *Eikon Basilike*, the book does have an audience: "an inconstant, irrational, and Image-doting rabble; {that like a credulous and hapless herd, begott'n to servility, and enchanted with these popular institutes of Tyranny, subscrib'd with a new device of the Kings Picture at his praier, hold out both thir eares with such delight and ravishment to be stigmatz'd and board through in witness of thir voluntary and beloved baseness}" (*Eikonoklastes*, CPW III:601; bracketed material is from the second edition; emphasis mine). In this closing passage of *Eikonoklastes*, Milton registers the undeniable success of *Eikon Basilike*, which went through thirty-five editions in its first year of publication alone.<sup>257</sup> The image of Charles as a martyr proved effective on the "Image-doting

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<sup>257</sup> More precisely, Milton had to deal with attack from both royalist propaganda, including Juxon's *The Subjects Sorrow*, Fabian Philipp's *Kings Charles the First no Man of Blood but a Martyr for his People*, as well as *Eikon Basilike*, and from Leveller writings, such as John Lilburne's *Englands New Chains Discovered* (Skinner, *Vision of Politics* III:294). Skinner reads Milton's *Tenure* as responding to the engagement controversy along the lines of Henry Parker's representation theory: "Henry Parker and Henry Robinson both lent their support to the engagement with the claim that the new government reflects the will of the people, while the republication of Milton's *Tenure of Kings and Magistrates* at the end of 1649 suggests that this line of thought was felt to have continuing relevance" (Skinner, *Visions of Politics* II:295-6). Go Togashi points out that there is a discrepancy between the first and second edition of *The Tenure* on who is allowed to depose a tyrant ("Milton and the Presbyterian Opposition, 1649-1650: The Engagement Controversy and *The Tenure of Kings and Magistrates*, Second Edition (1649)," *Milton Quarterly* 39 (2005): 59-81). In the first edition, Milton insists that anyone may do so. In the second edition, he defers to the Protestant theory of inferior magistrates (see,

rabble." In particular, in the second edition, Milton expands this contemptuous characterization of the readers of the king's book to emphasize that the English subjects have become "inconstant" and "irrational because they have been "begott'n to servility, and enchanted with these popular institutes of Tyranny." *Eikon Basilike* is the last in a series of "institutes of Tyranny." Similarly, in the preface, Milton attributes the "low dejection and debasement of mind in the people" not to "the natural disposition of an Englishman," but rather to two other causes. The first, following along the lines of *Of Reformation*, is the negative influence of the Laudian church: "the Prelats and thir fellow teachers [...] whose Pulpit stuff, both first and last, hath bin the Doctrin and perpetual infusion of servility and wretchedness to thir hearers" (CPW III:344). The second cause is the ambition of those who chose to either follow the king for their own gain: "the factious inclination of most men divided from the public by several ends and humors of

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in particular, CPW III:257). Togashi traces this discrepancy to the changing political situation and, in particular, to the pressures of the Engagement controversy. In 1648-9, the Rump was the "private persons" intent on removing the king. In 1650, the Rump was the magistrates and the Presbyterian opposition was the "private persons." On the engagement controversy, see also: Wallace, *Destiny his Choice* (43-68) and Sharon Achinstein, "Milton Catches the Conscience of the King: *Eikonoklastes* and the Engagement Controversy," *Milton Studies* 29, (1992): 143-63. Achinstein argues that, in order to counter the image of the king as a martyr at prayer promoted by *Eikon Basilike*, *Eikonoklastes* has to deny the sincerity of the king's appeal to the dictates of his conscience. Thus, for Achinstein, Milton can both deny the king's right to force the conscience of his subjects, since his own conscience is "false," and defend the Rump's right to force the swearing of Engagement oath since it was an expression of a "true conscience" justified by God's providence in winning the Civil war (156-8). For the publication history of *Eikon Basilike*, see the introduction in *Eikon Basilike: The Portraiture of His Sacred Majesty in His Solitudes and Sufferings*, ed. Philip A. Knachel (Ithaca, N.Y.: Cornell University Press, 1966), xv-xvi.

their own" (CPW III:344).<sup>258</sup> Under the government of a tyrant supported by a corrupt Church, English subjects have abandoned their "natural disposition" to virtue.

What kind of government would instead restore Englishmen to their original civic virtue? For Parker, the difference between free subjects under a legitimate king and slaves under a tyrant is the rule of law. Do laws play any role in the formation of a free subject in Milton's work? Both the *Observations upon the Articles of Peace* and *The Tenure of Kings and Magistrates* address the question of the relationship between laws, tyranny, and virtuous subjects that is a central concern of *Eikonoklastes*. In the *Observations upon the Articles of Peace*, we find a stirring indictment against the tyranny of the king in terms

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<sup>258</sup> In the early 1640s, Milton had expressed a desire that Parliament should reform a corrupt nation. In *Doctrine and Discipline of Divorce*, he addresses Parliament as being entrusted by God to perform this arduous task even though there might be doubts that it is achievable: "Yee have now, doubtlesse by favour and appointment of God, yee have now in your hands a great and populous Nation to Reform; from what corruption, what blindnes in Religion yee know well; in what a degenerate and fal'n spirit from the apprehension of native liberty, and true manliness, I am sure ye find: with what unbounded licence rushing to whordoms and adulteries needs not long enquiry: insomuch that the fears which men have of too strict a discipline, perhaps exceed the hopes that can be in others, of ever introducing it with any great successe" (CPW II:226-7). The corruption of England is still a concern in *Paradise Lost*, where Milton echoes these two causes of servitude in a people:

Returnd from Babylon by leave of Kings  
Thir Lords, whom God dispos'd, the house of God  
They first re-edifie, and for a while  
In mean estate live moderate, till grown  
In wealth and multitude, factious they grow;  
But first among the Priests dissension springs,  
Men who attend the Altar, and should most  
Endeavour Peace: thir strife pollution brings. (XII.348-55)

of the rule of law.<sup>259</sup> Here, Milton denounces the surrendering of a “Feudary Kingdome” of England, Ireland, as an outrage to justice:

it is again demanded by what expresse Law, either of God or man, and why he whose office is to execute Law and Justice upon all others, should sit himselfe like a demigod in lawless and unbounded *anarchy*; refusing to be accountable for that authority over men naturally his equals, which God himself without a reason given is not wont to exercise over his creatures? And if God the nearer to be acquainted with mankind and his frailties, and to become our Priest, made himself a man, and subject to the Law, we gladly would be instructed why any mortal man for the good and wellfare of his brethren being made a King, should by a clean contrary motion make himself a God, exalted above Law; the readiest way to become utterly unsensible, both of his human condition, and his own duty. (CPW III:307-8)

Two features of this passage clarify Milton’s view of the relationship of law to political rule. First, the passage is a response to an implied royalist argument in support of royal prerogative. As we have seen in the work of Ferne and Digges, royalist writers claimed that the king could act in the name of *salus populi* outside the bounds of law and without accountability in case of emergencies. For Milton, such actions are intrinsically harmful to the commonwealth. A king who claims the right to act above the law risks becoming “unsensible, both of his human condition, and his own duty” and thus turning into a

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<sup>259</sup> The *Observations upon the Articles of Peace* was Milton’s first official writing for the new commonwealth, written in preparation of Cromwell’s expedition to Ireland. Thomas Corns, in “Milton’s *Observations upon the Articles of Peace*: Ireland under English eyes” in *Politics, Poetics, and Hermeneutics in Milton’s Prose*, argues that Milton’s rhetorical strategy in the *Observations* is to reproduce the success of *The Kings Cabinet Opened* and to suggest “that the republican government acts in an orthodox defence of English interests, whereas the Articles of Peace constitute a dangerous and unprecedented deviation from traditional practice,” a practice that rests on England’s right of conquest (124; 126).

tyrant.<sup>260</sup> Indeed, even “God the nearer to be acquainted with mankind and his frailties” made himself “subject to the Law.” For a king to refuse to be bound by laws is a form of self-idolatry in which he makes “himself a God.” That is, to be human and to administer human justice is to be bound by laws. Second, Milton insists that even divine authority is not exercised “without a reason given.” As Merritt Hughes indicates in his notes to the Yale edition of the *Observations*, the preface of *The Reason of Church Government* presents a similar view of divine power and laws.<sup>261</sup> There we find Milton’s use of both Plato’s *Laws* and Scripture to support the claim that laws ought to be accompanied by an explanation of why they are good for the commonwealth. Moses, knowing that no man could benefit from unexplained laws, prefaced divine law with Genesis: “Moses therefore the only Lawgiver that we can believe to have been visibly taught of God, knowing how vaine it was to write laws to men whose hearts were not first season’d with the knowledge of God and of his works, began with the book of Genesis, as a prologue to his laws” (CPW I:747).<sup>262</sup> For Milton, like for Parker and Herle, a king not

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<sup>260</sup> In the *Tenure*, Milton puts the same sentiment in a different way. There, a king who rules above the law is somewhat less than human: “he that bids a man reigne over him above Law, may bid as well a savage Beast” (CPW III: 206).

<sup>261</sup> See note 21 to CPW III:307.

<sup>262</sup> This claim is not unique to Milton and it is also found in Coke’s *Reports*. In the preface to Part VI of the *Reports*, Coke turns to Moses to illustrate why reports of cases should be printed for instruction: “The reporting of particular cases or examples, is the most perspicuous course of teaching the right rule and reason of the law: for so did Almighty God himself, when he delivered by Moses his judicial laws, ‘exemplis docuit pro legibus’ as it appeareth in Exodus, Leviticus, Numbers, and Deuteronomy.” *The Reports of Sir Edward Coke, Knt. In Thirteen Parts* (1826), xvii-xviii. HeinOnline. December 10, 2010.

[http://www.heinonline.org.proxy.lib.duke.edu/HOL/Page?men\\_tab=srchresults&handle=hein.beal/reporcok](http://www.heinonline.org.proxy.lib.duke.edu/HOL/Page?men_tab=srchresults&handle=hein.beal/reporcok)

bound by laws is a tyrant who sets himself unjustly apart from his subjects—he is outside the bonds of justice. But moreover, in both the *Observations upon the Articles of Peace* and *The Reason of Church Government*, we see that for individuals to benefit from laws, they must know the reasons prompting the laws.

Good rulers are bound by laws and, in turn, good laws are accompanied by reasons so that the subjects may understand why they are enacted. In the *Tenure* Milton considers at greater length the question of what makes a king a tyrant and how his subjects can learn to reason correctly about their right to rebellion. After his first discussion of how kings and magistrates had been first created and by which authority they may be deposed, Milton turns to the task of explaining what a tyrant is and “what the people may do against him” (CPW III:212). At this point, Milton gives a concise definition of a tyrant: “A Tyrant whether by wrong or by right coming to the Crown, is he who regarding neither Law nor the common good, reigns onely for himself and his faction” (CPW III:212).<sup>263</sup> Moreover, just as a good king can greatly benefit the members of the commonwealth, an unjust tyrant can do almost infinite harm. Since “his power is great, his will boundless and exorbitant,” he will commit “murders, massachers, rapes, adulteries, desolation, and subversion of Citties, and whole Provinces” (CPW III:212).

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[e0003&id=359&size=2&collection=beal&terms=His|Moses%20his%20judicial%20laws|Moses|judicial|his|laws&termtype=phrase&set\\_as\\_cursor=0#360.](#)

<sup>263</sup> Milton adds specifics that it does not matter whether a king attained the crown “by wrong or by right” to respond to royalist claims that only tyrants who obtain power by unjust usurpation can be resisted.

Having given this image of tyrannical rule, Milton insists that the solution is self-evident. "What the people lawfully may doe" against a tyrant "as against a common pest, and destroyer of mankind, I suppose no man of cleare judgement need goe further to be guided then by the very principles of nature in him" (*CPW* III:212). However, clear judgment is rarely used: "[b]ut because it is the vulgar folly of men to desert their own reason, and shutting thir eyes to think they see best with other mens, I shall shew by such examples as ought to have most waight with us, what hath bin don in this case heretofore" (*CPW* III:212). Opposition to Charles' trial is here represented as a form of willful blindness.

The *Tenure* attempts to teach its readers to see correctly with their own eyes by recasting the regicide within the context of appropriate historical examples. These examples range from classical, to Biblical, and finally to English history. Quickly dispatching the Roman and Greek examples, "lest it bee objected they were Heathen" (*CPW* III:213), Milton dedicates a lengthy digression to the example of Ehud.<sup>264</sup> Answering the argument that the case of Ehud's killing of Eglon, a foreign invading king, cannot be applied to the deposing of a legitimate English king, Milton claims that

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<sup>264</sup> Milton focuses on Judges 3.14-21: "So the children of Israel served Eglon the king of Moab eighteen years./ But when the children of Israel cried unto the LORD, the LORD raised them up a deliverer, Ehud the son of Gera, a Benjamite, a man lefthanded: and by him the children of Israel sent a present unto Eglon the king of Moab./ [...]/And Ehud came unto him; and he was sitting in a summer parlour, which he had for himself alone. And Ehud said, I have a message from God unto thee. And he arose out of his seat./And Ehud put forth his left hand, and took the dagger from his right thigh, and thrust it into his belly." As the Yale editor points out, the example of Ehud had been addressed by royalist writers in order to neutralize the kind of argument for regicide put forward by Milton (n. 85 to *CPW* III:213).



“it imports not whether forren or native” (CPW III:213).<sup>265</sup> Once a king breaks the laws of the nation he rules, “what differs he from an outlandish King, or from an enemy?” (CPW III:214). A legitimate king rules only according to his oaths and is bound by the nation’s laws. Charles’s behavior during the Civil War, “so many thousand Christians destroy’d [...], polluting with their slaughterd carcasses all the Land over, and crying for vengeance against the living that should have righted them” (CPW III:214), demonstrates that he behaved as a foreign king attempting to invade England rather than as a legitimate ruler. Nationality is defined by being bound by the same laws. But immediately after this description of the atrocities of the war, Milton generalizes this line of reasoning. Echoing Cicero’s principle of universal human society, Milton turns to the bonds connecting all men: “Who knows not that there is a mutual bond of amity and brother-hood between man and man over all the World, neither is it the English Sea that can sever us from that duty and relation” (CPW III:214).<sup>266</sup> Having opened the scope of “amity and brother-hood” to all the world, Milton turns to the bonds that tie those who live in ever-closer circles:

a straiter bond yet there is between fellow-subjects, neighbours, and friends; But when any of these doe one to another so hostility could do no worse, what doth the Law decree less against them, then op’n enemies and invaders? or if the Law be not present, or too weake, what doth it warrant us to less then single defence, or civil warr? And from that time forward the Law of civil defensive war differs nothing from the Law of forren hostility. Nor is it distance of place that makes

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<sup>265</sup> Victoria Kahn, in *Wayward Contracts*, argues that in *The Tenure* Milton uses Scriptural history, and in particular the story of Ehud, to demonstrate “the natural right to interpret” (127).

<sup>266</sup> For reference to Cicero, see CPW III:214, n. 87.

enmitie, but enmitie that makes distance. He therefore that keeps peace with me, neer or remote, of whatsoever Nation, is to mee as farr as all civil and human offices an Englishman and a neighbour: but if an Englishman forgetting all Laws, human, civil and religious, offend against life and liberty, to him offended and to the Law in his behalf, though born in the same womb, he is no better then a Turk, a Sarasin, a Heathen. (CPW III:214-5; emphasis mine)

The passage begins by acknowledging a closer bond between “fellow-subjects, neighbours, and friends” than between strangers. It then recalls the devastation of the civil war, rendered more vivid by the image of the “slaughterd carcasses” depicted just a few lines earlier, to persuade the reader that once the “straiter bond” of amity is broken, we are no longer bound to treat “neighbours, and friends” as such. Indeed, even family bonds need not be respected: “though born in the same womb, he is no better then a Turk, a Sarasin, a Heathen.” If a brother becomes no better than “a Heathen,” then a tyrant cannot be tolerated whether “outlandish, or domestic” (CPW III:215). In this passage, Milton asks his audience to learn how to re-interpret the bonds of social relationships based on the events of the Civil Wars.

But what happens when Englishmen do not see these bonds as broken?

*Eikonoklastes* is a chapter-by-chapter response to *Eikon Basilike* and, in particular, it is a re-interpretation of the narrative presented in the king’s book of the events of the Civil Wars. For Milton, those who believe the version of history portrayed in *Eikon Basilike* are “the blockish vulgar” (CPW III:339). Though complaining that his audience is more easily persuaded by custom than by reason, Milton considers it necessary to present a corrected account of the wars: “though it be an irksome labour to write with industrie

and judicious paines that which neither waigh'd, nor well read, shall be judg'd without industry or the paines of well judging, by faction and the easy literature of custom and opinion, it shall be ventur'd yet" (CPW III:339). This passage is added to the second edition, when *Eikonoklastes* had indeed found few readers compared with *Eikon Basilike*.

*Eikonoklastes* repeatedly registers a despair that a majority of its readers are not equipped to put its pages to good use. Nonetheless, critics have paid close attention to how Milton's regicide tracts are meant to teach his readers how to interpret the king's book and actions correctly.<sup>267</sup> In particular, and influentially, David Loewenstein, in *Milton and*

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<sup>267</sup> See, for example, Sharon Achinstein, *Milton and the Revolutionary Reader* (Princeton: Princeton University Press, 1994). Achinstein argues that Milton in *Areopagitica* counters the "myth of the gullible readers," that is, readers who will passively take royalist propaganda for the truth (139-142). In *Eikonoklastes*, according to Achinstein, Milton, less optimistic about the reading audience than when arguing against censorship, attempts to correct the vision of his readers by destroying the distorting image of the king presented by *Eikon Basilike* (155-68). David Ainsworth, in *Milton and the Spiritual Reader: Reading and Religion in Seventeenth-Century England* (New York: Routledge, 2008), sees *Eikonoklastes* as presenting a public example of the type of reading praised in *Areopagitica* (33). Ainsworth argues that Milton's "evident scorn for the masses" in *Eikonoklastes* show that his aim for the pamphlet was not "merely propagandistic," but rather to create "an educative polemic" (33). Ainsworth differentiates his reading of *Eikonoklastes* from Achinstein's by focusing on "spiritual reading," "a strenuous and rigorous expression of devotion and worship, one which ideally results in the inner spirit's guidance and which advances the reader's understanding of truth (and of God)" (3). Barbara K. Lewalski, in *The Life of John Milton*, argues that, in *Eikonoklastes*, Milton develops his attack on the king's book by "posing insistent questions that require readers to weigh and judge, to give or withhold assent, in an effort to teach them how to engage with such duplicitous texts" (265). While Lewalski does note that the "construction of audience creates special difficulties since Milton, prophet-like, castigates the idolatrous populace as fiercely as the book-idol they worship" (266), she still concludes that in *Eikonoklastes*, "Milton sought to teach his audience how to read as free citizens of a republic: to weigh fine-sounding words against, actions, and to recognize propaganda that plays with emotions and sentiment" (267). Similarly, Thomas Corns in *Uncloistered Virtue: English Political Literature, 1640-1660* (Oxford: Clarendon Press, 1992) discusses the rhetorical style of *Eikonoklastes* as part of Milton's strategy to demystify *Eikon Basilike* (209-20). In particular, Corns argues that Milton strategically uses the "interrogative mood" to implicate "the reader in the hostile appraisal of the king's book" and to guide his audience in an "active alliance, [...] hunting out the truth [and] considering the alternatives" (213). Lana Cable, in *Carnal Rhetoric: Milton's Iconoclasm and the Poetics of Desire* (Durham, NC: Duke University Press, 1995), argues that Milton's use of metaphorical language is a form of "creative iconoclasm," both destructive and imaginatively creative (4). Cable argues that the "habituated affective response to the icon" is

*the Drama of History*, sees Milton's iconoclasm as a strategy aimed at reforming his readers. For Loewenstein, the iconoclasm of *Eikonoklastes* is a development of the iconoclasm found in the antiprelatical tracts, in which he attacks and figuratively destroys the twin idols of the Laudian Church and its bishops.<sup>268</sup> The crucial difference between the two forms of iconoclasm is that, in the later tract, Milton's strategy is not only destructive, but also creative and instructive. Milton "fiercely dismantles the fiction and symbolic icon of the royal text, and then, drawing upon his own powers of historical interpretation and literary invention, recasts that icon. [...] His sense that iconoclasm is itself a creative and dramatic means of affecting the historical process, moreover, sustains his perception of history as a process which may be actively altered and shaped by vehement polemic."<sup>269</sup> In Loewenstein's reading, Milton iconoclastically dismantles the king's text, chapter-by-chapter and line-by-line, to rewrite and correct the false history of the Civil War propagated by Charles' narrative. In doing so, a new narrative is

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"conceptual peace and rest" (146), that is the opposite of the kind of active reading demanded by Milton. According to Cable, "Milton in *Eikonoklastes* applies his affective rhetoric to the specific political task of inducing imaginative self-transformation in the pamphlet-reading public" (148). That is, the iconoclastic move in Milton's pamphlet is as much a taking apart of his reader as of the king's book: "because sender and receiver, propagandist and consumer, participate simultaneously in their sanctioning of carnal claims to truth, the idolatries of both are reciprocally anatomized by a single act of analysis" (158). Richard Helgerson argues that *Eikon Basilike* is self-consciously a "verbal performance" as well as "verbal icon" (9) and that Milton's strategy in *Eikonoklastes*, with its chapter-by-chapter reply to the king's book, is to get "*Eikon Basilike* onto his own logocentric, print-covered ground" to demystify the image of the king ("*Milton Reads the King's Book: Print, Performance, and the Making of Bourgeois Idol*," *Criticism* 29 (1987): 12).

<sup>268</sup> David Loewenstein, *Milton and the Drama of History: Historical Vision, Iconoclasm, and the Literary Imagination* (Cambridge: Cambridge University Press, 1990), 51.

<sup>269</sup> *Ibid.*, 51-2.

created which can reshape the unfolding events as well as his reader's understanding of recent history. Moreover, for Loewenstein, Milton's vision, in both the antiprelatical and regicide tracts, includes "the violent rejection of history as a process of accretion."<sup>270</sup> History, in this reading of Milton's perception, is "a dynamic process of change characterized by fierce conflict and struggle."<sup>271</sup> And indeed, those who are unwilling to recast history as Milton does, those who prefer Charles' icon to Milton's iconoclasm, are depicted as only capable of "judging, by faction and the easy literature of custom and opinion."

This is why *Eikonoklastes* is needed to counter *Eikon Basilike*. As Milton explains in the prologue of the pamphlet, he chose his title to destroy the seducing "Kings image" following the example of "many Greek Emperors, who in thir zeal to the command of God after long tradition of Idolatry in the Church, took courage, and broke all superstitious Images to peeces" (CPW III:343). In Milton's view of historical process, however, new idolatrous images are being constantly created: "But the People, exorbitant and excessive in all thir motions, are prone oftentimes not to a religious onely, but to a civil kinde of Idolatry in idolizing thir Kings, though never more mistaken in the object of thir worship" (CPW III:343). The purifying work of *Eikonoklastes* is always needed. It is the never-ending work of peeling back the idolatrous accruals of the

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<sup>270</sup> *Ibid.*, 63.

<sup>271</sup> *Ibid.*, 64.

people's actions. These are the same accruals that Milton attacks in the *Tenure*. There, as we have seen, he characterizes the Presbyterians who became reluctant to bring the king to trial as those "contesting for privileges, customs, forms, and that old entanglement of iniquity, their gibberish laws, though the badge of their ancient slavery" (CPW III: 192-193). The pity they express for Charles cannot be "true, and Christian commiseration, but either levitie and shallowness of minde, or else carnal admiring of that worldly pomp and greatness, from whence they see him fall'n" (CPW III:193). Their pity for the king, like the ceremonies and buildings of the Laudian Church depicted in *Of Reformation*, is a symptom of an "over-bodied" soul. And it is here that Loewenstein's description of Milton's conception of iconoclasm as meant to re-educate his reader's perception of history needs to be questioned. If Milton, on the one hand, conceives of history as "a dynamic process of change characterized by fierce conflict and struggle" and, on the other hand, views his readers as forming as well as formed by the very accruals of history his iconoclasm is meant to dismantle, how can his writing be considered a form of education in reasoning?<sup>272</sup>

What is the connection between history and reason? Marjorie Grene's treatment of Polanyi's *Personal Knowledge* is illuminating on the relationship between knowledge, reason, and history. Grene opens *The Knower and the Known* by presenting the ideal of

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<sup>272</sup> Tellingly, Loewenstein's comment on Milton's bleak view of Saxon history focuses on the need for a violent break out of the cycle of history: "the *History of Britain* seems not to offer a way out of the labyrinth of history: there is no iconoclastic gesture which breaks its cyclical pattern, that transforms history dramatically" (*Milton and the Drama of History*, 87).

knowledge as “final, impersonal and certain.”<sup>273</sup> To this ideal, she opposes Polanyi’s account of knowledge: “all knowledge entails the personal commitment of the knower to the reality with which he believes himself in contact. The knower, so committed, is limited by his bodily endowments, and he is also rooted in the traditions of his society.”<sup>274</sup> For Grene, as for Polanyi, knowing is dependent both on the personal history of the knower as well as in the history of his traditions. In her discussion of Kant’s view of scientific inquiry, Grene further elucidates the dependence of reason on history. “History,” and not reason, “comes first.”<sup>275</sup> To this, it might be objected that this conception of reason “puts what blindly happens ahead of logic, substitutes caprice for reason, inner commitment for impersonal truth.”<sup>276</sup> As far as it goes, this objection does highlight a denial of the possibility of fully objective knowledge: “If I say that there is no grasp of truth apart from the historical situation of the aspirant to truth, I do indeed inject into the cognitive situation a risk of irrationality. I admit that there is no ultimate, unquestionable criterion by which truth can be recognized and labeled and stored away forever apart from human aims and interests.”<sup>277</sup> But on the other hand, this objection only reaches so far: “Granted, the primacy of history puts reason in jeopardy; that is what it is to be ‘in the situation’, and that is where we are. But the primacy of history

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<sup>273</sup> The book begins with an account of this ideal as formulated by Plato, Aristotle, and Descartes (*The Knower and the Known*, 17).

<sup>274</sup> Grene, *The Knower and the Known*, 217.

<sup>275</sup> *Ibid.*, 146.

<sup>276</sup> *Ibid.*, 146.

<sup>277</sup> *Ibid.*, 146.

does not contradict, or abolish, reason. It exhibits the risk of reason, not its non-existence. Logic and situation, the ideal and the factual, reason and history, live as aspects of our lives in tension with one another, in ineradicable ambiguity."<sup>278</sup>

The same critique of the Enlightenment's and its successors', in general, and Kant's, in particular, conception of reason as ahistorical is found in MacIntyre's work. For these thinkers, "it was hoped, reason would displace authority and tradition. Rational justification was to appeal to principles undeniable by any rational person and therefore independent of all those social and cultural particularities which the Enlightenment thinkers took to be the mere accidental clothing of reason in particular times and places."<sup>279</sup> One of the main tasks of *Whose Justice? Which Rationality?* is to flesh out, through the history of, on the one hand, the philosophical tradition that connects Socrates, Plato, Aristotle, and Aquinas, and, on the other hand, the tradition populated by Shaftesbury, Hutcheson, and Hume, how the different accounts of rationality and justice presented by two traditions need to be understood, and can only be compared, as "socially embodied, historically contingent traditions."<sup>280</sup> And indeed, for MacIntyre, "[t]here is no standing ground, no place of enquiry, no way to engage in the practices of advancing, evaluating, accepting, and rejecting reasoned arguments apart from that

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<sup>278</sup> Grene, *The Knower and the Known*, 146.

<sup>279</sup> Alasdair MacIntyre, *Whose Justice? Which Rationality?* (Notre Dame, IN: University of Notre Dame Press, 1988), 6.

<sup>280</sup> *Ibid.*, 350.



which is provided by some particular tradition or other."<sup>281</sup> How does this understanding of the relationship of history to reason compare to that found in *Eikonoklastes*? Analyses along the lines of Loewenstein's in *Milton and the Drama of History* focus on Milton's strategies, iconoclastic or otherwise, to teach the readers of *Eikonoklastes* how to correctly interpret the king's book and how to learn to develop right reason. But for both Grene and MacIntyre, any account of reason has to be tied to a tradition of inquiry manifested in a specific historical and social moment. On the other hand, as we have seen, in Milton's writings, right reasoning is fundamentally detached from historical accrual. To think within a tradition is to follow the "easy literature of custom." Thus, for Milton, education of his readers is *necessarily* iconoclastic. What alternative is there?

MacIntyre, in Chapter 10 of *Whose Justice? Which Rationality?*, describes Aquinas' understanding of education in the virtues:

All education is the actualization of some potentiality. Hence to be educable is already to have a potentiality for learning whatever it is, but it is more than this. All education is in part self-education (*Commentary on Posterior Analytics* II, lect. 20). Unsurprising in view of this 'a teacher leads someone else to knowledge of what was unknown in the same way that someone leads him or herself to the knowledge of what was unknown in the course of discovery' (*De Veritate* XI,1). The order of good teaching is the order in which someone would learn by and for him or herself.<sup>282</sup>

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<sup>281</sup> *Ibid.*, 350.

<sup>282</sup> MacIntyre, *Whose Justice? Which Rationality?*, 177.

This brief passage immediately highlights the importance of continuity in development between the teacher and the student. If in teaching, the teacher retraces with the student the same development which he or she had undergone in order to arrive at the desired knowledge in the first place, then there can be no fundamental rupture between the world of the teacher and that of the student. For a student to be able to make sense of what Aquinas has to teach, he or she already has to share a great deal with the writer of the *Summa*. The *Prima Secundæ* outlines what introductory moral teaching ought to look like, and its argument “recapitulates at the level of theory the sequence of questions and answers which someone embarked on the moral life will find him or herself following through, as they make what they are doing and judging more and more intelligible to themselves, in the course of trying first to specify and then to achieve the kind of excellence appropriate to human beings.”<sup>283</sup> Thus, not everyone can learn from the *Summa*: “it is only individuals thus embarked, educated into the making of certain kinds of discrimination that enable them to order the expression of the passions in the light of an ordering of goods—something which in the first instance they will have had to learn from their teachers—who will be able to understand that the argument of the *Prima Secundæ* are about themselves.”<sup>284</sup> That is, the moral education of the *Prima Secundæ* requires a prior moral education—the training of the human “natural aptitude for

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<sup>283</sup> *Ibid.*, 178.

<sup>284</sup> MacIntyre, *Whose Justice? Which Rationality?*, 178.

virtue.”<sup>285</sup> This first training, for Aquinas, should happen in the household. But what about those individuals who have been deprived of such training? Aquinas does not excuse them from following the commands of divine law. Their intelligence prompts them to search after their good and after ways to learn what that good is. It should thus lead them to realize that “they cannot pursue their good, whatever it is, in isolation and that the relationships into which they enter in order to secure their most obvious goods need to be such as well enable them to improve their knowledge of what their good is.”<sup>286</sup>

This means that, in order to be educated in virtue and to learn to reason correctly, the student will need to form certain types of human relationships, those defined by natural law, within certain types of human communities, those defined by justice.<sup>287</sup> In the context of Milton’s regicide tracts, the question then is, how is such a community constituted? And what is the relationship between justice and positive law? Aquinas’ account of justice, *iustitia*, begins by explaining its relationship with *ius*. *Ius*, for Aquinas, “as in Roman law, is the word used of those norms which define the relationship of each person to others, and so ‘*iustitia*’ names *both* the virtue of living by those norms and so exhibiting in one’s dispositions a constant and perpetual will to render to each person what is due or owed to him or her *and* the standard of right

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<sup>285</sup> *Ibid.*, 179.

<sup>286</sup> *Ibid.*, 179-80.

<sup>287</sup> *Ibid.*, 180-1.

required of each of us.”<sup>288</sup> Thus, justice is a virtue “peculiarly concerned with relations to others.”<sup>289</sup> How is this embodied in positive law? “Justice in the administration of justice requires respect of jurisdiction, no irrelevant discrimination between persons, no unfounded accusations, truth-telling by everyone in court, that if a poor person has no one to defend him or her here and now but this particular lawyer, this particular lawyer defend that poor person, and that no lawyer defend knowingly an unjust cause.”<sup>290</sup> But what if the laws themselves are unjust? Or, in the extreme case, the ruler is a tyrant? Aquinas, as MacIntyre argues, is quite clear on this point: “It is important to remember at this point not only that Aquinas held that unjust laws do not require obedience [...], but also that he agreed with Augustine that unjust laws do not have the force of law and do not merit the name of ‘law.’ And so also insofar as unjust regimes approach the character of tyrannies, they lose all legitimate claim to our obedience.”<sup>291</sup> Finally, having understood the relationship between education in the virtues and just government, we can understand why a tyrant is not a legitimate ruler: “What is bad about tyranny is that it subverts the virtues of its subjects; the best regime is that whose order best conduces to education into the virtues in the interest of the good of all.”<sup>292</sup>

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<sup>288</sup> MacIntyre, *Whose Justice? Which Rationality?*, 198-9.

<sup>289</sup> *Ibid.*, 199.

<sup>290</sup> *Ibid.*, 199.

<sup>291</sup> *Ibid.*, 200-1.

<sup>292</sup> *Ibid.*, 201.

In broad outlines, this shares much with the classical ideals of good government and justice as adopted by the resistance theorists discussed above and espoused by Milton. But what I hope stands out from this very compressed overview of Aquinas' conception of justice and its embodiment in just government is the interconnectedness and specificity with which Aquinas accounts for the relationships between the political, interpersonal, and individual formation of justice. An individual seeking his own good, needs friendships based on the principles of natural law and just conduct, and these can only flourish within a just society, which, in turn is formed by just individuals. Moreover, if to this account of learning how to reason correctly, we add the necessarily historical nature of what we can recognize as rationality for which both MacIntyre and Grene argue, then Loewenstein's assessment that in Milton's writing we find "the violent rejection of history as a process of accretion" goes a long way to explain the description of his audience in the regicide tracts. For Milton, the task of *Eikonoklastes* is to bring truth to readers who have been presented with the distorted history of the war written in the king's book. *Eikon Basilike* is an attempt to accomplish "after death that revenge upon thir Enemies, which in life they were not able" (CPW III:342). Their goal is to stir "the people to bring him that honour, that affection, and by consequence, that revenge to his dead Corps, which he himself living could never gain to his Person" (CPW III:342). The "conceited portraiture," Marshall's engraving, is put in the book "to catch fools and silly gazers" (CPW III:342). But while many have been caught by this

portrait, truth is not to be “smother’d, but sent abroad, in the native confidence of her single self, to earn, how she can, her entertainment in the world, and to finde out her own reader” (CPW III:339). This image, recalling Spenser’s Una, sees truth as something to be acquired *despite* historical accrual. Those who do not are the “miserable, credulous, deluded thing [...], which is call’d the Vulgar.”

Similarly, *The Tenure of Kings and Magistrates* is needed to teach its readers interpret correctly. As we have seen earlier, for Milton, a free nation is one which allows its citizens the power “to dispose and *oeconomize* in the Land” (CPW III:237). What happens if we lack this freedom? “Without which natural and essential powr of a free Nation, though bearing high thir heads, they can in due esteem be thought no better then slaves and vassals born, in the tenure and occupation of another inheriting Lord. Whose government, though not illegal, or intolerable, hangs over them as a Lordly scourge, not as a free government; and therefore to be abrogated” (CPW III:237; underlining mine). Victoria Kahn, in *Wayward Contracts*, discusses this passage in the *Tenure* in light of the connection made by Coke in his *Institutes* between tenure and legal contracts, which can be rendered invalid if the conditions are not performed.<sup>293</sup> In Kahn’s reading, Milton uses the language of tenure to demonstrate that the royalist and Presbyterian version of the political contract—one in which the king cannot be

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<sup>293</sup> Kahn, *Wayward Contracts*, 129-30.

deposed—binds the English subjects to a version of voluntary servitude.<sup>294</sup> This is a form of idolatry since Presbyterians and royalists hold kingship above the covenant between God and England: “[i]n Milton’s view, a rational and revocable political contract is the form of God’s covenant with the English people. And this in turn means that the historical ‘rights’ of the ancient constitution are effectively the same as the natural rights of resistance granted to men at birth.”<sup>295</sup> That is, for Kahn, Milton locates the importance of the language of the ancient constitution in that it authorizes the right for individual interpretation: “[i]n this way Milton equated the historical precedent of the ancient constitution with the individual right to interpret, the right to interpret metaphorically or equitably according to the natural law of justice.”<sup>296</sup> For Kahn, “the right to interpret metaphorically” is what distinguishes Milton’s discussion of the political contract from Hobbes’s.<sup>297</sup> While Hobbes conceals that the political contract involves a transfer of power that it is only metaphorical since the actual power “remains fundamentally with the people,” Milton highlights this very fact in his regicide tracts.<sup>298</sup>

What are the consequences of such a metaphorical understanding of the political contract? The two main strands of Kahn’s argument that interest us focus on the role of

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<sup>294</sup> *Ibid.*, 130.

<sup>295</sup> *Ibid.*, 130-1; emphasis original. Kahn here comments on this passage from *The Tenure*: ‘Whence doubtless our Ancestors who were not ignorant with which rights either Nature or ancient Constitution had endowed them, when Oaths both at Coronation, and renewd in Parliament would not serve, thought it no way illegal to depose and put to death thir tyrannous Kings’ (CPW III: 220).

<sup>296</sup> Kahn, *Wayward Contracts*, 131.

<sup>297</sup> *Ibid.*, 128.

<sup>298</sup> *Ibid.*, 128.

the passions in the formation of the political contract and on the right of interpretation. On the one hand, those who show pity for Charles, in the argument of both the *Tenure* and in *Eikonoklastes*, can only be expressing “a feigned, seditious, self-regarding pity, based on fear for one’s life. This fear naturally leads to enslavement or voluntary servitude to a tyrant.”<sup>299</sup> In particular, for Milton, the Presbyterian’s use of Scripture to condemn the regicide is an act of renouncing the twin rights of interpretation and political freedom under the pressure of fear and self-interest: “[s]uch an idolatrous preoccupation with self-interest involved not only slavery to mere life but also the slavish inability to generate a new plot. [...] In disowning their own actions [in the Civil War], they had effectively ceded their power to interpret—and thus their political power—to the king.”<sup>300</sup> This, for Milton, is servile fear that leads the subject to bind himself in slavery to a tyrant. On the other hand, what the *Tenure* does is to show that the political contract as well as kingship itself are both metaphors and this, in turn, generates “a new narrative of political obligation.”<sup>301</sup> This new narrative, the “new plot” that the Presbyterians could not generate, *dictates* rebellion: “the metaphorical contract of tenure obliged subjects to abrogate hereditary kingship; the metaphorical contract of sovereignty engaged subjects to take up arms against Charles, whose literal pretensions

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<sup>299</sup> Kahn, *Wayward Contracts*, 125.

<sup>300</sup> *Ibid.*, 125.

<sup>301</sup> *Ibid.*, 131.



to absolute monarchy had proved to be blasphemous.”<sup>302</sup> As Kahn illuminatingly summarizes, in the *Tenure*, “Milton argued that the right sort of metaphorical interpretation dictated the violent plot of regicide, whereas the wrong sort would produce a tragic narrative of voluntary servitude. *The Tenure* was, in short, Milton’s lesson in the politics of reading for the year 1649.”<sup>303</sup> But if Kahn’s analysis is correct, it shows that all that Milton’s lesson can amount to is the insistence in the changing a royalist narrative for a different one—a narrative that is no less pre-determined.

We can see this further in Milton’s discussion of the king’s tyranny with respect to the law of England. On the one hand, we see Milton denigrating those who hang on to “their gibberish laws” even though they are “the badge of their ancient slavery.” On the other hand, we find him insisting that the king behaved like a tyrant because he wanted to be above the law. In the discussion over the rights to raise a militia, the king is scolded like a stubborn child who will not learn his lesson: “it hath bin oft enough told him, that he hath no more authority over the Sword then over the Law; over the Law he hath noe, either to establish or to abrogate, interpret, or to execute, but onely by his Courts and in his Courts, wherof the Parliament is highest” (*CPW* III:454). The king is bound by the law and the law is made and interpreted through Parliament and the courts. Similarly, we see that the king can only act legally when he does so for the good

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<sup>302</sup> *Ibid.*, 131; emphasis mine.

<sup>303</sup> Kahn, *Wayward Contracts*, 122.

of the commonwealth, “unless it be in order to their good, he [the King] hath no rights at all; raining by the Laws of the Land, not by his own” (CPW III:458). And if he does not act for the good of the commonwealth, the laws themselves condemn him as a tyrant: “[i]f therefore he obtrude upon us any public mischeif, or withhold from us any general good, which is wrong in the highest degree, he must doe it as a Tyrant, not as a king of England, by the known Maxims of our Law” (CPW III:458). The argument that the king is bound by the laws of the land is, as we have seen above, in the work of Herle, Parker, and Rutherford. But Milton’s version is peculiar. In the second edition of *Eikonoklastes*, Milton elaborates on his condemnation of the king’s claim to royal prerogative to insist again that the king must rule according to Parliament’s law: “He himself hath many times acknowledg’d to have no right over us but by Law; and by the same Law to govern us: but Law in a Free Nation hath bin ever public reason, the enacted reason of a Parliament; which he denying to enact, denies to govern us by that which ought to be our Law; interposing his own privat reason, which to us is no Law” (CPW III:360). Here we see the difference between “their gibberish laws” and the “Law in a Free Nation.” In this second category, we find law as “public reason,” that is, using Milton’s statement about law and reason from the opening of *Of Reformation* (CPW I:747), laws that are made by representatives of the people and explained, reasonably to the people. These laws are the only kinds of laws in a free nation, that is the kind of nation that can change its ruler and form of government whenever the people, or those who can reason correctly, deem it

good. This kind of nation is a nation that is fundamentally and radically ahistorical. It has not been shaped by its own history or laws.

In Parker, obedience to the law is fundamental in avoiding tyranny because and in so far that the law protects the interests that each individual has in himself and that the community has in each individual; in Milton the law is public reason. It has to be understood by each true member of the commonwealth. A.E. Barker, in *Milton and the Puritan Dilemma*, sees Milton's understanding of Christian liberty as "a right of the individual believer to judge for himself."<sup>304</sup> Similarly, good laws and good governments are those that promote this kind of liberty. Thus, a free nation is one which promotes virtue, but virtue is fundamentally understood as becoming independently reasoning individuals, freed from traditional and historical frameworks. Any historical accrual which promotes an attachment of custom leads to servile mind, that is, a non-reasoning mind in Milton's terms. That is why law can be both invoked as the fundamental bound that keeps a king from becoming a tyrant and, at the same time, be "gibberish law," which binds English subjects into servility. Milton's frustration with those who, according to the political tracts, have acquired exactly this servile mind is similar to his frustration with that "image of earth and fleam" (CPW II:254) in the *Doctrine and Discipline of Divorce*. Like the unsympathetic wife of the divorce tracts, the "vulgar" people in Milton's political tracts have minds impenetrable to reason and good

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<sup>304</sup> *Milton and the Puritan Dilemma*, 141.

arguments. In the second edition of the preface to *Eikonoklastes*, Milton, dealing with the limited success of his book compared to the king's, adds a pessimistic view of his audience. Because of them, "well it might have seem'd in vaine to write at all" (CPW III:339). Here he considers, "the envy and almost infinite prejudice likely to be stirr'd up among the Common sort, against what ever be writt'n or gainsaid to the Kings book, so advantageous to a book it is, only to be a Kings" (CPW III:339). Milton nonetheless keeps on writing for the sake of the truth: "the truth not smother'd, but sent abroad, in the native confidence of her single self, to earn, how she can, her entertainment in the world, and to finde out her own readers; few perhaps, but those few, such of value and substantial worth, as truth and wisdom, not respecting numbers and big names, have bin ever wont in all ages to be contested with" (CPW III:339-40).

## 4. Shadows and Form: the People, Legislation, and Reform

*All forms are but as shadowes & subject to the end, & the safety of the people is above all forms, customes, &c. and the equitie of popular safettie is the thing which justifieth all forms, or the change of forms for the accomplishment thereof.*<sup>1</sup>

The passage above is an excerpt from a letter addressed to General Fairfax and appended to *The Case of the Army Truly Stated* (15 October 1647), a document from a group of agents from five regiments expressing a series of grievances and urging the New Model Army not to allow itself to be disbanded before its requests have been addressed. The authors align themselves with the soldiers in the New Model Army and the letter explains why, even though the Army had been rebuked by Parliament for petitioning on matters of policy, they are writing again. To justify their transgression of orders, they adopt the language of Hebrews 8, “there are priests that offer gifts according to the law:/ Who serve unto the example and shadow of heavenly things, as Moses was admonished of God when he was about to make the tabernacle: for, See, saith he, that thou make all things according to the pattern shewed to thee in the mount.”<sup>2</sup> Their “pattern” is “the equitie of popular safettie” and all customs and laws can be changed if needed to preserve the people. This passage illustrates in a condensed form the claim put forward in different guises by the texts considered in this chapter.

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<sup>1</sup> *The Case of the Army Truly Stated*, in Don M. Wolfe, ed., *Leveller Manifestoes of the Puritan Revolution* (New York, NY: Thomas Nelson and Sons, 1944), 219-20.

<sup>2</sup> Hebrews 8.4-5.

Republican language, the Civil War rallying-call of *salus populi* encountered in the previous chapter, and the Scriptural language casting England as the New Jerusalem are blended together to argue that laws and political structures are just forms and shadows that may be remade. The joining of these idioms has been credited with making it conceivable for Englishmen to act to alter the constitution and laws of their nation in the mid-seventeenth-century. The standard version of this account is by J.G.A. Pocock. In the *Machiavellian Moment*, he argues for the importance of the role of specifically apocalyptic and prophetic language in articulating a new civic consciousness in England. As in the passage above, this Scriptural language is melded to Renaissance and early modern reformulations of classical republican language, and both elements are seen as crucial in providing impetus, and an idiom through which to understand and articulate justifications, for political change in the English Civil Wars.

Pocock's study of the religious aspect of Civil War builds on and modifies Michael Walzer's thesis in *The Revolution of the Saints*. There, Walzer argues that Calvinism provided the intellectual framework of early modern revolutions, a thesis later rejected by Quentin Skinner on the grounds that the origins of protestant resistance theory can be traced back to scholastic thinkers, in particular Gerson and Ockham.<sup>3</sup> Skinner, by retracing the genealogy of the resistance theory adopted by Calvinist writers from Catholic thought, not only corrects Walzer's work diachronically in terms of

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<sup>3</sup> Quentin Skinner, *The Foundations of Modern Political Thought*, vol. II.

identifying the sources for this strand of Reformation political thought, but redirects the synchronic study of “radical Calvinists” to reconstructing the process of legitimation of their revolutionary practice.<sup>4</sup> Nonetheless, while Walzer’s analysis of the role of Calvinism has been refuted, his concept of the “revolutionary” saint is embedded, though in a modified version, deep in Pocock’s formulation of the landscape of the English Civil Wars.<sup>5</sup> Walzer’s work brings to the fore questions of the relationship between the individual and the “state” and of the individual’s role and responsibility in guiding, and remodeling if necessary, the nation as prompted by his conscience in preparation for the millennium. For Walzer, the saints were moved by a collective zeal that was the impetus for a “Puritan” revolution: “Puritan zeal was not a private passion; it was instead a highly collective emotion and it imposed upon the saints a new and impersonal discipline. Conscience freed the saints from medieval passivity and feudal loyalty, but it did not encourage the individualist, Italiante politics of faction and intrigue.”<sup>6</sup> The saint presented by Walzer’s model as the engine for revolution is a clergyman or an educated layman associating with others of the same background and education and not the soldier, though drilled and organized by officer-saints such as Cromwell, signing a petition or an agitator debating at Putney. In *The Revolution of the*

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<sup>4</sup> Skinner, *Visions of Politics* II: 262-3.

<sup>5</sup> The first edition of Pocock’s *The Machiavellian Moment* came out three years before Skinner’s *Foundations* and, therefore, he does not include Skinner’s corrective of Walzer’s understanding of “Calvinist” resistance theory.

<sup>6</sup> Michael Walzer, *The Revolution of the Saints: A Study in the Origins of Radical Politics* (Cambridge, MA: Harvard University Press, 1965), 12.

*Saints*, warfare and military discipline are central to how the revolutionary saints organize, but more as a metaphor for the alienated godly individual fighting to remake societal norms, from the family to church discipline to political structures, than as the reality of the soldiers in the Army.<sup>7</sup> In the *Machiavellian Moment*, Pocock argues that Walzer's analysis captures only part of the forces at work on the saints during the Civil Wars and the Interregnum. Seventeenth-century "revolutionaries" did not see themselves in opposition to and fighting against "the state"; they were led instead by millenarian hopes that allowed them to envision reforming the laws of England. In the English Civil Wars, the "apocalyptic mode" is "one of those modes of secular consciousness which blurred the purity of 'the revolution of the saints,' and [...] one of those modes of civic consciousness which antedated the arrival of the classical concept of citizenship."<sup>8</sup> Part of Pocock's disagreement with Walzer's argument is over the role played by the version of "the modern state" presented in *The Revolution of the Saints*. For Walzer, the saints played a part in creating the modern state by attempting to remake the existing political order according to their interpretation of Scripture, while, at the same time, it was the development of the centralizing apparatus of the modern state

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<sup>7</sup> Walzer, *The Revolution of the Saints*, 268-99.

<sup>8</sup> J. G. A. Pocock, *The Machiavellian Moment: Florentine Political Thought and the Atlantic Republican Tradition* (Princeton, NJ: Princeton University Press, 1975), 337.



overwhelming “traditional political life” that made possible the creation of the citizen-saint.<sup>9</sup>

To respond to Walzer’s formulation of the relationship between saint and “state” and the saints’ opposition to a “traditional society”, Pocock brings to bear the “ideology of the Ancient Constitution” as furnishing a model of civic consciousness which allowed Englishmen to see themselves as possessing a sovereignty of their own making. This ideology allowed English lawyers, antiquarians, and MPs to see all English law as common law based on custom, immemorial and thus not made by any particular man, and therefore as safe from royal interference. This claim is built on Pocock’s earlier analysis in *The Ancient Constitution and the Feudal Law* in which he argues that common lawyers and parliamentarians used this conception of English law to resist what they perceived as early Stuart absolutist theory of monarchy expressed in attempts of royalist law reform, including the union of England and Scotland.<sup>10</sup> In *The Machiavellian Moment*, the “common law mind,” though insisting that the political and legal make-up of the nation existed since time immemorial, is not a reflection of Walzer’s traditional society

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<sup>9</sup> Walzer, *The Revolution of the Saints*, 1-16.

<sup>10</sup> Pocock argues that common lawyers, and Coke in particular, could deploy the conception of common law as immemorial custom to deny that English laws were ever created by the acts of sovereign kings (*The Ancient Constitution and the Feudal Law*, 37-55). The importance and the extent of the conflict over the issue of royal power between Crown, on the one hand, and Parliament and common lawyers, on the other, before the Civil Wars has been revisited by Glenn Burgess in both *The Politics of the Ancient Constitution and Absolute Monarchy and the Stuart Constitution* (New Haven: Yale University Press, 1996). In *The Politics of the Ancient Constitution*, Burgess argues for a strong Jacobean consensus on the extent of the royal prerogative and, in *Absolute Monarchy*, he proposes that the conflict that led to the Civil Wars was over specific policies in the government of Charles I and not against a growing monarchical absolutism in the Stuart period.

of “medieval passivity,” but rather a way to define the realm of England through the fabric of custom, which in turn is generated, refined, and clarified by Englishmen and, especially, by English landowners.<sup>11</sup> This leads Pocock to modify Michael Walzer’s version of the saints. He agrees with Walzer that the saints saw themselves as called to political action in response to their understanding of each individual’s duty to God and that they held a growing tendency to conceive of England as the chosen nation, portrayed in prophetic or apocalyptic terms. But he rejects the view of the saint as shaped by, and in turn reshaping, Walzer’s version of an emerging “modern state.” Pocock’s saints, and this term includes the agents at Putney, are not alienated from a centralizing system of laws and institutions, but rather see themselves as deeply involved in English laws and liberties, and, in consequence of this involvement, they understand their calling as operating to transform and modify the laws, rather than abolish them.<sup>12</sup>

The concept of the state and its relationship to the language of republicanism has been explored by Jonathan Scott in his discussion of the tumults of the seventeenth-century. Scott argues that the Civil War years did see a process of centralization and state formation on the part of Parliament going hand in hand with increasing military

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<sup>11</sup> Pocock, *The Machiavellian Moment*, 340-1.

<sup>12</sup> Pocock, *The Machiavellian Moment*, 374-6.

power.<sup>13</sup> How this form of statebuilding developed is a complex story beyond the scope of this dissertation, but it suffices to note that local government became a source of stability during the struggle for control of the central government between Parliament and king and, once the “military-fiscal state” did take a solid foothold, it had to cut across these local structures.<sup>14</sup> Scott focuses on two responses to this process of state formation. On one hand of the spectrum, English republicanism developed alongside and served to justify both Parliament’s military deployment and success as well as the fiscal apparatus constructed to sustain the protracted military engagement: “When English republicanism emerged, it did so as (among other things) the ideology of the first fiscally and militarily modernized English and British state. This helps to explain the deep and developing interest of republican writers in the economic, social, maritime and military bases of modern state power.”<sup>15</sup> At the other end, Scott places the response of the Levellers. In particular, he sees the agents’ position in the Putney Debates as part of a Leveller fight against this process of centralization. Rainborough’s and Wildman’s demands for expanding the franchise “occurred in defence of a document, the first *Agreement of the People*, the primary concern of which was the radical decentralization of

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<sup>13</sup> Jonathan Scott, *Commonwealth Principles: Republican Writing of the English Revolution* (Cambridge: Cambridge University Press, 2004), 67.

<sup>14</sup> Scott, *Commonwealth Principles*, 72. For a discussion of the concept and organization of the state and its development, see Michael J. Braddick, *State Formation in Early Modern England, c. 1550-1700* (Cambridge: Cambridge university Press, 2000). As Braddick argues increased military power and the correlated increase in taxation was not the only force driving seventeenth-century state formation (13-4), but it was certainly one that attracted vocal opposition in during the Civil Wars and the Interregnum.

<sup>15</sup> Scott, *Commonwealth Principles*, 67.

political (in particular parliamentary) power.”<sup>16</sup> For Scott, the argument over the expansion of the franchise at Putney is an attempt to counter the increasing centralization of political power.

If we look at the first response to Parliamentary centralization, English republicanism, we see that in Scott’s analysis it is characterized by a merging of classical republicanism, both Greek and Roman, and natural law theory.<sup>17</sup> Building on Pocock’s discussion of the importance of the conception of time and mutability of governments in republican thought, Scott argues that English republican writers linked both “protestant antiformalism and Platonism” to their view that specific laws and forms of government could be changed at will when found to be “hindrances, to the good and enjoyment of humane societies.”<sup>18</sup> This willingness to change governments could take the form of armed resistance.<sup>19</sup> Scott sees the potential for English republicanism to manifest itself as a form of resistance theory, rather than just as a formulation of a theory of government, exactly because republican writers adopted natural law theories alongside classical republicanism and the language of the ancient constitution.<sup>20</sup> Here, Scott builds on

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<sup>16</sup> Scott, *Commonwealth Principles*, 71.

<sup>17</sup> Scott, *Commonwealth Principles*, 89.

<sup>18</sup> Scott, *Commonwealth Principles*, 88; quoting Henry Vane as prototypical of English republican writers.

<sup>19</sup> Thus Scott takes issue of the revisionist view that republicanism in England manifested itself in reaction to, rather than motivating and justifying, the regicide (*Commonwealth Principles*, n. 12, p. 255). For an explicit argument against the revisionist view, see his discussion of Blair Worden’s “Republicanism, Regicide and Republic: the English Experience” in ed. Van Geldern and Skinner, *Republicanism: A Shared European Heritage*, 2 vols: vol. I. *Republicanism and Constitutionalism in Early Modern Europe* (Cambridge: Cambridge University Press, 2002).

<sup>20</sup> Scott, *Commonwealth Principles*, 109-10.

Skinner's corrective to Walzer's model of protestant resistance theory.<sup>21</sup> In this analysis, natural law, especially alongside Grotius's theory of just war, is used to formulate an English republican language of resistance. In particular, Scott singles out Edward Sexby in *Killing No Murder* (1657) as the most sustained advocate of this form of republicanism during the Protectorate.<sup>22</sup> In this account, in the hands of republican theorists, natural law inherited and adapted from the scholastic and neo-scholastic sources, is deployed to argue for the people's right to regain their sovereignty when the ruler turns out to be a tyrant. But here a question arises that is left unanswered by Scott's analysis. As Scott points out, Sexby's *Killing No Murder* amalgamates in its pages quotes from Cicero, Augustine, Grotius, Aristotle, Milton, and Scripture, just to name a few of the explicitly cited sources in the pamphlet. But how does that affect the version of natural law which underpins Sexby's argument? Grotius, whom Sexby quotes extensively and whose *De*

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<sup>21</sup> Scott sees the pre-regicide writers as distinctly using classical republican language alongside their deployment of continental resistance theory. On the other hand, Skinner's view of the influence of republican formulations of theories of government in England has somewhat shifted over time. In *Liberty Before Liberalism* (Cambridge: Cambridge University Press, 1998), he sees neo-Roman language as becoming influential mostly after the regicide, while in *Visions of Politics* II chapters 11 and 12, he gives it an earlier place in the arguments over the justification of the Civil War. This is a matter of emphasis rather than drastic change. In *Liberty Before Liberalism*, the neo-Roman concept of *libertas* comes into play in reaction to the use, by royalist writers, of the Roman law formulation of sovereignty as residing in an artificial person of the state, rather than in the monarch or in the people viewed as a corporation. While this royalist theory is voiced soon after the outbreak of the Civil War, Skinner presents the Parliamentary neo-Roman language as responding to Hobbes's version of the royalist position in *Leviathan* (*Liberty Before Liberalism*, 4-16). A writer like Henry Parker, defending the Parliament's actions against the king from the opening of the Civil Wars, is in this account a monarchomach thinker arguing that the people delegate their power to a ruler only for their own benefit and therefore retain the right to reclaim their sovereignty in defense of *salus populi*, but he does not share the neo-Roman understanding of *libertas* (*Liberty Before Liberalism*, n. 65, p. 21). Nonetheless, Skinner does not take the revisionist view that there was not a constitutional crisis before the regicide (see, for instance, *Liberty Before Liberalism*, 3).

<sup>22</sup> Scott, *Commonwealth Principles*, 110-18.

*Jure Belli ac Pacis* seems to be the direct source of most of his classical authorities, had tacitly used medieval and late scholastic thought to develop his theory of natural law and right and to elicit out of classical authors conceptions of *ius* that were not present in the original.<sup>23</sup> But Sexby's eclecticism is more problematic.

The first section of this chapter, "*Killing No Murder: the People and Tyrannicide*," explores how Sexby's indiscriminate appropriation of resistance theory arguments combined with his exegesis of Scriptural passages that had been the locus of debates over the lawfulness of tyrannicide, distorts and degrades the role of the people in forming a political community over time. My argument focuses on how paying attention to the *legislative* role of the community, understood as a corporate whole under natural as well as positive law, can help us to understand the impoverished version of the people and their political role underlying the republican resistance theory exemplified in *Killing No Murder*. By way of comparison, in section two, "*Parliament as Nothing: Political Idolatry and Iconoclasm*," I turn to apologies of the dissolution of the Rump and the appointment of the Nominated Assembly in 1653 as presenting versions of the body politic in direct opposition to those that are central to English republicanism. For republican writers, a body politic is deemed free only if, as in the case of a natural body, its actions are self-determined.<sup>24</sup> The texts considered in this section, attempting to

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<sup>23</sup> On this, see Tierney, *The Idea of Natural Rights*, 324-9, who points out, in particular, the importance of the influence of Alanus, Ockham, and Suarez on Grotius' thought.

<sup>24</sup> This is, baldly, the main strand of the argument of Quentin Skinner's *Liberty Before Liberalism*.

justify the Army's overt intervention in the government of England, argue that the people, though freed from the thrall of monarchy, are not yet capable of exercising their liberties and rights in electing a representative parliament. However, these justifications of the dissolution of representative civilian rule in England share with Sexby the view of law and custom as merely external to just government. By comparing the language traced in section one through *Killing No Murder* that dismisses law and trials as formalities with the claim advanced by supporters of the Army's actions that Parliament had become an empty name no longer signifying a true representative, we can see how the link of political reformation with iconoclastic language in texts at odds with each other ultimately stems from a joint attempt to replace historically bound, customary and legal embodiments of justice with an abstracted and a-historical conception of justice.

This comparison leads to the problem of how understandings of justice and law are related to questions of centralization of legislation and adjudication. To explore this problem within the context of the relationship between Parliament, the people, and the Army, in section three, I turn to the Putney debates (1647) and the arguments between the "Grandeers," Ireton and Cromwell, and the agents, especially Sexby and Wildman, and Rainborough, over the justification for the New Model Army's involvement in the political and legislative restructuring of England. The proponents of *An Agreement of the People* argue for a certain set of birthrights due to Englishmen and soldiers based on

natural law and not simply granted by a Parliament. In this view, the Army is to be the engine of reform. Cromwell and Ireton argue against the agents on two main counts. For Ireton, insisting on right to franchise based on natural law risks denying the validity of any positive right, and in particular the right to property. Moreover, for both Ireton and Cromwell, the Army is not free to enter new engagements until it has been absolved of its previous ones. As Pocock has argued in *The Machiavellian Moment*, it is not that Ireton and Cromwell were unwilling to press for reform, but rather that they represented the traditionalist view that individuals were defined by the social and political institutions into which they were and to which they were bound by a system of custom and inheritable property.<sup>25</sup> In Pocock's influential interpretation, it is the Leveller-influenced agents, appealing to natural law, who best exemplify his modified version of Walzer's saint, who wants to restore the laws and liberties of Englishmen to their original form rather than to uphold their inherited current structure.<sup>26</sup> The Levellers based their requests on a version of ancient constitutionalism supported by a "radicalization" of natural law arguments.<sup>27</sup> In this third section of the chapter, I explore the version of natural law theory formulated by the supporters of the *Agreement* at Putney to investigate their model of agency of the people and their resistance to the centralizing pull of the Parliament. In particular, I turn to their insistence that they fought to recover

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<sup>25</sup> Pocock, *The Machiavellian Moment*, 375-7.

<sup>26</sup> Pocock, *The Machiavellian Moment*, 374-5.

<sup>27</sup> For this reading of Leveller thought, see Scott, *England's Troubles: Seventeenth-Century English Political Instability in European Context* (Cambridge: Cambridge University Press, 200), 283-9.



their birthrights as based on the law of nature and compare this claim with a model for the recovery and loss of rights already embedded in the practice of how common law courts dealt with rival claims of jurisdiction.

#### **4.1 Killing No Murder: the People and Tyrannicide**

*If that promiscuous Right of Resistance should be allowed, there would be no longer a State, but a Multitude without Union, such as the Cyclops were, everyone gives Law to his Wife and Children. A Mob where all are Speakers, and no Hearers.*<sup>28</sup>

The language of resistance used to justify first the Civil Wars and then the trial and execution of Charles I as a tyrant is in 1657 turned against Cromwell by Edward Sexby in *Killing No Murder*.<sup>29</sup> Sexby had been a private soldier in the New Model Army up through 1647 and, as we will see in section three, he took part in the debates at Putney.<sup>30</sup> He maintained his contacts with the Army and with the Interregnum

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<sup>28</sup> Hugo Grotius, *The Rights of War and Peace. Book I*, ed. Richard Tuck (Indianapolis, IN: Liberty Fund, 2005), 338; emphasis original.

<sup>29</sup> Edward Sexby, *Killing no murder: Briefly discoursed in three questions*. Early English Books Online. William Andrews Clark Memorial Library, University of California, Los Angeles. May, 10, 2011. [http://gateway.proquest.com.proxy.lib.duke.edu/openurl?ctx\\_ver=Z39.88-2003&res\\_id=xri:eebo&rft\\_id=xri:eebo:citation:45097951](http://gateway.proquest.com.proxy.lib.duke.edu/openurl?ctx_ver=Z39.88-2003&res_id=xri:eebo&rft_id=xri:eebo:citation:45097951). *Killing No Murder* is first published in 1657 in the Low Countries and re-printed in 1658 (a French translation; Brussels?); in 1659 (in English; Brussels?); and in two different editions in 1689 (David Wootton, ed., *Divine Right and Democracy: An Anthology of Political Writing in Stuart England* (Indianapolis: Hackett, 2003), n. 6, p. 388). The 1657 and 1689 editions contain the dedicatory letter to Cromwell and a dedicatory letter to the army, the latter of which is absent from the 1659 edition. Throughout this chapter, all my quotes from *Killing No Murder* are from the 1689 edition. The pamphlet is written by Edward Sexby and possibly Silius Titus, but it carries the name of William Allen, one of Sexby's fellow army agitators from 1647 (Austin Woolrych, *Britain in Revolution*, 358). For the question of Sexby's authorship of the work, see: C. H. Firth, "Killing No Murder," *The English Historical Review* 17 (1902): 308-311. Firth argues for a co-authorship of *Killing No Murder*. For the life and career of Edward Sexby, see James Holstun, *Ehud's Dagger: Class Struggle in the English Revolution* (New York: Verso, 2000), 305-333. Holstun assigns the authorship of the pamphlet to Sexby, while acknowledging a possible contribution from Titus (333).

<sup>30</sup> James Holstun, *Ehud's Dagger*, 308-9.

government up through 1654. But by 1657, he had become involved in negotiations with royalists and Spanish agents to assassinate Cromwell with the aid of royalist financing and to bring Charles II to the throne under a settlement granting certain liberties to English subjects.<sup>31</sup> *Killing No Murder* is written to justify armed resistance to the Protectorate government and advocates the murder of Oliver Cromwell by any private individual. This section explores the model of political community and the conception and representation of law that are at the basis of Sexby's claim that each individual can assassinate a tyrant. Sexby's understanding of law and human society is expressed in the pamphlet through his use and interpretation of classical, patristic, and Scriptural sources. In particular, his interpretation of the narrative of the killing of the idolatrous Athaliah in 2 Chronicles, his central authorizing text for tyrannicide, presents a test-case for Sexby's understanding of the relationship between individual judgment and political community. As we will see, in *Killing No Murder*, Sexby oscillated between an optimistic and a negative view of human nature and sociability. On the one hand, his reliance on the Aristotelian view of human beings as naturally sociable leads him, in an echo of the Parliamentary propaganda from the Civil War, to confidently appeal to the consent of the people as the legitimating authority of any government. On the other hand, his view of human nature as corrupted by original sin pulls *Killing No Murder* towards an indictment of the "vulgar" judgment of the Protectorate.

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<sup>31</sup> Holstun, *Ehud's Dagger*, 319-22.

Following Pocock's framework, most of the work on English republicanism has focused on writers such as James Harrington, Marchamont Needham, Henry Vane, or John Milton.<sup>32</sup> While interest in Sexby, as we will see in section three, is mostly centered on his role in the Putney Debates, *Killing No Murder* has been seen by David Norbrook as "uncompromisingly republican" and by Jonathan Scott as a prime example of the survival of English republican resistance theory during the Protectorate.<sup>33</sup> But the most sustained discussion of Sexby's *Killing No Murder* is found in James Holstun's *Ehud's Dagger*. Holstun agrees with Worden and Scott that *Killing No Murder* should be part of the English republican canon and his reading of the pamphlet is part of a larger challenge to Pocock's and Skinner's linguistic approach as well as to revisionist and new-historicist historiography and criticism of the 1640s and 1650s.<sup>34</sup> Holstun's attention to Sexby is particularly meant as a corrective to the approach of historians and literary critics who focus on contingency, consensus and traditional practices and loyalties, and patronage relationships.<sup>35</sup> Against the interest in these loci of analysis, Holstun focuses

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<sup>32</sup> For a discussion of the development of the ever-expanding canon of republican writers since Zera Fink's focus on Harrington's *The Commonwealth of Oceana* in *The Classical Republicans*, see Jonathan Scott, *Commonwealth Principles*, 1-5.

<sup>33</sup> *Writing the English Republic: Poetry, Rhetoric and Politics, 1627-1660* (Cambridge: Cambridge University Press, 1999), 324; and Scott, *Commonwealth Principles*, 117.

<sup>34</sup> Holstun's revisionist targets are J.C.D. Clark, Mark Kishlansky, John Morrill, Conrad Russell, and Kevin Sharpe. His account of the "English Revolution" is explicitly Marxist and views the conflict as "a class struggle [...] among various groups that were endeavoring to maintain or transform the relations of production" (*Ehud's Dagger*, 87-8).

<sup>35</sup> For his assessment of each of these approaches, see, respectively, *Ehud's Dagger*, pp. 44-5; pp. 218-9, where Holstun is particularly attacking the account of early Stuart England presented by Glenn Burgess, as well as disagreeing with Mark Kishlansky's analysis of the New Model and the Putney Debates; pp. 146-7.

his own account on “*popular praxis*,” understood as “action planned, accomplished, and reflected upon,” as it is “organized in five *radical projects*.”<sup>36</sup> One of these five projects is Sexby’s attempt and call to tyrannicide. This challenge to the “new sort of monarchical charisma” of the Protectorate is seen by Holstun as a form of “godly republic[anism]” based on practices of popular and collective resistance.<sup>37</sup>

Holstun’s focus on popular praxis directs his reading of *Killing No Murder* as an expression of Sexby’s “associative practice.” Holstun sees Sexby acting as early as December 1653, after the dissolution of the Nominated Assembly, in conjunction with assorted “English radicals (including ex-Levellers, republicans, Fifth Monarchists, and Quakers)” and royalists, who formed an opposition to the Protectorate.<sup>38</sup> This represents a fundamental change in Sexby’s mode of association and authorization from that of the time of the Putney Debates:

Sexby’s conspiracies suggest a marked shift in his political practice. In 1647, he worked as an organic intellectual on behalf of a fused group; as a democratically elected Agitator, he attempted through petitions, manifestos, and communication networks to fabricate a new egalitarian party that would democratize the English state. In 1655-57, he worked as a conspiratorial *bricoleur* on behalf of a merely serial collective; as a self-authorized conspirator, he attempted to cobble together a makeshift alliance among preconstituted political parties united only by a shared opposition to Cromwell, and constantly threatening to fragment.<sup>39</sup>

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<sup>36</sup> *Ehud’s Dagger*, x-xi; emphasis original.

<sup>37</sup> Holstun, *Ehud’s Dagger*, 307, 335.

<sup>38</sup> Holstun, *Ehud’s Dagger*, 312.

<sup>39</sup> Holstun, *Ehud’s Dagger*, 317.

Strikingly, Holstun does not raise the question of whether a change in Sexby's political practice may not also mirror, and influence, a shift in the accompanying understanding of community and political association. While his "associative practice" may have changed, for Holstun, Sexby is a "godly republican" pursuing democratic reforms in England in 1657 as well as in 1647. Holstun's framework of republicanism is indebted to Pocock's work. However, Holstun argues against Pocock's focus on the languages and "discourse" of republicanism to the exclusion of praxis: "Pocock reduces practice to discourse, discourse to elite discourse, and plebeian oppositional writing and speaking to silence."<sup>40</sup> The consequence of this focus on "elite discourse" is, in Holstun's view, particularly near-sighted and damaging to our understanding of the conjunction of republicanism and resistance theory. In Holstun's account, "republican theory" views tyranny as the moment when "the 'one' threatens to extinguish the power of the 'few' and the 'many,' or when the sovereign representative begins to override the *salus populi*."<sup>41</sup> However, Holstun argues that by leaving out "plebeian" writing and actions, such as Sexby's, from accounts of the period, the language of republicanism is left separated from the call to action of resistance theory. Sexby is left out "perhaps because [he] emphasizes republicanism's Reformation dimensions as popular praxis over its Renaissance dimensions as elite discourse. [...] Sexby made plain his desire to translate

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<sup>40</sup> Holstun, *Ehud's Dagger*, 328; this passage from *Ehud's Dagger* has in its sights Pocock's *Virtue, Commerce, and History*.

<sup>41</sup> Holstun, *Ehud's Dagger*, 329.

his reading into practice, and he can enrich our appreciation for the practical impulses in those antityrannical works Pocock sees as discursive structures only.”<sup>42</sup> But by focusing on how he translates “his reading into practice,” Holstun neglects *how* Sexby reads his sources. It is to the specific form of resistance theory, natural law, and Scriptural exegesis that Sexby engages that I now turn.

Sexby’s anti-tyrannical practice draws on a combination of natural law arguments, classical and patristic quotations, and Scriptural examples. Old Testament celebrations of tyrannicide against usurping rulers and idolaters explicitly frame *Killing No Murder*. The title page of the pamphlet includes quotes from 2 Chronicles 23.21 and 2 Chronicles 25.27, verses which celebrate the killing of the tyrants Athaliah and Amaziah, respectively.<sup>43</sup> The stories of Athaliah and Amaziah frame *Killing No Murder* for its readers by recalling Scriptural verses that had been used by both resistance theorists and their royalist opponents before and during the Civil Wars.<sup>44</sup> The killing of Athaliah, as

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<sup>42</sup> Holstun, *Ehud’s Dagger*, 330. On the link between resistance theory and republican language, see footnote 21 above.

<sup>43</sup> “And all the people of the land rejoiced: and the city was quiet, after that they had slain Athaliah with the sword” (2 Chron. 23.21). The Geneva Bible commentary to this verse drives the point home: “For where a tyrant and an idolater reigneth, there can be no quietnesse: for the plagues of God are euer among such people” (Geneva Bible). “Now after the time that Amaziah did turn away from following the LORD they made a conspiracy against him in Jerusalem; and he fled to Lachish: but they sent to Lachish after him, and slew him there” (2 Chron. 25.27).

<sup>44</sup> Royalist writers argued that Athaliah could be killed by subjects only because she was an unlawful ruler who had usurped the throne. See, for instance, Charles I, *The Kings Declaration from Carisbrook-Castle, Jan. 18. 1647*: “People when oppressed and wronged by their lawfull Superiour, have allowance onley to cry unto God, (as 1 Sam. 8.18) and to sue for reliefe by way of Petition, as the *Israelites* in *Egypt* did to *Pharaoh*, when they were so cruelly used by his *Task-masters*. But its otherwise, if men be *usurpers*, and set up themselves, as *Abimelech* the *Bramble* did *Judg.* 9. or endeavour to destry the Royall Family, as *Athaliah* did” (emphasis original); in *The Kings most gracious messages for peace and a personal treaty published for his peoples satisfaction*,

recalled in the pages of *Killing No Murder*, promises the end of discord in the nation. In using this Scriptural passage in the title page, Sexby hides a problem that will recur in the texts I analyze in this chapter: killing a tyrant does not automatically lead to a re-covenanting of the country into “the Lord’s people” (2 Chronicles 23.16). The imagined histories of government formation analyzed in the previous chapter hinged on a rationalized forming of the body politic by necessity from the state of nature. Similarly, Sexby’s pamphlet envisions an automatic reformation of England after the assassination of the Lord Protector. But the narrative of Athaliah points in a different direction. Her story is told twice in the Old Testament, once in 2 Chronicles and once in 2 Kings. Both the Chronicles and Kings narratives of the story of Athaliah focus on her violent

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*that they may see and judge, whether the foundation of the Commons declaration, touching their votes of no farther addresse to the King, viz His Majesties aversenesse to peace, be just rationall and religious.* (London, 1648), 129. Early English Books Online. Huntington Library and Art Gallery (San Marino, CA). August 25, 2011.

[http://gateway.proquest.com.proxy.lib.duke.edu/openurl?ctx\\_ver=Z39.88-2003&res\\_id=xri:eebo&rft\\_id=xri:eebo:citation:13415192](http://gateway.proquest.com.proxy.lib.duke.edu/openurl?ctx_ver=Z39.88-2003&res_id=xri:eebo&rft_id=xri:eebo:citation:13415192).

For the use of the example of Athaliah in defense of the regicide, see John Goodwin, *Hybristodikai. The obstructours of justice. Or a defence of the honourable sentence passed upon the late King, by the High Court of Justice. Opposed chiefly to the serious and faithfull representation and vindication of some of the ministers of London* (London, [Thomason: May 30], 1649), image 1, and page 77. Early English Books Online. British Library (London). October 10, 2011.

[http://gateway.proquest.com.proxy.lib.duke.edu/openurl?ctx\\_ver=Z39.88-2003&res\\_id=xri:eebo&rft\\_id=xri:eebo:citation:99859273](http://gateway.proquest.com.proxy.lib.duke.edu/openurl?ctx_ver=Z39.88-2003&res_id=xri:eebo&rft_id=xri:eebo:citation:99859273).

More pointedly, in the context of Sexby’s links with royalist plans for the return of Charles II in the event of a successful assassination of Cromwell, the biblical verses celebrating the coronation of Jehoash as King of Israel by Johoiada after killing of Athaliah, as it is narrated in 2 Kings 11:12 and 17, had been used by Robert Douglas at the coronation of Charles II at Scone in 1651. See, *The form and order of the coronation of Charles the Second, King of Scotland, England, France and Ireland as it was acted and done at Scoone, the first day of Ianuarie, 1651* (Aberdene, 1651), image 5. Early English Books Online. British Library (London). May 10, 2012.

[http://gateway.proquest.com.proxy.lib.duke.edu/openurl?ctx\\_ver=Z39.88-2003&res\\_id=xri:eebo&rft\\_id=xri:eebo:citation:8713192](http://gateway.proquest.com.proxy.lib.duke.edu/openurl?ctx_ver=Z39.88-2003&res_id=xri:eebo&rft_id=xri:eebo:citation:8713192).

For use of the example of Athaliah before 1640 in support of resistance against a tyrant, see J. P. Sommerville, *Politics and Ideology in England: 1603-1640*, 72.

usurpation of the throne and on her execution. Athaliah, Ahab's daughter, becomes queen of Judah as Jehoram's wife (2 Chronicles 21). While the Chronicles narrative gives few details of about Athaliah, it does emphasize her identification with the cult of Baal (2 Chron. 21.6). After Jehoram's death, Athaliah takes the throne and attempts to assassinate all the legitimate claimants to the crown (2 Chronicles 22.10-2). But one, Joash, survives. During Athaliah's six-year reign, Jehoiada keeps Joash, the legitimate heir, hidden in his house (2 Chron. 22.11-12). In the seventh year, Jehoiada organizes a rebellion to restore Joash to the throne, killing Athaliah and all her followers (2 Chron. 23).

Athaliah's assassination in 2 Chronicles 23 is celebrated for inaugurating a re-covenanting between the people, the new king (the rightful ruler from the house of David), and God, and for instigating the destruction of the temple of Baal: "And Jehoiada made a covenant between him, and between all the people, and between the king, that they should be the LORD's people./ Then all the people went to the house of Baal, and brake it down, and brake his altars and his images in pieces, and slew Mattan the priest of Baal before the altars" (2 Chron. 23.16-17). The Chronicles narrative closely links the problems of idolatry with the problems of usurpers and tyrants; Athaliah is both an usurper and a worshipper of Baal. Thus, by killing her, Jehoiada restores both the rightful heir to the throne of Israel and the right worship of God. In her study of iconoclasm in the English reformation, Margaret Aston suggests a connection between



iconoclasm and deadly violence. Recalling the burning of sacred images in sixteenth- and seventeenth-century England, as well as Savonarola's bonfires of vanities, Aston comments that "[t]hese occasions also point to an aspect of iconoclasm which should not be lost sight of. There was a connection (occasionally indicated by contemporaries, but for the most part unacknowledged) between breaking images and killing people."<sup>45</sup> Iconoclasts, wrote Luther in 1525 as he reflected on laws demanding the death penalty for idolaters, reveal that "there is a spirit hidden in them which is death-dealing, not life-giving."<sup>46</sup> The story of Athaliah, narrating the murder of an idolatrous usurper to the throne of God's chosen nation, brings to the surface this link between iconoclasm and violence, in this case between iconoclasm and political assassination, a link that is brought to the forefront of the argument of *Killing No Murder*.

In Sexby's use of the story of Athaliah in *Killing No Murder*, Cromwell becomes idolater, idol, and the punishment visited upon England for the people's idolatry all in one. Sexby introduces his reading of 2 Chronicles 23 while arguing that any individual may lawfully kill a tyrant. I will return to this argument for the lawfulness of private action and to Sexby's definition of a tyrant below, but for the moment it is sufficient to note that Jehoiada is given as an example of a private individual, rather than a magistrate, whose actions justly and lawfully remove tyranny and idolatry from the

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<sup>45</sup> Margaret Aston, *England's Iconoclasts: Laws Against Images* (Oxford: Clarendon Press, 1988), 5-6.

<sup>46</sup> Quoted in Aston, *England's Iconoclasts*, 6.

nation.<sup>47</sup> His example is invoked throughout the pamphlet and, in particular, at the end, Sexby focuses on the killing of the supporters of Athaliah as described in 2 Chronicles: "I must not conclude this Story without observing that *Jehoiada* commanded, that whosoever followed *Athaliah* should be put to Death. Letting us see what they deserve that are Confederates with Tyrants and will side with them, and but appear to defend them, or allow them."<sup>48</sup> This explicit emphasis on the guilt and just punishment of all who are "Confederates with Tyrants" creates an ever-expanding circle of those whose death would automatically follow that of Cromwell: "his Highness, his Counsell, his Junto, and the Agaes of his Janizaries" will all share the same fate.<sup>49</sup> The killing of Mattan, Baal's priest, affords a similar occasion to include those divines who have supported the Protector from their pulpits:

likewise his Highness's Chaplains, and Tryers who are to admit none into the Ministry that will preach Liberty with the Gospel; may, if they think fit, observe, that with the Tyrant fell *Mattan* the Priest of *Baal*. And indeed none but *Baal's* Priests will preach for Tyrants. And certainly those Priests that sacrifice to our *Baal*, our Idol of a Magistrate, deserves [*sic*] as well to be hang'd before their Pulpits, as ever *Mattan* did to fall before his Altars.<sup>50</sup>

In this passage, Sexby turns Cromwell from an idolater to idol. In the Chronicles' narrative, Athaliah is represented as luring her son into wickedness: "He also walked in the ways of the house of Ahab: for his mother was his counsellor to do wickedly" (2

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<sup>47</sup> Sexby, *Killing No Murder*, 29.

<sup>48</sup> Sexby, *Killing No Murder*, 30; emphasis original.

<sup>49</sup> Sexby, *Killing No Murder*, 30.

<sup>50</sup> Sexby, *Killing No Murder*, 30; underlining mine.

Chronicles 22.3; emphasis mine). In Sexby's version the tyrant's ability to corrupt is changed from that presented in the Scriptural passage. Cromwell's very existence as an idol leads to idolatrous behavior from his "Priests," and his "Tryers" exclude those from the church any who "will preach Liberty with the Gospel." Unlike Athaliah who counsels her son, Cromwell silences good ministers and becomes an occasion for sacrifices "to our *Baal*." Alongside Cromwell's transformation into an idol, Sexby's retelling of the killing of Mattan makes "all the people" disappear. In 2 Chronicles 23.17, the people "went to the house of Baal, and brake it down, and brake his altars and his images in pieces, and slew Mattan the priest of Baal before the altars." In Sexby's version, the people no longer participate in the destruction of the idols. Instead, the killing of both Mattan and of the Cromwellian ministers is presented with passive verbs. Cromwell's idolatrous "priests" are themselves turned into grotesque sacrifices being "hang'd before their Pulpits" just as Mattan "did fall before his Altars." By hiding the agency of those who judge, and execute, the supporters of Cromwell as deserving to be hanged, Sexby covers up the vexing question of who has the authority of reaching such a judgment and by which standards and processes of justice the judgment is reached and carried out. What is the process of judgement and justice that is implicit in Sexby's depiction of tyrannicide?

Sexby's conceptions of justice and correct judgment come to light as we compare his depictions of good and bad forms of government. His understanding of good

government is based on the use and interpretation of republican language of liberty and slavery, language traced by Quentin Skinner in his discussion of the English Civil Wars in *Visions of Politics*.<sup>51</sup> Skinner has pointed out the centrality of Cicero's so-called *Philippics* in the works of English republican writers in their definition of political liberty and, its opposite, political slavery during the Civil Wars and the interregnum.<sup>52</sup> The eighth *Philippic*, in particular, became central to the defenses of the Commonwealth after the regicide. In this work, Cicero defines political slavery as the condition endured by any people who hold their liberty at the discretion of a ruler. Similarly, in *De Officiis*, he adds that a free people is ruled by law and not by the will of the ruler.<sup>53</sup> *Killing No Murder* revisits these definitions of political liberty and slavery, and uses them to argue that the Protectorate is a tyranny. Throughout the pamphlet, Sexby insists that good government is characterized by the defence of the people's liberty, while tyrants enslave their subjects. This republican argument is supported with Biblical examples. Sexby includes the positive example of David's kingship, from whom Joash descended, as a counterweight to Athaliah's idolatrous tyranny. In his analysis of Andrew Marvell's

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<sup>51</sup> Skinner prefers the term "neo-Roman" rather than republican. While Pocock focuses on the influence of Aristotelian conceptions of government in classical republicanism, Skinner highlights the importance of Roman texts to early modern discourses of liberty and slavery (see, for instance, *Visions of Politics* II, Chapter 7). For Skinner, the key sources are Cicero, Polybius, and legal texts such as the *Justinian Code*. Jonathan Scott has recently argued for a reconsideration of Greek sources. In *Commonwealth Principles*, he posits that Plato and Aristotle influenced the thought of English republicans such as Harrington more extensively than either Cicero or Polybius (134). To prevent confusion by frequent changes of terminology, I use the more common term "republican" throughout.

<sup>52</sup> In particular, the Ciceronian definition of political slavery was applied to the personal rule of Charles I to argue that he behaved as a tyrant (*Visions of Politics* II:314-5).

<sup>53</sup> *Visions of Politics* II:315.

though, John M. Wallace has shown Marvell's use of the imagery of Davidic kingship in *The First Anniversary* (published, January 1655) to portray Cromwell as called to kingship by God.<sup>54</sup> In this use of this imagery, Marvell is appealing to the dual appointment of David, by God and by the people, to awaken the English people to create Cromwell as king by popular consent.<sup>55</sup> Sexby counters this comparison by aligning Cromwell with Athaliah, a tyrant who attempted to keep David's line out of the throne. In contrast to Athaliah's slaughter of all the legitimate heirs in order to seize power, the reign of David is inaugurated by a pact between king, the elders, and the people: "*David* was anointed King [...], but afterwards, after *Saul's* Death, confirmed by the People of *Juda* and seven Years after by the Elders of *Israel*, the Peoples Deputies [...] before his Inauguration they made a League ([2 Samuel 5.3]) with him; that is, obliged him by Compact to performance of such Conditions as they thought necessary for the securing their Liberty."<sup>56</sup> A model of contractual kingship, David's reign begins when he places himself under obligation to rule according to whatever conditions the people<sup>57</sup> think necessary in order to secure their liberty. Sexby emphasizes that while David is

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<sup>54</sup> John M. Wallace, *Destiny His Choice*, 106-44. While *The First Anniversary* does not explicitly compare Cromwell to David, Wallace, in part following the work of Joseph Mazzeo ("*Cromwell as Davidic King*", in *Renaissance and Seventeenth-Century Studies* (New York, 1964), 183-208; cited by Wallace, n. 1 to p. 108), argues that David's reign is one of the models through which the poem interprets the Protectorate.

<sup>55</sup> Wallace, *Destiny His Choice*, 123-6.

<sup>56</sup> Sexby, *Killing No Murder*, 6; emphasis original.

<sup>57</sup> The people or the Elders. Sexby's syntax contains a list of "they," making it unclear who "they" are.

chosen by God and anointed by a prophet, he is truly made king only after he is confirmed by the people and constrained by the conditions that they imposed on him.

The Davidic image of the people binding a good king by obligating him to preserve the people's liberties is placed in contrast to the repeated depictions of England enslaved by Cromwell. While the government of England may style itself as a commonwealth, Englishmen live in "a great Family, consisting of master and Slaves. *Vir bone servorum nulla est usquam civitas*, says an Old Poet, a Number of Slaves makes not a City."<sup>58</sup> Having no say in their form of government and being ruled by the will of the Protector, the English people are turning into docile slaves.<sup>59</sup> Recalling the trope of England as Israel, Sexby depicts the recent call for a day of thanksgiving for Cromwell's escape from a failed assassination as an attempt to make Englishmen thank God for their own slavery:

if we had read in Scripture that the *Israelites* had cried unto the Lord, not for their own Deliverance, but the preservation of their Task-Masters, and that they had thanked God with Solemnity that Pharaoh was yet living, and that there was still great hopes of the daily increase of the number of their Bricks: Tho' that People did so many things, not only impiously and prophanely, but ridiculously and absurdly; yet certainly they did nothing we should more have wondered at, than to have found them ceremoniously thankful to God for Plagues, that were commonly so brutishly unthankful for Mercies; and we should have thought that *Moses* had done them a great deal of wrong, if he had not suffered them to enjoy their slavery and left them to their Tasks and Garlick.<sup>60</sup>

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<sup>58</sup> Sexby, *Killing No Murder*, 32; emphasis original.

<sup>59</sup> Sexby, *Killing No Murder*, 33.

<sup>60</sup> Sexby, *Killing No Murder*, 2-3; emphasis original.

Sexby's humorous description of the Israelites hoping for a "daily increase of the number of their Bricks" attacks the *Declaration* issued by Parliament to set a day of public prayers to celebrate the safety of the Protector.<sup>61</sup> Nonetheless, the central sentence in the passage, starting with "Tho' that People," attempts to prevent, while at the same time recalling, a reading of Exodus that would indicate that the prayers of England for Cromwell's safety may indeed be sincere. After all, the Israelites in the desert often demonstrated a desire to be left to "their Tasks and Garlick" in Egypt. The effort to forestall this line of thought leads to a strained rewriting of the Biblical story as the passage creates a parallel between Israel under Moses and contemporary England. If England is Israel and Cromwell is the plagues inflicted on Egypt, then, problematically for Sexby, Englishmen might indeed be "ceremoniously thankful to God for Plagues." By adding adverb to adverb—the people of God act "impiously," "prophanely," "ridiculously," and "absurdly"—the construction of the passage attempts, but fails, to suppress the possibility that England, as much as Israel, will not easily follow Moses into the desert.

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<sup>61</sup> The declaration: "And do hereby incite and encourage all persons, who are sensible of the Mercy of God to them, to come together in their several Congregations for the performance of this Duty, to praise the Lord for his goodness, humbly to intreat the continuance of his loving kindness to us, (though we have departed from him) that our God may be exalted in his own strength; and that Peace and Righteousness may flourish in these Nations." (*A declaration of His Highness the Lord Protector and the Parliament, for a day of publique thanksgiving on Friday the twentieth of February, 1656*, p. 6; [http://gateway.proquest.com.proxy.lib.duke.edu/openurl?ctx\\_ver=Z39.88-2003&res\\_id=xri:eebo&rft\\_id=xri:eebo:image:169269](http://gateway.proquest.com.proxy.lib.duke.edu/openurl?ctx_ver=Z39.88-2003&res_id=xri:eebo&rft_id=xri:eebo:image:169269))

The possibility that Englishmen may prefer the garlic of Egypt to freedom in a Commonwealth permeates *Killing No Murder*. Sexby repeatedly depicts in evident horror the people as sliding into a servile “condition”: “nor must we think we can conti[n]ue long in the Condition of Slaves, and not degenerate into the Habits and Temper that is natural to that Condition: Our Minds will grow low with our Fortune, and by being accustomed to live like Slaves, we shall become unfit to be any Thing else.”<sup>62</sup> This process of “degeneration” into slavery has already begun to take hold. Englishmen are untrustworthy and incapable of keeping promises, and England’s ministers are mere flatterers.<sup>63</sup> Sexby singles out for his harshest critique the city of London itself. In a passage reminiscent of Revelation 17 and extending the earlier imagery of England as Israel in captivity, London becomes a docile beast following the bidding of Cromwell: “What is the City but a great Tame Beast, that eats and carries, and cares not who rides it? What is the thing called a Parliament, but a Mock? composed of a people that are only suffered to sit there, because they are known to have no Virtue, and after the Exclusion of all others that were but suspected to have any?”<sup>64</sup> Sexby turns the standard description of a Parliament in session as “sitting” into an extension of the

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<sup>62</sup> Sexby, *Killing No Murder*, 33.

<sup>63</sup> “See but to what Degree we are come already: Can there any Oath be found so fortified by all Religious Ties, which we easily find not a Distinction to break, when either Profit or Danger persuades us to it? Do we remember any Engagements, or if we do, have we any Shame to break them?” (Sexby, *Killing No Murder*, 33-4). The ministers “rake Scriptures for Flatteries [...] and impudently apply them to his Monstrous Highness” (Sexby, *Killing No Murder*, 34).

<sup>64</sup> Sexby, *Killing No Murder*, 34.



enervated city; neither is capable of vigorous activity. London, rather than modeling itself on republican Rome, is turning into a new version of decadent imperial Rome. Earlier in the pamphlet, Sexby explicitly links England's economic and commercial activity with that of the Roman Empire under Caligula or Nero. Immediately following his use of the narrative of Athaliah in 2 Chron. 23 to argue that it is lawful to kill a tyrant, Sexby responds to the possible objection that "there being now no Opposition made to the Government of his Highness, that the People following their Callings and Traffick, at home and abroad, making use of the Laws, and appealing to his Highness's Courts of Justice. That all this argues the People's *Tacit* consent to the Government; and that therefore now 'tis to be reputed lawful, and the People's Obedience voluntary," with a mocking rejoinder that "we extremely wrong *Caligula* and *Nero* in calling them Tyrants, and they were Rebels that conspired against them; except we will believe, that all the while they reign'd, that in *Rome* they kept the Shops shut, an opened not their Temples, or the Courts."<sup>65</sup> Sexby's description of life under a tyrant points to two consequences. First, for Sexby, the daily life of the people, the legal system, and the church are corrupted by tyranny; shops, temples, and courts function even under a tyrant and the people are docile under his rule. Therefore, tyrannicide must be the act of individuals who cannot obtain sanction by the positive laws or by a clear demonstration that the people oppose the tyrant.

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<sup>65</sup> Sexby, *Killing No Murder*, 31-2; emphasis original.

The second consequence is that tacit consent to Cromwell's rule is either as impossible as denying that Nero and Caligula were tyrants or an indication of the deleterious effects of political slavery, of minds grown "low with our Fortune"; free rational consent to the Protectorate is a logical impossibility in *Killing No Murder*. The pamphlet works furiously to demonstrate that while Englishmen may appear to acquiesce to Cromwell's rule, once freed from the Protector and his corrupting influence, they will rejoice at the killing of the tyrant. To authorize the argument that any private individual may lawfully assassinate a tyrant, Sexby turns to a classical source, Cicero's *Philippics*.<sup>66</sup> Recruiting Roman history, and in particular Cicero's own version of the plot against Caesar in his attack against Marcus Antonius, Sexby turns to the *Second Philippic's* equating of the after-the-fact approval of tyrannicide with active advising and inciting of the killing to insist that just as every virtuous citizen of Rome had the will to murder Julius Caesar, so does every virtuous Englishman: "*Omnes boni quantum in ipsis fuit Caesarem occidenrunt: aliis consilium: al[i]is animus: aliis occasion defuit, voluntas nemini.* All good Men (saith he) as much as lay in them, killed *Caesar*: Some wanted Capacity: some Courage: Others Opportunity: But none the will to do it."<sup>67</sup> While Londoners' tacit consent is dismissed by Sexby in his link between Cromwell and Nero and Caligula, his

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<sup>66</sup> Sexby appears to rely on Grotius's *De Jure* for his quotes from Cicero's *Philippics* and, in fact, misattributes to Cicero one of Demosthenes *Philippics* quoted by Grotius without attribution: "And he that goes armed against every Man; arms every Man against himself. *Bellum est in eos, Qui iudiciis Coerceri non possunt* (says Cicero) we have War with those against whom we can have no Law" (Grotius, *The Rights of War and Peace*, 18).

<sup>67</sup> Sexby, *Killing No Murder*, 23.

use of Cicero's *Second Philippic*, equates being "good Men" and "vertuous" citizens with being complicit in the murder of Cromwell, whether in action or in thought.<sup>68</sup> As these passages begin to indicate, Sexby's argument for tyrannicide develops towards two conclusions with respect to his depiction of the English people. First, the complicity of the people in a potential tyrannicide becomes more and more implicitly assumed as a given in *Killing No Murder*. And, second, (active) participation in the killing of Cromwell becomes a test of virtuous citizenship; only those who act to assassinate the Protector truly deserve the name of Englishmen.

These two developments in *Killing No Murder* are part of an argument for tyrannicide that is dependent on three related questions, namely, what is a tyrant; what counts as consent to a government; and what Sexby understand by "lawful" —both in terms of a lawful government or a lawful action. The three questions are inextricably connected in *Killing No Murder* since the idea of original consent is necessary to Sexby's definition of a lawful government. The central stated aim of *Killing No Murder* is to determine whether Cromwell is a tyrant and whether he may be killed by any private individual.<sup>69</sup> In order to address both of these issues, Sexby begins by giving an account of what is a lawful government. While families, continues Sexby by citing Aristotle, have a natural ruler in the father, the union of families that "together make up one Body of

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<sup>68</sup> Sexby, *Killing No Murder*, 23.

<sup>69</sup> Sexby, *Killing No Murder*, 4.

Common-Wealth" do not have a natural governor.<sup>70</sup> From this point, Sexby argues that there are only two ways for a community to be ruled lawfully, either by direct divine appointment or by consent of the people.<sup>71</sup> Moreover, even when God appoints a ruler directly, he leaves "the Confirmation and Ratification of that Choice to the people themselves."<sup>72</sup> Given this understanding of the origins of the just power of a governor, Sexby turns to the specific case of Cromwell: "This being considered, have not the People of *England* much reason to ask the *Protector* this Question; *Quis constituit te virum principem & judicem super nos?* Who made thee a Prince and Judge over us?"<sup>73</sup> Neither God nor the people of England have granted Cromwell a right to rule over them.<sup>74</sup> Since Cromwell has received no delegation of authority from the people and is governing tyrannically, he fits both traditional definitions of a tyrant: "*Tyrannus sine Titulo*, and *Tyrannus Exercitio*: The one is called a Tyrant because he hath no Right to govern; the

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<sup>70</sup> Sexby, *Killing No Murder*, 4; Sexby refers to Aristotle's *Politics*, Book 1.

<sup>71</sup> "Wherefore all Power which is lawfully exercised over such a Society of Men (which from the end of its institution is called a Common-Wealth) must necessarily be derived either from the appointment of God Almighty, who is Supreme Lord of all and every part, or from the consent of the Society it self, who have the next Power to his, of disposing of their own Liberty, as they shall think fit for their own good" (Sexby, *Killing No Murder*, 5). This formulation is not unique to Sexby. As Wallace explains, the call to magistracy, having ruled out the possibility of succession to the throne for Cromwell, was seen as either "immediate" from God or "mediate," where God works through human appointment (Wallace, *Destiny His Choice*, 124).

<sup>72</sup> Sexby gives Saul and David as examples (*Killing No Murder*, 6).

<sup>73</sup> Sexby, *Killing No Murder*, 7. The question is taken from Exodus 2.14 and it is posed to Moses: "*Quis constituit te virum principem & judicem super nos?*" (Vulgate Bible). Moses, having killed an Egyptian in defense of one of his people just the previous day (Exodus 2.11-2), attempts to stop two Hebrews from fighting with each other and he is asked by what right he judges over them. I will turn to positive comparisons of Cromwell to Moses below. In this passage Sexby, who also uses the example of Moses killing the Egyptian to justify tyrannicide by a private man (*Killing No Murder*, 25-6), turns the image against Cromwell.

<sup>74</sup> Sexby, *Killing No Murder*, 7.

other because he governs Tyrannically.”<sup>75</sup> As such, Cromwell may be killed by any private individual: “[s]uch a Person, as one out of all bounds of human protection, all Men make the *Ishmael* [...] against whom is every Mans hand, as his is against every Man. To him they give no more security then *Cain*, his fellow-murtherer and oppressor, promised to himself, to be destroyed by him that found him first.”<sup>76</sup> Moreover, the “Law of God it self decreed certain<sup>77</sup> Death to that Man that would do presumptuously, and submit to no Decision of Justice. Who can read this, and think a Tyrant ought to live?”<sup>78</sup> In these passages, the term “lawful” therefore indicates that something is concordant to or allowed according to the law of nature or of God.<sup>79</sup> And, at this point in the pamphlet, it is according to the law of God that “certain Death” is decreed to a tyrant.

But in *Killing No Murder*, the question of what is “lawful” is also raised in terms of human laws. By following how Sexby develops his use of human law alongside his understanding of natural and divine law, we can see how his argument for the lawfulness of tyrannicide by any individual by appeal to both human and natural law ironically presupposes a devaluing of human law as well as the conception of justice embodied in the actions and customs of the people. This, in turn, allows Sexby to see the

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<sup>75</sup> Sexby, *Killing No Murder*, 4.

<sup>76</sup> Sexby, *Killing No Murder*, 14. Sexby is thus going further than the standard monarchomach arguments proposed during the Civil Wars that Parliament, as the representative body of the people, could depose a tyrannical king (see chapter three above). For the origins of this argument see Quentin Skinner, *The Foundations of Modern Political Thought*, vol. II, especially part 3.

<sup>77</sup> Here Sexby gives a reference in a footnote to Deuteronomy: “*Utique morietur vir ille Deut. 17.12*” (25).

<sup>78</sup> Sexby, *Killing No Murder*, 25.

<sup>79</sup> Sexby does not draw a distinction between the law of nature and the law of God in *Killing No Murder* and, within this context, I will follow his usage by using the terms interchangeably.

English people as acquiescing to slavery under a tyrant because they are led by a corrupted reason that can be restored only by living in a free commonwealth. I will focus on two particular uses of human law in the pamphlet. First, English law is, alongside natural law, a standard by which Cromwell is identified as a tyrant. Second, and in tension with the first use, natural law for Sexby ultimately supplants human laws as the authorizing source for tyrannicide. Turning to the first point, Sexby follows Cicero in arguing that a commonwealth is best ruled by laws rather than by the will of the ruler. For Sexby human society is instituted so that we may not merely survive, but rather live happily. Government is need and so men may lead

a Life answerable to the dignity and excellency of their kind. Out of Society, this happiness is not to be had, for singly we are impotent, and defective, unable to procure those things that are either of necessity, or ornament for our lives; and as unable to defend and keep them when they are acquired. [...] We cannot possibly accomplish these ends, if we submit not our passions and appetites to the Laws of reason and justice. For the depravity of Mans will make him as unfit to live in Society, as his necessity makes him unable to live out of it.<sup>80</sup>

Here Sexby combines a version of Aristotelian natural sociability of mankind, whereby man can only live a life appropriate to specifically human—rather than merely animal—nature in a community, with a view of human will as fundamentally depraved and therefore in need to be curbed by the laws of reason and justice. However, the term “Law of reason and justice” is left ambiguous by Sexby. Traditionally, positive laws could be deemed licit and rational only in so far as they did not contradict the first

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<sup>80</sup> Sexby, *Killing No Murder*, 15.

principles of natural law. Thus, while positive law is a distinct concept from that of natural law, the two are related. But a variety of widely differing systems of human laws could be considered reasonable by this standard.<sup>81</sup> By the use of the ambiguous term “Law of reason and justice,” Sexby can leave the passage open to two interpretations. On the one hand, following Cicero, the passage could indicate that it is not enough for a people to hold *de facto* freedom, that is, to live under a benevolent, but absolute ruler, but that a society is only free when men live under the rule of positive law.<sup>82</sup> On the other, the passage could more generally be interpreted to mean that men first aggregated into societies in order to live according to natural law.

This ambiguity becomes important as Sexby’s argument develops. On the next page, Sexby points out that a society is held together by its own laws:

That therefore by which we accomplish the ends of a Sociable Life, is our subjection, and submission to Laws, these are the Nerves and Sinews of every Society or Common-Wealth; without which they must necessarily dissolve and fall asunder. And indeed (as Augustine says) those Societies where Law and Justice is not, are not Common-Wealths and Kingdoms, but Magna Lactrocinia, Great Confederacies of Thieves and Robbers. Those therefore that submit to no Law are not to be reputed in the Society of Mankind, which cannot consist without Law.<sup>83</sup>

With the image that the political body of a commonwealth is held together by laws just as a natural body is held together by nerves and sinews, Sexby recalls the possible

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<sup>81</sup> See Pocock, *The Machiavellian Moment*, 10-13. For a medieval formulation of this relationship between natural law and positive law, see Thomas Aquinas, *Summa Theologiae*, (New York: Blackfriars and McGraw-Hill), vol. 28 (1964), Ia-IIae, q. 95, art. 2.

<sup>82</sup> See Quentin Skinner, *Visions of Politics* II:314-5.

<sup>83</sup> Sexby, *Killing No Murder*, 16; underlining mine.

derivation of “law,” *lex*, from the verb “to bind,” *ligare*.<sup>84</sup> The laws in this expression indicated the specific *positive* laws of the given Commonwealth. Why does this matter? Throughout the pamphlet, Sexby accuses Cromwell of setting his will above the law and this is what makes the Protector a tyrant.<sup>85</sup> Thus, by not ruling according to the laws of England, Cromwell is tearing the commonwealth apart. As we have seen, this Ciceronian formulation is common enough in English republican discourse, but what is striking in this passage is the conclusion that he draws from this once he combines it with his quotation from Augustine. The reference to a society “where Law and Justice is not” becoming but a “*Magna Latrocinia*” is from Book IV of *De Civitate Dei*. Sexby is not quoting exactly, but rather paraphrasing Augustine’s formulation and his addition to *De Civitate* is telling. The original reads as follows:

Remove justice, and what are kingdoms but gangs of criminals on a large scale? What are criminal gangs but petty kingdoms? A gang is a group of men under the command of a leader, bound by a compact of association, in which the plunder is divided according to an agreed convention. If this villainy wins so many recruits from the ranks of the demoralized that it acquires territory, establishes a base, captures cities and subdues peoples, it then openly arrogates to itself the title of kingdom, which is conferred on it in the eyes of the world, not by the renouncing of aggression but by the attainment of impunity.<sup>86</sup>

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<sup>84</sup> This derivation is used by Fortescue in his discussion of the body politics in *On the Laws and Governance of England*, Chapter XIII. The derivation used by Fortescue is originally from Alexander of Hales’s *Summa Universae Theologiae*, while the alternative derivation of *lex a legendo* that Fortescue dismisses is from Isidore of Seville’s *Etymologies* (John Fortescue, *On the laws and Governance of England*, Shelley Lockwood, ed. (Cambridge: Cambridge University Press, 1997), n. 79 to p. 21).

<sup>85</sup> See, for instance, page 7-8.

<sup>86</sup> Augustine *The City of God*, trans. Henry Bettenson (New York, NY: Penguin Books, 2003), 139.



Sexby's change turns Augustine's "justice" into "Law and Justice." But what kind of law is he referring to here, human or natural or both? In *De Civitate*, Augustine's target in this discussion is the Roman Empire. This passage is part of a larger critique of Roman pagan virtue as fundamentally infected by pride. As Jennifer Herdt argues, for Augustine, the Roman Empire's lack of true justice is not a failure to order the community according to the rule of positive law. Rather, Roman virtues are oriented by a pursuit of the common (earthly) good as an end in and of itself instead of being directed by a love of God.<sup>87</sup> Thus, while Rome may be ruled by laws and therefore pursue a semblance of justice, on Augustine's analysis, Roman "justice" is not true justice. In *Killing No Murder*, by turning Augustine's "justice" to "Law and Justice," Sexby attempts to reduce the question of whether the actions of the Protectorate are just to one of whether they are legal.

The addition of the term "Law" to Augustine's passage is not simply a matter of emphasis, but it is rather central to Sexby's condemnation of Protectorate. This becomes clear as Sexby reworks the image of a confederacy of robbers in the subsequent pages of *Killing No Murder*. Sexby extends the comparison of Cromwell to a robber by turning to Exodus 22.2:<sup>88</sup>

the Law of God permitting every Man to kill a Thief, if he took him breaking open his House in the Night: Because then it might be supposed he could not

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<sup>87</sup> Jennifer A. Herdt, *Putting On Virtue*, 48-50.

<sup>88</sup> "If a thief be found breaking up, and be smitten that he die, there shall no blood be shed for him."

bring him to Justice; but a Tyrant, that is the common Robber of Mankind, and whom no Law can take hold on, his Person should be, *Sacrosanct, cui nihil sacrum aut Sanctum*, to whom nothing is sacred, nothing inviolable? But the vulgar judge ridiculously like themselves. The glister of Things dazzles their Eyes, and they judge of them by their Appearances; and the Colours that are put on them. For what can be more absurd in Nature, and contrary to all common Sense, than to call him Thief, and kill him that comes alone, or with a few to rob me: And to call him Lord Protector and obey, that robs me with Regiments and Troops? [...] I wish that number were defined, that we might know where the Thief ends, and the Prince begins. And to be able to distinguish between a Robbery and a Tax. But sure no *Englishman* can be ignorant, that it his is Birth-Right to be Master of his own Estate; and that none can command any Part of it but by his own Grant and Consent, either made expressly by himself, or virtually by a Parliament. [...] In every Assessment we are robb'd, the Excise is Robbery, the Customs Robbery, and without Doubt, whenever 'tis prudent, 'tis always lawful, to kill the Thieves, whom we can bring to no other Justice.

In this passage, Augustine's accusation of the Roman Empire's injustice and violence is reduced to a denunciation of the Protectorate's illegal taxation; Cromwell is a thief because he robs the nation by imposing taxes not granted by a Parliament. Once this is granted, Sexby further literalizes Augustine's language by applying Exodus 22.2. Any private individual may kill a thief caught in his own house. For Sexby, the Protector with his "Regiments and Troops" is simply a thief intruding in the nation and therefore Exodus 22 provides the authorization for any Englishman to kill him. This application of Exodus 22.2 is far from self-evident as it stands. Exodus 22.2, alongside a similar maxim from the *Digest* of Roman law, had indeed been used by resistance theorists in the sixteenth-century to argue for violent resistance. But for these writers the focus had been on repelling violence with violence and only in extremely qualified contingencies on

protecting property.<sup>89</sup> For Sexby, however, the addition of his modification of Augustine's passage shows that the violation of positive law forms the basis for an *automatic* judgment that Cromwell is a tyrant and therefore deserving of death. Having thus made the question of how to judge a ruler dependent on simple legal criteria, Sexby prods his readers to take his view of the Protectorate as a gang of thieves by mocking as ignorant and, much worse, as not an Englishman, anyone who does not know "that it his is Birth-Right to be Master of his own Estate." Sexby's ridicule and condemnation of the judgment of "the vulgar" represents those who disagree with him as judging against "common Sense."<sup>90</sup> Rather than seeing correctly, "the vulgar judge ridiculously like themselves." The structure of the sentence leaves open two related interpretations. Namely, they are as ridiculous as their judgment, or they judge according to vulgar standards, that is, by common understanding and the common name of the thing. The vulgar, then, can be seen as judging both in a common way and, at the same time, lacking "common Sense." In this characterization, their judgment is indeed "absurd in Nature."

The accusation that the "vulgar" cannot see past appearances and that their eyes are dazzled by "the glister of Things" repeats a complaint voiced in the opening of *Killing No Murder*. There, Sexby addresses the discovery of a plot by Miles Sindercombe

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<sup>89</sup> See, Skinner, *Visions of Politics* II:246-55. I will return to the argument from private law and self-defence below to address the claim of the right to *individual* resistance raised by Sexby.

<sup>90</sup> The meaning of "absurd" denoting ridiculous does not become available until the 18<sup>th</sup> century (*Oxford English Dictionary*).

and Sexby himself to assassinate Cromwell. Under the direction of Sexby, Sindercombe had planned to assassinate Cromwell by burning Whitehall palace and, in January 1657, would have carried the plan through if one of his accomplices had not betrayed the plot to John Thurloe.<sup>91</sup> Thurloe had Sindercombe and his accomplices arrested, and informed Cromwell and Parliament of the plot.<sup>92</sup> As we have seen, the tensions in the use of the image of England as Israel in captivity praying for the pharaoh in Sexby's attack on the Parliament's *Declaration* for a day of thanksgiving brings to light the recurring threat of England's willing submission to the Protectorate in *Killing No Murder*. Sexby's pamphlet is in part an attempt to counter the version of England constructed by the official reaction to Sindercombe's attempt. On January 23, the members of Parliament met with Cromwell at Whitehall to congratulate him on his escape.<sup>93</sup> In his speech to Parliament, Cromwell turns their thanksgiving into an occasion to reflect on the mercy of God to the three nations they represent and to consider the country's current state:

But it is a goodly sight, if a man behold it *uno intuito*, and therefore this is a possession of your worthy congratulations. This is furnished [...] with the best people in the world possessing so much soil; a people in civil rights,—in respect of their rights and privileges,—very ancient and honourable. And in this people, in the midst of this people, a people [...] that are to God as the apple of his eye; and he says so of them, be they many or be they few. But they are many, a people of the blessing of God, a people under his safety and protection; a people calling upon the name of the Lord, which the heathen do not; a people knowing God,

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<sup>91</sup> Woolrych, *Britain in Revolution*, 650.

<sup>92</sup> Woolrych, *Britain in Revolution*, 650-1.

<sup>93</sup> Woolrych, *Britain in Revolution*, 650.

and a people, (according to the ordinary expressions,) fearing God. (Abbott, IV:389)<sup>94</sup>

In this speech, Cromwell encourages seeing the three nations in one sweep, “*uno intuito*,” thus emphasizing a united view of their people. Without distinction of nationality or political allegiance, the people are described as possessing “very ancient and honourable” rights and privileges. The passage elides the differences in rights and privileges between English, Scottish, or Irish people; they are viewed as a single people sharing the same soil and rights. The only distinction in this view is between the people in general and those who “are to God as the apple of his eye.” These are the people of Psalm 85. Those who fear God are those for whom “His salvation is nigh” (Abbott, IV:390; Psalm 85.9), and in this nation, “they are many.” Cromwell’s division, between those who fear God and those who do not, works to further dispels any distinction of nationality. The language of being “a people under his safety and protection” echoes the notion that subjects to a ruler are defined by being under the protection of their ruler.<sup>95</sup>

Just as speaking of the “ancient and honourable” civil rights of the people suggests legal

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<sup>94</sup> *The Writings and Speeches of Oliver Cromwell*, ed. W. C. Abbott, 4 vols. (Cambridge, MA: Harvard University Press, 1937-47). Throughout the chapter, all quotes from Cromwell’s speeches and writings will be from this edition and cited parenthetically.

<sup>95</sup> This language was used by Bacon to argue in favor of considering the *post-nati*, that is, Scottish subject of King James born after his ascension to the throne of England, as capable of inheriting land in England: “it is to be observed that it is *nec coelum, nec solum*, neither the climate nor the soil, but *ligeantia* and *obedientia* that make the subject born; for if enemies should come into the realm, and possess town or fort, and have issue there, that issue is no subject to the King of England, though he be born upon his soil, and under his meridian, for that he was not born under the ligeance of a subject, nor under the protection of the King” (Edward Coke, “Calvin’s Case,” *The Reports of Sir Edward Coke, Knt. In Thirteen Parts* (1826), 10. HeinOnline. June 10, 2011

<http://heinonline.org.proxy.lib.duke.edu/HOL/Page?collection=beal&handle=hein.beal/reporcoke0003&id=6>

unity, referring to the godly members of three peoples as those who are “to God as the apple of his eye” points to another form of unity by hiding national differences of religion and identifying one people under the rule and blessing of God.

Moreover, in Cromwell’s speech, the members of Parliament are encouraged to legislate according to divine law and, if they do so, “We shall know, you and I, as the father of this family, how to dispose our mercies to God’s glory, how to dispose our severity, how to distinguish betwixt obedient and rebellious children, and not to do as Eli did” (Abbott, IV:389).<sup>96</sup> In a speech giving thanks for an averted assassination that would have destroyed the current government, Cromwell turns to the image of the legislator and governor as *pater patriae*, administering justice like a father. In dealing with a would-be assassin, Cromwell and Parliament become a collective father who must punish rebellious children to avoid Eli’s curse. Even more strikingly, this paternal rule, turns into an imitation of divine rule. In following God’s law, the Parliament and Protector are emulating God himself. Paraphrasing Psalm 85 again, “Mercy and Truth

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<sup>96</sup> Eli and his sons Hophni and Phinehas were priests of Israel. When Eli was warned by prophecy to stop his sons’ desecration of sacrifices, he insufficiently reproves them (see 1 Samuel 2, 1 Samuel 3.12-13, and 1 Samuel 4.18). In *The Cry of a Stone. Or a Relation of Something Spoken in Whitehall* (1654), Anna Trapnel had described Cromwell as Eli: “O Gideon, when his own family there shall be that shall go naked and wanton; Oh this is found in thy family! David had not such in his family as thou hast, so many of these: and must thou rule a whole Nation, and canst not rule thy own family: Oh, thou sayest, I cannot rule them! canst thou not, says God? but I will make thee know what I did, to Eli of old, because of his sons” (The Cry of a Stone,” in *A Company of Women Preachers: Baptist Prophetesses in Seventeenth-Century England*, ed. Curtis W. Freeman (Waco, Texas: Baylor University Press, 2011), 428). The reminder in Cromwell’s speech about the difference between “obedient and rebellious children” might have been a reference to the recent, divisive trial of the Quaker John Nayler, whom Cromwell sought to protect from the more severe consequences of the blasphemy trial (Woolrych, *Britain in Revolution*, 650).

shall meet together, Righteousness and Peace shall kiss each other" (Psalm 85.10), Cromwell exhorts the members of Parliament to unite justice, truth, and mercy in their judgment: "mercy must be joined with truth, truth in that respect that we think it our duty to exercise a just severity, as well as to apply kindness and mercy" (Abbott, IV:390). Psalm 85 expresses a prayer for God's anger to cease against His people and line 10 constitutes a climactic moment in the Psalm in which four personified attributes of God lead Israel to follow God again, "Righteousness shall go before him; and shall set us in the way of his steps" (Psalm 85.10). In Cromwell's speech, mercy, truth, and a "just severity" are made to join together by the Parliament itself in its rule of the people and, in the present case, in its punishment of Sindercombe. Sindercombe's plot is thus presented as the rebellion of a sinful child against a paternal government and his just punishment will be a reflection of divine rule over a united nation.

In the opening of *Killing No Murder*, Sexby recasts the meaning of Sindercombe's plot not as a failed attempt to murder a lawful ruler, but rather as the failed but just punishment of a malefactor. Sexby declares that he has been moved to publish not to "declaim against my Lord *Protector* or his accomplishes," but rather because he must make his own account of the plot public to "examine whether if there hath been such a Plot as we hear of; and that it was contrived by Mr. *Sindercombe* against my Lord *Protector*, and not by my Lord *Protector* against Mr. Sindercombe (which is doubtful) whether it deserves those Epithets Mr. *Speaker* is pleased to give it, of bloody, wicked,

and proceeding from the Prince of Darkness.”<sup>97</sup> Similarly, at the end of the pamphlet, Sexby returns to the need to reformulate the official account and disputes its judgment that Sindercombe died as a suicide. Sexby proposes that the stake driven through Sindercombe’s heart at his burial should be replaced with “the pillows and Feather-beds” used to smother him in prison.<sup>98</sup> The method of burial of Sindercombe is a physical realization of the Protectorate’s judgment and Sexby argues that if it “should be known how he died,” the stake must be removed and the true instruments of Sindercombe’s death should be allowed to advertise this crime to all those who “are unacquainted (if any be) with his Cruelties and Falshoods.”<sup>99</sup> Here Sexby’s text shows a tension between claiming that the Protectorate’s manipulation of physical evidence as well as official reports hides the true nature of tyrannical actions and insisting that Cromwell’s “Cruelties and Falshoods” are almost universally known. By recasting the events of Sindercombe’s attempt on Cromwell’s life and his own death in prison, Sexby constructs a version of the people in tension with the view presented by Cromwell in his speech to Parliament. Rather than a united and godly people rejoicing at a ruler’s escape from murder, Sexby presents a people that has already judged Cromwell a tyrant.

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<sup>97</sup> Sexby, *Killing No Murder*, 3.

<sup>98</sup> Sexby, *Killing No Murder*, 41.

<sup>99</sup> Sexby, *Killing No Murder*, 41.



Strikingly, however, this people is at the same time depicted as incapable of judging correctly. His own account is needed because “the Vulgar” are too easily persuaded by official interpretations:

I know very well how uncapable the Vulgar are of considering what is extraordinary and singular in every Case, and that they judge of things, and name them by their exterior appearances, without penetrating at all into their Causes or Natures: And without a doubt when they hear the *Protector* was to be killed, they strait conclude that a Man was to be murdered, not a Malefactor punished: For they think the Formalities do always make the things themselves, and that 'tis the Judge and the Crier that makes the Justice.<sup>100</sup>

What Sexby presents in this passage is not a dispute of what happened, “the *Protector* was to be killed,” but an alternative judgment to the official one, which is believed by the people, “they strait conclude that a Man was to be murdered, not a Malefactor punished.” In Sexby’s account, official language, through the verdict of a judge and the publication of the judgment, is enough to persuade “the Vulgar” that the arrest of Sindercombe averted a crime. Like the parliamentary pamphlets we considered in the previous chapter, Sexby presents his argument as necessary to undeceive the “uncapable [...] Vulgar” who might be too easily deceived by officially sanctioned accounts of the events. His complaint about common people’s judgment parallels the language voiced in his characterization of Cromwell as a thief. But in the context of Sindercombe’s death, the “Formalities” of the law are implicated in Cromwell’s tyrannical distortion of the events. The people are lead to believe that “’tis the Judge and the Crier that makes the

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<sup>100</sup> Sexby, *Killing No Murder*, 3; emphasis mine.

Justice.” This accusation is followed on the very next page of *Killing No Murder* by the statement that one of the aims of the pamphlet is to answer the question of “Whether it is lawful to do Justice upon him without Solemnity, that is, *to kill him?*”<sup>101</sup> The language used in the question of whether Cromwell may be “lawfully” killed without the solemnities of a trial betrays the tensions I have been tracing throughout *Killing No Murder* between Sexby’s use of lawful (i.e., just according to the law of nature) and legal (i.e., not violating positive laws). In advocating tyrannicide by any private individual, Sexby repeatedly attempts to divorce lawful from legal; that is, he insists that it is lawful to punish the Protector’s illegal actions through an illegal execution.<sup>102</sup> But at the same time, in accusing Cromwell, Sexby argues that he is a tyrant because he breaks English law, that is, Cromwell’s actions are unjust, and therefore unlawful, because illegal. Strictly speaking, a “solemnity” is what makes a legal act valid, it is a “necessary formality.”<sup>103</sup> This passage then points to the problem of trying to defend an illegal act, killing Cromwell without a trial, as lawful within a context, as that of *Killing No Murder*, where lawful and legal are alternatively blurred and pulled apart. If, in Sexby’s argument, Cromwell’s actions are unlawful *because* illegal, how is an illegal assassination

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<sup>101</sup> Sexby, *Killing No Murder*, 3; underlining mine.

<sup>102</sup> Thus Sexby goes much further than the *de facto* theorists of 1649-1650 who argued that, after the regicide, it was *lawful* for subjects to obey an *illegal* government in *lawful* demands (Wallace, *Destiny His Choice*, 6-68. See also Skinner’s discussion in “Conquest and Consent: Thomas Hobbes and the Engagement Controversy,” in *The Interregnum: The Quest for Settlement, 1646-1660*, ed. G. E. Aylmer (London: The Macmillan Press, 1972), 79-98).

<sup>103</sup> *OED*, s.v. “formality,” 4b.

defended as lawful? By setting aside the “Solemnity” of the law, Sexby’s “lawful” indicates that we may set aside human law in an exceptional case and still act lawfully. But the question then becomes, who judges when illegal is lawful and how? To understand how judgement is determined in *Killing No Murder* and to understand the consequences of Sexby’s line of argument on his conception of the role of the people and public judgment in violent resistance to a ruler, I will now follow this use of solemnities and formalities and the representation of “trials” in the pamphlet and then finally return to Sexby’s use of the story of Athaliah as a paradigmatic Scriptural trial.

Sexby argues that since Cromwell rules according to his private will, he has placed himself outside the reach of all legal forms of justice: “we find him an Enemy to all human Society, and a subverter of all Laws, and one that by the greatness of his villanies, secures himself against all ordinary course of justice: We shall not at all think it strange, if then he have no benefit from human Society, no protection from the Law, as if, in his case, justice dispenses with her forms.”<sup>104</sup> Indeed, in the case of a tyrant, trusting to legal action can only prove dangerous: “But in a Tyrant’s Case Process and Citation have no place, and if we will only have formal Remedies against him, we are sure to have none. There’s small Hopes of Justice where the Malefactor hath a Power to condemn the Judge.”<sup>105</sup> The problem, in the case of a tyrant, is that it is impossible to

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<sup>104</sup> Sexby, *Killing No Murder*, 15.

<sup>105</sup> Sexby, *Killing No Murder*, 25.

punish him through the legal system; there is a failure of justice. And therefore, the only “Remedy therefore against a Tyrant is *Ehud’s Dagger*.”<sup>106</sup> As I argued in chapter three, the example of Ehud from Judges 3 had been used by royalist writers against defences of rebellion. For these writers, Ehud’s killing of Eglon is only justified because Eglon is a foreign, invading king. But Milton, in his *Tenure*, argued that once any king has turned into a tyrant, he could be treated like a foreign oppressor, “what differs he from an outlandish King, or from an enemy?” (CPW III:214). Moreover, he insisted that kings and rulers received their power from the consent of the people and held it only as long as they upheld the laws which the people had consented to (CPW III:198-200).<sup>107</sup> Similarly, for Sexby, the examples of Ehud, Moses from Exodus 2.11 and 12, and Samson all point to the same answer: “It cannot be but absurd to think it unlawful to kill him that oppresses a whole Nation and one that Justice as little reaches as it defends.”<sup>108</sup> In *Killing No Murder*, Scriptural examples all point to the need for action by private men against tyrants who have subverted the usual channels of justice. To the possible objection that “these Examples out of Scripture are of Men that were inspired of God, and that therefore they had Call and Authority for their Actions, which we cannot

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<sup>106</sup> Sexby, *Killing No Murder*, 25.

<sup>107</sup> See chapter three, page 304.

<sup>108</sup> Sexby, *Killing No Murder*, 26.

pretend to," Sexby answers by citing Milton: "I answer with Learned *Milton*, that if God commanded these Things, 'tis a Sign they were lawful and are commendable."<sup>109</sup>

But Sexby goes further than Milton's claim that these examples apply to domestic, as well as foreign, tyrants. He argues that a trial would be superfluous as English law simply does not apply to a tyrant. Cromwell is turned into a foreigner in England, he is no longer a member of the commonwealth and he has lost his right to be protected by English law: "There is no reason he should have the protection that is due to a member of a Common-wealth, nor any defence from Laws, that does acknowledge none."<sup>110</sup> The crucial relationship, for Sexby, is between the law and Cromwell. By placing himself above the law, Cromwell loses its protection. This move detaches Cromwell from English law and the English people conceived of as a community organized by its laws, customs, and "formalities." In turn, this understanding of the relationship between individuals and the law is reflected in Sexby's claim that a trial may be dispensed with because Cromwell's and his supporters' guilt and the appropriate punishment are self-evident, so much so that, at least at the beginning of the pamphlet, Sexby can insist that he need not even demonstrate it: "their own Actions did that work sufficiently, and I should not take pains to tell the World what they knew

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<sup>109</sup> Sexby, *Killing No Murder*, 30-1. Sexby is referring to *The Tenure of Kings and Magistrates* (see CPW IV:407).

<sup>110</sup> Sexby, *Killing No Murder*, 17. In his denunciation of Cromwell as outside the protection of the law, Sexby ultimately turns him into a disease of the body politic: "Tyrant that submits to no Law; but his Will and Lust are the Law, by which he governs himself and others, is no Magistrate, no Citizen or Member of any Society but an Ulcer and a Disease that destroys it" (16).

before.”<sup>111</sup> In the use of the Biblical example of Athaliah as an authorizing passage for tyrannicide in *Killing No Murder*, we find the logic of self-evident guilt spelled out: “*Jehoiada* had no Pretence to authorize this Action; but the Equity and Justice of the Act itself. [...] Now what Citation was given to *Athaliah*, what Appearance of was she call’d to before any Court of Justice: Her Fact was her Trial.”<sup>112</sup> The actions of both the tyrant and the tyrannicide self-evidently demonstrate their nature in being enacted. In Sexby’s reading, Jehoiada’s actions are self-authorizing because they are evidently just; Athaliah’s guilt and her sentence are similarly self-condemning without the need of a court of justice or a trial. The solemnities and the “forms” of justice are not necessary in the case of Athaliah because her actions, as well as Jehoiada’s, need no formal interpretation. That is, the essential form of Athaliah’s and Jehoiada’s action is transparent and thus the solemnities of justice and law become *mere, external forms* that have no relationship with the “Justice of the Act” and thus may be dispensed with. The formalities and solemnities of law are reduced to ornaments that may be discarded with no negative consequences for the community. Given this dismissal of the need for the “solemnities” of justice, any private individual may kill a tyrant: “an Usurper that by only Force possesseth himself of Government, and by Force only keeps it, is yet in the State of War with every Man, says the Learned *Grotius*: And therefore every Thing is

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<sup>111</sup> Sexby, *Killing No Murder*, 3.

<sup>112</sup> Sexby, *Killing No Murder*, 29; underlining mine.

lawful against him, that is lawful against an open Enemy, whom every Man hath a Right to Kill.”<sup>113</sup>

Holstun reads this passage in *Killing No Murder* as Sexby’s assimilation of the idea of “a Grotian war of all against one” caused by the tyrant because the “‘laws of God and nature’ insist that sovereignty must be social—that men should not be judges of themselves.”<sup>114</sup> However, the “all” in Sexby’s “war of all against one” is far from a social “all,” as his selective retelling of Athaliah’s story demonstrates. What is particularly striking about Sexby’s reading of the story of Athaliah is that he de-emphasizes the dual covenanting described in 2 Chronicles 13. Twice, in this chapter of Chronicles, we find Jehoiada making a covenant between, first “the Levites out of all the cities of Judah, and the chief of the fathers of Israel” with the king, and then between all the people and the king.<sup>115</sup> Sexby departs from this narrative and introduces the people only after the killing of Athaliah and the destruction of the temple of Baal: “How the People approved of this

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<sup>113</sup> Sexby, *Killing No Murder*, 21.

<sup>114</sup> Holstun, *Ehud’s Dagger*, 351. Here, Holstun accepts Sexby’s reading of Grotius on the issue of the lawfulness of individuals rebelling against a tyrant. But while Grotius did maintain that all the rights that inhere in the state, including that of punishing criminals (such as Sexby’s example of the thief), must have been possessed by the individuals themselves *before* the formation of the commonwealth and while he did support a right of violent resistance against tyranny, even by individuals in extreme cases, he balanced these individualistic strains of his thought with a view of human beings as deeply social which he inherited from medieval theories of natural law and rights (see, Brian Tierney, *The Idea of Natural Rights*, 324-42).

<sup>115</sup> The first happens before the assassination of Athaliah: “And all the congregation made a covenant with the king in the house of God. and he said unto them, Behold the king’s son shall reign, as the LORD hath said of the sons of David” (2 Chron. 23.3). The second covenant is taken after killing Athaliah, but before the destruction of the temple of Baal: “And Jehoiada made a covenant between him, and between all the people, and between the king, that they should be the LORD’s people./ Then all the people went to the house of Baal, and brake it down, and brake his altars and his images in pieces, and slew Mattan the priest of Baal before the altars” (2 Chron. 23.16-17).

glorious Action of destroying a Tyrant, this Chapter tells us at the last Verse. *And all the People in the Land rejoiced, and the City was quiet, after they had slain Athaliah with the Sword.*"<sup>116</sup> In Sexby's reading, Jehoiada acts on his own private judgment and the people appear only to rejoice and approve of the tyrannicide. Sexby's use of the term approving exploits its full range of denotation. While approving could simply imply that they pronounced the tyrannicide good as demonstrated by their rejoicing, it also hints at a more official form of confirmation of Jehoiada's actions implicit in the technical legal meaning of "approving" as officially sanctioning.<sup>117</sup> However, by incorporating the last verse of 2 Chronicles 23 *verbatim*,<sup>118</sup> but, at the same time leaving out the dual re-covenanting of the original narrative, Sexby presents the people of Israel as both passive—they are the audience of Jehoiada's actions and do not actively participate in it while it is unfolding—and, at the same time, as accomplices in the killing of Athaliah, since the biblical verse as quoted uses a plural subject when the people rejoiced "after they had slain Athaliah with the Sword." Thus, ironically, while Sexby attempts to contain the people's role in his retelling of the narrative of Athaliah to approving the tyrannicide after it is committed, his interpretation of Jehoiada's actions is undermined by the inclusion the original Scriptural verse that points to Jehoiada's securing the people's support for the execution of Athaliah.

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<sup>116</sup> Sexby, *Killing No Murder*, 29; emphasis original.

<sup>117</sup> See, for instance, the use of the term in the seventeenth-century when referring to a Parliamentary vote (*OED*, s.v. "approve," 5).

<sup>118</sup> Both the King James and the Geneva translations of the bible give the same translation as Sexby's.



Sexby's claim that each individual member of the commonwealth could hold the ruler accountable even by violent means is a version of the argument of resistance theory that cropped up repeatedly in early modern political thought. In *The Foundations of Modern Political Thought*, Quentin Skinner has argued that this "anarchic or insurrectionary" version of the right of political resistance had alternately been suppressed and embraced by Protestant resistance theorists.<sup>119</sup> In *Foundations*, Skinner traces the origins of the development of Calvinist resistance theory to Lutheran and Catholic sources. As he re-iterates in *Visions of Politics*, Skinner sees the sixteenth-century as the crucial period for the uptake of the theories of "popular sovereignty" in Northern Europe that had generated in the Italian city-states during the thirteenth-century: "Only in this period, in consequence, do we begin to encounter the idea that the power to resist and remove tyrannical kings must be regarded as a moral right possessed at all times by the body of the people—and perhaps even individual members—in virtue of their standing as the ultimate holders of sovereignty."<sup>120</sup> In *Foundations*, Skinner argues that Lutheran theorists were able to adapt ready-made theories formulated by Gerson in response to the Great Schism describing the Catholic Church as a sort of "constitutional monarchy" where sovereignty ultimately resides in the "General Council as the

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<sup>119</sup> Skinner, *Foundations* II:334.

<sup>120</sup> Skinner, *Visions* II:245.

representative assembly of the faithful.”<sup>121</sup> From Gerson’s theory, revived by John Mair and Jacques Almain in the early sixteenth-century, stems a lineage of arguments placing the ultimate sovereignty in the entire community of the people in a commonwealth. Crucially, this sovereignty was seen as exercised not by the people directly, but by a representative body.<sup>122</sup> These constitutional theories, however, held the potential of being extended to argue that the people themselves could resist and remove a tyrannical ruler, a potential already evident in some of the equivocations in Almain’s arguments over who held the right of resistance.<sup>123</sup> As we have seen, the question of who can lawfully resist a tyrant is central to Sexby’s argument. But in rehearsing the history of Protestant resistance theory, I am less interested in describing the lineage of Sexby’s arguments than in paying attention to what is lost in the constitutional side of the debate as it responds to the push to reserve the right for individuals to violently resist a ruler. To bring this to the surface, I will need to trace two further strands identified by Skinner in the development of resistance theories. Alongside the conciliar strand of constitutional theory, Skinner identifies a “legal tradition” based on private law

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<sup>121</sup> Skinner, *Foundations* II:113-7. Quentin Skinner argues that Gerson begins from this Conciliarist view of the Church and constructs an analogous theory for secular political societies “by way of developing a ‘subjective’ theory of rights” (*Foundations* II:116-7). In reading Gerson’s conception of rights, Skinner follows Michel Villey and Richard Tuck (*Foundations* II:117, n. 1), but such reading of Gerson’s understanding of subjective rights has been refuted by Brian Tierney (*The Idea of Natural Rights*, 210-220). While disagreeing with Skinner on Gerson’s conception of rights, Tierney finds Skinner’s treatment of fifteenth-century ecclesiology a positive corrective to the neglect of conciliar thought in histories of early modern political theory (Tierney, *Religion, Law, and the Growth of Constitutional Thought: 1150-1650* (Cambridge: Cambridge University Press, 1982), n. 1 to p. 1).

<sup>122</sup> Skinner, *Foundations* II:117-8.

<sup>123</sup> Skinner, *Foundations* II:122.

arguments from Justinian's *Digest* that justified the use of violence in self-defence. In the *Digest* these arguments were not meant to apply to political resistance; a private individual, according to the maxims of private law, may resist violence from another private individual. In the middle ages, in the thought of Ockham and Gerson, the *Digest's* allowance for private resistance was used to justify political resistance by the community against tyrannical rulers.<sup>124</sup> But, as the use of these arguments in the sixteenth-century was to show, the application of private law to political resistance could lead to an assertion that any individual, rather than the entire community or its representatives, could resist a tyrant.<sup>125</sup>

A related, though separate, use of Roman law in resistance theory is relevant to understanding the problems in Sexby's argument. Skinner traces this use of Civil law to Azo da Bologna in the thirteenth-century in his argument against Lothair over the issue of whether *imperium*, the power, according to the Justinian Code, to legislate and to command the army, could be wielded by "inferior magistrates" as well as the Emperor. Azo maintained that it could, while Lothair denied this.<sup>126</sup> According to Skinner's account of the dispute, Azo's interpretation had two important consequences. First, "each Emperor at his election could be said to have signed a contract with the electors and other 'inferior magistrates' of the Empire, swearing to uphold the good of the

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<sup>124</sup> Skinner, *Foundations* II:124-7.

<sup>125</sup> Skinner, *Foundations* II:200.

<sup>126</sup> Skinner, *Foundations* II:127.

Empire as a whole and to protect the 'liberties' of his subjects" and that meant that the Emperor was bound by his oath for his authority.<sup>127</sup> In turn, this meant that "since the electors and other princes of the Empire are bearers of the *ius gladii* no less than the Emperor himself, it must be lawful for them to use the sword against the Emperor if he should fail to observe the terms of his original oath."<sup>128</sup> Second, a similar conclusion of the right to depose a tyrannical Emperor could be derived from Azo's constitutional theory by viewing the Empire as "a *universitas*, an organic unit in which each member has a duty not merely under positive but also under natural law to maintain the integrity of the whole. This was taken to include the possibility that the electors might wield the *ius gladii* against the Emperor in the name of the Empire if they judged that his conduct was undermining the norms of justice which, it was claimed, he had promised in his coronation oath to uphold."<sup>129</sup> There is one further element in Azo's understanding of sovereignty that bears upon the question of *imperium* and that will help to illuminate the tensions within Sexby's argument for tyrannicide, namely, the question of where exactly sovereignty resides in the Empire and how that relates to the power to legislate in addition to command the army. Since Skinner's account in *Foundations* focuses on the development of resistance theories, he neglects this aspect of Azo's thought. I will turn to Tierney's and C.N.S. Woolf's discussion of Azo and

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<sup>127</sup> Skinner, *Foundations* II:127-8.

<sup>128</sup> Skinner, *Foundations* II:128.

<sup>129</sup> Skinner, *Foundations* II:128.

Bartolus's thought to fill out this strand of the argument below, but at this point, it suffices to note that according to the Code, *imperium* was concerned with legislation as well as with the *ius gladii*.

This thirteenth-century debate over the *imperium* of the electors and magistrates was rehearsed in 1529-30 when Charles V, as a Catholic Emperor, refused to compromise with the Lutheran contingent at the Diet of Augsburg.<sup>130</sup> While Gregory Bruck, the Chancellor of the Protestant prince John of Saxony, used the private law argument to justify violent resistance to the Emperor, Andreas Osiander and Martin Bucer reintroduced a constitutional theory of resistance along the lines of Azo's formulation.<sup>131</sup> Both Osiander and Bucer rightly feared that a resistance theory, such as Bruck's, based purely on a private-law argument would too easily lead to a justification of a right of resistance for every individual member of the commonwealth.<sup>132</sup> And indeed, this individualist potential in the private-law argument is realized in the writings of the more militant Calvinist theorists. Christopher Goodman, for instance, argues that in the case of a tyrannical ruler who is not restrained by other legitimate magistrates, "it is lawful for the people, yea it is their duty, to do it themselves', thereby ensuring that they 'cut off every rotten member.'"<sup>133</sup> But private law was not the only

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<sup>130</sup> Skinner, *Foundations* II:197.

<sup>131</sup> Skinner, *Foundations* II:198-206.

<sup>132</sup> Skinner, *Foundations* II:204.

<sup>133</sup> Skinner, *Foundations* II:235, quoting from Goodman, *How Superior Powers ought to be Obeyed of their Subjects, and wherein they may lawfully be God's Word by Disobeyed and Resisted* (Geneva, 1558), pp.189-90.

route to the individual's right of resistance. A similar conclusion is reached by the same theorists through the concept of a covenant between *each* member of the commonwealth and God so that, to take again the example of Goodman, the commonwealth is "ruled by no other laws and ordinances than by such as God had given them."<sup>134</sup> Having covenanted with God to uphold his laws, each individual has a duty to "maintain and defend these same laws' against their own magistrates, and in this way to resist and repudiate the idolatry and tyranny of their government."<sup>135</sup> Skinner's account traces how these arguments developed and, in the case of the more individualistic strands, were temporarily suppressed in response to the specific strategic needs of their proponents throughout the sixteenth-century. But already in this brief sampling of how some of the major lines of resistance theory developed, we see that even those who argued that the community retained the ultimate sovereignty emphasized the right to violently resist, rather than the right to legislate, as residing in the whole community. The body of the people enters the political process at the formation and, if necessary, at the dissolution of government. The right to legislate, even if theoretically placed in the people, tends to be deemphasized by the resistance theorists. This culminates, in Skinner's analysis, in the discussion of consent in Huguenot writings. Positing that a commonwealth is formed to preserve the people's welfare, Huguenot theorists argue that it can only be legitimately

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<sup>134</sup> Skinner, *Foundations* II:237, Goodman, *How Superior Powers ought to be Obeyed*, p. 163.

<sup>135</sup> Skinner, *Foundations* II:237, Goodman, *How Superior Powers ought to be Obeyed*, p. 182.

constituted by the people's consent.<sup>136</sup> But this consent is not given directly. Rather, the people delegate their authority to magistrates below the ruler.<sup>137</sup> For example, in Mornay's formulation we see that by the term "the people," he means "those who receive authority from the people, that is, the magistrates below the king who have been elected by the people."<sup>138</sup> As we have seen in chapter three, this slide in meaning of the term "people" from the body of the people to their representatives is typical of Parliamentary discussion of consent in government formation in the pamphlet from the 1640s.

But this change in emphasis appears as early as the adaptation of Azo's conception of sovereignty by Conciliarist writers in order to formulate an ecclesiology capable of dealing with the problem of the Great Schism. In response to the crisis of the schism, a fundamental feature of Azo's understanding of the people as *universitas* was lost. Like Skinner, Brian Tierney traces the idea that inalienable sovereignty resides in the whole body of the people to the communal experiences of Italian cities in the thirteenth-century and to canonist teachings on the corporate body of the Church.<sup>139</sup> Again like Skinner, he points out the importance of Azo da Bologna's work as it mostly

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<sup>136</sup> Skinner, *Foundations* II:329.

<sup>137</sup> Skinner, *Foundations* II:330-1.

<sup>138</sup> Skinner, *Foundations* II:331, quoting from Mornay, Philippe du Plessis, *A Defence of Liberty against Tyrants* (1579), 149.

<sup>139</sup> Tierney, *Religion, Law, and the Growth of Constitutional Thought*, 56.

clearly articulates this theory of “popular sovereignty.”<sup>140</sup> Azo argued that while each individual conceded the power to legislate to a ruler, he did not alienate it, and that the whole body of the people, the *universitas*, retained the ultimate sovereignty, including the right to depose a ruler.<sup>141</sup> But unlike Skinner, who bases his reading of Azo’s dispute with Lothair on Jean Bodin’s account in the *Six Books of the Commonwealth*, Tierney notes that Azo’s conception of *universitas* derives from Roman law and that, crucially, this means that Azo maintained a distinction between the people as a corporate body and the mere aggregate of individuals.<sup>142</sup> It was in the corporate body that sovereignty resided. In the thirteenth- and fourteenth-centuries, Azo’s view was not widely received amongst Roman lawyers. Tierney gives the examples of the disagreement of Cynus da Pistoia and his student Bartolus as typical of the opposition to Azo’s formulation of “popular sovereignty” as derived from the understanding of the body of the people as a corporate body according to Roman law. Particularly interesting is the form that Cynus’s answer to Azo takes. Tierney quotes this comment by Cynus as a representative rejoinder: “I know that if in fact the Roman people should establish a law or custom no one would observe it outside the city.”<sup>143</sup> The form which Cynus’s objection takes is as important as the fact that Azo’s view was not commonly accepted. Cynus’s comment

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<sup>140</sup> Tierney, *Religion, Law, and the Growth of Constitutional Thought*, 56.

<sup>141</sup> Tierney, *Religion, Law, and the Growth of Constitutional Thought*, 57.

<sup>142</sup> Tierney, *Religion, Law, and the Growth of Constitutional Thought*, 58; for Skinner’s use of Bodin on Azo, see *Foundations II*: 127.

<sup>143</sup> Tierney, *Religion, Law, and the Growth of Constitutional Thought*, 58.



gives a clear view of the problems that presented themselves over the interpretation of Roman law within a very different political context and, more importantly, they show some of the issues surrounding attempts to adapt conceptions of political authority and sovereignty from one historical context and political constitution to another.

Tierney's account in *Religion, Law, and the Growth of Constitutional Thought* of Cynus's and Bartolus's opposition to Azo on the issue of sovereignty is dependent on C.N.S. Woolf's *Bartolus of Sassoferrato*, which gives this specific quote by Cynus within the context of a discussion on the source of Imperial authority. The question at issue is whether the power of the Emperor over the entire Empire derives from his coronation by the Pope or whether it is bestowed on him upon election.<sup>144</sup> If imperial authority is founded on election, it is still necessary to understand how the practice of election by a group of German princes can be understood in terms of laws speaking of election by the Roman people:

So far indeed as the 'populus Romanus' stood for the 'whole Roman Empire,' the electors might be considered as representing the Populus Romanus. But we have to remember that the medieval lawyers applied the term 'populus Romanus' not only to the whole Empire, but also, in a narrow sense, to the populace of the medieval city of Rome. [...] It was with this narrow 'populus' in mind that the lawyers, for the most part, discussed the relations of the Populus Romanus to the Emperor.<sup>145</sup>

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<sup>144</sup> Cecil N. Sidney Woolf, *Bartolus of Sassoferrato: His Position in the History of Medieval Political Thought* (Cambridge: Cambridge University Press, 1913), 34-5.

<sup>145</sup> Woolf, *Bartolus of Sassoferrato*, 35.

This use in the narrow sense comes to the fore in both Bartolus's discussion of two crucial questions of sovereignty and in Cynus's rejoinder quoted above. Bartolus asks whether, first, the delegation of imperial power could be revoked by the people and, second, whether the people retained any powers to legislate.<sup>146</sup> Bartolus deals with the two questions together and comes to the conclusion that the people of Rome have given their power of election to the German electors, and that, by consequence of this transfer of the right of election, the people of Rome no longer retain any right to make laws for the Empire. Therefore, only the Emperor may interpret and make the law, and, finally, only the Pope may revoke the Emperor's authority.<sup>147</sup> It is at this point of the discussion that we find Cynus contributing the opinion quoted by Tierney above. For Cynus, the theoretical dispute over whether the right to make laws for the Empire remained in the people of Rome, understood in the narrow sense, has been already decided as a matter of fact: "The whole discussion as to the power of the *Populus Romanus*, with regard to law or custom, was by this time merely a remnant of an antiquated conception of the *Populus Romanus*, as represented by the actual Roman populace."<sup>148</sup> For Cynus, due to the historical differences between the status of the city of Rome during the classical and the medieval Empires, the people of Rome no longer held a political role with respect to the rest of the Empire that would allow their customs to acquire the status of general law

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<sup>146</sup> Woolf, *Bartolus of Sassoferrato*, 35.

<sup>147</sup> Woolf, *Bartolus of Sassoferrato*, 36-9.

<sup>148</sup> Woolf, *Bartolus of Sassoferrato*, 40.

beyond the borders of the city itself. In this view, a theory of “popular sovereignty” could not be derived from Roman law and its conception of the corporate body of the people along the lines developed by Azo.<sup>149</sup>

Azo’s view regained popularity, however, during the crisis of the Great Schism, when it was revived in the ecclesiastical context.<sup>150</sup> Versions of this argument then found their way into Protestant works of resistance theory, such as Willaim Prynne’s *Sovereigne Power of Parliaments*, which quotes a speech containing elements of Azo’s discussion of corporation made at the Council of Basle in the 1430s by Alfonso Garcia, bishop of Burgos.<sup>151</sup> But in adapting Azo’s theory of the sovereignty of the corporate body of the people to the Church, the Conciliarists introduced a significant shift in meaning: “Azo had in mind the people of the city of Rome, who could actually assemble together. Ludof [of Sagan in 1409] was thinking of the general council as a representative body acting on behalf of the whole church. Later Conciliarist writers often asserted that the pope was sovereign over individual members of the dispersed church but not over the corporate whole assembled in a council.”<sup>152</sup> As both Tierney and Skinner argue, it is this Conciliarist version of Azo’s position that influenced Protestant resistance theory. However, by paying attention to how Azo’s interpretation of Roman Law was changed through its adaptation by Conciliarist theorists we can recover the link between

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<sup>149</sup> Tierney, *Religion, Law, and the Growth of Constitutional Thought*, 58.

<sup>150</sup> Tierney, *Religion, Law, and the Growth of Constitutional Thought*, 58-9.

<sup>151</sup> Tierney, *Religion, Law, and the Growth of Constitutional Thought*, 60.

<sup>152</sup> Tierney, *Religion, Law, and the Growth of Constitutional Thought*, 59.

legislation by popular custom and the theory of a ruler's accountability to the people as it was debated in the thirteenth-century. In turn, by considering this link, the elision of the role of legislation by custom inherent in the reformulation of Azo's arguments in terms of representatives of the people becomes evident. In Azo's formulation, the corporate body of the people, rather than the mere aggregate of individuals, is intrinsically bound up with the legislation that governs it, legislation that, in part, is promulgated in the customs of the *universitas* of the people itself.<sup>153</sup> The key point here is that by focusing on the post-Conciliarist formulation of Azo's version of popular sovereignty the role of the people becomes merely that of transferring their rights and authority to either a sovereign or a group of representatives and the conditions under which they – the people directly or through their representatives – might reclaim that authority. What gets lost is the ongoing political activity of the people that consists of their customary actions as a form of legislation. This right to legislate is fundamentally connected, as Cynus' comment highlights, with their right to revoke authority from a sovereign. In this view, a community's structures of action and customs and the forms in

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<sup>153</sup> Aquinas, as I will explore in chapter five vis-à-vis the use of the *Summa* by John Rogers, a Fifth Monarchist, also placed particular emphasis on the people's right to legislate and transported, as Tierney points out, an argument based on Augustine's ecclesiology into a discussion of political organization and legislation: "Thomas asked whether an independent people had the right to change existing laws by practicing new customs [...]. Against all this [the arguments against the idea that people, not just rulers, could change laws] Thomas cited only one authority, but this one text proved quite decisive. 'St. Augustine says "The customs of the people of God ... are to be considered as laws. And those who throw contempt on the customs of the Church ought to be punished".' Here again an argument from ecclesiology is used to settle a point of political theory" (Tierney, *Religion, Law, and the Growth of Constitutional Thought*, 89, quoting from *ST*, Ia-IIae, q. 97, art. 3).

which its contracts, trials, and institutions of governance are run and adjudicated are an important source of legislation and express that community's shared understanding of its political life and, ultimately, its conception of justice.

This stands in stark contrast with the dismissal of the solemnities and forms of justice found in *Killing No Murder*. If we contrast Azo's view of a community with the one that emerges from following Sexby's condemnation of Cromwell and his use of the example of Athaliah, we see a striking tension in the pamphlet. Sexby argues that each individual is capable of standing as both judge and executioner over a tyrant, "over whom every Man is naturally a Judge and an Executioner, and whom the Laws of God, of Nature, and of Nations expose, like Beasts of Prey, to be destroyed as they are met."<sup>154</sup> However, at the same time, the people are depicted as incapable of rational judgment and easily deceived by appearances. For Sexby, this indictment of the people extends, as we have seen, to a dismissal of the "formalities" and "solemnities" of justice as mere forms that are easily manipulated by those in power and need not therefore be respected in attempts to resist tyranny. Justice, for Sexby, is ultimately independent of "her forms." Comparing this dismissal with Azo's description of the people's legislative power through repeated action is revealing. Sexby is willing to replace the judgment and reasoning of the people as expressed through the system of law and custom with the individualized reason of the tyrannicide. In the logic of *Killing No Murder*, this latter

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<sup>154</sup> Sexby, *Killing No Murder*, 4.

form of reason is presumably independent and therefore not dazzled by the “glisten of Things.” What is left unanswered by Sexby is how the tyrannicide’s correct judgment has developed independently of his education in justice — an education conducted through his encounter of those very forms of justice that Sexby dismisses — within the community. More precisely, by insisting that Cromwell’s guilt is as self-evident as Athaliah’s, “Her Fact was her Trial,” while, at the same time, accusing the common people of being unable to judge beyond appearances, Sexby places the correct judgment of the would-be assassin of Cromwell in a separate category. The judgment of the tyrannicide is separated from that of the other members of the community by a divide that could not be breached by any form of rational argument.

Ultimately, *Killing No Murder* is not meant to provide a rational argument for tyrannicide to the people. This can be seen in Sexby’s appeal for action against the tyrant to the only pre-existing community that he deems capable of judging correctly and acting accordingly, his fellow soldiers. Before encountering the main argument of pamphlet, the reader is greeted by two dedicatory letters. The first letter is addressed to Cromwell himself, and the second one is addressed to “all those Officers and Soldiers in the Army, that remember their Engagements, and dare be Honest.”<sup>155</sup> In the second letter, the soldiers of the army are reminded that they were raised to be the defenders of

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<sup>155</sup> Sexby, *Killing no murder*, iii.

England's liberty and not to support a tyrant.<sup>156</sup> Sexby appeals to his shared experience as a soldier, but one who has refused to serve the Protectorate: "This is from One that was once One amongst you, and will be so again when you dare be as you were."<sup>157</sup> The messianic language is paired with a representation of the soldiers willing to act against Cromwell as a honest few who have survived numerous purges: "I Heartily wish for *England's* Sake, That your Number may be far greater than I fear it is; and that His Highness's frequent Purgations may have left any amongst you" who still "dare to be Honest."<sup>158</sup> It is to this faithful remnant that Sexby addresses the final plea in *Killing No Murder*: "Hitherto I have spoken in general to all *Englishmen*; now I address my Discourse particularly to those that certainly best deserve that Name, our selves, that have fought, however unfortunately, for our Liberties under this Tyrant."<sup>159</sup> Thus, only the soldiers who are willing to resist Cromwell can truly deserve the name of Englishmen and tyrannicide becomes a test for citizenship in *Killing No Murder*.

As we have seen, *Killing No Murder* has been read as one of the best representatives of the articulation of a theory of resistance in the language of English republicanism during the Protectorate. Holstun, in particular, reads the two opening epistles as demonstrating the two aspects Sexby's opposition to the "re-emergence of a

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<sup>156</sup> "Could even *England* have thought to have seen that Army that was never mentioned without the Titles of Religious, Zealous, Faithful, Courageous, the Fence of her Liberty at home, the Terrour of her Enemies abroad, become her Goalers?" (Sexby, *Killing no murder*, iv; emphasis original).

<sup>157</sup> Sexby, *Killing no murder*, iv.

<sup>158</sup> Sexby, *Killing no murder*, iii.

<sup>159</sup> Sexby, *Killing no murder*, 38.

new sort of monarchical charisma under the Protectorate.”<sup>160</sup> The first letter mocks the client-patron relationship to argue for the overturning of the current “hierarchical social order,” while the second produces a call of “prophetic solidarity in a lay sermon calling for civic virtue.”<sup>161</sup> The rest of *Killing No Murder*, in Holstun reading, is characterized by an oscillating movement between these two poles. The pamphlet “alternates between the ideology critique of the first epistle, with its savage iconoclasm directed against the mystifying fictions of *de facto* monarchical rule, and the utopian association of the second, with its passionate effort to recall, construct, and prophesy the righteous collectives of the godly republic.”<sup>162</sup> Holstun interprets Sexby’s “republicanism” along the lines defined by Pocock in the *Machiavellian Moment*: “[u]nlike the traditional vision of monarchy as a timeless and hierarchical reflection of the heavenly order, the republic is a civic entity existing in time. [...] Republican citizens associate themselves through rational and voluntary discursive forms, not through the client’s mystifying assertion of filial relation to his patron.”<sup>163</sup> Here, and throughout his reading of *Killing No Murder*, Holstun agrees with Sexby that the only true republican citizens are the soldiers of the army who are willing to respond to his call for tyrannicide. The “vulgar” are left to, in Sexby’s words, “judge ridiculously like themselves.” While he does register that Sexby is

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<sup>160</sup> Holstun, *Ehud’s Dagger*, 307.

<sup>161</sup> Holstun, *Ehud’s Dagger*, 334-5.

<sup>162</sup> Holstun, *Ehud’s Dagger*, 335.

<sup>163</sup> Holstun, *Ehud’s Dagger*, 335-6; the ellipses indicate a long quote from Pocock, *The Machiavellian Moment*, 62, 53 on page 336.



“considerably less sanguine” when he turns from “the hoped-for future collective solidarity of the republic” to his “pious but small-witted countrymen” who accommodate the Protectorate, Holstun views Sexby’s upbraiding of indolent Englishmen who do not recognize that their birthrights have been taken away as an attempt to galvanize them to create “a virtuous English republic that the stab of his pen will shock into being.”<sup>164</sup> But as we have seen, Sexby’s enthusiasm for his fellow countrymen as they could be leads him to erase and deny their claim to citizenship of Englishmen as they are. In *Killing No Murder*, the would-be tyrannicide becomes the only true citizen and, as such, the only one whose political and moral judgment is to be trusted. The role of the people is to “approve,” as in Sexby’s telling rewriting of the Athaliah’s narrative, the action of the self-authorizing tyrannicide. Holstun is right in stating that *Killing No Murder*’s form is “savage iconoclasm,” but alongside the idol that is Cromwell, Sexby erases from the pages of his pamphlet and from his imagined virtuous republic, the embodiment of the people’s judgment and understanding of justice by refusing to imagine that “formalities” and “solemnities” could be more than external trappings of the processes through which justice manifests itself in a community. Thus, in *Killing No Murder*, instead of trials by jury, Sexby portrays corpses of idolatrous Protectorate ministers hanging, through no visible agency, in front of their altars. Such denials of the people’s judgment are not unique to Sexby, but rather typical

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<sup>164</sup> Holstun, *Ehud’s Dagger*, 351, 352.

of iconoclastic discourse. To see how the language of iconoclasm functions, I turn to apologies of the Protectorate from 1653.

## **4.2 Parliament as Nothing: Political Idolatry and Iconoclasm**

After Pride's Purge in December 1648, the Rump Parliament assumed power in January 1649 (though England was not declared a Commonwealth until March 1649) and retained it until it was dissolved by Cromwell in April 1653.<sup>165</sup> With the dissolution of the Rump, the Council of Officers appropriated the power to choose a new government and, while deliberating on which form it was to take, it instituted a temporary Council of State to deal with the day-to-day business of the nation.<sup>166</sup> Rather than calling for the elections of a new Parliament, the Council settled on putting into place a Nominated Assembly in July 1653, which, however, remained in power for less than a year and dissolved itself in December of 1653.<sup>167</sup> The causes immediately

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<sup>165</sup> For the over-all account of the period, I follow Woolrych, *Britain in Revolution*, especially pp. 514-36 on the dissolution of the Rump and on the rule of the Nominated Assembly.

<sup>166</sup> Woolrych, *Britain in Revolution*, 537-8.

<sup>167</sup> The Nominated Assembly is also known as Barebone's Parliament after the name of one of its members, Praise-God Barebone. Since the name was adopted by opponents of the Nominated Assembly as a social and economic sneer based on stereotypes of the saints and meant to give credence to the allegations that the Assembly was dominated by fanatical "mechanic preachers," I use the term Nominated Assembly. For the make-up of the members of the Assembly and the role played by gathered churches in suggesting nominations, see Austin Woolrych, *Commonwealth to Protectorate* (Oxford: Clarendon Press, 1982), 114-28. By the middle of December 1653, the Council of Officers had adopted the Instrument of Government and, on 16 December 1653, Cromwell became Lord Protector (Woolrych, *Britain in Revolution*, 563). While the Protectorate brought about a certain level of stability, the experimentation with forms of government did not halt during the period. Cromwell had to deal with two ineffective Parliaments and, in an attempt to reform local administration, he experimented with the rule by the major-generals from 1655 to 1657 (Woolrych, *Britain in Revolution*, Part V). It was during the sitting of the Second Protectorate Parliament and at a time when the Parliament was at odds with Cromwell over the case of James Nayler and the Parliament

precipitating Cromwell's dissolution of the Rump in 1653 are not fully identifiable. In April, Cromwell and the Council of Officers had been engaged in a series of negotiations both amongst themselves and with members of the Rump on how a new representative was to be formed.<sup>168</sup> A bill, which was to provide for the election of a new Parliament, had been drafted and, on April 20<sup>th</sup>, it was to be voted on. Cromwell intervened to stop the vote and dissolved Parliament. The motivation for this dissolution is unclear since there is no extant document of the bill and its content has been subject for speculation. Blair Worden, in *The Rump Parliament*, argues that the bill did not aim at recruiter elections and that, nonetheless, even if it had, that would not have been the motive for Cromwell's dissolution of the Rump: "Cromwell's objection at the time of the dissolution to the bill for a new representative [...] was not that it provided for recruiter elections. It was that it provided for elections at all."<sup>169</sup> According to Worden, by dissolving the Rump, Cromwell aligned himself with the Fifth Monarchists: "The dissolution of the Rump marked the capture of Cromwell by the chosen" and that the dissolution was "the triumph of [Thomas] Harrison and the prophets of the imminent

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itself was bitterly divided over whether to continue the decimation tax and thus continue the rule of the Major Generals, that Sindercombe's plot was discovered (Woolrych, *Britain in Revolution*, 548-50).

<sup>168</sup> Woolrych, *Commonwealth to Protectorate*, 61-67.

<sup>169</sup> Blair Worden, *The Rump Parliament: 1648-1653* (Cambridge: Cambridge University Press, 1974), 345.

millennium.”<sup>170</sup> On the other hand, Austin Woolrych argues that the bill that was to be passed on April 20<sup>th</sup> was deemed dangerous by Cromwell, who believed, correctly or otherwise, that it provided for some form of recruiter elections.<sup>171</sup> Moreover, Woolrych dismisses the hypothesis that Cromwell had been persuaded by Harrison and other Fifth Monarchists in opposing any elections for a new representative.<sup>172</sup> Harrison’s own account of the dissolution, as reported by Ludlow, is that Cromwell had found the Rump split by interests and incapable of governing justly. Cromwell had “loaded the Parliament with the vilest reproaches, charging them not to have a heart to do anything for the publick good, to have espoused the corrupt interest of Presbytery and the lawyers, who were the supporters of tyranny and oppression, accusing them of an intention to perpetuate themselves in power.”<sup>173</sup>

Harrison’s report of Cromwell’s attack on the Rump is supported by his own comparison of the new Assembly with the old Parliament. In his speech at the opening of the Nominated Assembly, Cromwell recollects his interpretation of the workings of Providence at the moment the events were unfolding to justify his dissolution of the

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<sup>170</sup> Worden, *The Rump Parliament*, 380, 374; Major General Thomas Harrison had proposed an assembly of 70 members appointed by the gathered churches who would rule England along the model of the Sanhedrin until the coming of Christ as universal king.

<sup>171</sup> Woolrych, *Commonwealth to Protectorate*, 68-102.

<sup>172</sup> Woolrych, *Commonwealth to Protectorate*, 75-6. Bernard Capp, in his study of Fifth Monarchists, agrees with Woolrych’s reading of the events and argues that the members of the Nominated Assembly were selected by Cromwell and the officers with minimal input from the gathered churches (*The Fifth Monarchy Men: A Study in Seventeenth-century English Millenarianism* (Totowa, NJ: Rowman and Littlefield, 1972), 64-6).

<sup>173</sup> *The Memoirs of Edmund Ludlow*, ed. Charles Harding Firth (Oxford: Clarendon, 1894), vol. 2, 351-5, quoted in Abbott, II:643.

Rump. In his discussion of the Bill for a new representative, Cromwell explains that the members of the Rump were pushing through the Bill in “preposterous haste” and that their “spirit was not according to God; and that the whole weight of this cause, — which must needs be very dear unto us who had often adventured our lives for it, and we believe it was so to you, — did hang upon this business” (Abbott, III:56). Cromwell’s very understanding of the motives of the members of the Rump is brought upon him by divine action: “When it pleased God to lay this close to our hearts; and we found the interest of His people was grown cheap and not laid to heart, but that if we came to real competition, the cause, even among themselves, would also in everything go to the ground: indeed this did add more considerations to us, that there was a duty incumbent upon us” (Abbott, III:56). Thus, Cromwell emphasizes that his, and the Army’s, actions had been prompted and authorized by Divine Providence in conjunction with his own understanding of the Parliament’s unwillingness to rule for the wellbeing of God’s people. But as the speech proceeds to its exhortative message to the Nominated Assembly, Cromwell’s performance evolves into a complex attempt to deny that any of the actions of the Army that have led to the Assembly’s formation and to the opening speech itself are needed. In reminding them “to endeavour the Promoting of the Gospel” (Abbott, III:62), Cromwell finishes giving his advice by asserting that he did not need to do so: “I need not discourse of these things to you; I am persuaded you are taught of God, in a greater measure than myself, concerning these things” (Abbott, III:63).

Cromwell's denial of the need to advise the Nominated Assembly within a speech of advice mirrors his attempt to disguise the lack of constitutional authority in his calling of its members by claiming precedent and proper standing for his position. In the introduction to his remarks, the contorted syntax he uses attempts to construct a tradition that does not exist in English history:

It hath been the practice of others who have, voluntarily and out of a sense of duty, divested themselves of power, and devolved the government into the hands of others; I say, it hath been the practice of those that have done so; it hath been practised, and is very consonant to reason together with the authority to lay a charge (in such a way as I hope we do), and to press the duty: [concerning] which we have a word or two to offer you. (Abbott, III:60; emendation Abbott's)

In this passage, the repetition of "it hath been the practice" and "it hath been practiced" indicates that Cromwell is attempting to find a formulation for the unprecedented divestment of power to the Nominated Assembly. As Carlyle points out in his edition of Cromwell's speeches, the position of calling a Parliament would have traditionally and legally belonged to the king.<sup>174</sup> Cromwell, as we have seen, laboriously establishes that the Nominated Assembly has been called by God and not by him. His position is that of a caretaker passing on the supreme authority *completely* to the Assembly. And by using the impersonal constructions, "it hath been the practice," "is very consonant to reason," Cromwell disguises his agency in summoning the Nominated Assembly while, at the

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<sup>174</sup> "He seems embarrassed lest he be thought to have some authority over this new Little Parliament [the Nominated Assembly], and to treat them as if he were their King. The dissolving of the old Parliament has also its embarrassment, though not so prominent here; and both together make an intricate paragraph" (*Oliver Cromwell's Letters and Speeches with Elucidations*, ed. Thomas Carlyle, 3 vols. (New York: John B. Alden, Publisher, 1885); n. 2, II:357).

same time, attempts to ground a novel event into a practice or tradition.<sup>175</sup> While he is performing a role legally reserved to the king, Cromwell insists that he is acting under the guidance of Providence. In the dissolution of the Rump and in the calling of the Nominated Assembly, the military leadership acted not in its own interests, but rather to facilitate the work of God just as earlier, through the Self-denying Ordinance of 1645, the leadership of the army had been changed in accordance to the will of God.<sup>176</sup> Cromwell grounds his claim for divine authorizations of the Army's intervention in the political life of England by reminding the Assembly of the New Model's military victories: "forasmuch as considering the works of God, and the operations of His hand, is a principal part of our duty; and a great encouragement to the strengthening of our hands and of our faith, for that which is behind those marvelous dispensations which have

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<sup>175</sup> This is of course strikingly different from the traditional formulation of a Parliament, which, for instance, Coke defines as a court summoned by the king and consisting of: "This Court consisteth of the Kings Majesty sitting there as in his Royall politick capacity, and of the three Estates of the Realm: viz. On the Lords Spirituall, Archbishops and Bishops, [...]; And every one of these when any Parliament is to be holden, ought, *ex debito justitiae* to have a Writ of Summons. The Lords Temporall, Dukes, Marquisses, Earls, Viscounts, and Barons [...]: and likewise every one of these being of full age ought to have a Writ of Summons *ex debito justitiae*. The third estate is the Commons of the Realme whereof there be Knights of Shires or Counties, Citizens of Cities, and Burgesses of Burghes. All which are respectively elected by the Shires or Counties, Cities and Burghes, by force of the Kings Writ *ex debito justitiae*, and none of them ought to be omitted: and these represent all the Commons of the whole Realme, and trusted for them." For each estate, Coke emphasized that they called by "force of the Kings Writ *ex debito justitiae*," as a matter of right (Edward Coke, *The fourth part of the institutes of the laws of England* (London, 1797), image 11. [Eighteenth Century Collections Online](#). Gale. 29 Nov. 2011

[http://find.galegroup.com.proxy.lib.duke.edu/ecco/infomark.do?&contentSet=ECCOArticles&type=multipage&tabID=T001&prodId=ECCO&docId=CW125187193&source=gale&userGroupName=duke\\_perkins&version=1.0&docLevel=FASCIMILE](http://find.galegroup.com.proxy.lib.duke.edu/ecco/infomark.do?&contentSet=ECCOArticles&type=multipage&tabID=T001&prodId=ECCO&docId=CW125187193&source=gale&userGroupName=duke_perkins&version=1.0&docLevel=FASCIMILE)). Even though Cromwell insists that he is following "the practice of others who have, voluntarily and out of a sense of duty, divested themselves of power," he is in a position that does not recall any of the procedure of the English Parliament.

<sup>176</sup> It "pleased God, much about the midst of this war, to winnow (if I may so say) the forces of this nation; and to put them into the hands of other men of other principles than those that did engage them at the first" (Abbott, III:53).

been given us" (Abbott, III:53). Their military success, granted by Providence, encourages Cromwell to assert that the actions of the Army in dissolving the Rump and forming a new government are guided by God.

In the speech, the insistence that all the Army's actions in settling the nation have been done by the will of God is used to create a firm contrast between the merely human authority of the Rump and the divinely ordained Nominated Assembly. While the Rump was divided by factions and self-interest, the member of the Nominated Assembly are described through the words of Isaiah 43.12: "You are as like the forming of God as ever people were" (Abbott, III:63).<sup>177</sup> For Cromwell, it was the call of God that made them members of the Assembly: "You have been passive in coming hither; being *called*, — and that's an active work. This people I have formed: consider the circumstances by which you are called hither, though what difficulties, through what strivings, through what blood you are come hither" (Abbott, III:62). The "active work" is done by God and not by the Council of Officers or the gathered churches and communities that sent nominations. Cromwell compares this calling by God to the human, and therefore corruptible, process of election of the members of the Long Parliament.<sup>178</sup> Having been formed by God into a new government, they are now called to work towards re-forming the English people so that they, in turn, may become capable of electing a representative

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<sup>177</sup> "This people have I formed for myself; they shall shew forth my praise" (Isaiah 43.21).

<sup>178</sup> "I may say also, never a people so formed, for such a purpose, so called, — if it were a time to compare your standing with those that have been called by the suffrages of the people" (Abbott, III:64).



fit for the work of God. This forming of the people is done primarily by God.<sup>179</sup>

However, how the members of the assembly proceed in their calling in government can also move the people “to own the interest of Jesus Christ”:

what is there more like to win the people to the interest of Jesus Christ, to the love of godliness (nay what stronger duty lies upon you, thus being called), but an humble and godly conversation? So that they may see you love them; [that] you lay out yourselves, time and spirits, for them! Is it not the likeliest way to bring them to their liberties? And do not you, by this, put it upon God to find out times and seasons for it by pouring forth his Spirit? At least by convincing them that, as men fearing God have fought them out of their thralldom and bondage under the regal power, so men fearing God do now rule them in the fear of God, and take care to administer good unto them. (Abbott, III:64)

In *The Revolution of the Saints*, Michael Walzer identifies this sense of being “called” to political office as a crucial element motivating and authorizing the saints’ opposition to, and encroachment upon, the prerogative of the king in the 1640s. Saints in Parliament viewed themselves as “instruments of God” and, as such, could undertake to fulfill duties that did not traditionally belong to MPs.<sup>180</sup> In the 1640s, the role of instruments of God belonged to elected members of Parliament, as the zealous preaching before the elections of the Long Parliament to convince the voters to make a “holy choice” rather than to decide based on traditional alliances demonstrates.<sup>181</sup> However, by 1653, the English people are seen by Cromwell as incapable of making such “holy choice” or to

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<sup>179</sup> “Who can tell how soon God may fit the people for such a thing [godly suffrage], and non can desire it more than I! Would all the Lord’s people were prophets. I would all were fit to be called, and fit to call” (Abbott, III:64).

<sup>180</sup> Walzer, *The Revolution of the Saints*, 257-8.

<sup>181</sup> Walzer, *The Revolution of the Saints*, 259-60.

demonstrate “religious care” in exercising their “liberties,” including their right to franchise.

Here again, as in Cromwell’s divestment of power in the earlier section of the speech, the grammar of the passage betrays the difficulty inherent in claiming that an assembly nominated against English law could bring the people to their liberties. Cromwell attempts to legitimate the authority of the members of the Assembly by creating a parallel construction between the men who, in the past, “have fought them [the people] out of their thralldom and bondage” and those who, in the present, “now rule them in the fear of God, and take care to administer good unto them.” It is this second group of men who will, in the future, “bring” the people “to their liberties.” As can be seen in the full quote above, in the original speech the temporal order is upset, placing the future action of bringing the people to their liberties before the past and present actions in the parallel construction that ends the quote. This helps to disguise that, if the temporal order is restored, the passage strangely states that while the people are no longer under “thralldom and bondage,” they have not yet acquired their liberties. In this ambiguous state, neither free nor under bondage, the people become objects, rather than actors, in this movement from thralldom to liberty; they have been “fought out of” and the Assembly will “bring them.” The people have been divested, by the very instituting of the Nominated Assembly, of the ability to exercise their traditional liberty of the franchise, they have lost their “voice” in government. But in Cromwell’s speech

this is presented as the necessary process to bring the people to their liberties. Ironically, as we will see below in section three, on the third day of the debates at Putney in 1647, Cromwell had opposed exactly this kind of claim, put forward by Sexby, Wildman, and Rainborough, of divine authorization to act with no warrant from either the Long Parliament or a direct manifestation of the people's demand for reform. In 1653, however, Cromwell justifies what he had opposed at Putney with an appeal to divine providence and the calling of the members of the Assembly by God.

While Cromwell, in his speech at the opening of the Nominated Assembly, tried to conceal the power of the military, apologies that appeared after the dissolution of the Rump based their arguments on the army's power as the necessary condition of existence of the Parliament. One such pamphlet is the anonymous *The Army No Usurpers* ([Thomason: May 20] 1653).<sup>182</sup> For the author, once the Long Parliament had taken up arms against Charles I, it had stopped functioning as a true representative and had taken on the ruling function that traditionally and legally belonged to the king.<sup>183</sup> In *The Army No Usurpers*, the proper power of any Parliament was that of restraining the king, the

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<sup>182</sup> Anon., *The Army no usurpers, or The late Parliament not almighty and everlasting: shewing, that the present army in their former opposing, and late dissolving of the Parliament, have done nothing contrary to law, but according to equity. And that the late Parliaments claim of power to do what they please, until they should be dissolved by their own consent, is long since made void by their own act.* Early English Books Online. British Library (London). May 10, 2011. [http://gateway.proquest.com/openurl?ctx\\_ver=Z39.88-2003&res\\_id=xri:eebo&rft\\_id=xri:eebo:citation:99871983](http://gateway.proquest.com/openurl?ctx_ver=Z39.88-2003&res_id=xri:eebo&rft_id=xri:eebo:citation:99871983).

<sup>183</sup> "The Parliament having declared against the King, step[t] up into his Throne, by taking upon them the ruling power. So that whereas before they were as the People, ruled; Assembled onely (*pro tempore*) to control their Rulers, and make Laws for them to rule by; they are now the standing Rulers that are subject to like control from the People; For, Both these powers they could not have at once, because there was no Law for it, and it was against equity" (*The Army No Usurpers*, 4).

actual ruler. Having usurped the ruling function, the Long Parliament, and subsequently the Rump, could not, “against equity,” claim to still hold its traditional role of protection the people from unchecked royal power. Moreover, alongside its restraining function, the Parliament, as a representative of the people, acted on behalf of the nation itself in legislating; that is, they exercised “a National Power, I mean a power to Act and do whatsoever the Nation it self (being present) might do.”<sup>184</sup> This power is now in the army: “[t]his power in a time of peace is in Parliaments, but in a time of War it ought to be in the Trained Bands, or such as are worthy to be Intrusted to Act for them; For in a time of War the National trust is not to be put in Councils but in Armies. [...] Councils may be dissolved by the Adversary or suddain commotions, whilst if Armies stand and be faithful, the Nation is upheld.”<sup>185</sup> The New Model’s ability to defend the nation in a time of war is seen as a demonstration of its embodying the “Nation it self” by acting in self-defense as it “might do.” While Cromwell denied that the people of England were capable of electing a representative body to rule after the dissolution of the Rump, the author of *The Army No Usurpers* argues that the very act of fighting against the royalist forces has demonstrated that the soldiers are the true representatives of the nation; fighting is presented as equivalent to voting.<sup>186</sup> Just as

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<sup>184</sup> *The Army No Usurpers*, 9.

<sup>185</sup> *The Army No Usurpers*, 9.

<sup>186</sup> Like Cromwell, the author of *The Army No Usurpers* argues that the conduct and success of the Army in the Civil Wars shows that they are instruments of Divine Providence. The army is not composed of “Souldiers of fortune,” but of “many gallant men” who fight “for love of their Country” (*Army No Usurpers*,

those who do vote act for the rest of the country in selecting members of a representative, those who fight “venture their lives and limbs for freedom (and that not as Soldier of fortune, but as their design),” while the rest of the country declines to participate in the war: “The Nation of *England* is invited to appear in its own defence; the Peoples leisure will not give way, but they permit these to appear for them; and this permission is a trust put upon them to Act in their stead.”<sup>187</sup> The language of trust which in the 1640s had been used to describe the relationship between people and the elected members of Parliament is here redirected to claim representative authority for the army. For the author of *The Army No Usurpers*, by not participating in actual fighting, all the other members of the nation have indicated that they entrust all political activity to the soldiers. In this pamphlet political activity is explicitly reserved for those who have responded to God’s call by fighting.

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2-3). Their victories mark them as instruments of Divine Providence: “They find in every thing success to wonder, acknowledged by friends and enemies to be from a divine presence.” (*The Army No Usurpers*, 3). This is contrasted with the treachery of the Rump. As soon as the army had attained victory, the Parliament asked them to “lay down Arms, that others whose ways tend to persecution and oppression (especially against men of their practices & Judgements) may take them up, and reap all the sweet fruits of these mens losses, of their blood and limbs, of their precious friends slain in the service (and the Widdows and Orphans made thereby) of the incomparable diligence, unexampled adventures, Invincible courage, miserable hardships undergone by them, and many other things of what moment soever, not at all now to be spoken of, but they are doomed to submit all this, yea and their lives, yea and their posterities, yea and some things relating to their souls, to the mercy of those that they plainly perceive, do implacably hate them, manifested in this their undeserved cruelty” (*The Army No Usurpers*, 2). The passage focuses in detail on the suffering and sacrifices of the soldiers as giving them a right to the “sweet fruits” of their victories. The long list shows how the soldiers loss of their “blood and limbs” and “precious friends,” as well as their “miserable hardships” are just part of the innumerable sacrifices, “not at all now to be spoken of,” that they have endured.

<sup>187</sup> *The Army No Usurpers*, 10.

Such claims by Cromwell and his supporters share an underlying view of liberty and political reformation with Sexby's advocacy of tyrannicide in *Killing No Murder*. To see this, I turn to *Reasons Why the Supreme Authority of the Three Nations (For the Time) Is not in the Parliament*, a pamphlet that was published anonymously in May 1653, but was recently attributed to Sir Thomas Urquhart (1611-60) by Nicholas McDowell.<sup>188</sup> Not much attention has been given to *Reasons Why*. Woolrych dismisses it as the work of an anonymous "pamphleteer [who] argued even more crudely [than the author of *The Army No Usurpers*] that parliament, being the king's great council and summoned to parley with him, had become extinct when the monarchy was abolished."<sup>189</sup> Similarly, Norbrook sees it as the work of "one enthusiast" who views Cromwell as a Caesar.<sup>190</sup> Both Woolrych and Norbrook seem unaware of the attribution of the pamphlet to Urquhart. Nicholas McDowell, on the other hand, by highlighting Urquhart's authorship of the pamphlet, reconstructs the context for its focus on Scotland and its attacks on Presbyterianism, but gives scant attention to *Reasons Why's* manipulation of the language and tropes found in other pamphlets supporting the dissolution of the

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<sup>188</sup> The pamphlet is anonymous, but its authorship has been traced to Sir Thomas Urquhart, a former Scottish royalist, with the probable co-authorship of John Hall (Nicholas McDowell, *Poetry and Allegiance in the English Civil Wars: Marvell and the Cause of Wit* (Oxford: Oxford University Press, 2008), 244-5). The original discovery of the authorship of the pamphlet is due to the work of Hugh H. G. Candy and C.H. Wilkinson (McDowell, *Poetry and Allegiance*, n. 87 to p. 245). Urquhart had fought on the royalist side of the Civil Wars and was arrested after the defeat of Charles II's forces at Worcester in September 1651 (McDowell, *Poetry and Allegiance in the English Civil Wars*, 240-1). McDowell sees Urquhart as convinced by Hall to support the union of England and Scotland after the defeat of the royalist forces as a way to curb the Presbyterian influence in Scotland (McDowell, *Poetry and Allegiance*, 241-3).

<sup>189</sup> Woolrych, *Commonwealth to Protectorate*, 132.

<sup>190</sup> Norbrook, *Writing the English Republic*, 299.

Rump. McDowell's reading of *The Reasons Why* focuses on Urquhart's rejection of the anti-humanist ethos of the Scottish Presbyterians and on his hopes, fostered by Hall, that his translation of "Rabelais would find acclaim and reward in a post-royalist Britain."<sup>191</sup> The pamphlet is less unequivocally supportive of Cromwell and the Army than it may seem at first and Urquhart's praise of the Army's coup is moderated by a critique of military interference in government. *Reasons Why* is riddled with passages that expose the logic of political violence that forms the foundation for the Army's dissolution of the Rump. While pamphlets such as *The Army No Usurpers* attempt to give unequivocal legitimacy to the Army's actions, Urquhart's pamphlet shows that any claim of the lawfulness of the military coup can be reduced at best to an argument from necessity or expediency.

*Reasons Why* styles itself as an answer to a "Letter sent from a Gentleman in Scotland to a friend in London."<sup>192</sup> The original "letter," which is included in the first page of the pamphlet, voices a concern that whatever "favor" the people of Scotland may have hoped to receive from "the Presbyterian party sitting in the House" has now

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<sup>191</sup> McDowell, *Poetry and Allegiance*, 245.

<sup>192</sup> C. N. [Sir Thomas Urquhart], *Reasons why the supreme authority of the three nations (for the time) is not in the Parliament, but in the new-established Council of State, consisting of His Excellence the Lord General Cromwell, and his honourable assessors. Written in answer to a letter sent from a gentleman in Scotland to a friend of his in London. To which is added the letter it self* (London, 1653), title page. Early English Books Online. British Library (London). May 10, 2011. [http://gateway.proquest.com/openurl?ctx\\_ver=Z39.88-2003&res\\_id=xri:eebo&rft\\_id=xri:eebo:citation:99863068](http://gateway.proquest.com/openurl?ctx_ver=Z39.88-2003&res_id=xri:eebo&rft_id=xri:eebo:citation:99863068).

disappeared.<sup>193</sup> The response to this letter begins by reassuring Urquhart's fictional correspondent of the abilities of the Army to settle the three nations; England, Scotland, and Ireland will all enjoy "greater apparent happiness under it then the former Government."<sup>194</sup> But more importantly, the pamphlet makes a claim for "the lawfulness of the change" and insists that it will "propound little or nothing of *Necessity*."<sup>195</sup> Thus, the opening of *Reasons Why* makes "lawfulness," rather than necessity, the standard by which to judge the dissolution of the Rump by the army and the subsequent actions by the Council of Officers. To do this, Urquhart turns next to the question of the legal status of the Rump and asks what defines a Parliament. He offers two possible answers to his own question. First, Parliament could simply be defined, acknowledging the power of the army, as "that kind of convention which the *army* did allow to sit at *Westm[inster]*."<sup>196</sup> Or second, by adopting the usual meaning of the word, the term Parliament can be reserved for the body "consisting of *King, Lords, and Commons*, which (as the soul of man is said to comprehend the *rational, sensitive, and vegetative* faculties) was first constituted *triennial*, and afterwards by vertue of the same *Royal* source, from whence the former grant did flow, prolonged or perpetuated at the pleasure and discretion of the sitters."<sup>197</sup>

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<sup>193</sup> *Reasons Why*, 1. In particular, the writer of the letter fears that "the unexperiencedness, and illiteracie of military men in the disquisition of divine or legal concernments, will by all appearance bring us to submit our necks to the absolute, uncontrollable, and arbitrary yoke of the sword" (*Reasons Why*, 1).

<sup>194</sup> *Reasons Why*, 2.

<sup>195</sup> *Reasons Why*, 2; emphasis original.

<sup>196</sup> *Reasons Why*, 3; emphasis original.

<sup>197</sup> *Reasons Why*, 3; emphasis original.



The second, and traditional, definition of Parliament is constructed to deny the Rump any pretense of being able to direct the nation. If England is likened to a body and Parliament to its animating soul, the Commons are no more than the “*vegetative facult[y]*.” Moreover, if anyone were to insist that “the *army* derived its power from the *Parliament*, and not the *Parliament* from it,” Urquhart replies that the army had been chosen by the Lords and Commons together and that it was the army that “took into their protection that part of the House which voted down *Monarchy*.”<sup>198</sup> Not only did the Army protect Parliament, but the Rump is exposed as a mere body animated by the army: “whilst the *Parliament* sate, it was the *Army* did animate them, the *Army* was their soul, and the Master-wheel by which they moved, in which sense I think my Lord *General* did acknowledge the *Parliaments* soveraginty, and in so doing did derogate nothing from himself and the Officers, who virtually governed by them.”<sup>199</sup> The dissolution of the Rump is simply an uncovering of what was already reality; the soul

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<sup>198</sup>*Reasons Why*, 3-4; emphasis original. The argument that the army was not dependent on the Parliament had been used in apologies for Pride’s Purge in 1648. For instance, William Erbery, a chaplain in the New Model Army, in *The Armies Defence*, insists that all power is from the Saints, through whom God acts, and not from the king or Parliament: “’twas not the King that called a Parliament, but the saints called a Parliament to oppose an oppressing King; so ’twas not the Parliament raised an Army against him, but we raised an Army against an oppressing Parliament” (William Erbery, *The armies defence, or, God guarding the camp of the saints, and the beloved city. Shewing, that all oppressions in governors, and government shall case by the appearance of God in the saints. Whether the appearance of God in the Army, with the saints, be in contrariety or enmity to the good spirit and minde of God. Not to rebuke an evil spirit in any, but soberly to enquire whether God doth not act with highest power in the saints, when they are at lowest weakness. And whether it be their weakness to act in this way of povver* (London, 1648), 23. Early English Books Online. Trinity College Library (Dublin). September 5, 2011. [http://gateway.proquest.com.proxy.lib.duke.edu/openurl?ctx\\_ver=Z39.88-2003&res\\_id=xri:eebo&rft\\_id=xri:eebo:citation:69648653](http://gateway.proquest.com.proxy.lib.duke.edu/openurl?ctx_ver=Z39.88-2003&res_id=xri:eebo&rft_id=xri:eebo:citation:69648653)).

<sup>199</sup> *Reasons Why*, 10; emphasis original.

behind the “outward Organs Microcosmically Representative of the great body of the Republick” was the army.<sup>200</sup>

Urquhart’s depiction of the body politic represented “Microcosmically” in the Rump, which, in turn, was animated by the Army, is developed in two directions in *Reasons Why*. First, the use of the simile between Parliament and the human soul draws on the tradition of likening the political body of the nation with a natural body. This language had a long history by the writing of *Reasons Why*, but, as Quentin Skinner argues in *Liberty Before Liberalism*, it had been used by Parliamentary writers during the 1640s and English republican theorists after the regicide to argue that if the laws of a nation are not enacted with the consent of the members of the body politic, then that nation is not a free state as the body politic would be moved and animated by the will of another and be enslaved.<sup>201</sup> Moreover, individual liberty, for republican writers, is inextricably connected to living in a free state.<sup>202</sup> Urquhart’s engagement with the republican version of this trope is made evident when he turns to the question of whether England and Scotland can be considered free nations under the rule of the Army. The pamphlet insists that the Army has fought to preserve the liberties and rights

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<sup>200</sup> *Reasons Why*, 10.

<sup>201</sup> Skinner, *Liberty Before Liberalism*, 24-8. Skinner’s formulation on this issue is problematic. He puts the point this way: “if a state or commonwealth is to count as free, the laws that govern it—the rules that regulate its bodily movements—must be enacted with the consent of all its citizens, the members of the body politic as a whole” (*Liberty Before Liberalism*, 27). Skinner’s language identifies the body politic as being composed of *only* those members who can be considered republican citizens. This leaves open the question of the place in this metaphor of those individuals who do not fit this description.

<sup>202</sup> Skinner, *Liberty Before Liberalism*, 59-77.

of England.<sup>203</sup> The argument then expands to include not only England's liberties, but those of Scotland as well. In the last section of the pamphlet, Urquhart turns to reassure his "correspondent" that he need not worry that a union with England will mean that Scotland will lose its freedom. Subjugation and liberty, being ruled by "Masters" and retaining one's rights, are not incompatible:

To be a free Nation, is to be subject to reasonable men: for, to conquer our own passions, and submit our selves to a just power, is the greatest freedom of any. To be left at random without Governours; to be in a continual state of war with your neighbours; or, like *Cannibals*, to be still devouring one another, without fear of Law, or terror of punishment, is not to enjoy the liberty of a free Nation; for that permission to do wickedly, cannot be accounted liberty in humane society; nor is the freedom of such of the *West-Indian Savages* as remain unconquered, any great honour to them.<sup>204</sup>

While Scotland may wish to be unconquered like "the *West-Indian Savages*," under its native Presbyterian rule, it has not known real freedom.<sup>205</sup> In this passage, Urquhart

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<sup>203</sup> Those "who no less freely expose their persons for the defence of their Country, and maintenance of the Liberties thereof, into such extreme perils, as if they had the shift of a new life, wherewith to cloath themselves the next day" (*Reasons Why*, 15). This claim echoes those made by the Army in 1647, insisting that it fought for the liberties of England and Parliament. For instance, "A Declaration or Representation from his Excellency Sir Thomas Fairfax, and of the Army under His Command" from June 14, 1647 states that: "we were not a meer mercinary Army, hired to serve any Arbitrary Power of a State but called forth and conjured by the several Declarations of Parliament, to the defence of our own and the People's just Rights and Liberties" in John Rushworth, *Mr. Rushworth's Historical collections abridg'd and improv'd*, vol. 6 (London, 1708), 565; underlining mine. [http://find.galegroup.com/ecco/infomark.do?&contentSet=ECCOArticles&type=multipage&tabID=T001&prodId=ECCO&docId=CW100983930&source=gale&userGroupName=duke\\_perkins&version=1.0&docLevel=ASCIMILE](http://find.galegroup.com/ecco/infomark.do?&contentSet=ECCOArticles&type=multipage&tabID=T001&prodId=ECCO&docId=CW100983930&source=gale&userGroupName=duke_perkins&version=1.0&docLevel=ASCIMILE). For Henry Ireton's role in drafting "A Declaration," see Barbara Taft, "From Reading to Whitehall: Henry Ireton's Journey," in *The Putney Debates of 1647: The Army, the Levellers, and the English State*, ed. Michael Mendle (Cambridge: Cambridge University Press, 2001), 177-8.

<sup>204</sup> *Reasons Why*, 24, 25-6; emphasis original.

<sup>205</sup> "What is (I pray you) the freedom you had under the Presbyter? [...] By which tyrannie of theirs, and other pressures proceeding from them, the most part of the inhabitants of the Land were so heavily oppressed, that laying aside those that are sequestered, whereof there are not may, the remanent of the Country is now under a far more easie yোক then it was at any time these nine years past" (*Reasons Why*, 24).

takes the republican term “free Nation” and redefines it, against the conclusions of republican authors, to mean that a nation is free if it is ruled by “reasonable men,” whether or not they rule with the consent of the people. The metaphor of the body politic is employed to depict Scotland as a body governed by its unruly passions and thus not capable of enjoying “the liberty of a free Nation.” Since Scotland cannot govern itself, these passions need to be restrained by reason imposed from outside. In this image, just as a natural body needs to “conquer” its own passions, so does the body politic of Scotland need to be submitted to the “just power” of the English Army. However, as the description proceeds, the ability of England to supply the reason needed to curb these passions becomes suspect. Urquhart argues that Scotland’s own history as an unconquered land has little to do with the virtue of its people. Only its difficult terrain has kept Scotland inviolate throughout its history: “hills, bogs, heath, hunger, cold, or such-like, proceeding from the inaccessibility and poverty of the Country, hath kept you till now a Virgin-nation, unexposed to the embraces of a foreign Conquerour.”<sup>206</sup> In this image, it is the “foreign Conquerour,” rather than Scotland, who needs to be restrained, and it is the physical landscape of the country that serves as a curb to passions. While this description may not attribute any virtue to Scotland for having defended itself like an “encloystred Nun,” England, as the passage develops, turns out to have been corrupted by its frequent changes of rulers: “*England* hath had

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<sup>206</sup> *Reasons Why*, 25.

more change of Governours [than Scotland], so have fair women of suiters, even unto prostitution."<sup>207</sup> By the end of this section of *Reasons Why*, the initial claim that England could supply the "reasonable men" necessary to make Scotland into a free nation as defined by Urquhart has become suspect.

The second use of the language of the body politic in *Reasons Why* focuses on the relationship between soul and body. As we have seen above, in the pamphlet, the Army, as the animating "soul," is privileged over the mere body of the Rump. Having depicted the dissolved Parliament as only a physical token of the body politic, *Reasons Why* dissolves the connection between the name of the "Representative" and its function in the political life of England by adopting iconoclastic language. In this idiom, to trust in the empty name of a Parliament turns out to be a form of idolatry. To make this point, Urquhart recalls the image of the Brazen Serpent raised by Moses in Numbers 21 to create a parallel between, on the one hand, the Rump and the old dispensation and, on the other, the Army and the new dispensation.<sup>208</sup> This parallel is used to argue that while the Long Parliament had indeed served as a remedy against the king's assault on the people's liberties, it is now lawful to dissolve the Rump, which is now a mere bodily form, and to replace it with a government instituted by the army, the animating "soul":

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<sup>207</sup> *Reasons Why*, 25.

<sup>208</sup> For the use of this image in the New Testament, see John 3:14-5: "And no man hath ascended up to heaven, but he that came down from heaven, even the Son of man which is in heaven./ And as Moses lifted up the serpent in the wilderness, even so must the Son of man be lifted up:/ That whosoever believeth in him should not perish, but have eternal life."

Whereas there is a buzzing, that the only refuge of the People was in former times the Parliament: so may I say that the people of *Israel* in their stinging afflictions had the like recourse to the Brazen Serpent, which nevertheless was afterwards very lawfully taken down: we ought not to be such nominal Statesmen as to dote upon the words of *Parliament, Law, Priviledges*, or I cannot tell what, whilst all the things signified by them are violated and infringed even by those them that idolize them in outward professions.<sup>209</sup>

The passage recalls the destruction of the Brazen Serpent by King Hezekiah.<sup>210</sup> In 2 Kings 18, Hezekiah destroys, along with other cultic sites and images, the Brazen Serpent that Moses had fashioned under the direction of God to cure the Israelites of snake bites (Numbers 21). The healing powers of Moses' Brazen Serpent had been connected, through John 3, to the crucifixion and the spiritual rebirth of Christians. But, as Margaret Aston points out in a discussion of the evolving understanding of the image of the Brazen Serpent in Tudor England, the Geneva Bible cross-referenced Numbers 21.8-9 to 2 Kings 18.4 and John 3.14 to make the explicitly iconoclastic point that even images originally instituted according to God's command can become objects of idolatry and as such ought subsequently to be destroyed.<sup>211</sup> The injunction against images is driven

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<sup>209</sup> *Reasons Why*, 11; emphasis original.

<sup>210</sup> "Now it came to pass in the third year of Hoshea son of Elah king of Israel, that Hezekiah the son of Ahaz king of Judah began to reign./ Twenty and five years old was he when he began to reign; and he reigned twenty and nine years in Jerusalem. His mother's name also was Abi, the daughter of Zachariah./ And he did that which was right in the sight of the Lord, according to all that David his father did./ He removed the high places, and brake the images, and cut down the groves, and brake in pieces the brasen serpent that Moses had made: for unto those days the children of Israel did burn incense to it: and he called it Nehushtan./ He trusted in the Lord God of Israel; so that after him was none like him among all the kings of Judah, nor any that were before him" (2 Kings 18:1-5).

<sup>211</sup> Margaret Aston, *The King's Bedpost: Reformation and Iconography in a Tudor Group Portrait* (Cambridge: Cambridge University Press, 1995), 118-9.

home by the commentary on the figure of Hezekiah.<sup>212</sup> In the 2 Kings narrative, Hezekiah is described as a king who “did that which was right in the sight of the Lord” and the marginal notes in the Geneva Bible interpret Hezekiah’s physical iconoclasm as being accompanied by a verbal iconoclasm. In the commentary, the word “Nehushtan” is glossed to indicate that Hezekiah called the serpent “but a piece of brasse,” thus reducing the image to its physical components by renaming it.<sup>213</sup> *Reasons Why* takes up the iconoclastic interpretation of the Brazen Serpent to accuse those who oppose the Army’s dissolution of the Rump of being but “nominal Statesmen” who “dote upon the words of *Parliament, Law, Priviledges,*” even though “all the things signified by them are violated and infringed.” The Rump is thus recast as a Parliament in name only and its supporters as idolaters who worship empty words. The political violence in the dissolution of the Rump is presented in the guise of godly iconoclasm.

This link between iconoclasm and the dissolution of the Rump develops alongside the discussion of whether the actions of the Army are legal. As we have seen, Urquhart opens *Reasons Why* by insisting that he will demonstrate the lawfulness of the dissolution. But after attacking the Rump as an empty idol, Urquhart dismisses, in language reminiscent of Sexby’s, the need to act legally as an inexpedient formality.

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<sup>212</sup> Aston, *The King’s Bedpost*, 119.

<sup>213</sup> “That is a piece of Brasse: thus he calleth the serpent by contempt, which notwithstanding was set up by the word of God, and miracles were wrought by it: yet when it was abused to idolatrie this good king destroyed it, not thinking it worthy to be called a serpent, but a piece of brasse” (marginal note to “Nehushtan” in 2 Kings 18.4).

Addressing the complaint that if Charles I's attempt to remove the five members from the House in 1642 was considered sufficient grounds to rebel against him then the dissolution of the entire Rump should be considered a proportionately graver assault upon the liberties of the people, *Reasons Why* draws a stark distinction between the two occasions:

the late King by his thus forcible coming in unto the House did break the priviledges which both his predecessors & himself had given, and therefore having resigned his power to that *Parliament*, by vertue whereof they then sate legally, he ought, if there were any refractory members, to have consulted with the remainder of the body concerning them, who together with the rest of the house had by him that place them undoubtedly had been raised, had not they been taken into the tuition and patrociny of the Army, whose Power being from God, he hadth accordingly continued unbroken amidst the revolution of various and innumerable dangers.<sup>214</sup>

In this passage, Urquhart traces legality and legitimate authority through transfers of power. In 1642, the king, by entering Parliament to arrest the five members, acted illegally by breaking the MPs' priviledges. Parliament sat "legally" because he had resigned his power to them. In 1653, the Army did not act illegally in dissolving the Rump because Parliament was under their protection. The Army's own authority derived, and continues to derive, directly from God. In this quote, all that divides the Parliament's legal authority and priviledge in 1642 and its subordination and dependence on the Army's power is a comma. By claiming that Parliament was under the protection of the Army and that the Army's own power derives from God and not

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<sup>214</sup> *Reasons Why*, 12; underlining mine.



from Parliament itself, Urquhart elides Parliament's agency in raising the Army. In the underlined clause, the authorizing relationship between Parliament and Army is turned upside down. Parliament is "taken into the tuition and patrociny" of an Army that is portrayed as existing independently of the body of government that raised it and whose continued legitimacy is demonstrated by its military victories. While the five members escape capture from the king, the whole Parliament loses all agency grammatically by being passively—the members had "been taken"—captured by the Army's custody and tutelage. The consequences of this move are spelled out in the next paragraph:

As for that which is called the rupture of the *Parliament*, it was as nothing: for if the action in it self was just (as I affirm it was) officious lingering circumstances, in such important matters as can admit of no delays, are not to be regarded: Formalities, at best, in such a juncture of occasions, are but imbellishing ornaments, or as paintings upon Sepulchres, where there is any rottenness in the main intendments covered by them.<sup>215</sup>

The dissolution by the Army of a Parliament that is seen as authorized by that same Army is indeed "as nothing." Once the traditional and legal relationships between King, Parliament, and Army are dissolved, questions of the legality of actions become "officious lingering circumstance" and "imbellishing ornaments" which need not be regarded. Moreover, while the passage insists that the action of dissolution was just, its ending is more ambiguous. Formalities can be used to cover "any rottenness" of action, but the destruction of formalities does not guarantee the soundness of the action.

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<sup>215</sup> *Reasons Why*, 12-3.

The inclusion of iconoclastic language in *Reasons Why* exposes the problem inherent in the use of this idiom to authorize political change.<sup>216</sup> As I argued in section one, Sexby linked iconoclastic language to a discourse of republican liberty. In *Killing No Murder*, the example of Athaliah is recruited to argue that the assassination of an enslaving tyrant is authorized by Scripture as part of the godly iconoclastic purge of idolatry. But, in Sexby's pamphlet, the attempt to free Englishmen from an idol-like tyrant leads to the suppression of the agency and judgment of the common people, that is, of those who do not belong to the godly remnant in the Army. As Urquhart's use of the destruction of the Brazen Serpent indicates, Sexby's attack on Cromwell as an idol and the enslaved English people as idolatrous is part of a wider aspect of the intersection of political and iconoclastic discourse. This connection between iconoclasm and political reform and the associated representation of idolatrous objects as both religiously and politically enslaving to the common people is brought out by James Simpson in *Under the Hammer*. In the opening chapter of the book, Simpson argues that "Western anti-idolatry discourse is remarkably consistent in its identification of idolatry with thralldom. The call to liberty is what justifies and characterizes iconoclasm.

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<sup>216</sup> As we will see in further detail in the context of Fifth Monarchist writings in chapter five, claims of divine authorization for the Army's political authority link the Army's dissolution of the Rump with the second commandment apocalyptically interpreted as a call to rid England of merely human political institutions and laws, depicted as false idols, so as to prepare it for the coming of Christ's kingship.

Idoltrous art enslaves."<sup>217</sup> In the English context, the identification of idolatry with slavery predates "Puritan" iconoclastic zeal. John Lydgate, in his *Troy Book* (1412-20), sees idolatry as serving to "bring 'folkes that be ffre' into 'servage.'"<sup>218</sup> This connection between the religious and the political dimensions of iconoclasm in Simpson's argument is grounded in the idolatrous psychology of the common people as imagined by the iconoclast. Discussing Wyclif's attack of idolatry, Simpson argues that even moderate opposition to images, which might begin by condemning only the wrong use of otherwise indifferent images, eventually takes a more aggressive stance: "as soon as a potential iconoclast says that images are permissible as long as they are not subject to worship, he will start imputing acts of worship to the naïve, into whose minds he feels confident to look."<sup>219</sup>

The presumption of idolatry in the minds of the "naïve" on the part of the iconoclast is part of what Simpson calls the "kinesis of iconoclasm," in which "breaking one image necessarily implies the need to break others. Not only does an iconoclastic act rightly imply that the past had its semiotic system; iconoclasm institutes a system of its own."<sup>220</sup> This kinesis is driven by the blurring of the initial line drawn to distinguish between which uses of images are permissible and which are not. Consequently, any

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<sup>217</sup> James Simpson, *Under the Hammer: Iconoclasm in the Anglo-American Tradition* (Oxford: Oxford University Press, 2010), 27.

<sup>218</sup> Simpson, *Under the Hammer*, 49-50.

<sup>219</sup> Simpson, *Under the Hammer*, 57.

<sup>220</sup> Simpson, *Under the Hammer*, 13.

religious image may potentially present the occasions for iconoclasm.<sup>221</sup> As Margaret Aston's study of iconoclasm in England confirms, during the Civil Wars and thus within recent memory at the writing of *Reasons Why*, this systematic process of iconoclasm escalated to paradoxical levels, destroying the very commandment tables that had been placed by earlier iconoclasts as safe replacements for dangerous images.<sup>222</sup> Even secular imagery did not survive the onslaught. At least one portrait of Edward VI, the reforming and iconoclastic young king, was destroyed by a soldier linking the Tudor monarch with the idolatry promoted by the Book of Common Prayer.<sup>223</sup> The drive to destroy all imagery and decoration in churches was far from unique to Civil War soldiers lashing

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<sup>221</sup> Simpson, *Under the Hammer*, 13. According to the argument of *Under the Hammer*, there is an internal logic that drives "kinesis of iconoclasm." This logic is based on the threat in the second commandment that the punishment for idolatry will be inflicted upon the third and fourth generations. This activates the need for the complete obliteration of the offending images so as to prevent idolatrous acts whose repercussions will extend into the future (Simpson, *Under the Hammer*, 12-3). Simpson argues that this logic is inherent in all iconoclasm that ultimately derives its motivation from the second commandment and therefore can be used to explain acts of iconoclasm in the English Civil Wars as well as in Afghanistan by the Taliban. This claim gives Simpson's analysis an extremely broad explanatory power and my own reading of Sexby's iconoclastic language and Urquhart's critique is indebted to this account. However, the explanatory strength of Simpson's argument is fundamentally dependent on the claim that the logic of iconoclasm is inherent in the second commandment, and, to that extent, a-historical. Simpson's mode of analysis can thus explicitly step outside of the boundaries of periodization in order to draw on the common features of iconoclastic movements (Simpson, *Under the Hammer*, 15-7). This allows him to account for a long-term development, but it also leads to lines of analysis in which images themselves come to life and begin to "provoke" and "activate" iconoclastic violence: "[o]nly by traversing boundaries between the late medieval and the Early Modern, and between the Enlightenment and the twentieth century, can we understand how images are capable of activating such intense and violent response, a response designed to separate one historical period from another" (Simpson, *Under the Hammer*, 15).

<sup>222</sup> Aston, *England's Iconoclasts*, 94. On the debate over the interpretation of the prohibition on graven images in the Decalogue and on the placement of commandment tables in English Churches in the sixteenth-century, see *England's Iconoclasts*, 343-92.

<sup>223</sup> Aston, *England's Iconoclasts*, 94. On the association of Edward VI with the young Josiah as a model of iconoclasm, see James Simpson, *Burning to Read: English Fundamentalism and its Reformation Opponents* (Cambridge, MA: Belknap Press of Harvard University Press, 2007), 10-7.

against the perceived idolatry of the established Church. Indeed, it was preceded by warnings from such divines as John Ponet, Alexander Nowell, and William Perkins in the sixteenth- and early seventeenth-centuries that even secular imagery might turn the viewer to idolatrous worship. The fear of the idolatrous potential encoded in even non-religious representation was dependent on an aetiology of idolatry and “paganism” claiming that they were based on the “deification” of ancestors.<sup>224</sup> Even secular images can thus become suspect as outside the pale of Christianity. In Aston’s account, while Perkins had allowed, though with warnings of its potential misuse, clearly secular and political imagery, the tendency of more aggressive reformers was to condemn all pictures as usurping the place of the Word.<sup>225</sup>

This process ultimately leads to a desire to obliterate mental idols. This meant, as Aston argues, that the iconoclast and the preacher had to attempt to establish a fine balance between admitting that thinking is in part a representational activity, and that therefore “the mind itself was a book with pictures,” *and* uphold their Christian ideal “to rise above the physical imagings of the mind” in order to make room for the Word and God.<sup>226</sup> The impetus for the iconoclast’s action is that images, even mental ones, become the idols forbidden by the second commandment because they usurp and

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<sup>224</sup> Aston, *England’s Iconoclasts*, 433-51.

<sup>225</sup> Aston, *England’s Iconoclasts*, 450-1.

<sup>226</sup> Aston, *England’s Iconoclasts*, 464, 463.

distort the place of the Word by producing “fantasies of the divine.”<sup>227</sup> While Simpson agrees with Aston’s assessment of the evolving target of the iconoclast’s attacks, he views her lines of analysis as only a partial reconstruction of the process of iconoclasm, which he sees as part of the “larger, violent drama of Protestant modernity and abstraction, a drama of which doctrinal positions are symptoms as much as motors of change.”<sup>228</sup> For Simpson, this “drama of modernity” drove a centralization and concentration of jurisdiction, which, in turn, “produced increasingly transcendent imaginations of power in the sixteenth and seventeenth century. Those movements of transcendence, both religious and political, required violence towards what was now described as past and foreign.”<sup>229</sup> Exemplifying the jurisdictional fight involved in the

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<sup>227</sup> Aston, *England’s Iconoclasts*, 436. The placing of the commandment tables in churches in the sixteenth- and seventeenth-centuries allowed reformers to publicly display a reading of the second commandment that strongly forbade any graven image (Aston, *England Iconoclasts*, 371-92).

<sup>228</sup> Simpson, *Under the Hammer*, 5.

<sup>229</sup> Simpson, *Under the Hammer*, 5-6. Simpson’s corrective of Aston’s argument, however, does not address the non-iconoclastic processes of centralization that manifested themselves before the Civil Wars. For instance Laudian policies, which proved the spark of much subsequent iconoclasm, were as much part of a centralizing program of spatial reconfiguration as any deployed by the Long Parliament or by the Protectorate. In particular, the fight over the position of the altar or the communion table—the term “altar” associated with idolatrous worship of the Eucharist by those who preferred the “communion table”—in parish churches was centrally directed by Laud with the eventual support of Charles I against local lay as well as episcopal opposition (Kenneth Fincham and Nicholas Tyacke, *Altars Restored: The Changing Face of English Religious Worship, 1547-c.1700* (Oxford: Oxford University Press, 2008), especially chapters 4-6). This is not to say that the Laudian beautification program was “top-down” with no support from the laity or the local clergy, but rather that it aimed at uniformity and conformity as well as being directed by a central control process of re-decoration of parish churches according to the model established in the cathedrals and college chapels. Fincham’s and Tyacke’s study provide numerous examples of local parishes going above and beyond the conformity required by the Laudian administration under the initiative of parishioners (see, for example, *Altars Restored*, 253-65), but this should not obscure the centralizing move by Canterbury. Adornment of parish churches could function to concentrate jurisdiction, by taking it away from local bishops and putting it in the hands of Canterbury—sometimes quite literally as in the case of Bishop Williams of Lincoln (see *Altars Restored*, 207-9),—as much as Civil War and Interregnum iconoclasm would

iconoclasm of the Civil War in Simpson's account is the figure of William Dowsing who, starting in 1643, guided a program of destruction of all church adornments condemned by the Parliament ordinance of 28 August 1643.<sup>230</sup> In this account, Dowsing's iconoclasm is more than an attempt to clear away unscriptural images to make room for the Word, it is a reflection of the push for jurisdictional concentration:

Jurisdictions need symbolic expression, and they need to clarify the relations of subjects to power; in this case, a jurisdictional simplicity needs to reshape both place and history, through new representations. A single jurisdiction (of a Puritan Parliament) replaces a triple, overlapping jurisdiction of monarch, Parliament, and clergy. [...] Within the intensely symbolic space of the parish church, divided space and jurisdictions are undivided: altar rails are to be removed, and chancel steps leveled.<sup>231</sup>

While Simpson highlights the spatial and visual reconstruction of jurisdiction, it is worth noting that Dowsing battled English law with Scripture. When he met with resistance from a local inhabitant who denied Dowsing's jurisdiction in such matters by recurring to the book of statutes, Dowsing answered by citing Acts and Calvin's commentary.<sup>232</sup> Thus, in addition to the jurisdiction of a "Puritan Parliament," Dowsing is here claiming that the authority of Scripture, as interpreted by Dowsing's Calvin, trumps that of

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attempt to representationally concentrate all jurisdiction in the hands of a "Puritan Parliament" (Simpson, *Under the Hammer*, 88).

<sup>230</sup> Simpson, *Under the Hammer*, 86.

<sup>231</sup> Simpson, *Under the Hammer*, 88-9.

<sup>232</sup> Simpson, *Under the Hammer*, 88.

English law. Dowsing quoted Acts and not the warrant which he had obtained from the Early of Manchester.<sup>233</sup>

Simpson's argument extends to cover a long-term process from English reforming iconoclasm to the practices of modern museums that is beyond the scope of this chapter, but his analysis of the political dimensions of iconoclasm in the Civil Wars and the Interregnum in England is helpful in contextualizing the problems raised by the use of iconoclastic language in *Killing No Murder* and *Reasons Why*. In Sexby, the link between the iconoclast and the political reformer is made evident as *Killing No Murder* calls for the assassination of Cromwell as both idol and idolater who enslaves Englishmen. It is the iconoclast who will set England free by destroying the empty idol of the Protector. That is, Sexby connects a republican ideal of Ciceronian *libertas* with the language of iconoclasm directed against a secular, but idolatrous and idol-like, object and uses it to redefine the jurisdiction of English law as limited by natural reason and law. However, in this attempt, Sexby's iconoclasm does not strike only at the Protector. As Simpson's analysis of the jurisdictional dimensions of iconoclasm indicates, Sexby's iconoclasm against the "formalities" and "solemnities" of the common law strives to replace the messy and historically bound expression of the judgment of the people with an a-historical and allegedly self-evident jurisdiction of his conception of natural reason and law. In *Reasons Why*, the same language is adopted with much more ambiguity. As

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<sup>233</sup> Simpson, *Under the Hammer*, 86.



we have seen above, Urquhart's denial of the need for legal "formalities" in dissolving the Rump is linked to the uncovering of the already-achieved military coup. The Rump was but the Army's empty shell.

The iconoclasm of *Reasons Why* shatters the image of legal legitimacy that the Rump had claimed as the representative of the people. But in the process of demonstrating that the Rump was not a true parliament, the pamphlet ends up by revealing that all claims for the legitimacy of military rule must be founded on seeing the nation as under a constant threat of war. The problem with insisting that the Rump was a legitimate ruling power, according to *Reasons Why*, is not only that the Army was the power behind the Parliament since Pride's Purge, but also that it was composed of men who were not fit for their office. Answering the opening letter's accusation that "the unexperiencedness and illiteracie of military men" disqualifies them as good rulers, Urquhart retorts that they have all the necessary qualities for political authority.<sup>234</sup> While the members of the Rump may have had the technical qualifications needed to rule, they "have been enriched by private contentions, will never harbor in their breasts such publike spirits as shall suffice to establish domestick safety, and gainstand forraign invasion."<sup>235</sup> It is to men endowed with "publike spirits" that the safety of the nation can be entrusted:

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<sup>234</sup> *Reasons Why*, 1.

<sup>235</sup> *Reasons Why*, 14.

The Safety of the People is said to be the Supreme Law, yet are those that have the power in their hand the fittest Judges of that safety; because they are the best able to consider what and where the strength is in which is the Guard of the Nation: nor is there any reason why we should be diffident of the discretion of those Officers, who are men of Publike spirits.<sup>236</sup>

Having the power to ensure the safety of the people and being “men of Publike spirits,” the officers of the army “therefore deserve to be accounted our Masters by defending us from the violence of others, and preserving us in those Rights that belong unto us.”<sup>237</sup>

The passage points to an image of England as a nation under siege and shows the consequences of living in a commonwealth at war.<sup>238</sup> The officers and the Army become the people’s “Masters” under the ostensible goal of preserving them “in those Rights

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<sup>236</sup> *Reasons Why*, 6.

<sup>237</sup> *Reasons Why*, 6; emphasis mine.

<sup>238</sup> The representation of England as a nation under siege is not unique to Urquhart. See, for instance, the anonymous *A Warning Seriously Offered to the Officers of the Army*. This pamphlet represents England as potentially becoming a garrison of the Saints: “when this Island (as a Garrison) shall be well victualled and stored with Righteousnesse, Faith, and Truth, though all the Nations of *Europe* should besiege it, it shall be relieved by the coming of the Lord with *thousands* of his *Angles*” (Anon., *A Warning seriously offered to the officers of the Army, and others in power* (London, [Thomason: May, 18] 1653), 8. Early English Books Online. British Library (London). May 10, 2011.

[http://gateway.proquest.com.proxy.lib.duke.edu/openurl?ctx\\_ver=Z39.88-2003&res\\_id=xri:eebo&rft\\_id=xri:eebo:citation:99872691](http://gateway.proquest.com.proxy.lib.duke.edu/openurl?ctx_ver=Z39.88-2003&res_id=xri:eebo&rft_id=xri:eebo:citation:99872691)). But this will happen only if the army and Cromwell do not succumb to pride and temptation. The author recounts in two short pages the history of the world as a series of Falls due to pride (4-5). Just as Adam’s initial pride condemned all of humanity to slavery and suffering, “When *Adam* (the first *prided*) himself above the *meek, humble* Spirit of God, although he was before *Heir and Lord of all*, he and all his children were *turned out of doors* to wander from the heavenly *Paradisicall* nature, and to this day they are *slaves and Beggars* in the *gates of the Creature*” (4), so has suffering continued through history with the pride of rulers such as Nimrod, Alexander, the Roman Emperors, and the Pope (4-5). Scriptural and profane history are mingled together to show how pride overtakes rulers who subsequently fall. The moral is drawn quickly and clearly: “now if these *Souldiers* do not *deny themselves*, and tread their steps very even according to God, but rather grow *lordly, lofty, worldly* and *humoursome, fierce, self-confident, by ended, and touchy*, that a man cannot speak to them; Down they also tumble with all their *Swords, Pikes and Cannons*, and a *better Generation* shall take their place” (7).

that belong to us." What those "rights that belong to us" consist of is left glaringly unspecified.

What is striking about the plea for military rule as justified by the safety of the nation is that it fails to produce the kind of argument based on the *legality* of the government by the army that the opening of *Reasons Why* had explicitly set out to build. The principle of *salus populi*, as we have seen in Chapter 3, had been argued by writers such as Henry Parker as being a fundamental element of natural law and, as such, the foundation of all government and law. In the opening of the pamphlet, Urquhart explicitly distances his own argument from that of the Parliamentarian writers during the war and insists that he does not follow those who "have said that the preservation of both the *Army* and *Country* did totally depend upon this late resolute action of breaking up the *Parliament*."<sup>239</sup> However, as the argument of *Reasons Why* develops, he turns to the safety of the people as the justifying principle of the army's rule. While the insistence that he is defending the legality of the Army's intervention remains throughout the pamphlet, his use of arguments on the basis of *salus populi* highlights that "justice" and "legal right" are reduced to an Hobbesian power of protection: "as it is just where the power of *Protection* is, that there should be the *Authority* (all of us owing *obedience* to those that do *protect* us) so is it no new thing that so legal a right be practically

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<sup>239</sup> *Reasons Why*, 3.

exercised.”<sup>240</sup> The passage does not only claim that protection simply entails lawful obedience in the subjects, but rather it gives authority and legal right to the protector. However, here, *legal* has taken on the meaning of what I have been referring to as lawful, that is, of allowed by natural law. This argument ultimately suppresses the rights and liberties of the people beyond their basic safety from “the Invasion of stranger, and discovery of Plots amongst our selves at home”<sup>241</sup> in order to advocate for the “legal [...] right” of the Army to rule. Most importantly, the right clearly denied to the people by this argument on the basis of *salus populi* and natural law is that to elect a Parliament.

### **4.3 The Putney Debates: Conflict of Laws and Silencing the People**

At Putney in the fall of 1647, natural law was invoked on the other hand to argue for an expansion of the franchise beyond the current legal limits. There, the role of the Army in securing and defining the birthrights of Englishmen was debated by members of the Army itself and civilian agents claiming to speak for the soldiers. In late October of 1647, with the king in military custody, the General Council of the Army met to discuss two pamphlets that had recently been published. These pamphlets were signed by agents claiming to represent five regiments of the Army. Earlier in the year, in February of 1647, the Scots, to whom Charles had turned himself in after the royalist army had lost Oxford in June of 1646, had sold the king to Parliament and left English

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<sup>240</sup> *Reasons Why*, 2-3, 4; underlining mine.

<sup>241</sup> *Reasons Why*, 9.

soil.<sup>242</sup> As soon as the Scottish army departed, the presbyterians in the Commons moved to disband the New Model Army by using the need to organize a force for Ireland as an excuse to break apart regiments that had fought together in the war, and by attempting to take the command of the forces that were to remain in England away from Fairfax and give it to the Presbyterian Richard Graves.<sup>243</sup> The Army, however, resisted disbandment and reorganization under these conditions. In particular, a petition began to circulate amongst the cavalry voicing the concerns of soldiers and officers. They complained of three main problems: “the threat of being disbanded without their full arrears of pay, which ran to forty-three weeks in the cavalry; their liability, when disbanded, to be prosecuted for acts committed in war; and the conditions of service that they faced if they were sent to Ireland.”<sup>244</sup> The complaints raised by this first petition are directly related to the conditions and threats faced by the soldiers *as* soldiers at

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<sup>242</sup> Woolrych, *Britain in Revolution*, 348-50.

<sup>243</sup> Austin Woolrych, *Soldiers and Statesmen: The General Council of the Army and Its Debates, 1647-48* (Oxford: Clarendon Press, 1992), 26-31. I follow Woolrych’s convention in *Britain in Revolution* and use the term “presbyterian” (lower case) to denote the political faction in parliament that, overall, tended to be less aggressive in its war policy against the king and which largely aligned itself with Presbyterian interests. Similarly, I use the term “independent” to denote the less-homogenous group that included moderates and hawks on the issue of the war and which, in matters of religion, included members who supported a congregational form of church organization. In Parliament, the independent group included Cromwell, Vane, and St. John (in the Commons) and Saye and Sele and Wharton (in the Lords) (Woolrych, *Britain in Revolution*, 296-98). While neither the independents nor the presbyterians in parliament formed parties in the modern sense, Woolrych sees the presbyterian faction as pursuing its common goals with much more discipline and success than its independent counterpart. Moreover, the independents’ lack of a unifying approach to policy after the defeat of the king in 1646 allowed Denzil Holles, leading the presbyterian group, to act aggressively to dismantle the New Model in 1647 and consequently provoked a backlash from the Army (Woolrych, *Britain in Revolution*, 352-55).

<sup>244</sup> Woolrych, *Britain in Revolution*, 353.

disbandment. This was to change as the situation developed and as the soldiers began to insist that they had fought not only for pay, but to preserve their rights as Englishmen.<sup>245</sup>

The House of Commons made it clear that it was not willing to allow the Army to interfere with matters of public policy; soldiers did not have a right to collectively petition Parliament. In response, a series of pamphlets were printed over the next few months justifying the position of the soldiers and officers of the Army. In mid-April, eight cavalry regiments in Essex and East Anglia elected agitators to represent their concerns. The practice soon spread outside the original cavalry regiments, and infantry units also began to elect two agitators each.<sup>246</sup> By the end of May, regiments, under the initiative of the agitators' own organization, began to work to secure their position against possible threats from Parliament by taking charge of the artillery at Oxford. On May 31, Cornet Joyce set off with 500 horse to Holmby, where the king was being held

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<sup>245</sup> The precise development of the level of political awareness, beyond the immediate needs of the soldiery, by the members of the Army has been debated. I follow Woolrych's account. In *Soldiers and Statesmen*, he describes the Army as comprising soldiers of varied religious and political make-up throughout the first Civil War, thus refuting the image presented by contemporary opponents of the New Model Army, such as Thomas Edwards, who viewed it as a hot-bed of radicals and sectarians (see especially chapter one of *Soldiers and Statesmen*). Nonetheless Woolrych also sees a "keen but latent political awareness [which] was roused into over political activity by treatment which soldiers and officers found not only intolerable to themselves but threatening to the cause for which they had fought" (*Soldiers and Statesmen*, 20-1). This "latent political awareness" was awakened by the Commons' overreaction to "The Petition of the Officers and Soldiers of the Army," which was circulating amongst the troops at the same time as the Levellers' "Large Petition" was circulating in London. The House mistook the coincidental timing of the two petitions for a concerted effort and issued, under the direction of Holles, a "Declaration of Dislike" branding any who supported the petition as "enemies of the state" (*Soldiers and Statesmen*, 35-9). For a different reading of the growth of political awareness in the Army and the development of parliamentary politics in 1646-7, see Mark A. Kishlansky, *The Rise of the New Model Army* (Cambridge: Cambridge University Press, 1979), especially, 139-78.

<sup>246</sup> Woolrych, *Britain in Revolution*, 358.

under Parliamentary guard. Joyce was acting with the approval of Cromwell to prevent the removal of the king by the presbyterian faction.<sup>247</sup> In a surprising turn of events, within a few days, Joyce removed the king from Holmby and conducted him to Newmarket, where Fairfax was assembling a general rendezvous of the Army, prompted by a petition from the agitators of sixteen regiments.<sup>248</sup> The regiments present at the rendezvous assented to the *Solemn Engagement of the Army*, a document consciously recalling the Solemn League and Covenant. The *Solemn Engagement* “was essentially a military covenant, whereby the whole army entered into a mutual pledge not to allow itself to be disbanded or divided until it received satisfaction on certain stated matters.”<sup>249</sup> The *Solemn Engagement* also stated that the army would disband only when satisfied that the soldiers, “once in the condition of private men, or other the freeborn people of England [...] shall not remain subject to the like oppression, injury, or abuse [...] by the same men’s continuance in the same credit and power (especially if as our judges), who have in the past proceedings against the Army so far prevailed to abuse the Parliament and us and to endanger the kingdom.”<sup>250</sup> In effect, this amounted to a request to remove the presbyterian faction in Parliament. Consequently, on June 14,

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<sup>247</sup> Woolrych, “The Debates from the Perspective of the Army,” in *The Putney Debates of 1647: The Army, the Levellers and the English State*, ed. Michael Mendle (Cambridge: Cambridge University Press, 2001), 58-9.

<sup>248</sup> While Joyce had Cromwell’s approval to guard the king at Holmby, he acted on his own initiative in removing him to Newmarket (Woolrych, *Britain in Revolution*, 362-5).

<sup>249</sup> Woolrych, *Soldiers and Statesmen*, 117.

<sup>250</sup> A. S. P. Woodhouse, ed., *Puritanism and Liberty: Being the Army Debates (1647-49) from the Clarke Manuscripts* (London: J. M. Dent, 1974), 402.

1647, articles of impeachment for eleven MPs hostile to the soldiers were delivered on behalf of the Army to parliamentary commissioners.<sup>251</sup> The satisfaction of the full requests of the *Solemn Engagement* was to be confirmed by a new entity, the General Council of the Army, composed of two soldiers and two (regimental) officers elected by each regiments in addition to the members of the Council of the Officers.<sup>252</sup> It was the General Council of the Army that was to meet at the end of October at Putney to discuss a document called *An Agreement of the People*.

On 18 October 1647, a paper entitled *The Case of the Army Truly Stated* was presented to Fairfax by agents from five cavalry regiments. The five regiments were “Cromwell’s, Ireton’s Fleetwood’s, Whalley’s, and Rich’s, all cavalry, and all noted for their religious radicalism and political awareness.”<sup>253</sup> Unlike the original agitators, these agents, who had clear ties to John Lilburne, may not have been elected by the regiments they claimed to speak for and therefore they had a dubious right to sit in the General Council of the Army. Sexby may also have been connected to this group of new agents, but if so, his name was kept separate from theirs in order to insure his seat in the

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<sup>251</sup> Woolrych, *Britain in Revolution*, 369-71. It is also during this period that the make-up of the body of officers of the Army changed considerably. Those who sympathized with the presbyterian cause in Parliament left the army and were replaced with men of lower social background (Woolrych, *Britain in Revolution*, 370).

<sup>252</sup> Woolrych, *Soldiers and Statesmen*, 117-8.

<sup>253</sup> Woolrych, *Soldiers and Statesmen*, 203.



General Council.<sup>254</sup> Given the new agents' connections with the Levellers, the likelihood that they were not elected, and that none of the original agitators spoke, as far as Clarke's manuscript records, at Putney, the text of the debates cannot be taken as a representative record of the views of the general soldiery.<sup>255</sup> *The Case of the Army Truly Stated* was the agents' response to a belief that the generals of the army were not addressing the concerns of the soldiers and to a growing restlessness with the king's response to the *Heads of the Proposals*, a paper drafted by Ireton and supported by the General Council which proposed a general peace settlement.<sup>256</sup> The General Council of the Officers was to convene at Putney to discuss *The Case of the Armie* on 27 October 1647. Asked to explain *The Case of the Armie*, its promoters arrived at the meeting with a new document, the *Agreement of the People*.<sup>257</sup>

The *Agreement of the People* was read on the first day of the debates recorded by Clarke, but it wasn't until the second day, 29 October 1647, that the participants engaged

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<sup>254</sup> Woolrych, *Soldiers and Statesmen*, 203-7. Woolrych follows Charles Firth in referring to the new representatives as "agents" and reserving the term "agitators" for the original men, even though the terms were often used interchangeably.

<sup>255</sup> On this point, see Woolrych, "The Debates from the Perspective of the Army," in Mendle, ed., *The Putney Debates*, 73.

<sup>256</sup> Woolrych, *Soldiers and Statesmen*, 153-67; 201-9. *The Heads of the Proposals* proposed a program of reform through Parliamentary legislation that would maintain king, Lords, and Commons, but would reform the Church of England, enlarge the franchise, and establish biennial elections of Parliament (relevant passages excerpted in Woodhouse, *Puritanism and Liberty*, 422-6). While Ireton was the main author of the draft of *The Heads of the Proposals*, there is evidence that he consulted with Lord Wharton, who was visiting the Army's headquarters as a parliamentary commissioner, and with Lord Saye and Sele (Woolrych, "The Debates from the Perspective of the Army" in Mendle, ed., *The Putney Debates of 1647*, 61; based on the research of J.S.A. Adamson, see n. 9, p. 91).

<sup>257</sup> Woolrych, *Soldiers and Statesmen*, 214-5.

in a full argument over its contents.<sup>258</sup> Most of the second day of the debate was spent on discussing the proposal for an enlargement of the franchise put forth in *The Case of the Armie* and in the *Agreement*.<sup>259</sup> *The Case of the Armie* and the *Agreement* have been seen as being heavily influenced by Leveller thought.<sup>260</sup> And accordingly, especially since the work of C.B. Macpherson, critical attention has been largely focused on the issue of the franchise in both the *Agreement* and the subsequent discussion at Putney within the

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<sup>258</sup> Woolrych, *Soldiers and Statesmen*, 220-48. The second day of the debates, was not a meeting of the full General Council, but rather of just a committee selected to discuss the *Agreement* and the *Case*.

<sup>259</sup> Wolfe, *Levellers Manifestoes of the Puritan Revolution*, 226 and Woolrych, *Soldiers and Statesmen*, 220.

<sup>260</sup> On the development of the *Agreement* in response to the questions of the General Council on *The Case of the Armie*, see Woolrych, *Soldiers and Statesmen*, 214-5. During the debate at Putney, Ireton made it clear that he thought that John Wildman was the author of *The Case* (Woolrych, *Soldiers and Statesmen*, 207). The overall consensus, with the exception of Morrill and Baker (see below in the main text), is that Wildman and Lilburne participated extensively in the writing of *The case of the Armie* (for this view, see D. M. Wolfe, *Leveller Manifestoes* (New York: Thomas Nelson, 1944), n.1, p. 196, and Woolrych, *Soldiers and Statesmen*, 203-9). For the debate in the scholarship on the Leveller-New Model Army connection, see the following: Mark Kishlansky in *The Rise of the New Model Army* has given a revisionist reading of the political activity of the New Model Army which argues that the Levellers did not exert a strong influence on the soldiers. Focusing on parliamentary and Army procedure, Kishlansky has argued that despite early attempts by Denzil Holles to control the Army through a new form of party politics, the breakdown of parliamentary norms led to an eventual harsh response to the Army's petitions in the spring of 1647. This, in turn, led to a "radicalization" of the soldiers. In "The Army and the Levellers: The Roads to Putney," *The Historical Journal* 22 (1979): 795-824, he argues against the assumption that the Levellers had successfully infiltrated and "radicalized" the New Model. In "Consensus Politics and the Structure of the Debate at Putney," *Journal of British Studies* 20 (1981): 50-69, Kishlansky has refocused the analysis of the debates themselves around how the issue of the franchise was discussed within the context of previous engagements by the Army. He views the debates as a search for consensus in opposition to emerging "party" strategies. Austin Woolrych, in *Soldiers and Statesmen*, has challenged Kishlansky interpretation. Woolrych faults Holles for his handling of the Army and, while he agrees with Kishlansky that the Levellers had marginal influence on only a minority of the regiments, he sees the New Model as becoming politicized earlier and more gradually than Kishlansky assumes. Woolrych's discussion of the make-up and functioning of the General Council in *Soldiers and Statesmen* is invaluable for understanding the debates themselves. James Holstun, in *Ehud's Dagger*, challenges Kishlansky's reading of the debates and sees the grandees' use of the language of consensus as a "derailing" tactic that is "demystified" by the agents' appeal to natural law and insistence of "democratic" and "rational" practices (*Ehud's Dagger*, chapter six, especially 218-35).

wider context of Leveller thought.<sup>261</sup> However the question of the extent of civilian collaboration on and of the authorship of these tracts does not only reflect on our understanding of Leveller thought. It has also been linked to the problem of whether the debates at Putney over these texts and their claims for rights can be seen as addressing the concerns of only the soldiery or as proposing a program of political reformation for the nation at large. Recently, contributing to a collection of essays on the debates, John Morrill and Philip Baker have argued against a Leveller authorship of *The Case* and have instead proposed Sexby as the principal author. In their view, Sexby's, and the document's, ties to the Levellers have been overstated. In particular, they argue that, in the debates at Putney, Sexby was mostly concerned with the rights and demands of the soldiers in particular rather than of the people in general: "The key here is that he slips

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<sup>261</sup> Focusing on the second day of the debates, C. B. Macpherson's *The Political Theory of Possessive Individualism: Hobbes to Locke* (Oxford: Oxford University Press, 1962) has shaped the critical focus on the Putney Debates around the question of franchise by arguing that the Levellers understood political liberty to be linked with economic independence. In his study, Macpherson reads the Levellers' exclusion of servants, recipients of alms, and beggars from their proposals for the expansion of the franchise as throwing light upon their understanding of the nature of freedom (110; Macpherson uses the term "servant" to cover the term "wage-earners." For a discussion of the problems with this usage, see Keith Thomas, "The Levellers and the Franchise," in ed. G. E. Aylmer, *The Interregnum: The Quest for Settlement, 1646-1660* (London: MacMillan Press, 1972), 71-2). According to Macpherson, the Levellers held that while all men had a natural right to vote (111), servants and alms-takers had forfeited their birthright (122). Macpherson uses Maximilian Petty's remarks at Putney as representative of the Levellers' position on franchise before, during, and after the debates. Macpherson's argument has been challenged both on the basis of his calculations of the numbers of individuals eligible for franchise under the various possible proposals put forward at Putney and on his choice of Petty as representative for the Leveller position at large (see J. C. Davis, "The Levellers and Democracy," *Past and Present* 40 (July 1968): 174-180; and Keith Thomas, "The Levellers and Franchise," 57-78). More generally, Keith Thomas argues that franchise was not a large element in the Leveller's program and that Macpherson's analysis gives it undue weight. This problem with Macpherson's argument was first brought up by Peter Laslett in his review of Macpherson, "Market Society and Political Theory," *The Historical Journal* 7 (1964): 150-4. Iain Hampsher-Monk argues against Macpherson that the structure of the debate shows that the Levellers supported manhood franchise ("The Political Theory of the Levellers," *Political Studies* (1976): 397-422).

unselfconsciously between the rights of the people and the rights of soldiers. Whenever he says ‘we’ he means the soldiers and not the people.”<sup>262</sup> While Morrill’s and Baker’s case of Sexby’s co-authorship of *The Case* is convincing, their reading of the referent implied by the use of “we” is overly restrictive. As we will see, Sexby and the other proponents of *The Case* and *An Agreement* at Putney had no trouble assuming that the soldiers did indeed speak for the people. In the passage that forms the immediate context of Morrill’s and Baker’s point, Sexby’s “we” does indeed refer to the rights of the soldiers, but of soldiers claiming their “birthrights and privileges as Englishmen.”<sup>263</sup> The question is then, what does it mean for Sexby to “slip unselfconsciously” between his rights as an Englishman and his demand of those same rights as a soldier?

Michael Mendle, in an essay in the same collection, argues that Putney can be seen as a debate between the grandees and the proponents of the *Agreement* over who was part of the commonwealth in the full political sense, a question that became particularly urgent as the soldiers faced imminent disbandment.<sup>264</sup> Indeed, a prospective return to civilian life without a clear settlement of the soldiers’ requests, especially around the question of indemnity, can be seen exerting pressure on the language of *The Case of the Armie*. *The Case* bases its demands on the principle that “all power is originally and essentially in the whole body of the people of this Nation, and [...] their free choice

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<sup>262</sup> “The Case of the Armie Truly Re-stated,” in ed. Mendle, *The Putney Debates of 1647*, 118.

<sup>263</sup> Woodhouse, *Puritanism and Liberty*, 69.

<sup>264</sup> Mendle, “Putney’s Pronouns: Identity and Indemnity in the Great Debate,” in Mendle, ed., *The Putney Debates*, 125-6.

or consent by their Representors is the only originall or foundation of all just government."<sup>265</sup> From this basic ideal, it asks for a new Parliament to be elected within a year on the basis of an expanded franchise, which would exclude those who "have or shall deprive themselves of that their freedome, either for some years, or wholly by delinquency."<sup>266</sup> *The Case* also links the specific grievances of the soldiers with respect to pay with the oppression of the people through taxation, thus aligning the interests of the army with those of the general population.<sup>267</sup> Moreover, the authors of *The Case* argue for the right of the soldiers as soldiers to petition and demand their rights as "commoners." That is, they want Parliament to acknowledge that they have a right not only to ask for the resolution of their grievances, such as arrears and indemnity, as soldiers, but that they may petition collectively on issues of national policy because, unlike mercenary soldiers, they have fought as members of the nation: "they thought we would have stood only as mercenary Souldieres, hired to serve their arbitrary power, and not remembered that we by their invitation took up armes in judgment and conscience, to preserve the nation from tyrannie and oppression, and therefore were obliged to insist upon our rights and freedoms as Commoners."<sup>268</sup> By depicting themselves as "citizen

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<sup>265</sup> Wolfe, *Levellers Manifestoes*, 212.

<sup>266</sup> Wolfe, *Levellers Manifestoes*, 212.

<sup>267</sup> Wolfe, *Levellers Manifestoes*, 213-5.

<sup>268</sup> Wolfe, *Levellers Manifestoes*, 207. This point is insisted upon twice in *The Case*. See also: "the Army took up Armes, in judgement and conscience, for the peoples just rights and liberties, and not as mercenary Souldiers, hired to serve an arbitrary power of the State, and that in the same manner it continued in armes at that time, and pag. 7. of the same Declaration, it was declared that they proceeded upon the principles of right and freedome, and upon the law of nature and Nations;: But the strength of the endeavours of many

soldiers,” they reframe their collective actions as those of “commoners” claiming their native rights. That is, *The Case* explicitly denies the difference between petitioning as members of an army and petitioning as Englishmen. *An Agreement of the People* goes one step further. While this second document restated some of the demands of the first, it eschews the details contained in *The Case*, such as specific requests for reforms on taxes, monopolies, and Church lands in order to raise money for soldiers’ pay. Instead, the *Agreement* is explicitly not a petition to Parliament, whose legislation is not deemed permanent enough to ensure the preservation of the people’s “native Rights,” but a constitutional document meant to frame a settlement of government on the foundation of the people’s consent.<sup>269</sup> While *The Case* presents its demands as the rights of the soldiers speaking as “citizen soldiers,” the *Agreement* frames its requests as rights belonging to any people living under a government that takes its power in trust from the people themselves.

The *Agreement* presents a substantial departure from previous attempts at compromise between the Army, the king, and Parliament. And indeed, upon its reading

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hath been, and are now, spent to perswade the Soldiers and Agitators, that they stand as Soldiers only to serve the State, and may not as free Commons claime their right and freedom as due to them” (Wolfe, *Levellers Manifestoes*, 202-3; emphasis mine).

<sup>269</sup> “But if any shall enquire why we should desire to joyn in an Agreement with the people, to declare these to be our native Rights, & not rather petition to the Parliament for them; the reason is evident: No Act of Parliament is or can be unalterable and so cannot be sufficient security to save you or us harmless, [...] and besides Parliaments are to receive the extent of their power, and trust from those that betrust them; and therefore the people are to declare what their power and trust is, which is the intent of this Agreement” (Wolfe, *Levellers Manifestoes*, 230).

on the first day of the debates at Putney, Cromwell's immediate reply registers this difference:

Truly this paper does contain in it very great alterations of the very government of the kingdom, alterations from that government that it hath been under, I believe I may almost say, since it was a nation. {...} I say, *if* there were nothing else [to be considered] but the very weight and nature of the things contained in this paper. Therefore, although the pretensions in it, and the expressions in it, are very plausible, and if we could leap out of one condition into another that had so specious things in it as this hath, I suppose there would not be much dispute—though perhaps some of these things may be very well disputed. How do we know if, whilst we are disputing these things, another company of men shall [not] gather together, and put out a paper perhaps as plausible as this?<sup>270</sup>

In this passage, Cromwell registers three crucial objections to the *Agreement*. The first is the fear that another document will supersede the *Agreement* as the *Agreement* superseded *The Case*. Second, while Cromwell does not necessarily reject the *Agreement's* requests, he does insist that some of its specific proposals “may be very well disputed.”<sup>271</sup> Here, the strength of the *Agreement* over *The Case* in terms of principled coherence and brevity is also what gives Cromwell pause. The *Agreement*, though proposing principles that Cromwell evidently found “very plausible,” also shows itself as requiring drastic reforms in general terms that that need to be fleshed out. In turn, Cromwell bases his main, and third, complaint on the difficulty of implementing such overarching principles of reform. Voicing an objection to which he returns several times

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<sup>270</sup> Woodhouse, *Puritanism and Liberty*, 7; underlining mine. Throughout this chapter, emendations by Woodhouse will be indicated in square brackets, my emendations in curly brackets.

<sup>271</sup> The term “specious” used by Cromwell along with “plausible” did not necessarily have the modern negative connotation. According to the OED, specious was just starting to acquire the negative connotation in the 1600s. In this context, it is clear that Cromwell meant both words in their positive sense.

in his reply to the reading of the *Agreement*, Cromwell argues that changing the fundamental nature of the political organization of England requires careful consideration of the nature of the people. The nation cannot simply “leap out of one condition into another.” Before supporting any reform, Cromwell continues, the Army must make sure that “the spirits and temper of the people of this nation are prepared to receive and to go on along with it.”<sup>272</sup>

Cromwell’s third concern stems from the *Agreement*’s claim to speak for the nation as a whole by framing its demands in terms of the “native Rights” of the English people. In addition, the *Agreement* posits a specific way of addressing the grievances of the people based on law-reform by embedding the rights of the people in a constitutional framework that sets the bounds to, and at the same time stands outside of, the nation’s body of law and the conjoined form of political association. This attempt, as I will argue below, stands in striking contrast with what had been traditional experiences of the recovery and defense of particular rights in England. The Putney debates have been framed as presenting two different, and competing, versions of rights and law: on the one side, we have Ireton defending the fundamental law of England, standing since time immemorial and in which political participation is based on a “permanent interest” in the nation founded on property; on the other side, we have *An*

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<sup>272</sup>Woodhouse, *Puritanism and Liberty*, 8. Cromwell elaborates this point further: “It is not enough to propose things that are good in the end, but suppose this model were an excellent model, and fit for England and the kingdom to receive, it is our duty as Christians and men to consider the consequences, and to consider the way” (Woodhouse, *Puritanism and Liberty*, 8).



*Agreement* and its Leveller-influenced promoters arguing for a new constitution based on the free consent of the people exercising their natural rights which had been taken away by the Norman Conquest.<sup>273</sup> This framework for the debates explains such exchanges as those between Ireton, Rainborough, Petty, and Cowling on the second day over the extension of the “birthright” to the franchise.<sup>274</sup> However, this theoretical quarreling over the bases, either in natural or common law, of right took place within established practices for dealing with competing claims to rights under different laws within the legal system. Thus, I ground my analysis of the theoretical conflict at Putney in a comparison to the practical experience of individuals with the legal resolution of conflicts of jurisdiction between systems of law in England. In this section, after following the key points of the debate over the birthrights of soldiers and Englishmen at Putney, I turn to the example of rights to (and to be free from) tithes during the sixteenth- and seventeenth-century. I choose this particular example for two reasons. First, tithe reform was a central point of contention throughout the Civil War and *The Case* engages the issue.<sup>275</sup> Second, the question of tithes allows us to see how in practice two different traditions and conceptions of the law, canon and common, negotiated the problem of conflicting rights. When a right to tithes was claimed or challenged, the lawsuit would involve two different jurisdictions that clashed over whose rights to

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<sup>273</sup> For this standard account, see Woolrych, *Soldiers and Statesmen*, 220-2 and Scott, *England's Troubles*, 281-9.

<sup>274</sup> See Woodhouse, *Puritanism and Liberty*, 52-3.

<sup>275</sup> Wolfe, *Levellers Manifestoes*, 216.

uphold and, more fundamentally, on what could count as a right.<sup>276</sup> At Putney, natural law is used to demand rights that are, according to their proponents, self-evidently prior and thus more valid than those embodied in positive and customary law. But who gets to determine what rights are granted by natural law? And who is silenced when custom is set aside? The debates at Putney are an opportunity to see how arguments for the foundation of a new political organization based on consent are worked out in the context of a lack of agreement in the debate itself as well as in the absence of the explicit consent of the people.

The question of conflicting rights and conflicting conceptions of the law appears very early on in the debates. This is in part because any compromise between Parliament, king, and Army would have to balance Parliamentary privilege with royal prerogative, as well as the Army's demands and the claims to fundamental rights of the people set forth in *The Case* and the *Agreement*. Such balance would be difficult to achieve and indeed Sexby depicts the task as hopeless from the very start of the debate: "I think all here {...} have leaned on, and gone to Egypt for help. {...} The cause of our misery [is] upon two things. We sought to satisfy all men, and it was well; but in going [about] to do it we have dissatisfied all men. We have laboured to please a king, and I think, except we go about to cut all our throats, we shall not please him; and we have

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<sup>276</sup> It is also relevant that Wildman, Ireton's most vocal opponent on the second day of the debates, had had some legal education ("Wildman, Sir John (1622/3–1693)," Richard L. Greaves in *Oxford Dictionary of National Biography*, ed. H. C. G. Matthew and Brian Harrison (Oxford: OUP, 2004); online ed., ed. Lawrence Goldman, January 2008, <http://www.oxforddnb.com/view/article/29405> (accessed July 18, 2012)).

gone to support an house which will prove rotten studs—I mean the Parliament, which consists of a company of rotten members.”<sup>277</sup> Punning on the term “the houses of Parliament” and on the metaphor of a nation as a building with its laws and political system as foundations, Sexby depicts the Parliament as particularly unfit to provide a settlement.<sup>278</sup> This claim that neither king nor Parliament can be trusted is one to which Sexby and the other agents return to repeatedly during the debates. On the third day, the meeting reconvening after a morning spent seeking God, Francis Allen, Nicholas Cowling, and Henry Lilburne explain that they had found confirmation of this same distrust of king, Lords, and “Norman Laws” in answer to their prayers.<sup>279</sup> In response, finding such specific prompting from God to be worrisome, Cromwell steers the discussion away from direct divine revelation to the issue of legitimate political authority. Crucially, Cromwell attempts to create boundaries on how far the Army can influence Parliament on civil matters:

For the actions that are [now] to be done, and those that must do them, I think it is their proper place to conform to the Parliament, that first gave them their being. {...} And therefore I think there is much [need] in the Army to conform to those things that are within their sphere. For those things that have been done in the Army, as this of [issuing] *The Case of the Army Truly Stated*, there is much in it useful, and to be condescended to; but I am not satisfied how far we shall [do

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<sup>277</sup> Woodhouse, *Puritanism and Liberty*, 2. Sexby’s distrust of Parliament was shared by other soldiers. For a discussion of the eroding sense of obligation from members of the army towards Parliament in the late 1640s, see Barbara Donogan, “The Army, the State and the Soldier in the English Civil War,” in *The Putney Debates of 1647: The Army, the Levellers and the English State*, ed. Michael Mendle (Cambridge: Cambridge University Press, 2001), 79-102.

<sup>278</sup> For an example of this imagery during the pamphlet wars of the 1640s, see Dudley Digges, *The unlavfulness of subjects taking up armes against their soveraigne*, 7 and 15.

<sup>279</sup> Woodhouse, *Puritanism and Liberty*, 95-6.

well to] press [it]. Either they are a Parliament or no Parliament. If they be no Parliament they are nothing, and we are nothing likewise. If they be a Parliament, we are [not to proceed without them in our plan for settlement, but] to offer it to them.<sup>280</sup>

Cromwell, after two full days of debate, returns to the problem he had originally voiced.

While there is much in *The Case of the Armie* that he finds commendable, proposals for reform must be implemented, as far as possible, within the legal and political framework of the nation. To attempt to do otherwise is to undermine the legitimacy of the Army as well as of Parliament. If the current Parliament is no legitimate Parliament, the Army is “nothing likewise.” Cromwell’s deflection of Allen’s, Cowling’s, and Lilburne’s prophetic statements is a striking departure from his habitual providentialism.<sup>281</sup> For instance, in a letter dated 1 September 1648, Cromwell reminds Oliver St. John that the recent victory at Preston can only be due to the providence of God, who “will not fail His People.” During the war, Cromwell continues, Isaiah 8.10 has been a “great stay” to him: “Take counsel together, and it shall come to nought; speak the word, and it shall not stand: for God is with us.”<sup>282</sup> In this letter, Cromwell typically interprets military victory as a dispensation of God; human planning comes “to nought” in the face of divine providence. Strikingly, at Putney, his use of Scripture is much more limited.<sup>283</sup> In

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<sup>280</sup> Woodhouse, *Puritanism and Liberty*, 97.

<sup>281</sup> On the topic of Cromwell’s providentialism, especially during the Protectorate, see Blair Worden, “Providence and Politics in Cromwellian England,” *Past & Present* 109 (1985): 55-99.

<sup>282</sup> *The Writings and Speeches of Oliver Cromwell*, I:644.

<sup>283</sup> Just before the passage quoted above, Cromwell reminds Allen, Cowling, and Lilburne that “the King is king by contract; and I shall say, as Christ said, ‘Let him that is without sin cast the first stone’”

response to claims of divine inspiration by the proponents of the *Agreement*, Cromwell bases the authority of the Army on legal, rather than Biblical, grounds.

Cromwell's uncharacteristic avoidance of providential and Scriptural language is intrinsically connected with his conception of political authority as demonstrated at Putney. By focusing on the issue of legitimate authority, Cromwell attempts to reframe the question of whether the Army should "press" *The Case* in terms not of the value of the proposals themselves, but on whether they have a right to do so to begin with. Traditionally, parliamentary privilege meant that Parliament was not to be pressured while debating pending legislation.<sup>284</sup> Cromwell warns that for the soldiers to collectively petition on non-strictly-military matters without consulting with the officially sanctioned parliamentarian commissioners would amount to a statement that the Army is questioning Parliament's authority and legitimacy. This, in turn, would impugn the identity of the Army as a legitimate Army, rather than as a gang of thieves, to paraphrase Sexby from 1657. On the previous day, Ireton had made the point even more forcefully and warned that such intrusion in government would be an usurpation

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(Woodhouse, *Puritanism and Liberty*, 97). While Scripture is invoked, it is done through a general moral sense rather than as indicating specific works of Providence in contemporary events.

<sup>284</sup> The breach of parliamentary privilege during the Civil War was acutely felt as the City of London had at times felt entitled to pressure Parliament on matters of national concern given their financial support of the Parliamentary cause against the king. While customarily the City corporation had been allowed to petition Parliament for matters that affected it directly, it was a breach of privilege to interfere with general legislation. For the issue of Parliamentary privilege and its breach in 1646 and 1647 by the Corporation of the City of London, see Kishlansky, *The Rise of the New Model Army*, chapter four.

of political power and a clear attempt to make the Army into the “conclusive authority of the kingdom”: “Our indemnity must be [owed] to something that at least we will uphold, and we see we cannot hold [the Army] to be a conclusive authority of the kingdom.”<sup>285</sup> For Cromwell, the only thing that could warrant such intrusion in political matters on the part of the Army would be a clear sign of support from “the people”: “If I could see a visible presence of the people, either by subscriptions or number, [I should be satisfied with it]; for in the government of nations that which is to be looked after is the affections of the people.”<sup>286</sup> What this sign would consist of is unspoken. But in response, Sexby changes register and legitimizing language by assuming the role of Jeremiah. While both Cromwell and Ireton ground the range of legitimate actions of the Army, including petitioning, within a system of authority in which the Army must ultimately be authorized by a (legitimate) civilian government or “a visible presence of the people,” Sexby attempts to bypass such concerns by projecting the assembled members of the General Council within Biblical history. Sexby warns that Parliament will certainly restore the king and uphold his prerogative and if the Army allows this to happen, “{w}e are going about to set up that power which God will destroy.” Those present at Putney are “in a wilderness condition,” and Sexby prophetically urges that “{w}e find in the word of God, ‘I would heal Babylon, but she would not be healed.’ I

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<sup>285</sup> Woodhouse, *Puritanism and Liberty*, 94.

<sup>286</sup> Woodhouse, *Puritanism and Liberty*, 97.

think that we have gone about to heal Babylon when she would not. We have gone about to wash a blackamoor, to wash him white, which he will not.”<sup>287</sup> Embedding the debates in Scriptural time allows Sexby to argue that the traditional English constitution of king, Lords and Commons is to be forsaken because “her judgment reacheth unto heaven.”<sup>288</sup> In this mode, Sexby can predict the outcome of a compromise with Charles I as a foregone conclusion.

Sexby and the other proponents of the *Agreement* justify this claim for military authority in political matters through their arguments with Ireton in the first two days of the debates. After the first reading of the *Agreement* on October 28<sup>th</sup>, Cromwell guides the debate to the question of previous engagements. To “insist upon good things” in their proposals is not enough. The Army must make sure that they don’t transgress “without faith; for faith will bear up men in every honest obligation,” on what they engaged to do in previous declarations.<sup>289</sup> John Wildman responds by asking whether the Army’s previous engagements are just or not: “they do apprehend that whatever obligation is past must afterwards be considered when it is urged whether [the engagement] were honest and just or no; and if it were not just it doth not oblige the persons, if it be an oath itself.”<sup>290</sup> Wildman here speaks on behalf of the other new

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<sup>287</sup> Woodhouse, *Puritanism and Liberty*, 102-3; Sexby quotes from Jer. 51.9; 13.3.

<sup>288</sup> “We would have healed Babylon, but she is not healed: forsake her, and let us go every one into his own country: for her judgment reacheth unto heaven, and is lifted up even to the skies” (Jer. 51.9).

<sup>289</sup> Woodhouse, *Puritanism and Liberty*, 8-9.

<sup>290</sup> Woodhouse, *Puritanism and Liberty*, 10.

agents — “they” in the quote — who are not present at the General Council. Their claim that unjust previous engagements do not bind becomes a central point of contention between Wildman and Ireton. But Ireton reintroduces a presence that had been elided by the agents’ argument and that is implicit in Cromwell’s statement that the Army must not break their faith by renegeing on their promises. Engagements, Ireton points out, are from one party to another:

But to take it as it is delivered in general, [that we are free to break, if it subsequently appear unjust], whatever engagement we have entered into, though it be a promise of something to another party, wherein that other party is concerned, wherein he hath a benefit if we make it good, wherein he hath a prejudice if we make it not good: this is a principle that will take away all commonwealth[s], and will take away the fruit of this [very] engagement if it were entered into; and men of this principle would think themselves as little as may be [obliged by any law] if in their apprehensions it be not a good law.<sup>291</sup>

Ireton links the keeping of engagements to the preservation of commonwealths; those who believe that they can break an engagement if they judge it unjust may just as well break a law if “in their apprehensions it be not a good law.” This formulation highlights the problem of an individual asserting the right to judge, alone, the justness of an engagement. To do so implies that he may release himself from obligations to others independently of the other party in the engagement.

As his reply to Wildman develops, Ireton draws a distinction between being “absolved” of an obligation, the word he uses to characterize Wildman’s position with

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<sup>291</sup> Woodhouse, *Puritanism and Liberty*, 11.



respect to the previous engagements of the Army, and finding oneself unable to perform what one engaged due to fears that it is unjust or unlawful: “when we are convinced of them {previous engagements}, that they are unjust, truly yet I must not fully concur with that gentleman’s principle, that presently we are, as he says, absolved from them {...}. Though we were convinced that we are not bound to perform it, yet we should not make it our act to break [it].”<sup>292</sup> The word absolved carried then, as it does now, the sense of being excused or discharged of an oath or promise. However, at the time of the debates, it carried the now rare meaning of accomplishing or completing an act and thus discharging oneself from an obligation.<sup>293</sup> While Ireton’s primary sense must be that of being excused from an obligation, at the same time, the availability of absolving oneself by completing an action or an obligation brings out even more strongly his understanding that *not* to fulfill an obligation is an act in and of itself that damages the party we are obliged to and that thus “we should not make it our act to break” an obligation. To deem a previous engagement as unjust does not automatically dissolve the engagement, but it rather requires an action from the parties involved. To absolve oneself, in Ireton’s representation of Wildman’s and the new agents’ position, can then

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<sup>292</sup> Woodhouse, *Puritanism and Liberty*, 12.

<sup>293</sup> OED, 3b. The OED points to an illustration of this second meaning in Milton’s usage in *Paradise Lost*: “what cause/ move the Creator in his holy rest/ Through all eternity so late to build/ In chaos, and the work begun, how soon/ Absolved, if unforbid thou may’st unfold” (VII.90-4). Milton uses the meaning of completing an act as the primary sense of the line. But the now-primary sense of “absolved” indicating being excused allows Milton to build tension, compounded by the line-breaks which place “Absolved” right next to “if unforbid,” by hinting at the blasphemous implication that God would have to be absolved for his act of creation.

imply that no amends are needed and that one can self-judge to have completed or done enough to *justly* not fulfill a promise without an act of “absolution” from the other party. It is this claim of independence of judgment in engagements that Ireton views as threatening the commonwealth.

Cromwell, after Rainborough answers Ireton by insisting that unjust commitments may be broken, returns to Ireton’s reminder that engagements are between two parties: “Our engagements are public engagements. They are to the kingdom, and to every one in the kingdom that could look upon what we did publicly declare, could read or hear it read. They are to the Parliament. And it is a very fitting thing that we do seriously consider of the things.”<sup>294</sup> This is answered by an agent identified by Clarke as “Bedfordshire Man” who redefines the issue of unjust engagements in terms of conflicting rights:

I apprehended, at least I hope, that those engagements have given away nothing from the people that is the people’s right. It may be they have promised the King his right, or any other persons their right, but no more. If they have promised more than their right to any person or persons, and have given away anything from the people that is their right, then I conceive they are unjust. {...} I conceive that for the substance of the paper, it is the people’s due.<sup>295</sup>

For the proponents of the *Agreement*, the Army is only obligated as far as its engagements undertake to uphold giving “all persons,” the king, Parliament, and the people, “their right” and upholding the “people’s due.” This stance states the

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<sup>294</sup> Woodhouse, *Puritanism and Liberty*, 16.

<sup>295</sup> Woodhouse, *Puritanism and Liberty*, 18; Woodhouse proposes that the “Bedfordshire Man” may be the Agent from Whalley’s Regiment (n. 1, p. 17).

understanding that the *Case* and the *Agreement* are expressions of the just balance of rights which the Army fought for in the war. In this view, what is due to each person in England, including the king, is not something to be negotiated or that has been established through previous engagements, but it is rather a set of rights independent of both the Army's promises and what is granted by positive law. For Cromwell and Ireton, on the other hand, the Army's engagements are a form of contract between the Army, "every one in the kingdom," and Parliament. The existence of such a contract gives both the people and Parliament rights over the Army, rights that cannot be discarded unilaterally by the Army. That is, in his speeches at Putney, rights are understood by Ireton not absolutely, but in specific relationships of right, duty, law and contracts between individuals. Similarly, for Ireton, what is "just" in an engagement is different from what is "evil" or a "sin" in an absolute sense. A man may break an engagement if it bound him to "a thing that is not just—to a thing that is evil, that is sin if he do it."<sup>296</sup> But in the question of whether the Army may break their engagements, what is at stake is "justice between man and man" and not what is sinful: "But when we talk of just, it is not so much of what is sinful before God (which depends upon many circumstances of indignation to that man and the like), but it intends of that which is just according to the foundation of justice between man and man."<sup>297</sup> Human justice, he

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<sup>296</sup> Woodhouse, *Puritanism and Liberty*, 26.

<sup>297</sup> Woodhouse, *Puritanism and Liberty*, 26.

continues, is based on the keeping of covenants and positive law itself is a covenant between people. In this conception of justice, the law of nature cannot specify particular rights to, for instance, property, but simply that a right to property in general is allowed.<sup>298</sup>

This question of rights takes over the rest of the first day of the debates as Wildman, supported by Rainborough, enters into a protracted argument with Ireton on what is the foundation of the rights of the people. J.G.A. Pocock, in *The Machiavellian Moment*, frames the argument between Ireton and Cromwell and the proponents of the *Agreement* as a fight between, on the one side, a conception of positive law as necessary for determining what is just, that each man should have his own, and, on the other, the position that the law of nature could be appealed to in order to restore the original rights and freedom of the people.<sup>299</sup> In this influential reading of Ireton's position, the "rights and personality" of each individual in a society are given to him by "law and property."<sup>300</sup> That is, the rights of the individual as understood by Ireton are specified by

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<sup>298</sup> Woodhouse, *Puritanism and Liberty*, 25-6. This does not mean that Ireton does not have a concept of rights based on natural law. As he explains on the second day of the debate in his reply to Petty's claim for a right to "a voice" in government, Ireton sees natural rights as pertaining to what is necessary for survival. However, to claim that further rights, such as franchise, can be derived from the law of nature is to dissolve all particular rights framed by positive laws: "You infer this to be the right of the people, of every inhabitant, because man hath such a right in nature, though it be not of necessity for the preserving of his being; [and] therefore you are to overthrow the most fundamental constitution for this. By the same rule, show me why you will not, by the same right of nature, make use of anything that any man hath, [though it be not] for the necessary substance of men. Show me what you will stop at; wherein you will fence any man in a property by this rule" (Woodhouse, *Puritanism and Liberty*, 63).

<sup>299</sup> Pocock, *The Machiavellian Moment*, 375-6.

<sup>300</sup> Pocock, *The Machiavellian Moment*, 375.

the law of England which, like the freehold property that Ireton insists is an essential requirement for franchise, must be understood as an “inheritance of customs from time immemorial, since there was no other way of anchoring the individual, from birth and at the moments of majority and inheritance, within a structure of law and property he could be obliged and committed to defend.”<sup>301</sup> I will turn to Pocock’s larger argument in *The Machiavellian Moment* in greater detail in chapter five, but at this point, it suffices to say that in Pocock’s analysis the focus is on the potential of natural law, combined with a millenarian vision, to radically reform law and social institutions being opposed by Ireton in the name of property and laws existing since time immemorial.<sup>302</sup> Pocock’s discussion of Putney focuses on the relationship between individual and the law in defining each individual’s rights with respect to those of others. But this analysis leaves out Cromwell’s and Ireton’s insistence that the Army and the proponents of the *Agreement* cannot judge for themselves whether they may justly be absolved from their previous engagements because an engagement sets up obligations and rights between parties rather than impersonally between individuals and the law. I now turn to the passages that lead to the conflict between positive and natural law at Putney in light of Cromwell’s and Ireton’s insistence that engagements and contracts are fundamentally interpersonal.

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<sup>301</sup> Pocock, *The Machiavellian Moment*, 375.

<sup>302</sup> Pocock points out that this did not make Ireton unwilling to accept and propose far reaching reforms, but these reforms had to be grounded on some form of positive law rather than in the law of nature (Pocock, *The Machiavellian Moment*, 376).

The main point of disagreement between grandees and the supporters of the *Agreement* is not the extent of needed reform, but rather how it is to be achieved. As Cromwell argues, "I cannot see but that we all speak to the same end, and the mistakes are only in the way."<sup>303</sup> Cowling, on the third day, expressed the agents' view of positive law as a means to deny the people their rights that must be reformed by the Army in its most stark form: "the sword was the only thing that had from time to time recovered our right[s], and which he {Cowling} ever read in the word of God had recovered the rights of the people; that our ancestors had still recovered from the Danes and Normans their liberties, by the sword."<sup>304</sup> Cowling moves without pause between the "rights of the people" in Scripture, the rights of "our ancestors," and "our rights." In this passage, "rights" are abstracted from their specific context; they are simply rights that must be recovered if taken away. For Cowling, English law denies, rather than frame and protect, the rights of the people. In this formulation, the fundamental rights of the English people have been unjustly taken away and the soldiers, as both soldiers and Englishmen, have the means to reform the law so as to recover their lost rights. Similarly, the framework of the *Agreement*, which requires the people to sign on to a fundamental constitution by explicit consent, denies the possibility that the people may lose or gain rights not through foreign oppression, but through usage. Moreover,

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<sup>303</sup> Woodhouse, *Puritanism and Liberty*, 104.

<sup>304</sup> Woodhouse, *Puritanism and Liberty*, 96.

through its recourse to natural law, the *Agreement* also rejects Ireton's position that whether those rights can be reclaimed against the rights of other parties cannot be judged *a priori* outside the frame of customary action and positive law.

How could rights be gained or lost through usage? *The Case of the Armie* points to tithes as an example of an infringement of rights which supported by "oppressive statutes, enforcing all persons though against their consciences to pay Tythes, whereby the husbandman cannot eate the fruit of his labours."<sup>305</sup> This was not a new complaint. By the sixteenth century, canon law demanded that every person pay a tenth of his income to the parish church.<sup>306</sup> In practice, however, it was not unusual for tithes to be converted to a fixed customary payment which could amount to less than the full tenth to be paid. This was the case for both England and Europe prior to the Reformation. In post-Reformation England we see a growth in litigation over tithes in ecclesiastical courts into the seventeenth-century.<sup>307</sup> This is due to changes in legislation in the previous century. On the one hand, statutes passed under Henry VIII and Edward VI had upheld the right to pay tithes according to established usage rather than to the letter of the law. But at the same time, post-Reformation legislation and procedural changes encouraged tithe holders to sue for the full tenth by allowing, for instance, lay "farmers"

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<sup>305</sup> Wolfe, *Levellers Manifestoes of the Puritan Revolution*, 216.

<sup>306</sup> R. H. Helmholz, *Roman Canon Law in Reformation England* (Cambridge: Cambridge University Press, 1990), 90. For simplicity sake, I am not distinguishing between praedial, personal, and mixed tithes, which Helmholz describes in *loc. cit.*

<sup>307</sup> Helmholz, *Roman Canon Law in Reformation England*, 90.

of tithes to sue for payment in their own name.<sup>308</sup> Tithe holders preferred to sue in ecclesiastical courts as canon law held that the full tenth was owed unless one could strictly demonstrate a specific grant or a valid custom for a different *modus decimandi*, that is, for a prescriptive right to pay less than the full tenth. Moreover, demonstrating a custom for a lower payment that would hold in an ecclesiastical court proved difficult as any deviation from the customary payment or any discrepancy in the witnesses' testimony as to the validity of the custom could lead to a loss of the right.<sup>309</sup> Common law courts, however, did not let the matter rest in the hands of ecclesiastical courts. Here, we see a contention between two areas of jurisdiction and two claims to rights, one based on ecclesiastical courts who claimed that the full tenth was due by *jure divino* and the other by common law courts that upheld the validity of customary rights. How did

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<sup>308</sup> Helmholz, *Roman Canon Law in Reformation England*, 91-4. Technically canon law did not allow laymen to hold tithes, but they could "farm" them for a cleric. Post-Reformation legislation still used the terminology of tithe farmers even though the tithe was held by a layman (Helmholz, *Roman Canon Law in Reformation England*, 91). Christopher Hill, in *Economic Problems of the Church: From Archbishop Whitgift to the Long Parliament* (Oxford: Clarendon Press, 1956), traces the difficulty that the clergy faced in collecting tithes in the sixteenth- and seventeenth-century (77-131). In this time period, the church found it difficult to provide preaching clergy to parishes where a *modus decimandi* had been established before the steep inflation in cost of living, including food, that occurred in the period from 1500 to 1640 (108-113). In addition to inflation, clergymen had to contend with economic developments that made assessing tithes more difficult. It was well established that tithes were due on the fruits of the earth as "free gifts from God," but questions of what constituted such free gifts became more common as forms of production changed. For instance, English agricultural production moved away from wheat farming towards pasture, vegetable-gardening and fruit growing in the period under question and tithing was not clearly established on these new industries (80-82). This meant that new wealth escaped tithing and, as Hill argues, it was often the wealth of the same groups who opposed royal attempts to collect greater tax revenues through such "innovations" as Ship Money and forced loans (120-21).

<sup>309</sup> Helmholz, *Roman Canon Law in Reformation England*, 95-9. According to civil law, to establish a matter of fact, there was a need of the testimony of two witnesses who agreed on all matters of substance. Common lawyers, starting in the reign of Elizabeth, attempted to stop ecclesiastical courts from implementing this rule (Helmholz, *Roman Canon Law in Reformation England*, 179-80).



common law courts uphold rights made by mere custom against claims made in the name of *jure divino*, which gave a presumptive and, according to canon law stronger and higher, right to the full payment of tithes? Common law courts attempted to take over the jurisdiction of tithes litigation from ecclesiastical tribunals by insisting that if a *modus decimandi* were pleaded in order to pay tithes other than the full tenth, then only common law courts could establish the validity of a custom. That is, common lawyers maintained that customs could not be judged by ecclesiastical courts because they could only be affirmed by the judgment of a jury comprising twelve men from the area in which the custom was allegedly in force.<sup>310</sup> Both sets of courts and lawyers, canon and common, argued that they had the authority to determine whether a custom was sufficiently established to count as a valid exception to the letter of the law. But while common law made proving a custom easier, neither side attempted to deny that local custom, that is, repeated usage, could effectively give rights against existing law and that interruption or change in usage could remove a right. Common lawyers, however, defended their courts' jurisdiction by insisting that custom could only be judged by the people who effectively formed it as represented by a jury; a judge in an ecclesiastical court could not substitute his judgment for theirs.

The supporters of the *Agreement* at Putney would of course refuse to identify their argument from natural law with the ecclesiastical courts' claims of jurisdictions

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<sup>310</sup> Helmholz, *Roman Canon Law in Reformation England*, 99-100.

based on canon law; the Army, as Sexby insists, is not composed of “mere mercenary soldiers,” but of Englishmen fighting to recover the rights of the people against enslaving positive law. And in particular, as the focus on the franchise on the second day of the debate demonstrates, they supported the right of a broad segment of Englishmen to have a voice in the formation of government and the creation of laws. Ironically, this commitment is based on an understanding of natural law that undervalues the expression of the natural reason of common people through customs and repeated action. By demanding reform on the basis of the law of nature, independent of the framework of English law, they silence the “voice” that the people have expressed in legislation through action rather than explicit consent. As the example of Sexby’s representation of the people in *Killing No Murder* indicates, such reductive conception of the law of nature can as easily be used to advocate a claim that the “vulgar” cannot judge in matters of government. That the same understanding of the law of nature is the basis of both *An Agreement* and *Killing No Murder* can be seen in the letter appended to the *Agreement*: “if any shall enquire why we should desire to joyn in an Agreement with the people, to declare these to be our natives Rights, & not rather petition to the Parliament for them; the reason is evident: No Act of Parliament is or can be unalterable, and so cannot be sufficient security to save you or us harmless, from what another Parliament may determine, if it should be corrupted.”<sup>311</sup> The requests of

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<sup>311</sup> Wolfe, *Levellers Manifestoes*, 230; underlining mine.

the *Agreement* vary from issues of the frequency of parliaments to the soldiers' indemnities, that is, they concern both the settlement of the nation at large and the immediate needs of the soldiers. For the authors, neither type of request can be trusted to a Parliament. And while the fear that a Parliament may become hostile to the soldiers was well-grounded in the recent experience of the Army, it is important that *no* Parliament, rather than simply the present one, is to be allowed to interfere with the rights demanded in the main body of the document. The *Agreement* speaks of a willingness to prevent any future judgment on soldiers' action from civilian government.

A similar letter, justifying the writing of *The Case*, anticipates both the rhetoric of the *Agreement* and the problem of judgment I have traced in the debates at Putney. The letter to Fairfax appended to *The Case* states that the requests of the authors have been made according to the promptings of their conscience; they write because they "find such deep obligations upon [their] consciences, written naturally by the finger of God in [their] hearts." Therefore, they must pursue such obligations even against orders:

for, Sir should you [Fairfax], yea, should the whole Parliament or Kingdome exempt us from this service, or should command our silence & forebearance, yet could not they nor you discharge us of our duties to God, or to our own natures. [...] for all forms are but as shadowes & subject to the end, & the safety of the people is above all forms, customes, &c. and the equitie of popular safettie is the thing which justifieth all forms, or the change of forms for the accomplishment thereof.<sup>312</sup>

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<sup>312</sup> Wolfe, *Levellers Manifestoes*, 219-20.

The language of forms and shadows is adopted from Hebrews 8: “there are priests that offer gifts according to the law:/ Who serve unto the example and shadow of heavenly things, as Moses was admonished of God when he was about to make the tabernacle: for, See, saith he, that thou make all things according to the pattern shewed to thee in the mount.”<sup>313</sup> The “pattern” of legal and political reform for *The Case* is “the equitie of popular safettie” and consequently all customs and laws can be discarded in order to preserve the people. The language of forms and shadows recalls that used by Sexby in *Killing No Murder*. As Sexby in 1657 will justify foregoing the “solemnities” of the law by the authority of natural and divine law, the authors of *The Case* appeal to their consciences and “duties to God” to persist in “this service” even if “the whole Parliament and Kingdome exempt” them. This passage from *The Case* exemplifies the obverse of the problem identified by Ireton around the issue of previous engagements at Putney. As we have seen, during the debate, the proponents of *An Agreement* insisted that their own judgement sufficed to clear them of the obligation to keep the previous engagements; they did not need to be “absolved” by others. Here, the authors, punning on the recent attempt to “discharge” the soldiers of the New Model from their positions, refuse to be cashiered from their duty to press the demands of *The Case*.<sup>314</sup> The agents present themselves as engaged upon a service from which they cannot be released even

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<sup>313</sup> Hebrews 8.4-5.

<sup>314</sup> According to the OED, “discharge” did have connotations specifically associated with the cashiering of soldiers (s.v. “discharge v.,” 5b).

by “the whole Parliament or Kingdome.”<sup>315</sup> What is, however, left unanswered by the letter is to whom they owe this service. By insisting on a duty to serve, *intransitively*, the authors can express a right to write and petition which recognizes no other authority than the duty itself to perform this service.<sup>316</sup> For the proponents of the *Case* and the *Agreement*, natural law is the source of the people’s natural rights. As such, it can be called upon as more fundamental than the positive laws of England in order to dissolve human laws, customs, and the institutions formed by them, when it is judged that these same laws, institutions, and customs impinge on the safety of the people and their rights.

As we have seen, Ireton feared that such claims from natural law would dissolve all “civil right.”<sup>317</sup> But appeals to natural law need not sweep away all laws and custom wholesale. The idea that positive laws must agree with the law of nature in order to have legitimate authority had been used in fact to defend the customs of a people against zealous reformers by Aquinas. In the *Summa*, Aquinas points out that a law that

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<sup>315</sup> “Service” had not yet acquired the sense of “military service.”

<sup>316</sup> Compare with Milton’s link between serving and waiting on God in his sonnet, *On His Blindness*. In the sonnet, a overly willful desire to “serve” (5) is reminded by “patience” that “they serve him best” who “bear his mild yoke” (11) and that they “also serve who only stand and wait” (14). On the connection between the ideals of serving God and Christian liberty in Milton, see Stanley Fish, *How Milton Works* (Cambridge, MA: Harvard University Press, 2001), 319-325.

<sup>317</sup> Ireton had also made the point on the second day: “if you make this the rule I think that you must fly for refuge to an absolute natural right, and you must deny all civil right {...}. This, I perceive, is pressed as that which is so essential and due: the right of the people of this kingdom, and as they are people of this kingdom, distinct and divided from other people, and that we must for this right lay aside all other considerations; this is so just, this is so due, this is so right to them” (Woodhouse, *Puritanism and Liberty*, 53).

contradicts natural law “will not be law, but a corruption of law,”<sup>318</sup> and, as MacIntyre argues in “Natural Law as Subversive: the Case of Aquinas,” this understanding of the relationship between legitimate human laws and the law of nature can have radical consequences, but consequences that point in the opposite direction than the one advocated by the promoters of the *Agreement*. Aquinas argues that human laws are constructed by natural human reason from its understanding of the law of nature, and consequently “the vulgar” are capable of knowing the precepts of natural law.<sup>319</sup> The manner in which these precepts are known is of crucial importance to Aquinas’s conception of human law and this, in turn, brings into relief the devaluing of the reason of common people implicit in the *Agreement* and its proponents’ arguments at Putney. Individuals acting in accordance to the precepts of natural law need not to explicitly articulate these precepts each time they engage in an activity, but it is in participating in activities with others who respect and organize their actions by these principles that we learn the precepts of the law of nature: “[w]e come to know them practically as precepts whose binding authority is presupposed in any situation in which learning and enquiry between rational individuals about their individual and common goods can be advanced and by any relationship in which individuals can conduct themselves with

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<sup>318</sup> *ST*, Ia-IIae, q. 95, art. 2.

<sup>319</sup> Alasdair MacIntyre, “Natural Law as Subversive: the Case of Aquinas,” *Ethics and Politics: Selected Essays* (Cambridge University Press, 2006), II:47. This is not to say that Aquinas argues that all persons know equally well what the good is, but just that, in so far that they are rational, they will recognize the precepts of Natural Law.

rational integrity."<sup>320</sup> In particular, the precepts of natural law and the requirements of justice which are defined by it are presupposed in and essential to the organization of any society that aims at the common good. Any positive law that violates such precepts will be unjust and, crucially, common people have the ability to judge which laws are unjust and ought not to be obeyed.

Aquinas credits every rational individual with the ability to make sophisticated discernments with respect to what it means for a law to be unjust and whether, in certain situations, disobeying an unjust law may not cause grater harm than obeying it:

laws may be unjust, when they are not conducive to the common good, when they are imposed by someone without the requisite authority to do so, and when, although designed to promote the common good, they place a disproportionate burden on some for the benefit of others. Such laws no one is bound to obey. What each person has to judge is whether disobedience to unjust laws may not cause scandal or some greater harm, to a degree that gives one good reason to conform out of prudence, rather than from a respect for justice.<sup>321</sup>

From this understanding of the ability of common people to judge positive laws and to understand the precepts of natural law, there are two conclusions to which Aquinas arrives that are relevant to the conception of rights based on natural law debated at Putney. The first is that the people are the source of all legislative authority.<sup>322</sup> And the second is that "laws can be changed and published by repeated actions, as much as by speech, and indeed that from actions repeated so that they have become customary

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<sup>320</sup> MacIntyre, "Natural Law as Subversive," 48.

<sup>321</sup> MacIntyre, "Natural Law as Subversive," 49.

<sup>322</sup> MacIntyre, "Natural Law as Subversive," 50.

'something can be established which has the force of law.'"<sup>323</sup> In turn, this means that the utmost care must be taken in considering whether to change the laws and customs of a nation.<sup>324</sup> This does not mean that common people are not capable of ignorance and shared injustice, but it does mean that they can be brought to overcome their ignorance by arguments to which they are capable of assenting rationally.<sup>325</sup> Moreover, it also means that the customs and laws of a nation cannot be seen as mere "shadowes" or "formalities." It follows from Aquinas's discussion that to appeal to the law of nature in order to argue that a law or custom must be changed as unjust should be done only when prompted by strong reasons and that the argument for such change must be intelligible and convincing to "the vulgar." In particular, a claim such as that made in *The Case and the Agreement* that the demands put forward by their authors must be put beyond the reach of all future legislative action would be suspicious because it insists that the law be modified by an act of a non-legitimate legislative authority, i.e., the Army, and that such modification could at no point be discovered as defective and therefore in need of change. From this vantage point, the understanding of natural law advocated by the promoters of the *Agreement* is revealed as divorced from a concomitant conception of natural reason as embodied in the customs and repeated actions of the people. And, in turn, this indicates that the agents' claims of fighting for the rights of

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<sup>323</sup> MacIntyre, "Natural Law as Subversive," 51; quoting Aquinas, *ST*, Ia-IIae., q. 97, art. 3.

<sup>324</sup> MacIntyre, "Natural Law as Subversive," 51.

<sup>325</sup> MacIntyre, "Natural Law as Subversive," 59. Here MacIntyre is extrapolating from Suarez's explicit development of what MacIntyre sees as a logical conclusion of Aquinas's argument.



Englishmen even though, in the words of *The Case*, the “whole Parliament or Kingdome” were to exempt them from it, presupposes that the people are incapable of recognizing their own rights.

## 5. Forming the “Lord’s People”: Law, Action, and Reason in the Interregnum

### 5.1 “We ought to obey God rather than men”: the Proposals of the Fifth Monarchists

Acts 5.29, enjoining us to obey God rather than man, is invoked by John Rogers in *Ohel or Beth-shemesh* to defend Independent church government against objections raised by his Presbyterian opponents: a “true *Church of Christ* then is [...] gathered and ordered by *Christs rule alone*. [...]. As the *Apostles* said, *Acts 5.29.3.1* to the *Priests* and others, that commanded them to preach no more *Christ*, *We ought to obey God rather than men*, who hath exalted *Christ* to be a *Prince and Saviour*; and we are his witnesses.”<sup>1</sup> This injunction is repeated, in one form or another, in the writings of most Fifth Monarchists, a movement of Independents and Baptists who demanded legal and political reforms in preparation for the imminent coming of the kingdom of Christ.<sup>2</sup> As we will see, Fifth

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<sup>1</sup> John Rogers, *Ohel or Beth-shemesh. A Tabernacle for the Sun* (London, 1653) 137-9; underlining mine. Early English Books Online. Union Theological Seminary (New York, N.Y.). May 10, 2011. [http://gateway.proquest.com.proxy.lib.duke.edu/openurl?ctx\\_ver=Z39.88-2003&res\\_id=xri:eebo&rft\\_id=xri:eebo:citation:12686509](http://gateway.proquest.com.proxy.lib.duke.edu/openurl?ctx_ver=Z39.88-2003&res_id=xri:eebo&rft_id=xri:eebo:citation:12686509). In *Ohel*, Rogers defends Independent churches against the “papist” traditions of the Presbyterian church, including infant baptism. Rogers defines a true church as “1. A society of Believers sanctified in Christ Jesus; 2. Separate from the world, false-ways, and worships, united together into one Body, Independent; or having a plenary power within its self, without the least subordination, to any but Christ; 3. Having the special presence of God, in the midst of her; 4. and being gathered and ordered by Christs rule alone; 5. all here Members freely, and voluntarily, embodying without the least compulsion (having communion with the Father and the Son,) 6. All seeking the same End, viz. The honeor and glory of God in his worship” (*Ohel*, 137).

<sup>2</sup> I apply the term “movement” to Fifth Monarchists to indicate a fluid and loose association. While Fifth Monarchists gradually came to see themselves as a group distinct from the Baptists and Independents from which they drew their numbers, they did not adhere to a well-defined shared set of beliefs. They even held a variety of view on the crucial question of how Christ would rule on Earth, some arguing that He would rule directly, others, such as Aspinwall, envision a divine kingdom administered through the rule of the Saints. On Fifth Monarchists’ religious views, see B. S. Capp, *The Fifth Monarchy Men: A Study in Seventeenth-century*

Monarchists take the message of Acts 5.29 to demand a rejection of all non-Biblical institutions and laws. These millenarian writers and militants view the dissolution of the Rump and the calling of the Nominated Assembly as first steps towards instituting a kingdom of God, organized according to Scriptural law and ruled by King Jesus, in England. At the same time, as we will see in Rogers' writings, appealing to Acts 5.29 carries along a question faced by all Christian communities: how are Biblical commands to be translated into precepts for life in a contemporary community? How Fifth Monarchists answer this question reveals their understanding of political and legislative authority. In the last section of chapter four, I considered how the proponents of the *Case of the Army Truly Stated* and the *Agreement of the People* insisted that natural law is "more fundamental" than human laws and customs and that, consequently, natural law safeguards the birthrights of Englishmen. As I argued, their appeal to natural law ironically undermined the legislative authority of the people. How legal reform is implemented is inextricably bound with questions of political authority. Fifth Monarchists also appeal to a law "more fundamental" than human law, but base their calls for political and legal reform on their millenarian expectations. Expecting the imminent advent of Christ's kingdom on earth, the movement centered its hopes on the

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*English Millenarianism* (Totowa, NJ: Rowman and Littlefield, 1972), 172-94. The movement coalesced around meetings in the churches of St Anne's, Blackfriars and Allhallows the Great in London, under the leadership, respectively, of Christopher Feake and John Simpson (Austin Woolrych, *Commonwealth to Protectorate* (Oxford: Clarendon Press, 1982), 18).

seventh chapter of Daniel, predicting the Fifth Monarchy. Daniel's vision portrayed four beasts, representing four earthly empires, being destroyed to make way for the kingdom of the saints, "These great beasts, which are four, are four kings, which shall arise out of the earth./ But the saints of the most High shall take the kingdom, and possess the kingdom for ever, even for ever and ever."<sup>3</sup>

Members of the movement saw this prophecy beginning to come to fruition in the Civil Wars and the regicide, which they interpreted as the destruction of an anti-Christian king. Following the dissolution of the Rump, tract after tract were published by Fifth Monarchists urging Cromwell and the New Model to establish a government by the Saints.<sup>4</sup> Typical of Fifth Monarchist support for the dissolution of the Rump are the writings of John Spittlehouse. Spittlehouse, a former member of the Ironsides, composed two pamphlets, published less than a month apart, in support of Cromwell: *The Army vindicated, in their late dissolution of the Parliament* and *A warning-piece discharged: or, Certain intelligence communicated to His Excellencie the Lord General Cromvel, with all the real and cordial officers and souldiers under his command*.<sup>5</sup> In both pamphlets, Spittlehouse

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<sup>3</sup> Daniel 7.17-8.

<sup>4</sup> There is little critical agreement on the extent of Fifth Monarchists' political influence. On the debate over their possible role in the dissolution of the Rump and the calling of the Nominated Assembly, see chapter four above, pages 54-7.

<sup>5</sup> Thomason dates *The Army Vindicated* on April 24 and *A Warning Piece* on May 19. The opening of *A Warning Piece* confirms Thomason's dating by referring to Spittlehouse's publication of a "Vindication of [Cromwell's] then-late thrice-noble actions" on April 24 (John Spittlehouse, *A warning-piece discharged: or, Certain intelligence communicated to His Excellencie the Lord General Cromvel, with all the real and cordial officers and souldiers under his command. Wherein the present tempers of each society of people in this Commonwealth, under each degree or notion whatsoever, are inserted and controverted, in relation to the election of a new representative. As*

voices the enthusiasm common to all Fifth Monarchists for the dissolution of the Rump and looks upon Cromwell as a new Moses to guide England out of anti-Christian captivity.<sup>6</sup> Spittlehouse's proposals in both pamphlets demonstrate Fifth Monarchists' conceptions of human government and history. Published only four days after the dissolution of the Rump, *The Army Vindicated* opens by arguing that the Rump was no Parliament. Spittlehouse bases this claim on two reasons. First, Parliaments are called by the king and the Rump no longer sat with the king's approval. Second, the Rump had lost all right to the claim to represent the nation because "all their other Electors had wholly deserted them, even unto blood."<sup>7</sup> Because Parliament's authority flows directly from the king's, a new government must be formed so as to reflect that England is no

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*also, a brief and full parallel betwixt the history of Israel and our late and present series of affairs. In which simile, our present general is compar'd with Moses, as he was their deliverer, judge, and general. By John Spittlehouse, a late member of the Army* (London, 1653), 1. Early English Books Online. British Library (London). May 10, 2011. [http://gateway.proquest.com.proxy.lib.duke.edu/openurl?ctx\\_ver=Z39.88-2003&res\\_id=xri:eebo&rft\\_id=xri:eebo:citation:99863520](http://gateway.proquest.com.proxy.lib.duke.edu/openurl?ctx_ver=Z39.88-2003&res_id=xri:eebo&rft_id=xri:eebo:citation:99863520)). Spittlehouse had served in the army from 1643 to 1651. On Spittlehouse's military career, see Woolrych, *Commonwealth to Protectorate*, 113. Capp describes Spittlehouse as "accepting Cromwell as an absolute ruler by divine right" (*The Fifth Monarchy Men*, 64). However, like other prominent Fifth Monarchists, after the dissolution of the Nominated Assembly Spittlehouse began to write in opposition of the Protectorate and was arrested for seditious writing (Capp, *The Fifth Monarchy Men*, 72-5).

<sup>6</sup> On the comparison of Cromwell with Moses, see Capp, *The Fifth Monarchy Men*, 62-3 and Wallace, *Destiny his Choice*, 118-9.

<sup>7</sup> John Spittlehouse, *The Army vindicated, in their late dissolution of the Parliament: with several cautions and directions in point of a new representative. Published for the satisfaction of all the real and cordial members of the Commonwealth, whose aid and assistance is required herein* (London, 1653), 2. Early English Books Online. British Library (London). May 10, 2011. [http://gateway.proquest.com.proxy.lib.duke.edu/openurl?ctx\\_ver=Z39.88-2003&res\\_id=xri:eebo&rft\\_id=xri:eebo:citation:99863516](http://gateway.proquest.com.proxy.lib.duke.edu/openurl?ctx_ver=Z39.88-2003&res_id=xri:eebo&rft_id=xri:eebo:citation:99863516).

longer a monarchy.<sup>8</sup> However, this new “representative” must only be elected by the “real members” of the Commonwealth.<sup>9</sup> Who belongs to this category?

Spittlehouse’s definition of the “real members” of the Commonwealth is dependent on his representation of the events of the Civil Wars. Anyone who had supported the king since the Civil Wars is to be excluded: “it is irrational to imagine that such persons and *Parsons, &c.* whose Principles are as contrary to a commonwealth, as darkness to light (which all Royallists of the Nation, whether of the Presbyterian or Cavalier parties are notoriously known to be)” should be involved in forming a government for the Commonwealth.<sup>10</sup> Spittlehouse urges that by losing the war, royalists have been shown to be “such as *God hath rejected.*”<sup>11</sup> For Spittlehouse, royalists include anyone who supported the Solemn League and Covenant and opposed the regicide. Strikingly, he justifies this inclusion by arguing that Presbyterians who have supported the king after first opposing him and have “not continued faithful unto the end.”<sup>12</sup> That is, the regicide cannot be separated from the aims of the Civil Wars, thus making the Presbyterians not “faithful unto the end.” By adhering to the Covenant and,

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<sup>8</sup> In the describing the relationship between king and Parliament, Spittlehouse uses the same metaphor as Urquhart in *Reasons Why*. Parliament is a stream and the king as its springs (*The Army Vindicated*, 2 and *Reasons Why*, 10).

<sup>9</sup> Spittlehouse, *The Army vindicated*, 1 and 3.

<sup>10</sup> Spittlehouse, *The Army vindicated*, 2.

<sup>11</sup> They “have not been thought meet *by God* to be made co-operators with the present Army, and their adherents in those great actions that have lately been accomplished, but that the Lord hath rather left them to follow their own inventions; What are we, that we should entertayn such as *God hath rejected?*” (Spittlehouse, *The Army vindicated*, 4; emphasis original).

<sup>12</sup> Spittlehouse, *The Army vindicated*, 3; emphasis mine.

to that extent, supporting the monarchy, the Presbyterians have proved “destructive to the present Army, and their adherents, who are the alone proper subjects of this present Commonwealth.”<sup>13</sup> More broadly, Spittlehouse proceeds to explain that anyone who opposed the New Model Army has acted against “the designe which Jesus Christ is now about to accomplish by them [=the Army], who without all controversie is determined to pluck up all Monarchical, and Antichristian Rule and Government; to the end he may accomplish his yet unperformed promises as to rule all Nations.”<sup>14</sup> In this sentence, the actions and designs of the Army and Christ are indistinguishable. Grammatically, the antecedent of the relative pronoun “who” appears at first to be “them,” i.e. the Army, but the presence of the singular verb “is” singles out “Jesus Christ” as the correct antecedent. The ambiguity in the construction of the sentence allows Spittlehouse to present the Army’s continued military campaign as fulfilling the prophecies of Daniel 7. This passage comes as the answer to an imagined interlocutor’s objection to excluding Presbyterians from the ranks of the “proper subjects” of the commonwealth.<sup>15</sup> That is, Spittlehouse excludes from membership in the commonwealth anyone who will not support the removing of “all Monarchical, and Antichristian Rule.”

As Spittlehouse’s argument develops, it becomes increasingly clear that *The Army Vindicated*’s aims exceed questions of England’s constitutional arrangements. England,

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<sup>13</sup> Spittlehouse, *The Army vindicated*, 3.

<sup>14</sup> Spittlehouse, *The Army vindicated*, 3-4; emphasis mine.

<sup>15</sup> Spittlehouse, *The Army vindicated*, 3. The entire pamphlet beyond the opening argument is organized in a question and answer format.

through the Army and the congregated Churches, is represented as a catalyst for the beginning of the Fifth Monarchy on Earth. In a striking passage, Spittlehouse links the Army's destruction of all monarchies to a world-wide work of conversion: "I take it to be the onely peculiar work of the Congregated Churches &c. to hold forth the golden Scepter of the love of God in Christ Jesus unto the Nations of the world, and thereby to labour to allure them into the Church with that golden bait, and so to convert them."<sup>16</sup> The passage recalls the image of the golden scepter described in the book of Esther. In the Old Testament book, anyone who approached king Ahasuerus without formal invitation would be put to death unless the king extended his golden scepter.<sup>17</sup> Esther, as Ahasuerus' second wife, approaches the king unsolicited to intercede on behalf of the Jewish people who have been unjustly accused of rebellion. Her life, and that of her people, is spared as Ahasuerus extends his scepter. In reworking the image, Spittlehouse softens it by turning the golden scepter into the "the golden Scepter of the love of God" and into a "bait" to "allure" other nations into the church. However, the threat of death implicit in the image of Ahasuerus' golden scepter is reinforced by pairing it with the "rod of iron" of Revelation. In Revelation 12.5 and 19.15 the "rod of iron" is used by

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<sup>16</sup> Spittlehouse, *The Army vindicated*, 6.

<sup>17</sup> "Whosoever, whether man or woman, shall come unto the king into the inner court, who is not called, there is one law of his to put him to death, except such to whom the king shall hold out the golden sceptre, that he may live" (Esther 4.11).



Christ to rule all the nations.<sup>18</sup> In *The Army vindicated*, the conquering “rod of iron” is to be wielded by the New Model for Christ. The Army will impose Christ’s rule wherever it “either hath or by providence may yet conquer, and so by gradation, until the Kingdom and Dominion, and greatness of the Kingdome under the whole heavens, shall be given to the people of the Saints of the most high.”<sup>19</sup> Combining the two images allows Spittlehouse to represent the Army’s violent military conquest as preliminary work for the Saints’ conversion of the world. Strikingly, as he urges for immediate action in spreading the kingdom of “the most high,” Spittlehouse’s writing changes from argumentative to prophetic. In these passages of *The Army Vindicated*, Daniel’s dream unfolds in seventeenth-century England: “The time being now present, that the antient of days is come, and judgement is given unto the Saints of the most high, so that they shall take the Kingdomes of the world into their possessions, and that for ever, even for ever and ever. Even so be it Lord Jesus; *Amen, Amen.*”<sup>20</sup>

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<sup>18</sup> In *The Army vindicated*, while members of the Congregated Churches, in their capacity as ministers, may follow the Army in order to convert the world, they must not directly rule other nations since it is “altogether improper” for the “Congregated Churches and their well-wishers [...] to take upon them to *rule the Nations with a rod of Iron*, (viz. in a Magistratical employment)” (Spittlehouse, *The Army vindicated*, 6; emphasis original).

<sup>19</sup> Spittlehouse, *The Army vindicated*, 7.

<sup>20</sup> *The Army Vindicated*, 7. Compare with the following passages from Daniel: “I saw in the night visions, and, behold, one like the Son of man came with the clouds of heaven, and came to the Ancient of days, and they brought him near before him./ And there was given him dominion, and glory, and a kingdom, that all people, nations, and languages, should serve him: his dominion is an everlasting dominion, which shall not pass away, and his kingdom that which shall not be destroyed” (KJV, Daniel 7.13-4). And: “But the saints of the most High shall take the kingdom, and possess the kingdom for ever, even for ever and ever” (KJV, Daniel 7.18).

The joint “labour” of the Army and the Congregated Churches depicted by Spittlehouse is in part an expression of the close connection between soldiers and some Fifth Monarchy leaders. A number of the officers of the English troops in Scotland, in particular, kept an ongoing exchange of letter with Feake, Simpson, and Powell.<sup>21</sup> However, Spittlehouse’s proposal for a godly military campaign is more than a reflection of existing links between soldiers and Saints; it arises from an understanding of human government and history that flattens all local laws, customs, and historical development by regarding them as equally antichristian. This becomes evident in Spittlehouse’s return to the ideal of international propagation of the gospel in *The First Addresses to His Excellencie the Lord General* (1653).<sup>22</sup> In the dedicatory letter to Cromwell that opens this pamphlet, Spittlehouse returns to the image of the general as a new Moses. However, this comparison contains a warning as well as praise. If Cromwell rests before the work of universal conversion is completed:

as you have been parallel’d with *Moses* in your acts of valour, so you shall likewise die in *Mount-Nebo* [...] but I hope the Lord hath not onely intended to shew you the Land of *Canaan*, but will also lead you over the flood *Iordan*, into the Land of the *Canaanites*, &c. (*viz.* over the Narrow Seas, into *Holland, France*,

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<sup>21</sup> Capp, *Fifth Monarchy Men*, pp. 53-4.

<sup>22</sup> John Spittlehouse, *The first addresses to His Excellencie the Lord General, with the Assembly of elders elected by him and his Council for the management of the affairs of this Commonwealth; as also, to all the cordial officers and souldiers under his command. Containing certain rules & directions how to advance the kingdome of Jesus Christ over the face of the whole earth. By John Spittlehouse, a late member of the Army, and a servant to the saints of the most high God, whose kingdom is an everlasting kingdom, and whom all dominions shall serve and obey, Dan. 7.27* (London, 1653). Early English Books Online. British Library (London). May 10, 2011. [http://gateway.proquest.com/openurl?ctx\\_ver=Z39.88-2003&res\\_id=xri:eebo&rft\\_id=xri:eebo:citation:99863518](http://gateway.proquest.com/openurl?ctx_ver=Z39.88-2003&res_id=xri:eebo&rft_id=xri:eebo:citation:99863518).

and so to *Rome* itself, to the end you may pluck up all Antichristian power whatsoever doth oppose Jesus Christ in the least.<sup>23</sup>

Just before his death, Moses views the land of Canaan from the mountain of Nebo.

Because he had “rebelled against [God’s] commandment in the desert of Zin, in the strife of the congregation, to sanctify me at the water before their eyes,” Moses is denied entering Canaan, which is instead conquered by Joshua.<sup>24</sup> Spittlehouse recalls the event to warn Cromwell, but goes against the grain of the Biblical narrative. The passage expresses hope that Cromwell may yet conquer “the Land of the *Canaanites*.” By changing Scriptural history, the dedicatory letter also rewrites the typological connection between Canaan and salvation. A common application of this particular Deuteronomic verse by sixteenth- and seventeenth-century exegetes points to the insufficiency of Mosaic Law for salvation.<sup>25</sup> Spittlehouse ignores this standard reading

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<sup>23</sup> John Spittlehouse, *The first addresses*, “To his Excellency the Lord General *Cromwell*.”

<sup>24</sup> For God’s condemnation of Moses, see Numbers 27.14 and Numbers 20.12-13. For Moses’ death, see Deuteronomy 34.

<sup>25</sup> Jason P. Rosenblatt, “Adam’s Pisgah Vision: *Paradise Lost*, Books XI and XII,” *ELH* 39 (March, 1972): 68-75. Rosenblatt points to, for instance, Henry Ainsworth’s commentary as illustrating a typical reading. Ainsworth was a prominent scholar of Hebrew who published a frequently-referenced explication of the Pentateuch. Ainsworth links Deuteronomy 34.4, “And the LORD said unto him, This is the land which I swear unto Abraham, unto Isaac, and unto Jacob, saying, I will give it unto thy seed: I have caused thee to see it with thine eyes, but thou shalt not go over thither,” with Galatians 3.4, “Wherefore the law was our schoolmaster to bring us unto Christ, that we might be justified by faith,” to conclude that the Law is not sufficient for salvation: “This view was by the marvellous worke and grace of God towards his servant, that in one place and time hee should behold so large a Countrie [...] the beholding therof was the beholding of the blessings to be enjoyed by Christ Iesus; unto whom Moses and his law is a Schoolemaster, *Gal.3.24*” (Henry Ainsworth, *Annotations upon the five bookes of Moses, the booke of the Psalmes, and the Song of Songs, or, Canticles VWherein the Hebreu vwords and sentences, are compared with, and explained by the ancient Greeke and Chaldee versions, and other records and monuments of the Hebreues: but chiefly by conference with the holy Scriptures, Moses his words, lawes and ordinances, the sacrifices, and other legall ceremonies heretofore commanded by God to the Church of Israel, are explained* (London, 1627), 167. Early English Books Online. December 29, 2012. [http://gateway.proquest.com.proxy.lib.duke.edu/openurl?ctx\\_ver=Z39.88-](http://gateway.proquest.com.proxy.lib.duke.edu/openurl?ctx_ver=Z39.88-)

and, mapping Canaan unto seventeenth-century Europe, links the conquering of “Holland, France, and so to Rome itself” to destroying all who “doth oppose Jesus Christ in the least.” Cromwell and the army are indentified, through the Song of Songs, with the army of the kingdom of Christ: “so that the Church or kingdom of Jesus Christ may appear in its now proper posture (viz. *terrible as an Army with Banners*, unto all the Nations upon the face of the whole earth.”<sup>26</sup> England is *both* ancient Israel and the kingdom of Christ at the onset of the millennium.

Such dual identification of seventeenth-century England is also found in *A warning-piece discharged*. This pamphlet, published within a month of *The Army vindicated*, insists that Cromwell should be allowed to nominate the new government. England, as the nation of Israel wandering in the desert, needs the guidance of a new Moses: “we are now put into the same estate and condition with the aforesaid Israelites in their wilderness-condition” and, as such, “all the cordial members of this Commonwealth may henceforth look upon our present General, as the aforesaid Israelites did upon *Moses*.”<sup>27</sup> Throughout the tract, Spittlehouse moves seamlessly from

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[2003&res\\_id=xri:eebo&rft\\_id=xri:eebo:citation:99842509](#)). As Rosenblatt also notes, the typological relationship is explicitly brought out by Milton in the final book of *Paradise Lost*. Writing after the Restoration, Milton sounds a much more pessimistic note than that evinced by the Fifth Monarchists when he draws attention to this Deuteronomic passage. In Book XII, Michael explain to Adam that the Law and Moses cannot redeem sin, but that “*Joshua*, whom the Gentiles *Jesus* call” will be the one to lead the people of Israel into Canaan (*PL*, XII.310; for the entire admonition, see *PL*, XII.290-314).

<sup>26</sup> John Spittlehouse, *The first addresses*, “To his Excellency the Lord General *Cromwell*.”

<sup>27</sup> Spittlehouse, *A warning-piece*, 11, 10.

the history of Israel in the Old Testament to the history of Civil War and Interregnum England. Through movement in time, Spittlehouse can predict the future of England by projecting the recent history of his country onto the Biblical narrative of the history of Israel. 1653 England is Israel in the “wilderness-condition” and, as such, the nation should accept Cromwell’s dissolution of the Rump based on the example of Israel under the guidance of Moses. By equating England’s history with Israel’s, Aspinwall can justify Cromwell’s intervention in government by representing it as a reenactment of Scriptural history. Using this parallel, Spittlehouse sweeps away all objections as the “murmurs” of the “ingrateful” Israelites in the desert, having “presently waxed fat, and (*Jesuron*-like) kicked against the Lord and his servant *Moses*.”<sup>28</sup> This first link between the history of England and Scripture is doubled by urging that England, as the New Israel, is now on the verge of the millennium.<sup>29</sup> This second temporal layering is made explicit at the end of the pamphlet. Spittlehouse concludes *A warning-piece* with a framed quote of two biblical passages. There, he fuses together Luke 2.13-4, recounting the birth of

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<sup>28</sup> Spittlehouse, *A warning-piece*, 12-3.

<sup>29</sup> I am indebted to Boyd M. Berry’s analysis of seventeenth-century typology in *Process of Speech: Puritan Religious Writing and Paradise Lost*. In his discussion of “Puritan” typology, Berry argues that this mode of exegesis is pervasive in revolutionary Scriptural and historical thought: “as the Puritans so ranged backward and forward through time, they fused a literal with a wildly figurative reading of the Bible, drew their models of conduct from an ancient, literal Israel while they sought to erect an eschatologically typical Israel; the latter had, though the peculiar process of Puritan theologizing, been reduced from a type to a mere analogue of the English Church and nation. [...] But because, in their view, everything, in all times had been the same, the Puritans showed a marked tendency simultaneously to reduce ecclesiastic types to literal statements and to extend their sense of security about the phenomenal basis of ecclesiastic typology to speculations about the apocalypse” (Boyd M. Berry, *Process of Speech: Puritan Religious Writing and Paradise Lost* (Baltimore, MD: The Johns Hopkins University Press, 1976), 127).

Christ, and Revelation 19.1-10, the prophecy of the triumph over the Whore of Babylon: "And sodainly there was with the Angel a multitude of the heavenly hoast praying God, and saying, glory in the highest, and on earth peace, good will towards men. And after these things I heard a great voice of much people in heaven saying, *Alleluja*, salvation, and glory, and honour, and power unto the Lord out God: For true and righteous are his judgements; for he hath judged the great whore."<sup>30</sup> In this concluding passage, the praise and rejoicing of angels at the birth of Jesus are followed immediately by the alleluias of Revelation 19.1. The conjoining phrase, "and after these things," marks the beginning of Revelation. In the original Scriptural passage, it points back to the prophecy of the destruction of the "great city Babylon" in Revelation 18.21; in *A warning-piece*, grammatically, it points to the Incarnation. This move allows Spittlehouse to effectively erase the narrative of the life and crucifixion of Christ and the history of the Church militant.<sup>31</sup> On the last page of *A warning-piece*, the moment of the birth of Christ is *also* the time of triumphant judgment and destruction of the "great whore."

Spittlehouse's approach to Scriptural history underwrites his exhortations for military conquest in *The Army vindicated*. By identifying England's military campaigns with Israel's conquest of Canaan and, at the same time, with the destruction of "antichristian" monarchies at the beginning of the millennium, Spittlehouse erases the

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<sup>30</sup> Spittlehouse, *A warning-piece*, 25; underlining mine.

<sup>31</sup> In *On the Morning of Christ's Nativity*, Milton checks this impulse and reminds his reader that the "bitter cross" has to follow the joy of the nativity: "But wisest Fate sayes no,/ This must not yet be so, /The Babe lies yet in smiling Infancy,/ That on the bitter cross/ Must redeem our loss" (149-3).

historical specificity of the Army's actions. The closing passage in *A warning-piece* condenses the New Testament into the moment of the birth of Christ, depicted as an event that perfects the Old Testament nation of God into a New Israel poised at the beginning of the millennium. In doing so, Spittlehouse can view all those nations that do not embrace the "labour" of conversion of the Congregated Churches as antichristian opposition to the beginning of the Fifth Monarchy. Since England is also a new Israel led by Moses, Spittlehouse can confidently predict the destruction of all such opposition. In this model there is no room for the political and ecclesiastical forms developed during the long history that separates Israel from seventeenth-century England. Fifth Monarchist identification of England with Israel becomes fully fleshed out in their calls for law reform. Written and published in the first half of 1653, *The Army Vindicated*, *The First Addresses*, and *A warning-piece* were brief pamphlets responding to the quickly changing political situation. Their primary concern was the justification of Cromwell's dissolution of the Rump. To see how Spittlehouse's approach to Scripture and history could be turned into a call for a fundamental reconstructing of the body of law itself, I turn to Fifth Monarchist writings produced from 1654 to 1656.<sup>32</sup> In this period, the Fifth

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<sup>32</sup> That law reform was needed was not a uniquely Fifth Monarchist claim. Austin Woolrych identifies three schools of thought advocating for law reform during the tenure of the Nominated Assembly: "The first, to which Cromwell and the moderate majority in the House adhered, wanted to preserve the historic common law of England in its essentials but to improve and expedite its procedures, clarify its obscurities and archaisms, abolish parasitic fees, make its benefits available to a wider public, and render it more humane, especially with regard to insolvent debtors and the excessive number of capital crimes. A more radical objective was pursued by the Levellers and their fellow-travellers, who regarded the current legal system as a product of the Norman Yoke imposed by the Conquest, and aimed to scrap it altogether. They wanted to

Monarchists' initial enthusiasm for Cromwell's dissolution of the Rump turned into disappointment as the Nominated Assembly dissolved itself and Cromwell became Lord Protector. Many Fifth Monarchists had predicted that Daniel prophecies would be fulfilled in 1656. Ironically, by the end of 1656 and the beginning of 1657, the Saints had begun to lose enthusiasm for militant opposition to the government as their expectations went unfulfilled and they repeatedly failed to gain support in the army.<sup>33</sup> By early 1657, while some militant Fifth Monarchists still opposed the Protectorate as the "Fourth Monarchy," the movement's activities were effectively contained by Thurloe's

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replace it with a simple written code that would be easily comprehensible to the laity and could be completely administered by popularly elected magistrates, holding court at frequent intervals in every county, without any need for professional advocates. The third school of reformers consisted of Fifth Monarchist and other extreme sectaries, who believed that the kingdom of Christ was in process of being established and that the only laws fit to be observed in it were those contained in the Scriptures, whether in the Mosaic code or the teachings of Christ" (*Britain in Revolution*, 548-9). For an overview of Fifth Monarchist views on law reform, see B. S. Capp, *The Fifth Monarchy Men*, 157-71. Requests for law reform had been widespread ever since the regicide and already had a well established history by then: for an overview of this movement in the mid-seventeenth-century, see Donald Veall, *The Popular Movement for Law Reform: 1640-1660* (Oxford: Clarendon Press, 1970); for a study of the subject within the context of the calls for reform starting with the reigns of Elizabeth I and James I, including Bacon's proposals for the rationalization of the law, see Barbara Shapiro, "Law Reform in Seventeenth Century England," *The American Journal of Legal History* 19 (Oct., 1975): 280-312; for a comparison of attempts at law reform in England and New England, see G. B. Warden, "Law Reform in England and New England, 1620 to 1660," *The William and Mary Quarterly* 35 (Oct., 1978): 668-690. The Rump Parliament itself had created the Hale Commission in 1652 to explore possible ways to implement a certain measure of law reform. The Commission produced an extensive program of reform, but the Rump failed to implement its recommendations (see Mary Cotterell, "Interregnum Law Reform: the Hale Commission of 1652," *The English Historical Review* 83 (Oct., 1968): 689-704. In particular, Cotterell demonstrates the legal expertise of the members of the Hale Commission and how their recommendations, rather than being the work of millenarian extremists, were developed in collaboration with the Parliamentary committee on law reform.

<sup>33</sup> B.S. Capp, *The Fifth Monarchy Men*, 105, 113-4.



surveillance and arrests.<sup>34</sup> Nonetheless, Fifth Monarchist pamphlets continued to appear urging the reformation of England's laws and government along Biblical lines.

While the Fifth Monarchist leaders Christopher Feake and Vavasor Powell attacked the Lord Protector as the little horn of Daniel 7, and thus turned against Cromwell the identification with they had previously aimed at Charles I, others still appealed to Cromwell as a type of Moses capable of reforming England's laws and government. William Aspinwall is representative of the latter group. Aspinwall had been a merchant and an explorer in New England, participating in the Massachusetts Bay colony's legislature as one of Boston's deputies. He returned to England in the early 1650's after difficulties with the colony's authorities over his interpretation of Scripture.<sup>35</sup> Believing that the kingdom of Christ was imminent even after the dissolution of the

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<sup>34</sup> B.S. Capp, *The Fifth Monarchy Men*, 102-30. The notable exception is Thomas Venner who organized a rising in London in 1657. The rising failed when most other prominent Fifth Monarchists refused to support his efforts. Having been arrested after the abortive rising, Venner remained in prison until 1659 (Capp, *The Fifth Monarchy Men*, 105, 115-6). After the Restoration, Venner organized a final London rising in 1661. While his group managed to kill some soldiers, the rising was put down and Venner was arrested and executed (Capp, *The Fifth Monarchy Men*, 105, 199-200).

<sup>35</sup> In particular, he advocated the adoption of John Cotton's Mosaic Law code and supported the religious views of Anne Hutchinson (Francis J. Bremer, "Aspinwall, William (*d.* in or after 1662)," in *Oxford Dictionary of National Biography*, see online ed., ed. Lawrence Goldman, (Oxford: Oxford University Press, 2004), <http://www.oxforddnb.com/view/article/76217> (accessed December 6, 2012)). For the context of Aspinwall's program of Mosaic Law with respect of the Massachusetts legislature, see R. H. C., "The Rule of Law in Colonial Massachusetts," *The University of Pennsylvania Law Review* 108, no. 7 (May, 1960): 1001-1036. Aspinwall had immigrated to Massachusetts in 1630, but he had been expelled from Boston from 1637 to 1642 as an antinomian. He returned to England in either 1652 (Capp, *Fifth Monarchy Men*, 240) or possibly 1653 (according to Bremer's article in the *DNB*). There are several namesakes of William Aspinwall who lived in both England and New England in this period which might account for discrepancies between Capp's and Bremer's chronology of Aspinwall's life. David Loewenstein aligns Aspinwall with Feake's and Powell's attacks on Cromwell in early 1654 (*Representing Revolution in Milton and His Contemporaries: Religion, Politics, and Polemics in Radical Puritanism* (Cambridge: Cambridge University Press, 2001), n. 18 to p. 147). However, Capp notes and as it is clear from *An Explication*, Aspinwall was willing to work with the Protectorate to usher Christ's kingdom.

Nominated Assembly, Aspinwall addresses his *An Explication and Application of the Seventh Chapter of Daniel* to Cromwell and proposes a plan for legal and political reform.<sup>36</sup> In his dedicatory letter, Aspinwall explains that he is writing an interpretation of Daniel 7 for two reasons. On the one hand, the events of the recent past can only be fully understood as a partial fulfillment of that prophecy. The seventh chapter of Daniel shows “the true ground of all the great Revolutions that have happened in these Nations, which are founded upon the Eternal Counsel of God” and, by correctly interpreting Daniel’s prophecy, Cromwell’s actions will be justified: “all men may see the just warrant you had from Christ, to act as you have done.”<sup>37</sup> Countering Feake’s and Powell’s condemnations of the Protectorate, Aspinwall uses his pamphlet to make very specific identifications between verses of Daniel 7 and details of Charles’ reign.<sup>38</sup>

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<sup>36</sup> The full title of the pamphlet gives a clear first sketch of its argument: *An Explication and Application of the Seventh Chapter of Daniel: With a Correction of the Translation. Wherein is briefly shewed The State and Downfall of the four Monarchies; But more largely of the Roman Monarchy, and the Ten Horns or Kingdomes; And in Particular, the Beheading of Charles Stuart, who is proved to be the Little Horn by many Characters, that cannot be applied to any before or after him. And what is meant by the Carkass of the Beast, which yet remains to be burned. Together with a Hint of the Slaying and Rising of the Two Witnesses* (London, [Thomason: March 20<sup>th</sup>], 1654). Early English Books Online. British Library (London). May 10, 2011.

[http://gateway.proquest.com.proxy.lib.duke.edu/openurl?ctx\\_ver=Z39.88-2003&res\\_id=xri:eebo&rft\\_id=xri:eebo:citation:99865974](http://gateway.proquest.com.proxy.lib.duke.edu/openurl?ctx_ver=Z39.88-2003&res_id=xri:eebo&rft_id=xri:eebo:citation:99865974). The full title of *An Explication* contains a rejoinder to Feake’s and Powell’s identification of Cromwell with the little horn of Daniel 7.8. The title asserts that in the pamphlet “Charles Stuart, *who is proved to be the Little Horn by many Characters, that cannot be applied to any before or after him.*”

<sup>37</sup> Aspinwall, “To his Excellencie the Lord General Cromwell,” *An Explication*.

<sup>38</sup> Typical is his reading of Daniel 7.25, “And he shall speak great words against the most High, and shall wear out the saints of the most High, and think to change times and laws: and they shall be given into his hand until a time and times and the dividing of time” (KJV). Aspinwall interprets it as representing both the “unsoundness of this Prince [Charles I] in matters of Religion” as well as his attempt to “wear out the saints [...] to wit with Tributes, Loans, Ship-monies, &c. all which may be understood by the word, תְּבִלָּה for תְּלוּ which comes of the same root signifies Tribute” (Aspinwall, *An Explication*, 16). The Hebrew word תְּבִלָּה is taken to represent specifically English forms of tribute, “Loans, Ship-monies.”

On the other hand, having established a correspondence between the Old Testament prophecies and the recent events in England, Aspinwall points to the unfilled promises foretold by Daniel to insist that the work of the Saints is not finished. While, the “Beast is slain, none can deny it, and the Sultanship is utterly removed; the Body or Carkass, which hath been enlivened by that spirit of Prerogative, is not given to the burning of the flame.”<sup>39</sup>

The twin goals of *An Explication* are mirrored in its division into two sections. The first focuses mainly on issues of translations and meaning, but it also gives a preliminary interpretation of the reign of Charles I and the Civil Wars in the light of his translation. The second and longer section is a full application of Daniel’s prophecy to history. In this latter part of the pamphlet, Aspinwall reads ancient history as a verification of Daniel’s description of the reign of the first four monarchies. The recent history of England, instead, is taken to demonstrate that the Second Coming is imminent. In the seventeenth-century, the term “prophecy” could refer both to a divinely inspired utterance, including, but not restricted to, a prediction of future events, as well as to the interpretation and explanation of Scripture.<sup>40</sup> In both sections of *An Explication*, Aspinwall’s expounding of Daniel 7—“prophecy” in the second meaning—is modeled on the prophet Daniel’s account of the experience and understanding of his

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<sup>39</sup> Aspinwall, “To his Excellencie the Lord General *Cromwell*,” *An Explication*.

<sup>40</sup> Nigel Smith, *Perfection Proclaimed: Language and Literature in English Radical Religion, 1640-1660* (Oxford: Clarendon Press, 1989), 24-7.

divinely inspired dream—a “prophecy” in the first sense. The pamphlet oscillates between statements arguing that the meaning of Scripture can be made clear with the knowledge of the original languages and the warning that Daniel’s prophecies can only be interpreted correctly because they have finally begun to unfold.<sup>41</sup> In his explanation of Daniel 7, Aspinwall moves between the Scriptural verses and the recent events with a simple “to wit.”<sup>42</sup> This is usually done in the midst of detailed explanations about his translation from the original Hebrew text. Interpretation of Scripture becomes almost a form of translation.

In the opening of the first section, Aspinwall explains at length Daniel’s experience and method of narration of the prophetic dream. In particular, on pages 3-5, Aspinwall focuses on the verbs in verses 8 and 9 that introduce the prophetic dream.<sup>43</sup> In

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<sup>41</sup> Aspinwall repeatedly argues the original languages of the Scripture are in and of themselves essential to understand biblical revelation. Recalling Tremellius’s complaint that few Christians study Hebrew, Aspinwall encourages the reading of Scripture in the original languages: “in that Tongue (together with *Greek*) is contained, so much of the boundless and unsearchable wisdom of God, as is meet and necessary for us poore creatures to know, or we [are] capable to receive.” At the same time, Aspinwall argues that until the Second Coming the very perfection of biblical languages can make Scripture difficult to interpret: “And that is indeed one Excellencie in those Eastern Languages, to express sundry and different things, by one and the same word. [...] Whence it comes to pass, that a perfect, and full application cannot well be made of such Predictions, until the Prophecies be accomplished, or at least in accomplishing; Nor then neither, without some beam of light from Christ, and diligent comparing the Word of God, and his Works together” (“To his Excellencie the Lord General *Cromwell*,” *An Explication*). But Aspinwall has come to believe that Daniel’s prophecies are indeed being fulfilled and he has done so following Cromwell’s own example: “I remember an Expression of Yours, to one now at rest with the Lord, *That these times are of accomplishment of Prophecies*” (“To his Excellencie the Lord General *Cromwell*,” *An Explication*; emphasis original).

<sup>42</sup> For examples of his use of “to wit,” see pages 4, 5, 16, 17, and 28.

<sup>43</sup> “I considered the horns, and, behold, there came up among them another little horn, before whom there were three of the first horns plucked up by the roots: and, behold, in this horn were eyes like the eyes of man, and a mouth speaking great things./ I beheld till the thrones were cast down, and the Ancient of days

the case of verse 8, he explains that the expression “I was considering [...] properly denotes an act of Understanding, and being used in this Conjugation, it argues a reflect act of the Intellectual faculty upon itself, in a way of meditation or contemplation.”<sup>44</sup> For Aspinwall, it is clear that Daniel’s receiving of the vision is not a passive act. The prophet is called upon to interpret and understand the dream: “So that *Daniels* meaning is to shew, that as God at first made a cleer and distinct representation of things unto him in his Dream; so now being awake he takes up the several passages and circumstances attending the same, and revolv’s them in his mind.”<sup>45</sup> Similarly, in verse 9, we see that the original word for “I was contemplating”:

הִתְחַלְּתִי doth properly signifie a distinct apprehension and discerning of the Object, as well by the Understanding, as by the Eye [...] And then it is more properly translated *Contemplating*. [...] So the summe of the matter is this, God represented to *Daniel* in his Dream, this Vision in an orderly and discreet manner, and when he was awake, he took up the same in his meditation and contemplation in the like discreet order.<sup>46</sup>

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did sit, whose garment was white as snow, and the hair of his head like the pure wool: his throne was like the fiery flame, and his wheels as burning fire” (KJV, Daniel 7.8-9).

<sup>44</sup> Aspinwall, *An Explication*, 3.

<sup>45</sup> Aspinwall, *An Explication*, 3.

<sup>46</sup> Aspinwall, *An Explication*, 4-5.

Commenting on this passage, Nigel Smith argues that Aspinwall's disagreement with the Geneva translation of this passage allows the Fifth Monarchist to define inspired prophecy as "a rational, well-ordered and contemplative activity, as opposed to frenzied enthusiasm."<sup>47</sup> More strongly than that, it allows Aspinwall to create a parallel between Daniel's prophetic interpretation and his own expounding of Scripture. By methodically paying attention to lexical and grammatical details of the Daniel's original vision, Aspinwall presents his own interpretive method as working in the same way as that of Old Testament prophet. Both the dream, as granted by God, and Daniel's meditation on it are described as "clear," "distinct," "orderly," and "discreet." Aspinwall's reading of Daniel 7 follows the same principles, moving through the vision verse by verse and, in a meticulous manner, explaining his translation and its application to history.

Having closely identified his interpretation of Scripture with the prophet's own exposition of the inspired dream, Aspinwall confidently appropriates Daniel's language to launch an attack on England's laws and forms of government. The call for legal reform is based on the identification of the "little horn" of Daniel 7.8 with Charles I. While the little horn has been slain,<sup>48</sup> a final step is yet to be taken to fully destroy all monarchical power: "Thirdly, Against the Emblems, or if you will, the Figures, and

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<sup>47</sup> Nigel Smith, "The Uses of Hebrew in the English Revolution," in *Language, Self, and Society: A Social History of Language*, ed. Peter Burke and Roy Porter (Cambridge: Polity Press, 1991), 59.

<sup>48</sup> "First against his person, they beheaded him [...]. Secondly, against his Power and Prerogative, they took away his Sultanship here in this verse; And this they did by some publick Act of State" (Aspinwall, *An Explication*, 17-8).

Representations, of his Kingly Prerogative, which *Daniel* calls, *His Body or Carcasse*: that is all such things as carry the stamp, forme, or figure of Prerogative Royal, and are animated by his power, as the body is animated by the soule, all these they shall utterly destroy.”<sup>49</sup> What is the “carcasse” of the late king? After a menacing reference to the possibility of also beheading Charles’s children,<sup>50</sup> Aspinwall turns his attention to English laws. All of England’s laws have their roots in the king’s arbitrary government and, even though Charles is dead, they are still used to persecute the Saints: “There is a thing called a Body of Laws, which have been inlivened, with *Le Roy le Vult*, I mean the Spirit of Prerogative hath given power & life to many Laws by which many of the dear Saints of Christ have been cast into Prisons, and burned at stakes, and the Prerogative of Christ laid aside, and this body, as *Daniel* sheweth, must in a speciall manner be given to the burning of fire.”<sup>51</sup> For Aspinwall, this means that English law is fundamentally

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<sup>49</sup> Aspinwall, *An Explication*, 18.

<sup>50</sup> Aspinwall, *An Explication*, 36.

<sup>51</sup> Aspinwall, *An Explication*, 29. The attack on England’s laws as the product of the tyrannical power of kings is typical of Fifth Monarchist writings. For instance, in *The First Addresses* (1653), Spittlehouse denounces human laws in language reminiscent of Aspinwall’s: “for what are the national Laws of Kings other [than] the decrees of tyrants, and corrupt men, whose foundation and institution had their being from the corrupt reason of the heathen, whose proceedings, laws, and punishments, do infinitely differ from the laws and punishments imposed by God?” (Spittlehouse, *The First Addresses*, 16). Unlike the everlasting divine law, human edicts are changeable and uncertain: “what are they other then things full of uncertainties, and changeableness” (Spittlehouse, *The First Addresses*, 16). That the laws of England have existed for time immemorial is of little consequence to Spittlehouse. It is his “very end and purpose” to overthrow even ancient human laws since they stand in “defiance to the aforesaid Laws of God himself” (Spittlehouse, *The First Addresses*, 21). For Spittlehouse, Scriptural law was never abolished, but it was only set aside “until such times as Jesus Christs world should be made apparent, in which he should reign as King over the face of the whole earth” (Spittlehouse, *The First Addresses*, 23). All that is left to do for Englishmen is to “work with a cordial resolution to erect the aforesaid Laws of God, and Ordinances of Jesus Christ” (Spittlehouse, *The First Addresses*, 24). As similar argument for law reformation is put forward

corrupted. Similarly, the language of “publick good” is part of the “Body or Carcass” of “King-craft.”<sup>52</sup> As discussed in chapter three, the idioms of “publick good” and of *salus populi* were used by the king in the 1630s and appropriated by Parliamentary writers in the 1640s to justify extraordinary actions outside of the boundaries of English laws.<sup>53</sup> In *An Explication*, Aspinwall represents the language of “publick good” as a way for those who use it to accumulate “power in their hands, and then improve the same for their owne ends, and not publick interests.”<sup>54</sup> By applying his interpretation of Daniel 7 to contemporary English history, Aspinwall links both England’s body of law and the language of “publick good” to the carcass of the fourth beast.

Aspinwall argues that both English law and the appeal to *salus populi* are defective because they are founded on forms of human, rather than divine, authority.

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by John Brayne’s *The Authority of God over Men, In the Law Cleared* (1653). Bernard Capp in *The Fifth Monarchy Men* does not see Brayne as a Fifth Monarchist, but he indicates that the list of Biblically-inspired laws found in Brayne’s *The New Earth* was considered by Fifth Monarchists such as Spittlehouse and John Rogers as a model for reform (Capp, *The Fifth Monarchy Men*, 164). In *The Authority of God over Men*, Brayne uses Paul’s epistles to advocate for law reform along the lines of Mosaic Law: “Paul writes to the Romans Gentiles, shewing, that the Law had dominion over them, whiles they lived, as a husband over a wife, and the Reason (because they knew the Law) the knowledge of it actually enjoyns obedience to it” (John Brayne, *The authority of God over men, in the law cleared, shewing that its no persecution for the magistrate as Jehovah’s deputy, in Jehovah’s name, to enforce it on the people, but that he is bound to do the same* (London, [Thomason: Jan. 4], 1653), 1. Early English Books Online. British Library (London). May 10, 2011. [http://gateway.proquest.com.proxy.lib.duke.edu/openurl?ctx\\_ver=Z39.88-2003&res\\_id=xri:eebo&rft\\_id=xri:eebo:citation:99865879](http://gateway.proquest.com.proxy.lib.duke.edu/openurl?ctx_ver=Z39.88-2003&res_id=xri:eebo&rft_id=xri:eebo:citation:99865879)). Brayne explains that the Law in this case does not only mean the Ten Commandments: “By the Law, cleerly the Apostle understands not the ten commands only, but the whole judicial Law, its Statutes and judgements” (Brayne, *The authority of God*, 2).

<sup>52</sup> Aspinwall, *An Explication*, 29.

<sup>53</sup> See chapter three above at page 198.

<sup>54</sup> Aspinwall, *An Explication*, 29.



While England's government and law need to be reformed, this cannot be done by human legislators. Aspinwall's approach to law reform, typical of Fifth Monarchist proposals, reveals his understanding of the role of human reason and judgement in legislating and governing.<sup>55</sup> Central to Fifth Monarchist conception of political authority is the idea that human law-giving is an usurpation of a power that ought to belong only to Christ. Consequently, no human law can be deemed just.<sup>56</sup> Aspinwall argues that by imposing Biblical law, the Saints simply execute Christ's laws; they do not legislate: "Christ giveth Laws, [the Saints] execute his Laws; Christ judgeth all things according to the rule of his owne will, but they judge not according to their owne wills, but according to their discerning of his word and will."<sup>57</sup> In *The Army vindicated*, Spittlehouse had aligned the actions of the Army with Christ's "designe" to destroy all antichristian monarchies. Similarly, through a parallel construction, Aspinwall appropriates for the Saints legislative and judicial authority while claiming to relinquish it: the Saints "judge not according to their own wills," instead they discern "his word and will." Echoing Psalm 1, Aspinwall depicts the Saints as directly guided by the word of God: "the

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<sup>55</sup> For an overview of Fifth Monarchist law reform proposals, see Capp, *The Fifth Monarchy Men*, 157-71.

<sup>56</sup> Interpreting Daniel 7.12, "As concerning the rest of the beasts, they had their dominion taken away: yet their lives were prolonged for a season and time" (KJV), Aspinwall argues that the law-giving power, "when exercised by men, is an exorbitant usurpation. It is Christs Prerogative, and his only, to be his peoples Law-giver" (Aspinwall, *An Explication*, 7). Aspinwall specifies that by Christ's government he does not only mean Church, but also secular, government. The very Hebrew word used to describe Christ's prerogative indicates civil rule: "By the subject matter about which this power is conversant, it is a Kingdom, in a relation to Civil administrations, מְלִכּוּת; For I do not remember that the word מְלִכּוּת is any where applied to Christs spiritual Regiment in his Church" (9).

<sup>57</sup> Aspinwall, *An Explication*, 19; emphasis mine.

Administration of Judgement, according to these Lawes, is committed to Saints; to holy men that walk with God, and judge for God, and make his word the Man of their Council.”<sup>58</sup> In this passage, the term “council” recalls the English translation of the New Testament term for the Jewish Sanhedrin, the authoritative religious court of ancient Israel. After the dissolution of the Rump, Fifth Monarchist had argued for modeling the supreme governing body of England on the Sanhedrin.<sup>59</sup> Aspinwall recalls this proposal and, in the formulation of *The Army Vindicated*, Scripture itself is animated and becomes

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<sup>58</sup> Aspinwall, *An Explication*, 19. Psalm 1: “Blessed is the man that walketh not in the counsel of the ungodly, nor standeth in the way of sinners, nor sitteth in the seat of the scornful./ But his delight is in the law of the LORD; and in his law doth he meditate day and night./ And he shall be like a tree planted by the rivers of water, that bringeth forth his fruit in his season; his leaf also shall not wither; and whatsoever he doeth shall prosper./ The ungodly are not so: but are like the chaff which the wind driveth away./ Therefore the ungodly shall not stand in the judgment, nor sinners in the congregation of the righteous./ For the LORD knoweth the way of the righteous: but the way of the ungodly shall perish” (KJV; emphasis mine).

<sup>59</sup> The Greek *συνέδριον* (rendered in the Vulgate as *concilium*) is translated in the Authorized Version as “council” in, for instance, John 11.47 (*Oxford English Dictionary*, OED online, s.v. “council” (Oxford: Oxford University Press, 2012).

<http://www.oed.com.proxy.lib.duke.edu/view/Entry/42589?rskey=0qrIko&result=1&isAdvanced=false> (accessed December 10, 2012)). Before the appointment of the Nominated Assembly in 1653, Fifth Monarchists had formulated various proposals for organizing the governing body that was to replace the Rump according to Scriptural descriptions of the Sanhedrin, (Capp, *The Fifth Monarchy Men*, 63-4). Throughout the 1650s, Aspinwall continued to advocate for such a council. In *The Legislative Power* (1656), Aspinwall outlines a proposal for a representative body elected by the Saints along the lines described in Deuteronomy 1.13, Exodus 24.1, and Numbers 11.24. The powers of this representative body include the executive authority that would traditionally have belonged to a king: the council is to “deliberate about all Matters that concern the Publick Tranquillity and Peace of the State; To negotiate with Forraign Princes and States; To conclude of Peace and War; to order the Militia; To impower fit Officers for the service of the Commonwealth, and to limit their Power; To call all Officers, higher or lower, to an account, and if there be just cause, to displace them” ([William Aspinwall] W. A., *The Legislative povver is Christ's peculiar prerogative* (London, [Thomason: Aug. 20], 1656), 21. Early English Books Online. British Library (London). May 10, 2011. [http://gateway.proquest.com/openurl?ctx\\_ver=Z39.88-2003&res\\_id=xri:eebo&rft\\_id=xri:eebo:citation:99865193](http://gateway.proquest.com/openurl?ctx_ver=Z39.88-2003&res_id=xri:eebo&rft_id=xri:eebo:citation:99865193)). While judicial duties are in most occasions not a concern of the representative, its members do “have Power to direct, and determine, in hard and difficult cases of Judgement, such as may be transmitted to them from inferior Judicatories” (Aspinwall, *The Legislative Power*, 21). The second kind of ministerial power, active, is the power to “execute Judgement and Rigteousness: And this also is a Lordly Ruling Power, but subordinate to the former. And such is the *Power* of all Judges and Justices, and other inferior Officers” (Aspinwall, *The Legislative Power*, 21; emphasis original).

a member of this governing council. By turning Scripture into a legislator, Aspinwall can draw a stark distinction between merely human laws and the law implemented by Fifth Monarchists: “And such be the Lawes that Christ hath given. [...] And if the Lawes be perfect, and such as administer the Lawes be Saints, by calling, and have a promise of divine assistance, how can it in reason be judged lesse safe, then to have imperfect Lawes (as all humane Lawes be) and such to execute those Lawes, as have not the promise of divine assistance?”<sup>60</sup>

Aspinwall presents the implementation of Scriptural law by the Saints as not only Biblically mandated, but as securing justice for the commonwealth. The government of the Saints in the Fifth Monarchy will be characterized “by the free passage of Justice, the tranquility and peace of the Government, the subjection of his enemies, and the homage which shall be yielded to him by all.”<sup>61</sup> In a later pamphlet, *The Legislative Power is Christ's* (1656), Aspinwall argues that government by Christ through the Saints is most suited to a commonwealth.<sup>62</sup> In the Fifth Monarchy, magistrates are “called, according to Christs appointment, and by the suffrage of the people.”<sup>63</sup> Using Deuteronomy 1.13 as Scriptural support, Aspinwall proposes that magistrates be appointed through a dual system of election and selection. First, the people elect

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<sup>60</sup> Aspinwall, *An Explication*, 20.

<sup>61</sup> Aspinwall, *An Explication*, 8.

<sup>62</sup> *The Legislative Power* includes some veiled criticism at the Protectorate government. Significantly, unlike Aspinwall's other tracts, it does not advertise the author's identity, but carries only Aspinwall's initials.

<sup>63</sup> Aspinwall, *The Legislative Power*, 22.

candidates from among “the wise men” of the community. Then, the “Supreme Power” in the commonwealth chooses magistrates from this group of elected candidates.<sup>64</sup> This form of election is contrasted to the appointment of judges and other magistrates in monarchies. In a monarchy, the governing power flows directly from the king.

Consequently, magistrates, accountable only to the prince, will “rule over the People of God with rigour, like as the Egyptians did over the Israelites.”<sup>65</sup> In recalling the narrative of the Egyptian captivity, however, Aspinwall glosses over the murmurs of the Israelites upon being freed from the Egyptian yoke. The omission is telling. While his program for the appointment of magistrates indicates that in the Fifth Monarchy “the People of God” have a voice in government, Aspinwall’s specific legal recommendations argue otherwise. In his list of laws, Aspinwall closely follows the prescriptions found in John Cotton’s *An Abstract of Laws and Government*. In 1655, Aspinwall had published a London edition of Cotton’s work and, *The Legislative Power* follows *An Abstract* in classifying adultery as a capital crime.<sup>66</sup> This insistence on making adultery punishable by death is,

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<sup>64</sup> Aspinwall, *The Legislative Power*, 22.

<sup>65</sup> Aspinwall, *The Legislative Power*, 23-4.

<sup>66</sup> Aspinwall, *The Legislative Power*, 31. Aspinwall’s edition of Cotton’s *An Abstract of Lawes and Government* and included a dedicatory letter written by Aspinwall himself to the English reader, recommending the implementation of Cotton’s laws (John Cotton, *An abstract of laws and government wherein as in a mirrour may be seen the wisdome & perfection of the government of Christs kingdome accomodable to any state or form of government in the world that is not antichristian or tyrannicall* (London, 1655). Early English Books Online. Union Theological Seminary Library (New York). July 25, 2011. [http://gateway.proquest.com.proxy.lib.duke.edu/openurl?ctx\\_ver=Z39.88-2003&res\\_id=xri:eebo&rft\\_id=xri:eebo:citation:7901033](http://gateway.proquest.com.proxy.lib.duke.edu/openurl?ctx_ver=Z39.88-2003&res_id=xri:eebo&rft_id=xri:eebo:citation:7901033)). John Cotton was part of a committee, comprising, alongside Cotton, Sir Henry Vane (the governor), Hugh Peter, and Thomas Shepard, constituted in 1636 to write a body of laws for Massachusetts (Woolrych, *Commonwealth to Protectorate*, 271). Cotton’s draft of the

on a certain level, redundant; such a law had been enacted in 1650, that is, six years before the writing of *The Legislative Power*.<sup>67</sup> However, the bill for the ordinance against adultery included, in part thanks to the efforts of Edmund Ludlow and Henry Marten, rather strong safeguards for the accused.<sup>68</sup> In addition, juries proved extremely reluctant to condemn adulterers to death. These two factors account for the extreme rarity of convictions in these cases.<sup>69</sup> Similarly, in the New England of the 1630s and 1640s

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laws, attempting “a synthesis between the Mosaic Law and current legal practice in the colony,” was never adopted (Woolrych, *Commonwealth to Protectorate*, 272). An earlier edition than Aspinwall’s had been printed in London in 1641 (Woolrych, *Commonwealth to Protectorate*, 272).

<sup>67</sup> The bill had originally been proposed in 1644, but not passed until 1650. In the 1640s, the Long Parliament had abolished the ecclesiastical courts and, until a secular counterpart was instituted, adultery, previously under the jurisdiction of bishops and church courts, was left unpunished (see Bernard Capp, “Republican reformation: Family, community and the state in Interregnum Middlesex, 1649-60,” in *The Family in Early Modern England*, ed. Helen Berry and Elizabeth Foyster (Cambridge: Cambridge University Press, 2007), 42; and Keith Thomas, “The Puritans and Adultery: The Act of 1650 Reconsidered,” in *Puritans and Revolutionaries: Essays in Seventeenth Century History Presented to Christopher Hill*, ed. Donald Pennington and Keith Thomas (Oxford: Clarendon Press, 1978), 275). In 1644, a bill designed “to repress incest, adultery, whoredom, drunkenness, swearing, blasphemy, and other vices” was brought before Parliament (Thomas, “The Puritans and Adultery,” 275). However, more urgent matters and the Civil Wars took precedence and it wasn’t until 1649 that the Rump was able to revisit the bill (Thomas, “The Puritans and Adultery,” 276). The ordinance against adultery, incest, and whoredom was finally passed in May 1650 (Thomas, “The Puritans and Adultery,” 275). As Keith Thomas argues, the Rump was under both internal and external pressure to pass legislation to curb vice and, in many fast-day sermons, its members had been warned that allowing sin to go unpunished in England would certainly bring about God’s retribution against the nation: “it is noticeable that it was on fast days that the adultery bill tended to make most progress” (Thomas, “The Puritans and Adultery,” 276-7).

<sup>68</sup> The alleged adulterer “could produce witness for the defence; the indictment had to be filed within twelve months of the offence; the penalty for adultery did not apply to a man who did not know that the woman concerned was married; nor did it touch a married woman whose husband had been overseas for three years, or was by common fame reputed dead, or whose whereabouts had been unknown to her for three years. Most crippling of all, the confession of one party was unacceptable as evidence against the other; nor could husbands and wives testify against each other” (Thomas, “The Puritans and Adultery,” 278-9).

<sup>69</sup> Thomas, “The Puritans and Adultery,” 280-1. This does not indicate, however, that adultery went unpunished. Local authorities found ways to inflict less stringent penalties and, as Bernard Capp demonstrates for the case of Middlesex, adulterers were often punished by magistrates with binding-over

(Aspinwall's model for the law on adultery), there was a marked reluctance from the legislators themselves to implement the death penalty for adulterers because they feared that the law had not been properly made public.<sup>70</sup> The experience of the 1650 adultery act and of colonial Massachusetts indicated that attempts to modify customary law to comply with Mosaic Law could meet with stiff resistance. English- (and New English-) men were as recalcitrant against Mosaic Law as the ancient Israelites yearning for the fleshpots of Egypt. Magistrates, judges, juries, and witnesses resisted the strictures of the new law and mitigated its consequences.

Aspinwall's solution is to argue against the need for juries in English courts. In the discussion of juries in *The Legislative Power*, it becomes evident that proposals for the wholesale removal of customary law are dependent on imagining England as a fundamentally different kind of political and social community, governed by new, Scripturally-based institutions. In a sustained attack on English courts, Aspinwall argues that "We have not one word of a Jury of twelve men, in all the Scripture; but the Judges having heard the cause and the Testimonies, they give *Judgement* according to the Law; and the party or parties are to sit down with this *Judgment*, as proceeding from Christ,

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orders in cases where it seemed unlikely that sufficient evidence for a trial and sentence would be found (Bernard Capp, "Republican Reformation," 51).

<sup>70</sup> R. H. C., "The Rule of Law in Colonial Massachusetts," 1022.

who sitteth upon the Throne amongst the Judges.”<sup>71</sup> In the 1640s and 1650s, complaints about juries and the procedure for calling witnesses were common and not the sole prerogative of Fifth Monarchists basing their arguments on Scriptural reasoning. Like many contemporaries, Aspinwall complains about the number of witnesses called during trials. Judges ought to be able to determine the case based on the evidence heard “at the mouth of two or three witnesses [...] *Deut.* 17.6 and 19.15” and Aspinwall complains that the admitting “scores of witnesses” has come into usage only to “satisfy the lusts of the plaintiffs and defendants, and to increase the Courts fees.”<sup>72</sup> Here too, on the issue of the number of witnesses, Aspinwall uses the same scriptural verses cited in Cotton’s *An Abstract*. But whereas Cotton uses the Deuteronomic places to give a minimum of witnesses needed to come to a judgment, Aspinwall uses them to limit the number of witnesses.<sup>73</sup> Lawyers interested in reforming criminal trial procedure also complained that the process for selecting members of a jury needed to be improved; some went so far as to advocate abolishing their use altogether.<sup>74</sup> However, what stands out about Aspinwall’s solution, rather than his complaints, is his insistence that juries are simply judges by another name:

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<sup>71</sup> Aspinwall, *The Legislative Power*, 26; emphasis original.

<sup>72</sup> Aspinwall, *The Legislative Power*, 26, 25.

<sup>73</sup> For Cotton’s argument, see *An abstract*, 29.

<sup>74</sup> See Veall, *The Popular Movement for Law Reform, 1640-1660*, 156-59. Similarly, the seemingly eccentric complaint about the number of witness evinced by Aspinwall is grounded on concrete problems with evidence giving in criminal trials. A particular target of complaints were procedures that denied accused prisoners the ability to call their own witnesses. Moreover, in Common Law criminal trials “[t]here were no rules about the admissibility of evidence at trials,” and “[h]earsay evidence was accepted” (Veall, *The Popular Movement for Law Reform, 1640-1660*, 19).

it may be granted, these *Jurors* are indeed Judges of the causes brought before them, and be men qualified and chose according to the Rule, and be obliged to give in their Verdicts and Judgements according to the perfect rule of the Word of Truth; and that in every circuit, whether town, hundred, or shire, such knowne fit persons may be constituted, I disallow not: it is not the name [of juror] I take offence at, for I would not strive at words.<sup>75</sup>

The passage argues that the difference between judges and properly-understood jurors is only a *linguistic* one. However, in the seventeenth-century, as now, the role of jurors was simply a matter of assessing questions of fact and not law.<sup>76</sup> Aspinwall's willingness to argue that "*Jurors* are indeed Judges of the causes brought before them" shows that he views acts of legal judgment as simple questions of fact. The only task left for a judge is to discern matters of fact and to then classify them to fit a particular law.<sup>77</sup> By equating all legal judgments to resolving questions of fact, Aspinwall reduces human judgement to the application of rules.

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<sup>75</sup> Aspinwall, *The Legislative Power*, "To the Reader"; emphasis original.

<sup>76</sup> For a brief history of the function of juries, see Veall, *The Popular Movement for Law Reform, 1640-1660*, 21. Veal points out that originally the jury "consisted of a body of witnesses summoned from the neighborhood to a trial to give evidence on oath because of their special knowledge of the facts" (21). While with time their function evolved from giving evidence to evaluating the evidence given by witnesses, even in the early seventeenth-century, they were allowed to use their own knowledge of the case to come to a decision, thus preserving some of the function of a witness (21). Sir Edward Coke, in *The First Part of the Institutes*, makes it clear that juries are to stick to matters of fact, not law: "Hereby it appeareth, that it is the office of the judges to instruct the grand assise or jury in points of law; for the grand assise or other jurors are triers of the matters of fact, *ad questionem facti non respondent iudices, so ad questionem juris non respondent juratores*" (L.3.C8. Sect. 514. 295.a.295.b).

<sup>77</sup> Aspinwall makes clear that a verdict reached by a council modeled on the Sanhedrin would be infallible, with no grounds for appeal: "if the matter prove too difficult for the Judges to determine, then are they to repair unto the great Council, and to advise with them Concerning the Law and the Judgement; [...]. There was no appeale allowed, for that would have been a dishonour to Christ, to suppose his Judgement changeable, like mens minds and places are" (Aspinwall, *The Legislative Power*, 26). Christ's laws, administered by judges and officers drawn from and elected by the Saints, inevitably produce just verdicts.



In addition, Fifth Monarchists' insistence on the perfection of Deuteronomic law indicates that the same set of rules can organize all societies at all times. This becomes evident in his definition of laws: a law is "a *prescribed Rule*, for the well ordering of mens Conversation, whether in Church or in Common-wealth."<sup>78</sup> While the definition of a law as a rule or a measure of human interactions is traditional, Aspinwall uses it to argue that all civil laws are part of the Decalogue: "there is no *Civil Law*, but is comprehended within the Decalogue, which we call *Moral Laws*."<sup>79</sup> In this definition, the term "comprehended" is used in a strict and strong sense; civil laws do not simply have to agree with the Decalogue, they are rather contained in it. Aspinwall's strict Scriptural faithfulness in matters of legal reform is intimately connected to his conception of the relationship between just laws and political society. In the very next page of *The Legislative Power*, he lists as an intrinsic property of all moral laws "that Laws and Judgements should be perfectly righteous, and by consequence unvariable; Such as do binde all Persons, in all of Ages, and in every Nation."<sup>80</sup> That is, all political societies can

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<sup>78</sup> Aspinwall, *The Legislative Power*, 16; emphasis original.

<sup>79</sup> Aspinwall, *The Legislative Power*, 16; emphasis original. By "Civil Laws," Aspinwall means positive law rather than the technical term "civil law." Aquinas also defines human laws as rules, see his definition in the *Summa*, Ia-IIae, q. 96, art. 2. I will return to Aquinas's definition of laws in greater details below in my discussion of John Rogers.

<sup>80</sup> Aspinwall, *The Legislative Power*, 17; emphasis mine. John Brayne makes a similar point when arguing that Mosaic Law has never been abolished. The Law's purpose is not simply to show us our sins, but it is also to teach us how to judge and punish them: "Such offences are committed among us, and such offenders are abiding with us, and the Law was made for them, not onely to shew them their sin, and let them al[o]ne in it, but to punish them for it, and judge them by it" (John Brayne, *The new earth, or, The true Magna Charta of the past ages, and of the ages or world to come: called The Jews commonweal* (London, [Thomason: Octob. 2], 1653), 2. Early English Books Online. British Library (London). May 10, 2011.

be ruled by the same laws. Consequently, as a set of perfect laws has already been revealed and made available through Scripture, there is no legitimate human legislative action. In Aspinwall's formulation, Mosaic Law is such that it *completely* classifies human action. In this framework, interpretation of the law is reduced to ascertaining the facts of the case; the law is presented as self-interpreting and almost self-administering. Justice and equity are self-evidently inscribed in the dictates of Scripture itself, which are independent of tradition or custom.<sup>81</sup> I have been belaboring the point about jury reform because, as we have just seen, Fifth Monarchist calls for deep and broad legal reformation, both on the substantive as well as procedural level, are linked with their conception of legitimate legislative authority. But what Aspinwall and other Fifth Monarchists leave unanswered is how to apply Biblical law to seventeenth-century English society. That is, given that the customs and laws of the English people

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[http://gateway.proquest.com.proxy.lib.duke.edu/openurl?ctx\\_ver=Z39.88-](http://gateway.proquest.com.proxy.lib.duke.edu/openurl?ctx_ver=Z39.88-2003&res_id=xri:eebo&rft_id=xri:eebo:citation:99866304)

[2003&res\\_id=xri:eebo&rft\\_id=xri:eebo:citation:99866304](http://gateway.proquest.com.proxy.lib.duke.edu/openurl?ctx_ver=Z39.88-2003&res_id=xri:eebo&rft_id=xri:eebo:citation:99866304)). Mosaic Law is a manifestation of the covenant between God and His people and, consequently, to accept any other law is to place human rule above God's rule: "if mortal men made Kings, adjudge men to death for denying their supremacy, doth not man more justly dye for denying Gods? was it Treason to declare any other King in a Nation then he that is Legally such? How much more doth he deserve death, that sets up another King then God over men, by Idols?" (Brayne, *The authority of God*, 4).

<sup>81</sup> "Now the perfection of these Laws of Christs Kingdom appears, 1. By the equity of them, they are most just; 2. By the comprehensiveness of them; for though they be but few in number, yet may be extended in the application of them, by way of proportion, unto all cases and actions, that do or can fall out, at Sea or Land; all circumstances being duly weighed, and rightly applied. 3. By the extent of them, which reacheth all persons in all ages, and in all Nations. For unrighteousness, is unrighteousness, as well in one person as in another; as well in one age and in one Nation, as in another. And by consequence, as unrighteousness is one and the same, so also must the Judgment and the punishment be" (*The Legislative Power*, 32; underlining mine).

manifestly differ from those provided by Scripture, how are the people of England to be turned into the people of the New Israel envisioned by the Fifth Monarchists?

The question of how to relate Scriptural injunctions to contemporary societies formed by a host of traditions and customs is, of course, one that has been faced well before Fifth Monarchists published their proposals. As MacIntyre argues in *After Virtue*, it is a problem that explicitly resurfaced with the rediscovery of classical texts in the middle ages. In the twelfth- and thirteenth-century, as MacIntyre explains, this problem was manifested both on the theoretical level, with respect to the rediscovery of pagan philosophy, and on the practical level, with respect to the local pagan elements in European medieval society. How could scholars reconcile pagan with Christian virtue?<sup>82</sup> Fifth Monarchists, labeling all laws and forms of government that were not strictly Biblical as anti-Christian, attempt to bypass a version of this very question, that is, how to reconcile human custom with Scriptural law. However, as MacIntyre points out, the dismissal of pagan teachings in certain strands of medieval and early modern thinking left an intractable problem: “That problem is one of translating the Bible’s message into a particular and detailed set of discriminations among contemporary alternatives and for

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<sup>82</sup> When “in the twelfth century the question of the relationship of pagan to Christian virtues is explicitly posed by theologians and philosophers, it is much more than a theoretical question. It was indeed the rediscovery of classical texts [...] which first occasioned the theoretical problem. But the paganism with which scholars such as John of Salisbury and Peter Abelard or William of Conches wrestled was partly within themselves and their own society, even if in a form quite other than that of the ancient world” (Alasdair MacIntyre, *After Virtue: A Study in Moral Theory* (Notre Dame, IN: University of Notre Dame, 2007), 167).

that task one needs types of concepts and types of enquiry not made available by the Bible itself.”<sup>83</sup> Fifth Monarchists are blind to the existence of this problem. At no point in his detailed accounts of law reform does Aspinwall express awareness of any need to give an account of *how and by which means* the English political community can become the New Israel. Fifth Monarchists’ account of the relationship between divine law as revealed through Scripture and human law or customs is oppositional and adversarial. For laws to be just, divine law must replace human law wholesale and, consequently, the institutions and forms of political association that are shaped and defined by those human laws and customs must also be supplanted.

By sweeping under the rug the question of how to reconcile Scriptural law with the institution and customs of seventeenth-century English political community, Fifth Monarchists reveal a central aspect of their understanding of political and legislative authority. How legal reform is brought about is inextricably connected to the conception of how laws and, more broadly, political authority compel individuals. In turn, how laws compel individuals is dependent on the question of where legitimate legislative authority resides. The connection between these two issues is evident, for instance, in Roman law. In particular, it is found in the *Digest*, a text that, as Brian Tierney explains, formed the foundation of all subsequent arguments over the binding authority of custom. The *Digest* argues that custom has the force of law *exactly because* it is an

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<sup>83</sup> MacIntyre, *After Virtue*, 167.

expression of the will of the people, that is, of the ultimate legislative authority in a community: "Since statutes are binding on us only because they have been accepted by the judgement of the people ... What does it matter if the people declares its will by voting or by the very nature of its actions?"<sup>84</sup> By contrast, Aspinwall views customs and human laws as having no power, other than brute force, to compel. His line of reasoning is made explicit in both *An Explication* and *The Legislative Power*. In *An Explication*, Aspinwall draws a distinction between human law's and divine law's power to compel: "all Gods laws doe binde the conscience, as well as the outward man, and so do not the Lawes of men."<sup>85</sup> His understanding that only divine laws bind in *foro conscientiae* has an important consequence for the relationship between political authority and the people. For Aspinwall, in a godly government under the rule of God's laws, men would not be able to disobey due to conscientious qualms: "If God command, wee may not say, wee will suffer the punishment for our conscience sake: For there can be no Conscience, or pretence of Conscience against any Law of God."<sup>86</sup> Aspinwall's denial of the possibility of conscientious resistance against political authority ruling through divine law is presented as a guarantee of stability; the claim that God allowed men to legislate is an

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<sup>84</sup>*Digesta*, in *Corpus Iuris Civilis*, ed. T. Mommsen and P. Krueger, (Berlin: Weidmann, 1868), *Dig.* 1.3.32 quoted in Brian Tierney, "Vitoria and Suarez on *ius gentium*, Natural Law, and Custom," in ed. Amanda Perreau-Saussine and James Bernard Murphy, *The Nature of Customary Law* (Cambridge: Cambridge University Press, 2007), 118.

<sup>85</sup> Aspinwall, *An Explication*, 20; underlining mine. See also Aspinwall, *The Legislative Power*, 17.

<sup>86</sup> Aspinwall, *An Explication*, 20-1.

“unsafe” principle.<sup>87</sup> What is important to note in Aspinwall’s argument is not the simple statement that divine law binds in *foro conscientiae*, but rather the conclusion he draws from it: no other law binds the conscience and therefore no other law can create a stable and just political community because other forms of law can be objected to.

In chapter four, I argued that the proponents of the *Agreement of the People* at the Putney Debates used natural law to demand rights for the English people while, at the same time, they implicitly denied the expression of the people’s legislative authority embodied in customary law. Fifth Monarchists go further. They explicitly reject human laws as neither legitimate nor just. To paraphrase Aspinwall’s title, the legislative power is Christ’s at all times in all nations and Christ’s law, unlike human law, binds the conscience. However, we have seen that Aspinwall’s proposals required obedience to a government of the Saints as the only authority capable of applying and administering divine law. While Aspinwall’s arguments rarely cite authorities beyond the Bible, the Fifth Monarchist John Rogers, as we will see below, relies on Aquinas’s *Summa Theologiae* for his discussion of legal reformation. However, even in the case of Aspinwall, comparison with Aquinas elicits two questions about the Fifth Monarchists’ conception of the law.<sup>88</sup> First, in *The Legislative Power*, Aspinwall argues that not only do Christ’s

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<sup>87</sup> Aspinwall, *An Explication*, 20.

<sup>88</sup> As we have seen in the case of Aspinwall and Spittlehouse, Fifth Monarchists based their program of legal and political reform on their interpretation of Scripture and, in particular, of Daniel 7. Consequently, scholarly work on the movement has centered on their Biblical hermeneutics and their own prophetic productions as the basis for their political activities. While B. S. Capp’s careful account of the movement

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acknowledged the presence of university educated members who “cited classical and mediaeval Greek and Latin authors, as well as Hebrew works,” overall scholarship on Fifth Monarchists still ignores non-Scriptural influences on their thought (*The Fifth Monarchy Men*, 189). Capps’ account carefully discriminates between different Fifth Monarchists. While some of them, such as Spittlehouse, attacked university education, others, including Rogers, took university degrees. His acknowledgment of Fifth Monarchists’ engagement with the university curriculum is, however, brief and has gone largely unnoticed. This tendency has been reinforced by interest in female Fifth Monarchist prophets, such as Anna Trapnel and Mary Cary. Though adding a welcome level of attention to women’s voices in the analysis of Interregnum politics, scholarly work on Baptist and Fifth Monarchist prophetesses centers, understandably, on the authorizing strategies in their verbal and written utterances as well as on the highly dramatic quality of their prophesying. Consequently, the visionary and prophetic element of Fifth Monarchists’ millenarian hopes has received more attention than the use of classical and medieval authorities by writers such as John Rogers. Phyllis Mack, for instance, argues that female prophets justify speaking and writing on religion and politics by appealing to the common representation of women’s “essence” as “irrational” and “emotional” and therefore more responsive to visions (Phyllis Mack, “Women Prophets During the English Civil War,” *Feminist Studies* 8 (Spring 1982): 23). In *Visionary Women*, Mack argues that seventeenth-century women prophets were far from “being a marginalized, hysterical fringe group,” but rather depicted themselves as “empty vessels” for God’s spirit in order to justify their religious and political activities (Phyllis Mack, *Visionary Women: Ecstatic Prophecy in Seventeenth-Century England* (Berkeley, CA: University of California Press, 1982), 93, 33). Nonetheless, such emphasis on women’s prophetic strategies foregrounds the spectacular and “irrational” element in the Fifth Monarchist movement. On female prophecy in the revolutionary and restoration period, see also Elaine Hobby, *Virtue of Necessity: English Women’s Writings, 1649-88* (London: Virago Press, 1988), 26-53. Erica Longfellow argues that Anna Trapnel’s prophetic activity manipulates the categories of “private” and “public” around the question of women’s speech (*Women and Religious Writing in Early Modern England* (Cambridge: Cambridge University Press, 2004), 149-79). Nigel Smith also focuses on Trapnel’s life and need to authorize her prophetic activity (*Perfection Proclaimed*, 45-53). Similarly, when considering John Rogers’ writings, Smith pays close attention to the question of inspiration and prophecy (*Perfection Proclaimed*, 26-9, 33-45, 67-84, and 99-100 (conversion experience)). On Mary Cary, see also: David Loewenstein, “Scriptural Exegesis, Female Prophecy, and Radical Politics in Mary Cary,” *Studies in English Literature 1500-1900* 46 (Winter 2006): 133-53. In *Ehud’s Dagger*, James Holstun argues for the importance of women’s prophetic writings in the English revolution (262-6). Holstun pays attention to the educational function of female conventicles in Baptist and Independent churches for women prophets (260). However, the bulk of his discussion focuses on Trapnel’s prophecies against Cromwell as “symbolic actions” and her sexuality (279, 270-2). Trapnel’s prophetic actions and utterances are linked by Holstun to the larger Fifth Monarchist program. For Holstun, attacks on Fifth Monarchists “from Cromwell to the present,” including apparently Woolrych’s discussion in *Commonwealth to Protectorate*, are “strategic attempts to obscure [...] the rational, democratic, and carefully elaborated quality” of the movement’s project (274). Like Christopher Hill, he sees Fifth Monarchist reform proposals as the result of “genuine small producer radicalism” (*Ehud’s Dagger* 275; cf. Christopher Hill, *The World Turned Upside Down: Radical Ideas During the English Revolution* (London: Penguin Press, 1991), 97). Accordingly, instead of carefully questioning Fifth Monarchists’ accounts of political and legal reformation, Holstun likens Trapnel’s subversion of male authority by submission with the movement’s “servile yet anti-tyrannical fealty to King Jesus” (280). This strand of scholarship contributes to the association of Fifth Monarchist militant and aggressive millenarianism with “self-dramatization and exhilarating prophecies” based on “radical”

laws ensure a safe and stable government, they also apply “to all cases and actions,” leaving no crime or sin unaccounted for.<sup>89</sup> Aquinas considers this very question in the *Ia-IIae*. Quæstio 96, art. 2 asks whether human law should restrain all vice and Aquinas answer that “human law rightly tolerates some vices without suppressing them.” As MacIntyre argues, Aquinas’ answer stems from his conception of the educative role that the law has to play in a community. While the purpose of the law is to help habituate human beings into the virtues, the law is written for everyone in the community and, consequently, its primary goal is to educate those who are imperfect in the virtues. Aquinas warns that to demand perfect virtue from those who are only beginning to be educated in the virtues will be ineffective.<sup>90</sup> As we have seen, Aspinwall’s discussion of law reform lacks exactly an account of how the English people are to be educated into becoming a New Israel. Aquinas’s account prompts a question about Fifth Monarchists’ legal theory: what is the role of the law in the moral life of the community?

Second, for Fifth Monarchists, the only legitimate legislative authority is Christ’s and his laws are revealed in Scripture. Aquinas, on the other hand, “appealed to natural reason, not only for his account of the purpose and function of law, but also for the

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readings of the Old Testament (David Loewenstein, *Representing Revolution in Milton and His Contemporaries: Religion, Politics, and Polemics in Radical Puritanism* (Cambridge: Cambridge University Press, 2001), 116).

<sup>89</sup> Aspinwall, *The Legislative Power*, 32.

<sup>90</sup> Alasdair MacIntyre, “Natural Law as Subversive: the Case of Aquinas,” in *Ethics and Politics: Selected Essays*, vol. 2, (Cambridge University Press, 2006), 47.



standard to which all positive legal enactments and administrative measures must conform, if they are to be appropriate law rather than merely an expression of the will and interest of those who enact and administer.”<sup>91</sup> As we have seen, Aspinwall appeals to divine law to argue that rule by the Saints cannot be justly opposed. In doing so, he places the administration of the law beyond the grasp of the resources of natural reason which Aquinas sees as available to all members of the community. For Aquinas, since the role of the law is to promote the common good and to educate the members of a political community in the virtues, legislative authority ultimately belongs to the people: “The chief and main concern of law properly so called is the plan for the common good. [...]. Therefore to make law is the office of the entire people or the public personage who cares for them.”<sup>92</sup> Moreover, since human law is from natural reason, every member of a community, if possessed of sufficient rationality, can determine whether laws conform to the standard set by reason. Central to Aquinas’ account of the people’s legislative authority is a specific conception of human reason and the role of law in the moral education of a community. What is the Fifth Monarchists’ conception of the role of human reason in government? The pamphlets we have considered so far do not directly address this question, but the work of John Rogers does. In particular, as we will see, Rogers borrows from Aquinas his discussion of reason as well as his definition of the

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<sup>91</sup> MacIntyre, “Natural Law as Subversive: the Case of Aquinas,” 47.

<sup>92</sup> Ia-IIae, q. 90, art. 3, Aquinas, *Summa Theologiae*, vol. 28, trans. Thomas Gilby (Cambridge: Blackfriars Press, 1965).

law, but comes to drastically different conclusions. What happens when the connection between human reason and legislation set out in the *Summa* is taken out of the context of Aquinas's conception of education in the virtues?

## **5.2 Reason and the Law: John Rogers' Conception of Natural Law**

John Rogers published his views on church discipline and a collection of conversion narratives from his congregation in Dublin in *Ohel, or Beth-shemesh* (1653). The son of a Church of England minister, Rogers was estranged from his family when he decided to enter the Presbyterian Church. After earning his degree from Cambridge in 1646, he became the Presbyterian minister of a congregation in Essex, a position he left in less than one year. By the time he came to write *Ohel* Rogers had served as minister to Independent congregations, first in London and then in Dublin, and had begun to justify congregational ecclesiology in millenarian terms.<sup>93</sup> On his return to England from

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<sup>93</sup> In *Ohel*, Rogers narrates how, at the age of ten, he was "struck" with the realization of his sinfulness while listening to one of William Fenner's sermons (*Ohel*, 419-422). On Rogers' life and on his time as a Presbyterian minister, see also: Suellen M. Hoy, "John Rogers: A Disillusioned Fifth Monarchy Man," *Albion: A Quarterly Concerned with British Studies* 4 (Autumn, 1972): 125-146. Moving to London after leaving his position in Purleigh, Essex, Rogers attracted the attention of the council of state and was commissioned to Dublin in 1651. There, he gathered a congregation that admitted members who both believed in and opposed infant baptism. His sermons were attended by officers of the Cromwellian Army stationed in Ireland. In both London and Dublin, Rogers attacked Presbyterianism as imitating the Catholic church in their acceptance to church membership of non-visible saints ("Rogers, John (b. 1627)," Richard L. Greaves in *Oxford Dictionary of National Biography*, ed. H. C. G. Matthew and Brian Harrison (Oxford: OUP, 2004); online ed., ed. Lawrence Goldman, January 2008, <http://www.oxforddnb.com/view/article/23983> (accessed December 14, 2012)). For a summary of Rogers's career, see: Capp, *The Fifth Monarchy Men*, 261. In particular, Rogers had supported Cromwell and the army up to the dissolution of the Nominated Assembly, but starting in December 1653, with the beginning of the Protectorate, Rogers criticized Cromwell both privately and in print (Capp, *The Fifth Monarchy Men*, 103-4). For Capp's reading of Rogers's program of law

Ireland, Rogers begun to openly associate with Fifth Monarchists. While in *Ohel*, Rogers addresses legal reformation, and particularly condemns tithing, his full account of law reform along Scriptural lines appears in a later tract, *Sagrir or, Doomes-day drawing nigh* (1653). *Sagrir* was written while the Nominated Assembly was still sitting and explicitly links Rogers' proposals for legal reform with the institution of a government by the Saints ushering in the Fifth Monarchy. Rogers, like other Fifth Monarchists, believes that England is on the verge of turning into a New Israel in covenant with God. In *Sagrir*, the members of the Nominated Assembly are charged with the task to bring about this transformation by enacting the laws of God: "O that you might bee used of God, for Christ in this work of *magnifying his Law* in this *Commonwealth* of England! (I was ready to say of *Israel*, but it is not so yet) which should be to your *Fame* for ever! The Lord Jesus *awaken* you with the noise of his *Monarchy!* which is swift in *motion*, and now *nigh* us! *least you be surprised.*"<sup>94</sup> In language reminiscent of Jesus' sermon on the last times found

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reform, see *The Fifth Monarchy Men*, 158-60. On Rogers' congregation in Dublin, see Crawford Gribben, *God's Irishmen: Theological Debates in Cromwellian Ireland* (Oxford: Oxford University Press, 2007), 38-59.

<sup>94</sup> John Rogers, *Sagrir, or, Doomes-day drawing nigh, with thunder and lightening to lawyers in an alarum for the new laws, and the peoples liberties from the Norman and Babylonian yokes : making discoverie of the present ungodly laws and lawyers of the fourth monarchy, and of the approach of the fifth, with those godly laws, officers and ordinances that belong to the legislative power of the Lord Iesus : shewing the glorious work incumbent to civil-discipline, (once more) set before the Parliament, Lord Generall, army and people of England, in their distinct capacities, upon the account of Christ and his monarchy* (London, 1654), 140; emphasis original. Early English Books Online. Huntington Library and Art Gallery (San Marino, CA). May 10, 2011. [http://gateway.proquest.com.proxy.lib.duke.edu/openurl?ctx\\_ver=Z39.88-2003&res\\_id=xri:eebo&rft\\_id=xri:eebo:citation:12435814](http://gateway.proquest.com.proxy.lib.duke.edu/openurl?ctx_ver=Z39.88-2003&res_id=xri:eebo&rft_id=xri:eebo:citation:12435814). There is an earlier edition of *Sagrir*, published on 7 November 1653 (Capp, *The Fifth Monarchy Men*, 293).

in Luke 21, “And take heed to yourselves, lest at any time your hearts be overcharged with surfeiting, and drunkenness, and cares of this life, and so that day come upon you unawares” (Luke 21.34; underlining mine), Rogers warns the members of the Nominated Assembly that the kingdom of Christ is imminent and that they must hasten to turn England into the New Israel.<sup>95</sup> In this passage, the “work of magnifying his Law” is connected with the necessary preparations for the Second Coming: to delay the reformation of English law is to risk being “surprised” by the coming of the Kingdom of Christ. Jesus’ warning about the destruction of Jerusalem in Luke 21—or in the parallel verses in Mathew and Mark—surfaces in both the opening and closing passages of *Sagrir*.<sup>96</sup> In the address to the reader, Rogers uses Matthew 24 to admonish those who oppose the reformation of English law that Christ’s kingdom will come and find them unprepared: “the *Floud* begins; and as in *Noah’s Arke* after the *doores* were shut up there was no *mercy*.”<sup>97</sup> The effect of these Scriptural echoes is to both urge quick action in implementing divine law as well as to depict the transformation of the “Commonwealth of England” into the Commonwealth of Israel as being but a slip of the pen away: “this

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<sup>95</sup> Rogers, like many other Fifth Monarchists, predicted that the Fifth Monarchy would begin in 1656 (*Sagrir*, “To the Reader of all sorts,” image 13).

<sup>96</sup> Rogers variously uses the parallel versions in the Synoptic Gospels. The verses parallel to Luke 21.31-8 are Matthew 24.34-51 and Mark 13.30-7.

<sup>97</sup> Rogers, *Sagrir*, “To the Reader of all sorts,” image 13; emphasis original. Matthew 24.38-9 warns: “For as in the days that were before the flood they were eating and drinking, marrying and giving in marriage, until the day that Noe entered into the ark, And knew not until the flood came, and took them all away; so shall also the coming of the Son of man be.” Neither Luke 21 nor Mark 13 uses the image of Noah’s flood.

*Commonwealth of England!* (I was ready to say of *Israel*, but it is not so yet).<sup>98</sup> In *Sagrir*, the application of Deuteronomic law is both a necessary preparation for the kingdom of God on earth and a characteristic of Christ's rule during the Fifth Monarchy.

At the same time, Rogers presents the adoption of Deuteronomic laws as a return to England's true and original laws. In urging legal reform, Rogers weaves together the language of the ancient constitution with Fifth Monarchist millenarianism to target the "Norman and Babylonian yokes." The "Norman" yoke represents the common law and its lawyers, and the "Babylonian" yoke, tithes and the national clergy.<sup>99</sup> The unjust "Norman laws" that oppress Englishmen cannot be amended by imposing new human laws. Rather, Scriptural law is the only true "Magna Carta" of England capable of preserving the "*Rights, Priviledges, and Freedom*" of all "*Free-born Country-men*."<sup>100</sup> Rogers conflates the language of the rights and freedoms of all "free-born" Englishmen preserved by the "Magna Carta" with Biblical language and texts. Mosaic Law, unlike the failed attempts at legal reform by the Rump, presents for Rogers a perfect body of law.<sup>101</sup> This conflation of England and Biblical history is not unique to Fifth Monarchists. As we have seen in chapter four, the Leveller Cowling at Putney argued that he had "ever read in the word of God [that the sword] had recovered the rights of the people;

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<sup>98</sup> Rogers, *Sagrir*, 140; emphasis original.

<sup>99</sup> Rogers, *Sagrir*, "To the Reader of all sorts"; image 11; emphasis original.

<sup>100</sup> Rogers, *Sagrir*, "To the Reader of all sorts"; image 11; emphasis original. See also page 4 in the body of the tract.

<sup>101</sup> Rogers, *Sagrir*, "To the Reader of all sorts"; image 5.

that our ancestors had still recovered from the Danes and Normans their liberties, by the sword.”<sup>102</sup> Similarly, Rogers abstracts the rights and privileges of the English people from their specific historical context by presenting them as grounded in Biblical law. However, unlike Cowling, Rogers does not simply use Scripture as a warrant for action in recovering English rights, he also argues that those rights are fully defined and protected by Mosaic Law. In the opening letter to Cromwell, Rogers urges him to “*wall* us with the good and wholesome *Lawes* and *Liberties* of the People, as we were before the *Norman invasion*, or rather as *Israel* of old, Deut. 6.1.”<sup>103</sup> Such laws are represented in *Sagrir* as ready to be directly and immediately implemented in England: “Why are there so many perplexable *cares* about the *Lawes*? Hath not God given you a *Booke* of *Lawes* ready to your hand? and can men make *Lawes* better then God?”<sup>104</sup>

While Rogers insists that it is obvious that men cannot make “Laws better than God,” the one hundred and fifty pages of *Sagrir* are dedicated to a lengthy justification and explanation of this call for reform. His justification is supported by extra-Biblical arguments. In the opening address to the reader, Rogers develops a threefold argument based on the law of nature, the law of nations, as well as on the law of God, to justify his “call” and “warrant” to propose legal reform.<sup>105</sup> Rogers’s tripartite division of the law deserves attention because it brings focus to his understanding of the relationship

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<sup>102</sup> See chapter four above at page 453.

<sup>103</sup> Rogers, *Sagrir*, “To the Right Honourable The Lord. Gen. Cromwell”; image 3; emphasis original.

<sup>104</sup> Rogers, *Sagrir*, “To the Reader of all sorts”; image 5; emphasis original.

<sup>105</sup> Rogers, *Sagrir*, 4.

between the law and human community. Rogers defends his threefold definition of the law by rejecting the well-known classification by Ulpian in the *Digest*.<sup>106</sup> Ulpian divides the law into natural law, which is common to all animate creatures; the law of nations, which is common to all human communities; and civil law, which is obeyed in a specific society or nation. Rogers opposes the definitions of the *Digest* and insists that the law of nature pertains only to rational creatures. Additionally, he subsumes civil law into the law of nations and replaces Ulpian's third category, civil law, with the law of God.<sup>107</sup> Such redefinition creates an ambiguity in Rogers' discussion of civil law, an ambiguity particularly problematic since the aim of *Sagrir* is to advocate for the reform of English civil law. In legal tradition, there had been little difficulty in distinguishing the law of nations from civil law. Civil law pertained to a particular society; the law of nations was shared by all nations. The thornier problem had always been that of distinguishing between the law of nature and the law of nations.<sup>108</sup> Suarez, whom Rogers repeatedly cites on natural law, clearly separates the law of nature from the law of nations by

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<sup>106</sup> Rogers argues against the definition of natural law as being the law in common to all "sensitive Creatures" put forward by "greedy lawyers" Rogers, *Sagrir*, 33.

<sup>107</sup> Rogers, *Sagrir*, 7. For Ulpian's classification, see Brian Tierney, "Vitoria and Suarez on *ius gentium*, Natural Law, and Custom," 103. It is important to note that, when Rogers uses the term "civil law," as in the case of Aspinwall, he clearly means the laws and statutes of a particular society, rather than the technical term "civil law." Thus, for Rogers, "civil law" can indicate English common law.

<sup>108</sup> The problem can be traced back to debates in Roman law. Cicero, who is also invoked as an authority by Rogers, produced conflicting discussion of the distinction between the two types of law. On Cicero's inconsistent definitions of the law of nature and the law of nations, see M. B. Crowe, *The Changing Profile of the Natural Law* (The Hague: Martinus Nijhoff, 1977), 36-41). Marcia L. Colish argues that the inconsistencies in Cicero's treatment of natural law can in part be accounted by the differing aims of his rhetorical and political works, see *The Stoic Tradition From Antiquity to the Early Middle Ages*, vol. 1 *Stoicism in Classical Latin Literature* (New York: Leiden, 1990), 95-101. For a discussion of the law of nations in the sixteenth-century context, see Brian Tierney, "Vitoria and Suarez on *ius gentium*, Natural Law, and Custom," 101-124.

insisting that the latter is a form of customary law.<sup>109</sup> Saurez's solution, however, involves granting custom and repeated usage authority as law. What about Rogers' approach? His opening account includes civil law in his discussion the law of nations. How does he distinguish the law of nations, and consequently civil law, from natural law? Rogers states that the law of nations is "drawn out of the Law of *Nature*, and the Principles of *Reason*, as so many Axioms or demonstrative Conclusions."<sup>110</sup> In giving this definition, Rogers registers, but does not attempt to resolve or clarify the problem in his classification: if the law of nations, including civil laws, is a direct consequence of the law of nature and the "principles of reason" why should they from two distinct categories? Indeed, Rogers equivocates by stating that since the two are so similar, he need not dedicate much space to discussing the law of nations: "This Law of *Nations* is to be brought out of the Law of *Nature*; and looking so alike the other, I shall say the lesse to it."<sup>111</sup>

Rogers' equivocation in distinguishing between the law of nations and natural law becomes even more glaring as he argues that his case for legal reform along Scriptural lines can be based on natural law. The law of nature "teaches us to maintaine and defend our *lives* and liberties; yea, and *fellow-members* too, against all injuries and wrongs." In turn, "our liberties" are defined by divine law, which teaches us our

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<sup>109</sup> For Rogers' explicit use of Suarez on natural law, see *Sagrir*, 9, 33, 36 and 106 (in connection with the law of God), and 44 (on the relationship between laws, reason, and natural law).

<sup>110</sup> Rogers, *Sagrir*, 7; underlining mine.

<sup>111</sup> Rogers, *Sagrir*, 7; emphasis original.



ultimate, supernatural *telos*.<sup>112</sup> Having identified England's liberties with Israel's and basing its argument on the law of nature, *Sagrir*, though addressed to an English audience, generalizes the "our" in this passage. Citing Cicero's *De Officiis*, Rogers argues that he must write to urge legal reform because the law of nature "commands and ordaines that every man endeavor and procure the good of another whatsoever he be, only because he is a man; otherwise all bonds of society, and mankind must needs run to ruin."<sup>113</sup> In this quote, Rogers paraphrases the argument put forward in *De Officiis* III.26-28. The paraphrase is however stronger than the original, where Cicero argues that we must not harm another for our own benefit. Rogers instead explicitly extends this argument to indicate a duty to actively bring legal reform along Scriptural lines beyond the boundaries of England. He urges "our Army and Statesmen" to reform the laws of England's continental neighbors in order to protect the Saints who live there:

How durst our *Army* to be still, now the *work* is to do *abroad*? Are there no *Protestants* in *France* and *Germany* even now under persecution? [...] it is the Lord hath sent for us thither, and calls for a part of our *Army*, at least, into *France* or *Holland*.<sup>114</sup>

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<sup>112</sup> Rogers, *Sagrir*, 4. In this passage, Rogers gives reference to Ephesians 5.29, "No man ever yet hated himselfe, but loves and cherishes himselfe" (*Sagrir*, 4; the text incorrectly gives the reference as Eph. 5.39). He defines the law of God through Luke 10.27: "The Law of God saies, Luk. 10. 27. Love the Lord thy God, &c. and thy Neighbor as thy selfe. Besides the Law of Nature, and Nations, the Law of God is unavoidably necessary (ad ultimum finem.)" (Rogers, *Sagrir*, 11; emphasis original).

<sup>113</sup> Rogers, *Sagrir*, 12; underlining mine.

<sup>114</sup> Rogers, *Sagrir*, 14-15; emphasis original.

In making this call for active military involvement in Europe, Rogers connects his argument for legal reform in England to the Fifth Monarchist understanding that the work of preparing for the kingdom of Christ extends beyond national bounds.<sup>115</sup> As in the case of Aspinwall, for Rogers all human law, not just English, must be reformed.

In *Sagrir*, however, Rogers' willingness to extend the reforming work of the English Army to other nations is clearly linked to a particular understanding of rationality. This conception of reason emerges from his discussion of natural law. For Rogers, "the Law of Nature is one and the same to all Nations (qu[o]d prima principia) inclining all a like (ad agendum secundum rationem) to things according to Reason."<sup>116</sup> As we saw in chapter four, traditionally, positive law was considered "rational" and licit only if it did not contradict the law of nature.<sup>117</sup> While positive law is not simply a set of direct consequences of the first principles of the law of nature, the two are related and

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<sup>115</sup> Steven Pincus has argued that Fifth Monarchists supported the Dutch War because they viewed the United Provinces as having failed to fully reform (*Protestantism and Patriotism: Ideologies and the Making of English Foreign Policy, 1650-1668* (Cambridge: Cambridge University Press, 1996), 115-25). Pincus thus sees a temporary alliance between millenarians, hoping for further reformation, and republicans, wary of Orangist factions in the United Provinces, in pursuing an aggressive policy towards the Dutch. Against the economic interpretation of the war, Pincus argues for an ideological alignment of republican and millenarian interests in the early 1650s (*Protestantism and Patriotism*, 85-6). In his account, hostility towards the Netherlands in 1652-3 was formed by republican fears of Orangist factions and by the millenarian view that the Dutch reformation had stalled as the United Provinces had been corrupted by wealth and commerce (*Protestantism and Patriotism*, 115-25). Pincus's account focuses on a broader group of millenarians than Fifth Monarchists, the "apocalyptic" in his terminology (*Protestantism and Patriotism*, 24, 76). Indeed, for Pincus, "there were no Fifth Monarchists" until after the movement crystallized around opposition to the Protectorate (*Protestantism and Patriotism*, n. 20 to p. 122).

<sup>116</sup> Rogers, *Sagrir*, 5. The marginal note to this passage cites Isidore: "Isidorus in lib. 5 c. 4. Etymolog. Jus naturale est commune omni nationi" (*Sagrir*, 5). I suspect, however, that here, as throughout *Sagrir*, Rogers is copying his quotes from Isidore from the questions on the law in the *Summa* (in this case, Ia-IIae, q. 94, art. 4). All of the quotations from Isidore that I have found in *Sagrir* are also quoted by Aquinas. Given Rogers' extensive use of the *Summa* throughout the tract, it seems likely that he did not refer back to the *Etymologies*.

<sup>117</sup> See chapter four above, page 358.

human reason can recognize their connection. In this formulation, just human laws will incline individuals to act according to reason. In turn, acting according to reason means following the first principles of the law of nature. In *Sagrir*, Rogers partially appropriates and reshapes this understanding of the relationship between positive and natural law. For Rogers, acting reasonably also means acting according to the law of nature. More specifically, a reasonable action is one that is just and promotes the common good.<sup>118</sup> The question, however, arises of how to judge whether a given action conforms to the dictates of reason and justice. To answer this question, Rogers distinguishes between understanding actions as virtuous in themselves or according to the principles of natural law:

it is one thing to see *vertuous acts*, as they are *actions* in themselves, (for so they are to be considered *in propriis speciebus*, not of the *Law of nature*, but according to their *vertue*, which is given *beside nature*, as *Art*; or above *nature*, as *grace*, or the like) and it is another thing to see them as they are *rationall, vertuous, and morally good*, (as *just, mercifull, &c.*) and so they appertaine to the *Law of nature*; for every thing naturally inclines to *operation* according to its *forme*, as *Fire to heat, Sun to shine*.<sup>119</sup>

This formulation of the distinction between actions as understood “in themselves” and actions as understood as “they are *rationall, vertuous, and morally good*” is borrowed from the *Summa Theologiæ* Ia-IIae, q. 94.<sup>120</sup> In Ia-IIae, q. 94, art. 3, Aquinas debates

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<sup>118</sup> *Sagrir*, 6; emphasis original.

<sup>119</sup> Rogers, *Sagrir*, 7.

<sup>120</sup> Rogers quotes, both with and, as here, without attribution, extensively from Aquinas throughout *Sagrir*. As we will see, in his discussion of natural law, Rogers works his way through the questions on law in the Ia-IIae.

whether all just acts belong to natural law and, in the passage used by Rogers, considers just acts both with respect to virtue and in general: “There are two ways of referring to acts of virtue, the first, in so far as they are virtuous, the other, in so far as they are acts of a certain specific kind. If we are speaking of them as virtuous, then all of them are matters for natural law.”<sup>121</sup> Since humans are rational creatures, Aquinas goes on to explain, for them to act virtuously is to act according to reason: “All things have a natural tendency towards activity befitting their natures, like fire to heating. Since the rational soul is man’s proper form, he has a natural tendency to act according to reason, that is to say, according to virtue. Consequently in this sense all acts of virtue are of natural law, for each man’s own reason naturally dictates that he should act virtuously.”<sup>122</sup>

Rogers returns to Aquinas’ discussion of reason in the second chapter of *Sagrir*. There Rogers considers how reason interprets natural law in order to formulate just laws. The chapter opens with an argument for the necessity of good laws in promoting the wellbeing of a polity: “for *civil Order* and use, good and plain *laws* are unavoidably necessary; this will appear upon the very definition of the *Law*, which is *quoddam*

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<sup>121</sup> “Dicendum quod de actibus virtuosis dupliciter loqui possumus: uno modo inquantum sunt virtuosus; alio modo inquantum sunt tales actus in propriis speciebus considerati. Si igitur loquamur de actibus virtutum inquantum sunt virtuosus, sic omnes actus virtuosus pertinent ad legem naturæ” (Ia-IIae, q. 94, art. 3).

<sup>122</sup> Ia-IIae, q. 94, art. 3. In my reading of Aquinas, I follow MacIntyre’s reading of the *Summa* in *Whose Justice? Which Rationality?* (Notre Dame, IN: University of Notre Dame Press, 1988). As MacIntyre argues, the questions on law, Ia-IIae, 90-97 need to be read within the context of the rest of the *Summa Theologiæ* (*Whose Justice? Which Rationality?*, 177-182).

*dictamen practicae rationis, a certain dictate of practical reason.*"<sup>123</sup> Though Rogers does not cite Aquinas in this passage, the Latin definition of the law is from the *Summa* Ia-IIae, q. 91.<sup>124</sup> In the *Summa* this definition is developed to explain the role of human law within a discussion of the varieties of law. But Aquinas's classification of laws differs profoundly from Rogers'. What are the consequences of detaching one element from Aquinas' specific system of classification? In question 91, Aquinas begins by considering the eternal law and then, having established its existence, he turns to natural, human, and divine law. Before returning to Rogers' formulation in *Sagrir*, I will follow Aquinas's discussion of the relationship between eternal and human law. Understanding this relationship will clarify Aquinas' conception of the relationship between reason and law. In turn, how Roger appropriates the *Summa's* discussion helps us to understand his formulation of the role of reason in legislating and governing. Starting with eternal law, Aquinas, quoting Augustine, explains that it is unlike other laws since it is "the supreme exemplar to which we should always conform."<sup>125</sup> All other laws are derived from the eternal law. Natural law itself is linked to the eternal law.<sup>126</sup> In turn, human laws have force of law only in so far as they conform to natural law and thus to the eternal law. Consequently, for Aquinas, the definition of a legitimate human law is bound up with

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<sup>123</sup> Rogers, *Sagrir*, 31; emphasis original.

<sup>124</sup> See, in particular, *ST* Ia-IIae, q. 91, art. 3 for Aquinas' use of this formulation in discussing human law.

<sup>125</sup> "lex aeterna est summa ratio, cui semper obtemperandum est" (Ia-IIae, q. 93, art. 1; Thomas Gilby references Augustine, *De lib. arb.* I, 6. PL 32, 1229).

<sup>126</sup> Ia-IIae, q. 93, art. 3.

that of the eternal law. Aquinas explains that the eternal law is divine reason: “law is nothing but a dictate of practical reason issued by a sovereign who governs a complete community. Granted that the world is ruled by divine Providence, and this we have shown in the *Prima Pars*, it is evident that the whole community of the universe is governed by God’s mind.”<sup>127</sup> What immediately stands out from this explanation is that Aquinas’s discussion of positive law is parallel to his discussion of eternal law. More precisely, human law stands to human communities in a relationship analogous to that of the eternal law and the universe. The account of human and natural law that follows is thus dependent on the eternal law, that is, divine reason and Providence.

Having begun his classification of the varieties of law with the eternal law, Aquinas moves on to natural law in the second article of quæstio 91.<sup>128</sup> In this question, Aquinas rejects the possibility that the eternal law can be directly understood by humans and that therefore there is no natural law. Instead, natural law is the “sharing in the Eternal Law by intelligent creatures” and “the light of natural reason by which we discern what is good and what is evil, is nothing but the impression of divine light on us.”<sup>129</sup> For Aquinas, we call natural law a *law* properly speaking because it is a sharing in the eternal law by *rational* creatures: “Even non-rational creatures share in the Eternal Reason in their own way. The way, however, for rational creatures is intelligent and

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<sup>127</sup> Ia-IIae, q. 91, art. 1.

<sup>128</sup> In my reading of Aquinas on the law and practical reason, I am indebted to MacIntyre’s account in *Whose Justice? Which Rationality?*, 173-82.

<sup>129</sup> Ia-IIae, q. 91, art. 2.

reasonable; that is why their sharing is called law properly speaking, since law, as we have seen, belongs to mind."<sup>130</sup> That is, natural law is how humans, as reasonable creatures, perceive the eternal law.<sup>131</sup> What about human laws? In article 3, Aquinas gives the description of law that Rogers appropriates: "law is a kind of dictate of practical reason."<sup>132</sup> A significant change occurs in Aquinas's discussion as he shifts focus from natural to human law. He notes that positive laws are the product of practical, rather than theoretic reason. However, just as human law is presented in parallel to eternal and natural law, in the *Summa*, the functioning of practical reason is discussed in parallel with theoretic reason:

Now the processes of the theoretic and practical reasons are parallel; both, we have held, start from certain principles and come to certain conclusions. Accordingly we say this, that just as from indemonstrable principles that are instinctively recognized the theoretic reason draws the conclusions of the various sciences not imparted by nature, but discovered by reasoned effort, so also from natural law precepts as from common and indemonstrable principles the human reason comes down to making more specific arrangements. Now these particular arrangements human reason arrives at are called 'human laws.'<sup>133</sup>

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<sup>130</sup> Ia-IIae, q. 91, art. 2, ad. 3.

<sup>131</sup> There is a crucial element in Aquinas' account of the relationship between reason and law that is not immediately evident from his preliminary discussion on the law of nature. In *Whose Justice? Which Rationality?*, MacIntyre point out that for "Aquinas the single most important experience of human beings in relation to the divine law, whether in the form in which reason apprehends its precepts as the natural law or as revealed directly by God in the Ten Commandments, is that of disobedience to it, a disobedience ineradicable by even the best moral education in accordance with reason. Each particular act of disobedience is a consequence either of a corruption of reason by the force of some passion or of bad habit or some undisciplined natural tendency" (181). I will return to the problem of how fallen reason can be led astray when I revisit Aquinas in my discussion of shared moral deliberation and Milton's *The Readie and Easie Way* below.

<sup>132</sup> Ia-IIae, q. 91, art. 3.

<sup>133</sup> Ia-IIae, q. 91, art. 3.

It is important to note, however, that Aquinas does not view practical reason as simply an *application* of theoretic reason. More precisely, Aquinas, following Aristotle, argues that both theoretic and practical syllogisms involve the same notion of logical entailment, but that practical reason is directed towards action while theoretic reason is directed towards knowledge.<sup>134</sup> Consequently, an appropriate action follows the conclusion of a practical syllogism *in the same way* that a concluding statement follows a theoretic syllogism. However, a rational action will only follow a true practical syllogism for an individual who has been habituated in the virtues and has therefore redirected his desires towards the good. It follows that only the virtuous person can be practically rational.<sup>135</sup> In *Sagrir*, Rogers also develops the same parallel between theoretic and practical reason.<sup>136</sup> I will return to his treatment below in greater detail below, but at this point, it suffices to note that Rogers emphasizes the parallel between theoretic and practical reason without maintaining Aquinas' distinction regarding the functions of the two.

Aquinas's analogy between theoretic and practical reason and its further development in question 94 brings out an important aspect of how members of a community perceive natural law. In article 2 of quæstio 94, Aquinas notes that all theoretical inquiries are based on self-evident axioms that cannot be proved, such as the

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<sup>134</sup> Ia, q. 79, art. 11.

<sup>135</sup> See MacIntyre, *Whose Justice? Which Rationality?*, 136-41.

<sup>136</sup> Rogers, *Sagrir*, 31.



principle of non-contradiction. Similarly, “the first principle for the practical reason is based on the meaning of good, namely that it is what it seeks after. And so this is the first command of law, ‘that good is to be sought and done, evil to be avoided’; all other commands of natural law are based on this.”<sup>137</sup> When discussing the self-evident axioms of theoretical inquiry, Aquinas notes that, while they may be self-evident, they are not equally known to all men.<sup>138</sup> Given that Aquinas develops his discussion of practical reason by analogy of speculative reason, it becomes clear that not all persons will equally know what the good is. Such inequalities can, however, be remedied. By living in society, individuals can develop the moral virtues and acquire and exercise good practical reasoning.<sup>139</sup> There are of course obstacles to an individual’s development in moral reasoning. In Ia-IIae, q. 94, art. 4, Aquinas continues the analogy between theoretic and practical reason. While both practical and theoretic reason “proceed from common principles to particular conclusions,” they do so in different ways.<sup>140</sup> This is because practical reason is concerned with the particular and contingent cases in which humans act:

So then it is evident that with respect to general principles of both theory and practice what is true or right is the same for all and is equally recognized. With

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<sup>137</sup> Ia-IIae, q. 94, art. 2.

<sup>138</sup> “No a truth is self-evident at two stages, one, in itself, two, in our minds. A proposition is self-evident in itself when the Predicate is of the essence of the Subject. At the same time the proposition may not be self-evident to a man who does not know the definition of the Subject. [...] Sometimes, [...] propositions are self-evident only to the well-informed, who know what the terms of the proposition mean” (Ia-IIae., q. 94, art. 2).

<sup>139</sup> MacIntyre, *Whose Justice? Which Rationality?*, 174.

<sup>140</sup> Ia-IIae, q. 94, art. 4.

respect to specific conclusions of theory the truth is the same for all, though all do not equally recognize it, for instance some are not aware that the angles of a triangle together equal two right angles. With respect to particular conclusions come to by the practical reason there is no general unanimity about what is true or right, and even when there is agreement there is not the same degree of recognition.<sup>141</sup>

Aquinas considers two main forms of difficulty in deciding a just course of action. In certain complex cases, while one may know the general principles of just action, their application to our specific circumstances may prove difficult.<sup>142</sup> In addition, the *Summa* considers a much more important type of difficulty. Aquinas argues that our desires to act according to the law of nature may be impeded by our own education and culture. As an example, Aquinas points to the report by Julius Caesar in *The Gallic War* that German tribes condoned theft: “the knowledge [...] of what is right may be distorted by passion or bad custom or even by racial proclivity; for instance, as Julius Cæsar narrates, the Germans did not consider robbery wicked, though it is expressly against natural law.”<sup>143</sup> Thus, for Aquinas, *certain* human laws can be pernicious to development in the virtues.

Such cases, however, are rare. The example of the Germans notwithstanding, Aquinas sees human laws as essential in forming a community within which individuals

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<sup>141</sup> Ia-IIae, q. 94, art. 4.

<sup>142</sup> To illustrate how the details of a specific situation make it difficult to decide a just course of action, Aquinas turns to a traditional example in casuistry. While, in general, it is right to return a possession to its owner, nonetheless there are particular cases when doing so does not amount to acting according to reason. For instance, if the owner of the goods wishes to attack our country and his possessions would make that possible, we may abstain from returning them (Ia-IIae, q. 94, art. 4).

<sup>143</sup> Ia-IIae, q. 94, art. 4.

can be educated in the virtues. Just as bad customs and bad positive laws can hinder our apprehension of the natural law, and thus hinder our ability to act justly, so do good laws and customs, by agreeing with the natural law, help us to pursue the good. In question 95, Aquinas considers the usefulness of human laws. Here, we see that good laws help to educate human beings. While all individuals are naturally inclined towards virtue, they nonetheless need to be educated in order to become fully virtuous.<sup>144</sup> Thus, good human laws, by threatening with punishment those who act unjustly, can help to lead to virtue those who are not sufficiently inclined to it by other processes of habituation:

for the young apt for deeds of virtue by good natural disposition or by custom or, better still, by divine gift, all that is required is the fatherly discipline of admonition. Not all the young, however, are like that; some are bumptious, headlong in vice, not amenable to advice, and these have to be held back from evil by fear and force, so that they at least stop doing mischief and leave others in peace. Becoming so habituated they may come to do of their own accord what earlier they did from fear, and grow virtuous. This schooling through the pressure exerted through the fear of punishment is the discipline of human law.<sup>145</sup>

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<sup>144</sup> Ia-IIae, q. 95, art. 1.

<sup>145</sup> Ia-IIae, q. 95, art. 1. In question 90, discussing the nature of laws in general, Aquinas explains that a law "is a kind of direction or measure for human activity through which a person is led to do something or held back," and that "direction and measure come to human acts from reason." Practical syllogisms, in Aquinas' discussion, have the character of laws: "because the practical reason makes use of a sort of syllogism in settling on a course of action, as already noted in accordance with the teaching of Aristotle, a proposition can be discerned which is to practice what a premise is to the conclusions the theoretic reason draws. General propositions of this type in the practical reason which bears on what has to be done have the character of law; sometimes they are actually adverted to, sometimes they are convictions held merely as habits of mind" (Ia-IIae, q. 90, art. 1, ad. 2).

Thus, while Aquinas acknowledges that bad human laws, as in Caesar's example of the Germans, can be detrimental to moral development, he does not take such cases to be paradigmatic of positive law. Human laws, though imperfect, are essential in the education of individuals in the virtues. By contrast, Rogers' own account of human law and reason latches onto the cases in which human reason misapprehends the law of nature and bad laws corrupt a community.

Rogers' distrust of human laws becomes fully evident in his discussion, developed in the third and fourth chapters of *Sagrir*, of the origin and authority of laws. Chapter three discusses the "right *RISE* and *ORIGINAL* of all good *LAWS*" and here, again, Rogers borrows extensively and without attribution from the *Summa*.<sup>146</sup> Quoting from Ia-IIae, q. 96, art.1, Rogers reaffirms Aquinas' point that the law should be made for the common good of all the members of a society.<sup>147</sup> Then, further supporting his argument with Aquinas' discussion of judgement and justice in IIa-IIae, q. 60, art. 6,

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<sup>146</sup> Rogers, *Sagrir*, 45; emphasis original. In this chapter of *Sagrir*, Rogers uses passages from both Ia-IIae, q. 96 and from IIa-IIae, q. 60, art. 6. While Rogers does not cite Aquinas directly, the source is unmistakable. See, for instance, footnote 147 below.

<sup>147</sup> "Constituitur enim Communitas Cavtatis [*sic*] ex multis personis, &c. The commonality makes *Laws* consisting of many persons that represent the publick" (Rogers, *Sagrir*, 44-5). Rogers misattributes this quote to Isidore's *Etymologies*, but the passage is from Aquinas, Ia-IIae, q. 96, art.1. In the *Summa* this passage is preceded by a quote from Book II of the *Etymologies*, which might account for Rogers' mistake. Rogers' translation of the passage is loose, but captures the general sense of Aquinas' original argument. In Thomas Gilby's translation: the law "should cover all manner of personalities, occupations, and occasions. Many types go to make up the political community, a variety of business serves its common interest, and, as Augustine observes, law is not instituted as a temporary measure but to persist throughout generations of citizens" (Ia-IIae, q. 96, art.1).

Rogers concludes that “*Law* cannot be made but by the *peoples voice*.”<sup>148</sup> While at first Rogers seems to argue that the people are the sources of all just laws, he immediately reins in this concession by specifying that “all this while I speake of a rightly principled, people that are in their capacity.”<sup>149</sup> It is worth pausing over this specification that only a “rightly principled people” can justly legislate. As we have seen, Fifth Monarchists insist that the legislative power belongs only to Christ. How does Rogers reconcile divine and human authority to legislate? The key to this apparent contradiction is his discussion of how laws command obedience. In addressing the position that “*Humane Laws* do bind the *Conscience* to obedience,” Rogers makes the traditional point that only “just and honest” laws do so.<sup>150</sup> This statement, in turn, raises the question of what it means for a law to be just and honest. Here again, Rogers heavily relies on Aquinas’ treatment of just laws in the *Summa*, but with one important and glaring omission. In Ia-IIae, q. 96, art. 4, Aquinas argues that just human laws do have force in the *foro conscientiae* because they are derived from the eternal law. In contrast, laws that are unjust are not properly called laws and do not bind the conscience. According to Aquinas, a law is unjust if, first, it does not promote the common good; second, it is imposed by a lawgiver who does not have the appropriate authority; and, third, if it imposes a disproportionate burden on

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<sup>148</sup> Rogers, *Sagrir*, 46; emphasis original.

<sup>149</sup> Rogers, *Sagrir*, 47; emphasis original.

<sup>150</sup> Rogers, *Sagrir*, 42.

some members of the community. Rogers presents a similar definition of unjust laws.<sup>151</sup> However, while he adopts the first and third conditions for a just law as those in the *Summa*, Rogers omits the qualification that the legislator must have the appropriate authority. Instead, he substitutes a condition that to be considered just a law must also be executed fairly.<sup>152</sup>

The consequences of this modification become apparent in chapter four of *Sagrir*, a chapter on the “*END, the OBJECT, and FOUNDATION of the LAW.*”<sup>153</sup> There, Rogers further explains that just laws are “not a spark struck out of *humane Intellectuals* [...], but from an eternall *light and wisdom, shining, ruling and irradiating the whole Universe,*” that is, from Divine Reason.<sup>154</sup> Thus, for Rogers, the true “fundamental law” is not the set of customs of England, but rather the eternal law, which should be the foundation of all human laws.<sup>155</sup> What becomes evident in Rogers’ discussion of the relationship between human and eternal law is a relentless emphasis on laws that are immutable, an

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<sup>151</sup> Rogers quotes from Augustine’s *De Libero Arbitrio* and from the *Summa*, Ia-IIae, q. 96, art. 4 to support his conclusion: unjust laws “are *flaws* not *Laws, magis violentiae sunt quam leges*, and as *Aug. de lib. arbit. l. 1 c. 5, Lex esse non videtur, quae justa non fuerit, unde tales leges non obligant in foro conscientiae*” (Rogers, *Sagrir*, 43; emphasis original). However, while Rogers attribute the entire quote to Augustine, the clause starting with “unde tales leges,” is Aquinas’s.

<sup>152</sup> Rogers, *Sagrir*, 42-3.

<sup>153</sup> Rogers, *Sagrir*, 97; emphasis original.

<sup>154</sup> Rogers, *Sagrir*, 105; emphasis original.

<sup>155</sup> Rogers, *Sagrir*, 106-7. As we saw in chapter three, the language of the fundamental laws of England had been used during the early 1640s primarily by Parliamentary authors to justify actions that were at times, strictly speaking, illegal. Behind the term “fundamental law” was the idea that the law of England existed to promote certain fundamental liberties and ends of government. When “necessity” dictated, Parliament could act against the letter of the law in order to follow the spirit of the fundamental laws. As we see in the case of Charles I’s chaplain Henry Ferne, however, royalist writers could also appropriate this language to argue that the king’s duty was to uphold the fundamental laws of the land against Parliamentary disruption of the mixed constitution of England (see chapter three, page 188).

emphasis that we had already encountered earlier in the case of Aspinwall. Laws that closely agree with the eternal law are “unalterable” and “absolute,” and hence, for Rogers, more “excellent.”<sup>156</sup> By contrast, customary laws are presented as corrupting departures from eternal law: “men make mere *notions* fundamental *Lawes*, and cry up such *customes* as are of eldest *date* for their fundamentals, they make *Idols* of their *forms*, and *oberre* from the *real*, unalterable *Fundamentall Law*.”<sup>157</sup> Those who rely on custom for the fundamental law of the nation, stray into error; they “oberre” —wander off— from the real in order to worship mere “forms.”<sup>158</sup> Non-Biblical laws are represented in *Sagrir* as idols of the fourth monarchy that require human sacrifices as they imposed on the Saints: “For though the *Forme* promises protection to its own Followers, yet the lives of others that prefer Reason must be sacrificed, and their blood poured out the quench the *flame* and the fury of enraged Formes and unreasonable Laws.”<sup>159</sup> All deviations from

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<sup>156</sup> “The more agreeable the Laws are to this Eternall Law, the more unalterable they are; and the more they partake of this Fundamentall Law, the more absolute they are, and to be obeyed; and the more proper, excellent, and profitable are the *acts* and *ends* of such Laws” (Rogers, *Sagrir*, 107).

<sup>157</sup> Rogers, *Sagrir*, 106; emphasis original.

<sup>158</sup> An oberration is a “wandering about.” The term is derived from the post-classical Latin “oberrare,” that is, ob+errare, thus allowing Rogers to explicitly gesture towards an erroneous form of deviation from the original (*Oxford English Dictionary*, OED online, s.v. “oberration” (Oxford, Oxford University Press, 2012). <http://www.oed.com.proxy.lib.duke.edu/view/Entry/129575?rskey=3CwI7F&result=5&isAdvanced=false> (accessed January 16, 2013).

<sup>159</sup> Rogers, *Sagrir*, 43; underlining mine. This contrast between human custom and eternal law encapsulates a tension that is implicit through all of *Sagrir*. On the one hand, Rogers condemns human laws as too mutable and unstable and thus must be replaced by unalterable divine laws. On the other hand, he castigates Englishmen for viewing their customary laws as fundamental and, therefore, untouchable: “such an Idoll as men make of it, as if a *noli me tangere* were *writ* upon it, because it hath been of long *continuance*, and therefore must not bee altered” (Rogers, *Sagrir*, 107; emphasis original). These idols distract men from the laws of God, which are already set out in Scripture and ready to be implemented (Rogers, *Sagrir*, 140). As such, human laws and customs must be destroyed: “in the *worke* which is to doe for *Christ*, by burning the

Scriptural laws are but “Formes” and, as such, “unreasonable.” Human legislation is collapsed into the application of Scriptural law. Rogers can remove Aquinas’s condition that just laws must be enacted by a legislator with the appropriate authority because, in his account, there is no just human legislative authority. Rogers’ use of such a static image of the law is an attempt to negate the need for human reason to discern what laws are needed in each community and how these laws may change through the historical development of different nations. The notion that one set of laws applies to all nations at all times allows Rogers to present a reduced role for human reason.

Aquinas, on the other hand, provides a greater role for human reason and laws. Unlike Rogers, Aquinas argues that mutability is important in human laws as they adapt to a given community. Not all the principles of Scriptural law are equally intelligible to all people at all times. Consequently, for laws to be effective in educating individuals and communities in the virtues, they have to take into account the particular conditions of that community. A good lawmaker, like a good teacher, will craft laws that are suited for educating that given community:

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*Images, and pulling downe the Groves, wherein so much sinne hath been committed; so by burning those Lawes, and pulling downe those Courts, Termes and Lawyers” (Rogers, Sagrir, 138; emphasis original). In chapter four above, I considered the use of iconoclastic language by Sexby and Urquhart in attacking, respectively, Cromwell and the Rump (419-23). Both polemicists linked the work of the iconoclast with that of the political reformer: the iconoclast sets Englishmen free from the tyranny of idol-like laws and forms of government. In Sexby’s *Killing No Murder*, in particular, I argued that Sexby’s attack of the “formalities” of the common law ironically undermines the authority and reason of the common people even as it claims to defend them. Rogers goes further. As we have just seen, he insists that human reason is idolatrous as soon as it attempts to legislate rather than to implement Scriptural law.*



law is established as a kind of rule or measure for human acts. Now, as noted in the *Metaphysics*, a measure ought to be of the same kind as the thing it measures; different things have different standards. Hence laws should be appointed to men according to their condition; Isidore remarks how law should *be possible both according to nature and the custom of the country*. The ability of and resource for action and a certain way spring from an interior disposition or habit; the same course of action is not possible for a man who has a habit of virtue and for a man who lacks it, nor for a grownup and a child.<sup>160</sup>

Hence, human laws can change over time to adapt to changing conditions in a community, as Aquinas discusses in question 97. More precisely, for Aquinas, while “natural law comprises universal commands which are everlasting,” human law “comprises particular commands to meet the various situations that arise.” That is, the general principles of natural law can be expressed in the particular principles embodied by positive laws in a variety of ways that can be adapted through time both as we learn how to write better laws and as we see abuses of current laws.<sup>161</sup> Therefore, for Aquinas, changing human laws that vary from community to community are not a sinful deviation from divine or natural law. On the contrary, human laws – when they are just and thus do not violate natural law – form an educative framework for the members of a community. Moreover, Aquinas argues that humans are naturally inclined towards the precepts of natural law via their participation in the eternal law by the means of

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<sup>160</sup> Ia-IIae, q. 96, art. 2.

<sup>161</sup> However, Aquinas cautions about changing laws too easily since older laws bring greater respect due to tradition (Ia-IIae, q. 97, art. 2).

reason.<sup>162</sup> Because of this, just human laws are implementations within a specific historical and political context of the precepts of natural law.

The contrast with Rogers could not be starker. As we have seen, Rogers argues that only just laws, promulgated by a “rightly principled people” bind in *foro conscientiae*. However, in his or other Fifth Monarchists’ writings, there is no account of how a people may become “rightly principled.” While Rogers insists that the end of good laws is “the *publick good, freedome, and safety*,” even the best laws cannot help in educating the people into the virtue necessary for liberty. As Rogers vividly expresses it: The *Object of the Law* [...], *about which the Law is conversant and takes most speciall cognizance [is] wicked men, in their wicked actions, whom the Law is to curb and restraine [...]* the Apostle therefore in 1 *Tim.* 1.9 says, *We know the Law is not made for a righteous man, but for the lawless, and disobedient, for ungodly, and for sinners, for unholy, and prophane, for murderers, &c., and whoremongers, for men-stealers, and liars, and liars, and perjured persons, &c., that is, for their punishment, to the muzzling of the mad world, and their wolwish natures, that would tear a peeces the innocent, and destroy the Lambs of equity, truth, and honesty.*<sup>163</sup>

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<sup>162</sup> Ia-IIae, q. 93, art. 2.

<sup>163</sup> *Sagrir*, 103-4; underlining mine.

The law's only concern is to separate the "wicked" from the "innocent" and to "muzzle" "the mad *world*, and their *wolvish natures*." While *Sagrir* follows the *Summa* in arguing that human reason can discriminate between just and unjust laws by discerning whether they agree with the law of nature, Rogers comes to a drastically different view of human law and legislative authority than that proposed by Aquinas. What Rogers leaves out from his adaptation of the account of the law in the *Summa* is the legislative authority granted to custom. As I will argue in the next section, Aquinas views custom as a legitimate form of expression of human rationality and, as such, an expression of the common people's legislative authority. This omission of the role of custom, in turn, leads to an impoverished conception of rationality, one shared by John Milton in *The Readie and Easie Way to Establish a Free Commonwealth* (1660).

### **5.3: Milton's "Readie and Easie Way" and the Rational Citizen**

Why focus on the similarities of the concept of reason between Milton in *The Readie and Easie Way* and the Fifth Monarchists? Milton demonstrated little interest in the kind of millenarianism found in the writings of Aspinwall or Rogers and, in the first edition of *The Readie and Easie Way*, explicitly attacks those who attempted to bring about a theocracy by "pretending to a fifth monarchie of the saints" (CPW VII: 380-1).<sup>164</sup> This

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<sup>164</sup> David Loewenstein notes that while Milton removes his rebuke in the second edition of *The Readie and Easie Way*, he nonetheless opposes "extreme militant radicals like the zealous Fifth Monarchists with their chiliastic ideology" and that Jesus' calm demeanor in *Paradise Regained* can be read as, in part, reflecting on the failure of Thomas Venner's rising in London (*Representing Revolution in Milton and His Contemporaries*, 256).

first edition of the pamphlet (February, 1660) was composed and published as the Rump Parliament, which had been recalled by the Council of State in December 1659, prepared writs for elections to replenish its numbers. The second edition (April, 1660) was published after the Rump had been forced to readmit the secluded members by General Monck. The newly-reassembled Long Parliament called for general elections for a new Parliament, issuing writs that did not disqualify royalists from voting or standing for election.<sup>165</sup> Even as the return of monarchy looked like a foregone conclusion, Milton “thought it best not to suppress what I had written, hoping that it may now be of much more use and concernment to be freely publishd, in the midst of our Elections” (CPW II:408). *The Readie and Easie Way* warns England of the danger of the imminent return of the king and advocates instead for a Commonwealth governed by a permanent Grand Council.<sup>166</sup> Historical and literary scholarship on Milton’s proposals for England’s

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<sup>165</sup> Austin Woolrych, *Britain in Revolution: 1625-1660* (Oxford: Oxford University Press, 2002), 765-73. See also, the introduction to *The Readie and Easie Way*, CPW VII:398-9. For a discussion of the difference between the two editions, see Stanley Stewart, “Milton Revises *The Readie and Easie Way*,” *Milton Studies* 20 (1984): 205-24. Stewart places Milton’s pamphlet in dialogue with *The Censure of the Rota* and compares the two editions of *The Readie and Easie Way*.

<sup>166</sup> There is a consensus in the scholarship that while *The Readie and Easie Way* provides constitutional recommendations, these are secondary to the tract’s main purposes. Jonathan Scott argues that the tract’s “much-derided” Grand Council is Milton’s attempt to deal with emergent political instability and not a plan for long-term governance of England (*Commonwealth Principles: Republican Writing of the English Revolution* (Cambridge: Cambridge University Press, 2004), 146). Barbara K. Lewalski also views the proposals in *The Readie and Easie Way* as responding to the contemporary constitutional crisis. In “Milton: Political Beliefs and Political Methods,” she places the two editions of *The Readie and Easie Way* within the rapidly changing political situation of early 1660 and argues that rather than being ‘utopian,’ the tract is “in fact endeavoring to deal directly with existing conditions” (“Milton: Political Beliefs and Political Methods, 1659-60” in *PMLA* 74 (Jun., 1659): 191-202; 194). In her more recent *The Life of John Milton*, Lewalski argues that “there is nothing of utopia in [*The Readie and Easie Way*], but equally clearly it runs counter to political reality, given the vociferous demand of the English people to be rid of the all-too-permanent Long Parliament and its Rump”

government describes this late prose work as “republican” and therefore more closely aligned with writers such as Machiavelli and Marchamont Needham than with the Fifth Monarchists.<sup>167</sup> For Nigel Smith, *The Readie and Easie Way*, especially the first edition, is a

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(Barbara K. Lewalski, *The Life of John Milton* (Oxford: Blackwell Publishing, 2000), 375). Laura Lunger Knoppers, “Milton’s *The Readie and Easie Way* and the English Jeremiad” in *Politics, Poetics, and Hermeneutics* deemphasizes the document’s constitutional recommendations. Instead of considering the details of the political events surrounding the publication of the pamphlet, she focuses on the question of form and argues that *The Readie and Easie Way* is primarily a jeremiad (*Politics, Poetics, and Hermeneutics in Milton’s Prose*, ed. David Loewenstein and James Grantham Turner (Cambridge: Cambridge University Press, 1990), 213-25). This classification, though occasionally contested, has been reconciled with Milton’s “persuasive” and “republican” aims in *The Readie and Easie Way*. David Norbrook, in *Writing the English Republic*, argues that while Milton rhetorically presents himself as the isolated Jeremiah speaking only to trees and stones, nonetheless, the pamphlet aims at persuasion and reflects Milton familiarity with the rapidly evolving political arguments of 1660 (*Writing the English Republic: Poetry, Rhetoric and Politics, 1627-1660* (Cambridge: Cambridge University Press, 1999), 415-6). However, Thomas Corns, in *Uncloistered Virtue*, argues against the usefulness in applying the term “jeremiad” to *The Readie and Easie Way* and warns against creating “redundant genre categories” since “only intermittently does Milton slip into the jeremiad mode” (*Uncloistered Virtue: English Political Literature, 1640-1660* (Oxford: Clarendon Press, 1992), 283-4). Nigel Smith, in *Literature and Revolution in England, 1640-1660*, argues that the jeremiad classification ought to be taken seriously, but highlights the republican nature of the proposals in the pamphlet (*Literature and Revolution in England, 1640-1660* (New Haven: Yale University Press, 1994), 193-5).

<sup>167</sup> I put the term “republican” in quotations because it has been used to describe a variety of modes of political thought. Pocock emphasizes the debt that classical republicanism owes to Aristotle’s conception of citizenship. The central aspect of republicanism is not a specific constitutional recommendation, but rather a form of self-governing citizenship. In this version of republican theory, man is “naturally a citizen and most fully himself when living in a *vivere civile*” (J. G. A. Pocock, *Virtue, Commerce, and History: Essays on Political Thought and History, Chiefly in the Eighteenth Century* (Cambridge: Cambridge University Press, 1985), 39). As explained more fully in his magisterial account of republicanism, *The Machiavellian Moment*, Pocock argues that in republican thought, humans are seen as political animals who participate in the life of the community by both ruling and being ruled through the cultivation and exercise of the virtues (*The Machiavellian Moment*, 66-74; I will return to this definition in greater detail below in the main text). In tracing the emergence of republicanism in England, Pocock argues that republicanism could not take roots in England before the onset of the Civil Wars. In Pocock’s account, James Harrington is the paradigmatic figure in English republicanism. Blair Worden, agreeing with Pocock’s timeline for the origins of English republicanism, argues that republicanism is distinguished by its constitutional recommendations; republicans are committed to government without a king (Blair Worden, “Republicanism, Regicide and Republic: the English Experience,” in *Republicanism: A Shared European Heritage*, vol. 2. *Republicanism and Constitutionalism in Early Modern Europe*, ed. Martin Van Geldern, and Quentin Skinner (Cambridge: Cambridge University Press, 2002), 307). David Norbrook, on the other hand, argues for a broader definition of republicanism, deemphasizing the constitutional aspect highlighted by Worden. He recognizes a

republican, even Machiavellian, text. While Smith does acknowledge the pamphlet's pessimistic view of the English people, he argues that it is "in fact a development consistent with Milton's own republicanism. It is possible to regard the two *The Readie and Easie Ways* as equivocating pamphlets, yet still as republican as the earlier works: less democratic but equally republican."<sup>168</sup> Similarly, David Norbrook concedes that Milton's proposals in *The Readie and Easie Way* for a government by a permanent "oligarchy" represent "opinion-forming and the active life [as] burdens to be taken by the few." Nonetheless, Norbrook argues that Milton "both practices and preaches a commitment to the power and value of republican language."<sup>169</sup> Thomas Corns, surveying the development of Milton's political views from the late 1640s to the Restoration, describes Milton's republicanism as being "more an attitude of mind than

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definable group of English republicans in the mid-seventeenth-century who, though divided on whether good government could include a monarchical element, shared a concern with "civic virtue and responsibility" (Norbrook, *Writing the English Republic: Poetry, Rhetoric and Politics, 1627-1660* (Cambridge: Cambridge University Press, 1999), 19). Quentin Skinner focuses on the concept of liberty as central to republican (or neo-Roman) thinkers in the 1640s and 1650s (*Visions of Politics*, vol. 2, *Renaissance Virtues*, chapters eleven and twelve). The neo-Roman concept of *libertas* posits that subjects are only free if they live under the rule of law, rather than by the will of the ruler, though benevolent (*Visions of Politics II*: 315). Having singled out this understanding of (personal) liberty, Skinner sees neo-Roman writers, and above all, Machiavelli, as concluding that *libertas* can only be obtained if a community is organized by a system of self-government (*Visions of Politics II*: 198-9). More broadly, some scholars have taken to describing specific idioms as "republican." For instance, Michael Mendle sees the language of "common good" and of "*salus populi*," at least when deployed by Parliamentary polemicists, as republican (Michael Mendle, *Henry Parker and the English Civil War*, 40).

<sup>168</sup> Nigel Smith, *Literature and Revolution in England, 1640-1660* (New Haven, CT: Yale University Press), 193-6; emphasis mine. Jonathan Scott concurs with Smith's assessment that *The Readie and Easie Way* is consistent with Milton's earlier political writings, even as it attempts to respond to the emergency of the impending Restoration (Jonathan Scott, *Commonwealth Principles: Republican Writing of the English Revolution* (Cambridge: Cambridge University Press, 2004), 146).

<sup>169</sup> Norbrook, *Writing the English Republic*, 412.

any particular governmental configuration," but republicanism nonetheless. In particular, in Corns' account, *The Readie and Easie Way* sketches a proposal for a "free commonwealth founded on the service of the godly."<sup>170</sup> Like Corns, Martin Dzelzainis argues that Milton's political writings produced in the 1640s and 1650s are based on an unwavering emphasis on a people's "right to self-determination."<sup>171</sup> *The Readie and Easie Way* constitutes a continuation of Milton's earlier republican thought and presents "familiar arguments in a familiar idiom."<sup>172</sup> Along similar lines, in his account of seventeenth-century republicanism, Blair Worden argues that Milton adopts the classical republican language introduced in England by Marchamont Nedham. *The Readie and Easie Way* is an attempt to pragmatically preserve a republican government in the commonwealth as the people rush back to monarchy.<sup>173</sup> The picture that emerges from the scholarship on *The Readie and Easie Way* is of Milton as a divided author. On the one hand, he is a republican writer, concerned with educating citizens to become capable of virtuous self-government. On the other hand, the pamphlet articulates his political despair; for Milton, most Englishmen are simply not ready to participate in this form of

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<sup>170</sup> Thomas Corns, "Milton and the Characteristics of a Free Commonwealth," in *Milton and Republicanism*, ed. David Armitage, Armand Himy and Quentin Skinner (Cambridge: Cambridge University Press, 1995), 41.

<sup>171</sup> Dzelzainis, "Milton's Classical Republicanism," in *Milton and Republicanism*, 20-1. In a more recent essay, following Quentin Skinner's definition of republican *libertas*, Dzelzainis describes Milton's republicanism as a "commitment to a politics of virtue" and traces Milton's conception of liberty to his readings of Justinian's institutes in the early 1640s (Martin Dzelzainis, "Republicanism," in *A Companion to Milton*, ed. Thomas Corns (Oxford: Blackwell, 2001), 300-2).

<sup>172</sup> Dzelzainis, "Republicanism," 308.

<sup>173</sup> Blair Worden, *Literature and Politics in Cromwellian England: John Milton, Andrew Marvell, Marchamont Nedham* (Oxford: Oxford University Press, 2007), 350-7.

political life.<sup>174</sup> By considering *The Readie and Easie Way* in light of my discussion of the writings of Fifth Monarchists, I aim to address what conception of rational life underlies this text's argument for "republican" forms of government while representing Englishmen as irrational. If rational and virtuous political participation is an essential prerequisite to republican conception of social life, what are the consequences of a "republican" text ruling out most members of the community from political life?

Before turning to the text of *The Readie and Easie Way*, the term "republican" itself deserves more attention. As I noted above, this term has come to acquire a variety of shades of meaning in the scholarship. However, the most influential account of republicanism is found in J. G. A. Pocock's *The Machiavellian Moment* (1975). In his study of classical republicanism, Pocock reconstructs the emergence of "a civic consciousness" in England in the mid-seventeenth-century. In this account, while in Italy republican ideals had been articulated in the late-fifteenth- and sixteenth-centuries, the development of an English civic consciousness had to wait until the Civil Wars and the

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<sup>174</sup> Recently, however, Ethan H. Shagan has argued that this tension is an intrinsic part of the early modern republican view of liberty: seventeenth-century English republican writers, including Milton, supported a theory of "moderate liberty" found in "a complex vision of good government as equally free both from external domination and from unbridled will or unrestrained appetites of its people" (Ethan H. Shagan, *The Rule of Moderation: Violence, Religion and the Politics of Restraint in Early Modern England* (Cambridge: Cambridge University Press, 2011), 257). In Shagan's account, republicans who adopted such view of liberty did not balk at excluding large sections of the people: "republicans did not seem to mind a commonwealth in which many or even most English people existed in [a] state of unfreedom" because "the poor" were denied citizenship (*The Rule of Moderation*, 270). Shagan concludes that republican discourse attempted, by proposing a moderate conception of liberty, to produce a much more limited version of political participation than that experienced by Englishmen during the revolutionary years (*The Rule of Moderation*, 285-6). Republican authors depicted the moderate, "middle sort" as examples virtuous self-rule; they were seen, to use Milton's characterization in the first *Defence*, as *prudētissimi*, most prudent and capable of rational participation in the political life of the commonwealth (*The Rule of Moderation*, 245).



regicide displaced other forms of political thought.<sup>175</sup> Republican ideals had to displace the traditional conceptualization of England as a “territorial monarchy” and could not do so until the monarchy was abolished. The drastic change in the facts of England’s political situation in the 1640s and 1650s forced an ideological reorientation.<sup>176</sup> Pocock argues that in the traditional view of England as a “territorial monarchy,” the English people form “a fellowship of reason, capable of cognizing rational laws, a fellowship of experience, capable of generating a body of remembered customs which became its second nature,” but not a “fellowship” of citizens. Only after the regicide, a new understanding of political association could supplant the traditional view. Drawing from classical and particularly Aristotelian sources, republicanism furnishes what Pocock sees as a new political language. Through it, the English people could come to understand themselves as forming “a fellowship of action or a partnership of directing virtues in which men were intelligently participant according to the diversity of their individualities.”<sup>177</sup> The introduction of republican language forms a decisive break with pre-Civil War political thought. While Pocock recognizes the presence of a humanist political language prior to the constitutional crisis of the seventeenth-century, he argues that it is limited to “the image of the humanist as counselor to his prince.” This kind of

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<sup>175</sup> Pocock, *The Machiavellian Moment*, 333-341.

<sup>176</sup> “In the unheralded collapse of the forties and fifties, attempts both radical and conservative were made to restate the terms on which Englishmen as civic beings lived with one another; and in this endeavor theories of classical republicanism played their part” (Pocock, *The Machiavellian Moment*, 348).

<sup>177</sup> Pocock, *The Machiavellian Moment*, 334; emphasis mine.

humanism does not produce a republican “citizen”: “the community of counsel does not become a republic in the acephalous sense; [...] it remains a *corpus* of which the prince is head, a hierarchy of degree in which counsel is given by every man sitting in his place.”<sup>178</sup> In Pocock’s account of the emergence of “civic consciousness” in England, we see Englishmen learning to see themselves as “citizens” or “political animals,” participating “intelligently” “according to the diversity of their individualities.” As I will argue in this section, central to Pocock’s characterization of the change from “traditional” to republican political understanding is the claim about “rational” political participation. Only once they start to see themselves within a republican framework do Englishmen become capable of being fully rational as members of a commonwealth.<sup>179</sup>

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<sup>178</sup> Pocock, *The Machiavellian Moment*, 339. Though not unchallenged, Pocock’s timeline for the development of republicanism in England has dominated scholarship of the period. For instance, Blair Worden has argued that English republicanism does not begin until the execution of the king and the declaration of England as a “free state” (Blair Worden, “Milton’s Republicanism and the Tyranny of Heaven,” in *Machiavelli and Republicanism*, ed. Giselda Bock, Quentin Skinner and Maurizio Viroli (Cambridge: Cambridge University Press, 1990), 225-6). Worden’s account of the *sources* of English republican thought varies from Pocock’s. While in *The Machiavellian Moment*, Pocock emphasizes the role of Aristotelian virtue in shaping Renaissance and early modern republicanism, Worden focuses on the influence of Ciceronian accounts of virtue and of Livy’s histories (Blair Worden, “Marchmont Nedham and the Beginnings of English Republicanism, 1649-1656,” in ed. Wootton, *Republicanism, Liberty, and Commercial Society* (1994), 45-81). Glenn Burgess, drawing on Pocock’s earlier work, *The Ancient Constitution and the Feudal Law*, posits that the dominant language of English political thought in the first half of the seventeenth-century was that of the common law (Glenn Burgess, *The Politics of the Ancient Constitution: An Introduction to English Political Thought* (University Park, PA: The Pennsylvania State University Press, 1993), 19-59). Burgess sees, however, a “crisis of the common law” beginning, after 1625, to disturb the early Stuart consensus. This crisis, deepening throughout Charles I’s reign, arose from a sense that English law had been unable to protect the property rights of the subject (“Repacifying the Polity: The Responses of Hobbes and Harrington to the ‘Crisis of the Common Law,’” in *Soldiers, Writers, and Statesmen of the English Revolution*, ed. Ian Gentles, John Morrill, and Blair Worden (Cambridge: Cambridge University Press, 1998), 202-28).

<sup>179</sup> As will become evident in my discussion, this is not simply a matter of how seventeenth-century authors represented Englishmen. Pocock argues that the “traditional” conceptualization of England as a territorial monarchy involves a less than rational form of political participation. This outlook has seeped into

How is rational political participation and legislation represented in Pocock's account? In the *Machiavellian Moment*, Pocock argues that the earlier notion of England as a territorial monarchy could not produce a concept of the individual as rationally and actively participating in the political life of a commonwealth. In a territorial monarchy,

the individual took on positive being primarily as the possessor of right—rights to land, and to justice affecting his tenure of land—and a structure of 'ascending authority' existed mainly as a structure of customs, jurisdictions, and liberties, in which such rights were embodied and preserved and which rose to meet the descending structure of authority that existed to command its continuance and enforcement. [...] It can be strongly affirmed, however, that to define the individual in terms of his rights and his duties, his property and his obligation, is still not enough to make him an active citizen or a political animal.<sup>180</sup>

Pocock further argues in *Virtue, Commerce, and History*, that there is a unbridgeable conceptual difference between the understanding of political life in, on the one hand, the "traditional" or "juristic" outlook and, on the other, in the republican mode of thought.<sup>181</sup> Central to both of these traditions is "political liberty," but the term "liberty" is used differently in the juristic and republican context. Adopting the terminology made famous by Isaiah Berlin, Pocock argues that the juristic tradition employs a

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subsequent scholarship of Milton's political prose works, aided by Milton's own depiction of the people as irrational when yearning for the return of the monarchy.

<sup>180</sup> Pocock, *The Machiavellian Moment*, 335.

<sup>181</sup> "We have, then, two vocabularies in which political thought has been conducted that are markedly discontinuous with one another because they premise different values, encounter different problems, and employ different strategies of speech and argument" (Pocock, "Virtue, Rights, and Manners," in *Virtue, Commerce, and History* (1985), 39). In this essay, Pocock uses the term "juristic" to describe the tradition of political thought that bases its understanding of political organization on natural and divine law (Pocock, "Virtue, Rights, and Manners," in *Virtue, Commerce, and History*, 37).

negative notion of liberty, while the republican model a positive one. Put simply, in Pocock's formulation, the juristic tradition views liberty as being free from restraint and impediments; the republican tradition understands humans as Aristotelian rational animals with certain ends and thus posits that liberty entails an individual's ability to fulfill his or her *telos*.<sup>182</sup> Concomitant with these two notions of liberty are two traditions of thought about human association: "jurisprudence can be said to be predominantly social, concerned with the administration of things and with human relations conducted through the mediation of things, as opposed to a civic vocabulary of the purely political, concerned with the unmediated personal relations entailed by equality and by ruling and being ruled."<sup>183</sup> It is the central thesis of *The Machiavellian Moment* that the "purely political" tradition which takes "citizenship as its ideal" came to be formulated in the Italian communes with the recovery of Aristotle's *Politics* in the late thirteenth-century: "The theory of the polis—which is, in a certain sense, political theory in its purest original form—was cardinal to the constitutional theory of Italian cities and Italian

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<sup>182</sup> The seminal essay is Isaiah Berlin, "Two Concepts of Liberty," in *Liberty*, ed. Henry Hardy (Oxford: Oxford University Press, 2002), 166-217. For an argument in defense of the positive conception of liberty, see Charles Taylor, "What's Wrong with Negative Liberty," in *The Idea of Freedom: Essays in Honour of Isaiah Berlin*, ed. Alan Ryan (Oxford: Oxford University Press, 1979), 175-193. Quentin Skinner, in "The Idea of Negative Liberty: Machiavellian and Modern Perspectives," proposes a third conception of liberty in which a negative conception of liberty is combined with a commitment to civic virtue and service as necessary to the preservation of social freedom (*Visions of Politics II*:186-212). Skinner sees Milton as "eventually" adopting this third concept of liberty ("The Paradoxes of Political Liberty," in *The Tanner Lectures on Human Values*, vol. 7, ed. Sterling M. McMurrin (Salt Lake City: University of Utah Press, 1986), 241).

<sup>183</sup> Pocock, "Virtue, Rights, and Manners," in *Virtue, Commerce, and History*, 44.

humanists.”<sup>184</sup> In Pocock’s account, Aristotelian political theory as reconstructed by civic humanists filled a conceptual need by offering a truly new way to formulate political life: “one which depicted human social life as a universality of participation rather than a universal for contemplation. Particular men and the particular values they pursued met in citizenship to pursue and enjoy the universal value of acting for the common good and the pursuit of all lesser goods.”<sup>185</sup>

There are two lines of criticism of Pocock’s claim for the innovative quality of republican thought that are relevant to my argument. First, the question of Pocock’s dating the beginning of republicanism in England to the Interregnum is intimately connected with his definition of “intelligent” political participation. This becomes clear by comparison with Patrick Collinson’s argument, in “The Monarchical Republic of Queen Elizabeth I,” that Elizabethan England can be best described not as a pure monarchy, but as a monarchy mixed with republican structures.<sup>186</sup> Collinson objects to Pocock’s argument in *The Machiavellian Moment* that “in sixteenth-century English thought the theory of corporate rationality served merely as an ideal and historical account of how political society had begun, and of how the single ruler emerged whose government subsequently excluded the intelligent participation of the subject. In no way

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<sup>184</sup> Pocock, *The Machiavellian Moment*, 64-66, 74.

<sup>185</sup> Pocock, *The Machiavellian Moment*, 75.

<sup>186</sup> Patrick Collinson, “The Monarchical Republic of Queen Elizabeth I,” in *Elizabethan Essays* (London: The Hambledon Press, 1994), 31-57.

was Tudor England a *polis* or its inhabitants citizens."<sup>187</sup> In this essay, Collinson has shown that in the Tudor period a tradition of "localized self-government, involving men of very humble status" was well alive.<sup>188</sup> Alongside this humbler form of republicanism, he also finds evidence, in the 1584 Bond of Association, of the ability of Elizabethan statesmen and clergy to envision and "condone an irregular, acephalous, quasi-republican state of emergency" in case of the Queen's demise.<sup>189</sup> Collinson emphasizes that he is not arguing for the existence of a "coherent republican movement" in Elizabethan England, but rather that Tudor Englishmen could intelligently respond to the need or possibility of self-government.<sup>190</sup> While recently some scholars have supported Collinson's argument, English republicanism is mostly seen as starting on 30 January 1649.<sup>191</sup> This consensus has an important conceptual consequence. To anticipate

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<sup>187</sup> Collinson, "The Monarchical Republic of Queen Elizabeth I," 38.

<sup>188</sup> Collinson, "The Monarchical Republic of Queen Elizabeth I," 33. Collinson's argument is supported by Mark Goldie's account of the strong participation in local governance by householders in the seventeenth-century (Mark Goldie, "The Unacknowledged Republic: Officeholding in Early Modern England," in *The Politics of the Excluded, c. 1500-1850*, ed. Tim Harris (New York: Palgrave, 2001), 153-194). Goldie argues that officeholding provided a form of political participation that was republican, and indeed Aristotelian, in nature: "rotation of office was held to be crucial, so citizens were sometimes rulers and sometimes ruled" (154). Goldie demonstrates how local officeholding, unlike Parliamentary election, was a mark and requirement of citizenship for economically independent heads of households: "governance was the required activity of any, and every, citizen. It was expected that people would take up the burdens of office when their turn came around" (168; on the limitations of participation in local politics, see 170-175). However, Goldie ultimately argues that the "idealization of the rural parish republic" in the sixteenth- and seventeenth-century is ideologically based on the "tradition of celebration of the perfections of the Anglo-Saxon constitution" (182). His argument, therefore, does not address Pocock's insistence, noted by Collinson, on the difference between juristic and republican traditions.

<sup>189</sup> Collinson, "The Monarchical Republic of Queen Elizabeth I," 51.

<sup>190</sup> Collinson, "The Monarchical Republic of Queen Elizabeth I," 55.

<sup>191</sup> David Norbrook has argued that republican modes of thinking flourished in early Stuart times. While following Pocock's reading of Italian Renaissance republicanism, Norbrook takes issue with *The Machiavellian Moment's* assessment that before 1649, "English republicanism was 'a language, not a

part of my argument, by connecting the emergence of English “civic consciousness” with the regicide, the literary scholars and historians who follow Pocock’s account have come to discount earlier forms of political reasoning. Consequently, Milton’s representation of Englishmen who yearned for the return of the monarchy as an “impatient or disaffected people” (CPW VII:430) has largely been accepted in Milton’s own terms, that is, as the disappointment of a republican “citizen” with the “irrationality” of vicious “subjects” clinging on to a customary form of government.

Alongside the question of the beginning of republican thought in England, there is a second concern with Pocock’s characterization of the innovative quality of the republican concept of political participation. Brian Tierney’s work on the conciliar theory of the medieval Church has demonstrated the existence of a process of cross-

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programme” (Norbrook, *Writing the English Republic*, 5). Norbrook argues that, starting with Thomas May’s 1627 translation of Lucan’s *Pharsalia*, “republican language was a more powerful presence than has been recognized” in Stuart England (*Writing the English Republic*, 6). In the specific context of Milton’s studies, Martin Dzelzainis has argued that there is a “republican moment” in 1644 in Milton’s composition of *Of Education* (“Milton’s Classical Republicanism,” in *Milton and Republicanism*, ed. David Armitage, Armand Himy, Quentin Skinner (Cambridge: Cambridge University Press, 1995), 3-24). More recently, Quentin Skinner has argued that the theory of neo-Roman liberty played a role in Parliamentary opposition to the king as early as 1640. According to Skinner, this strand of republican thinking has been neglected by historians because of the focus on the language of common law (Quentin Skinner, “Classical Liberty and the Coming of the English Civil War,” in *Republicanism: A Shared European Heritage*, vol. 2, *The Values of Republicanism in Early Modern Europe*, ed. Martin Van Geldern and Quentin Skinner (Cambridge: Cambridge University Press, 2002), 9-28, see particularly, 14. For how Skinner’s interpretation of Parker’s thought has changed over time, see n. 21 to p. 332 in chapter four above. However, even this modest re-dating of the influence of republican ideals in English political thought has been criticized by Perez Zagorin as likely to “be received with skepticism by historians who are knowledgeable about the political literature” of the period (Perez Zagorin, “Republicanism,” *British Journal for the History of Philosophy* 11 (2003): 711).

pollination between secular and ecclesiastical constitutional thought.<sup>192</sup> Addressing Pocock's account in *The Machiavellian Moment*, Tierney argues that to understand the development of seventeenth-century political theory it is not enough to focus on civic humanism. The ideal of a mixed constitution is a case in point for Tierney's argument. Pocock traces its influence on Renaissance and Early Modern thought to the revival of Polybius's *Histories* as well as Aristotle's *Politics*.<sup>193</sup> Tierney, while acknowledging the role played by these classical sources, points to medieval ecclesiastical constitutional thought as an alternative source for the early modern incarnation of the theory of mixed constitutions. This source provided a political language that was still in use in the seventeenth- and eighteenth-centuries.<sup>194</sup> This is not simply a matter of tracing a fuller picture of the "ancestors" of early modern political theory. The crucial point is that Tierney's corrective addresses the structural differences between Aristotelian political theory and the developing early modern state in ways consonant with Collinson's analysis: "The major change in the formulation of the doctrine that occurred during the Middle Ages was that, in classical thought, the idea of a mixed constitution was applied only to the small-scale society of the polis, the city-state; in medieval thought it was

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<sup>192</sup> Tierney describes an ongoing process of adaptation between Church and secular law: "The typical process that occurred was the assimilation of a text of Roman private law into church law, its adaptation and transmutation there to a principle of constitutional law, and then its reabsorption into the sphere of secular government in this new form" (Brian Tierney, *Religion, Law, and the Growth of Constitutional Thought, 1150-1650* (Cambridge: Cambridge University Press, 1982), 22)

<sup>193</sup> Pocock, *The Machiavellian Moment*, 76-80.

<sup>194</sup> Tierney, *Religion, Law, and the Growth of Constitutional Thought*, 87.



applied to a whole nation or a whole church.”<sup>195</sup> Medieval constitutional theory addressed the tensions between local and central government, tensions that were an inescapable part of the political life of seventeenth-century England, in a way that theories based on the organization of the classical *polis* could not do.<sup>196</sup> Tierney’s account points to a tradition of medieval political thought that early modern political theorists drew upon in concert with classical republican ideals of citizenship to formulate conceptions of political participation.

Nonetheless, Pocock has argued that constitutional theories that drew on medieval legal and natural law thought should not be confused with those arising from republicanism. He insists on an insurmountable *conceptual* difference between the republican and juristic traditions.<sup>197</sup> In Pocock’s account, “the two modes remained incommensurate”:

Virtue was not reducible to right, and if a full-bodied republic should be found emerging from the jurist’s state of nature, it was for the less than republican

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<sup>195</sup> Tierney, *Religion, Law, and the Growth of Constitutional Thought*, 87-8. More recently, in his work on natural rights, Tierney has pointed out how the influence of medieval thought could be masked in early modern texts by reference to common classical sources. In particular, in the case of Hugo Grotius, Tierney argues that his conception of natural rights and permissive law was supported by quotes from Aristotle, Philo, Cicero, Seneca, Florentius, and Augustine in *De jure belli ac pacis*, but that “Grotius was presenting a medieval and late scholastic structure of argument” (*The Idea of Natural Rights*, 326). Similarly, Tierney traces the roots of Grotius’s account of the relationship of individual to community and of the right of resistance to twelfth century canon law.

<sup>196</sup> Tierney, *Religion, Law, and the Growth of Constitutional Thought*, 105-6.

<sup>197</sup> Pocock insists that the two languages—republicanism and natural law and rights—cannot be reduced to one another and that, consequently, republicanism introduced a deeply novel way for individuals to understand themselves as political agents. Because of this, the rejoinder by, for instance, Jonathan Scott that “the political languages of classical republicanism and natural law theory were more often combined by early modern republicans than separated” does not properly address Pocock’s claim (Scott, *Commonwealth Principles*, 25; emphasis mine).

purpose of creating and transferring the rights which were all that a state of nature could generate. Populism, therefore, which arose from investing a *populus* with *dominium, jus, and imperium*, was linguistically and politically distinct from republicanism, which arose from investing them with *virtus*.<sup>198</sup>

What is the conception of reason and “rational” that forms the foundation of Pocock’s analysis of this distinction? The opening sections of *The Machiavellian Moment* describe the contrast between the conception of a subject living in a territorial monarchy, that is, living in a community organized on principles of laws and rights, and a citizen in a republic, organized along principles of Aristotelian virtue and shared political action. For Pocock, the traditional understanding of a subject is exemplified in English political thought by Fortescue’s account in *De Laudibus Legum Anglie* (1468-1471). To this work, Pocock contrasts the conception of the republican citizen derived from Aristotle’s political theory and then revived by Italian civic humanists. In the *Machiavellian Moment*, the distinction couldn’t be starker. While the republican ideal of a citizen implies active political participation and a voice in the legislative process, the individual described by Fortescue chooses the contemplative over the active life.<sup>199</sup>

*De Laudibus* is written as a dialogue between the Prince of Wales and a Lord Chancellor of England.<sup>200</sup> By choosing this text as paradigmatic of “traditional” political

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<sup>198</sup> Pocock, “Virtue, Rights, and Manners,” in *Virtue, Commerce, and History*, 47. Quentin Skinner’s argument for a “third” version of liberty found in Machiavelli implicitly addresses part of Pocock’s claim that the juristic and republican traditions are conceptually incompatible by connecting negative liberty with civic virtue (see, in particular, *Visions of Politics* II: 190, 192, 211).

<sup>199</sup> Pocock, *The Machiavellian Moment*, 56.

<sup>200</sup> Pocock, *The Machiavellian Moment*, 10.

and legislative theory, Pocock focuses on the prince as would-be law maker in his description of medieval conceptions of political reasoning and participation. Consequently, when Pocock asks what conception of “rational” political action was available in the “traditional” formulation, the focus is on prince’s role in legislation. In *De Laudibus*, Fortescue divides all human laws into three categories: the law of nature and its deductible consequences, laws that are derived from custom, and those that are enacted as statutes.<sup>201</sup> The definition of the law of nature sets the stage for how laws can be understood to be “rational” in *The Machiavellian Moment*: “The law of nature consists of those self-evident principles of justice, and their universally deducible consequences, which are true and have binding force among all men. Human laws may be simply the translation of the commands of natural law into the formalized command or rules of a particular kingdom.”<sup>202</sup> These human laws are the result of the work of deductive reason which recognizes the universal principles of justice and derives laws from them.<sup>203</sup> It follows that English law can be demonstrated to be “rational” or “reasonable” by showing that it does not contradict the first principles of natural law and justice.<sup>204</sup> Such a definition of rational law, however, creates a problem. “Rational knowledge” is a deductive process that starts from first principles: “In the philosophy which Fortescue is outlining here, all rational knowledge is essentially deductive. Knowledge, of whatever

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<sup>201</sup> Pocock, *The Machiavellian Moment*, 11.

<sup>202</sup> Pocock, *The Machiavellian Moment*, 11-12.

<sup>203</sup> Pocock, *The Machiavellian Moment*, 10-12.

<sup>204</sup> Pocock, *The Machiavellian Moment*, 13.

kind, starts with the acceptance of certain basic principles [...]. The rational proof of any statement is arrived at by demonstrating that it is the necessary logical consequence of some principle or combination of principles.”<sup>205</sup> However, Pocock argues that, in this account, a deductive process that starts from universal first principles cannot logically arrive at particular, and in this case specifically English, laws.<sup>206</sup> That is, the conformity of human law with natural law via reason does not distinguish *English* law from the law of any other nation. Specifically English laws, then, are not derived through a process of deduction from natural law. They are produced through repeated usage as customs or they are enacted as statutes. It’s important to note that by considering both custom and statutes as *categorically* different from natural law and its corollaries, Pocock places them in the realm of the not strictly “rational”: “English law contains—as does the law of any nation—an element other than the purely rational, based on the cognition of circumstances and conditions peculiar to England and on the application or adaptation of universal principles to these local and peculiar conditions.”<sup>207</sup>

If such laws are not the product of “reason,” how are they devised? By focusing on Fortescue’s discussion on the creation of positive law, Pocock arrives at the conclusion that law systems based on custom and tradition contain dominant non-rational elements. Customary laws are not the product of a rational deductive process:

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<sup>205</sup> Pocock, *The Machiavellian Moment*, 10-1; emphasis mine.

<sup>206</sup> “Principles, inescapably, are universal statements; and from universals we can deduce only universals” (Pocock, *The Machiavellian Moment*, 11).

<sup>207</sup> Pocock, *The Machiavellian Moment*, 13; emphasis mine.

the cognition of concrete cases and the discernment of how principles are to be applied to them [as explained by Fortescue] is a sharply different intellectual process from the cognition of principles and the deduction of their logical consequences. Indeed, it is scarcely an intellectual process at all; it is a matter of pure trial and error, since the test of a custom's goodness is not its demonstrable rationality, but the simple fact of its having remained in usage. [...] It is very possible that Fortescue's main intention was still to argue that English law was reasonable, in the sense that it could be shown to be consonant with deductions performed from the principles of jurisprudence or the maxims characteristic of common law itself. But there exists in his thought an inexpugnable level at which it appeared that English law was not rational, in the sense that it could never be reconstructed by the performance of any such deductions.<sup>208</sup>

I have quoted this passage at length because it reflects Pocock's account of the difference, to use Aristotelian and Thomistic terminology, between theoretic and practical reasoning. As we have seen earlier in the context of Rogers' adaptation of the questions on the law in the *Summa*, theoretic and practical reasoning differ from each other. Aristotle and, subsequently, Aquinas distinguish between theoretic reason, directed towards knowledge, and practical reason, directed towards action. Pocock's account of the rational deductive process outlined by Fortescue is Aristotelian enough: it constructs the "rational proof of any statement" by logical steps from basic principles. But this is not the only form of rationality found in Aristotle; as we have seen earlier, practical reasoning is not concerned with the proof of statements. Pocock recognizes a certain sense in which customary law can be shown to be rational if it does not

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<sup>208</sup> Pocock, *The Machiavellian Moment*, 16-7; emphasis mine.

contradict natural law. However, he rules out the possibility that the process of judgment involved in constructing the specific dictates of positive law is a rational one.

It is crucial to note that Pocock does not consider this understanding of the “irrationality” of practical reason and of the formation of custom as an idiosyncratic feature of Fortescue’s thought. Strikingly, he finds a similar understanding of custom in the *Summa Theologiæ*. As we saw earlier, Aquinas holds that human laws have a crucial function in the education of individuals in the virtues and in practical reasoning.<sup>209</sup> However, Pocock’s short account of Aquinas’ formulation of prudence and law confirms his reading of Fortescue:

[Aquinas in *ST Ia-IIae*, question 57] continues by quoting Cicero as mentioning ‘three other parts of prudence, namely memory of the past understanding of the present and foresight of the future,’ and concludes that these ‘are not virtues distinct from prudence,’ but ‘integral parts or components.’ Prudence, it should now be evident, was the present and future, where custom was the perfect, tense of experience. In custom, experience judged what had proved good and satisfactory; it judged also what had proved adapted to the particular nature, or ‘genius,’ of the people, and this judgment was likely to be self-fulfilling, since use and custom created this ‘second nature’ as well as evaluating it—the past was perfect indeed.<sup>210</sup>

Pocock’s pun on custom as the “perfect, tense of experience” hints at a sharp temporal division between custom and developing prudence. But, as I argued above, this division is not present in Aquinas. In arguing for the mutability of laws, Aquinas cautioned against breaking with custom and established law; a long-standing custom is more

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<sup>209</sup> Thomas Aquinas, *Summa Theologiæ*, Ia-IIae, q. 95.

<sup>210</sup> Pocock, *The Machiavellian Moment*, 25; emphasis mine.

easily obeyed than a new law and therefore laws should only be changed for the strongest reasons. However, Aquinas does not stop there. He also describes custom as an ongoing process by which “a law can be changed and explained.”<sup>211</sup> Strikingly, Aquinas argues that the people’s repeated actions function, in terms of legislation, just like the law-giver’s words: “As manifesting interior concepts and motions of the human mind it is clear that words serve to alter a law as well as express its meaning. So also by repeated deeds, which set up a custom, a law can be changed and explained [...] and this because what we inwardly mean and want is most effectively declared by what outwardly and repeatedly we do.”<sup>212</sup> Because he adopts Aristotle’s account of action, Aquinas, unlike Pocock, does not argue that only *statements* are the result of deductions. A practical syllogism ends in a rational *action*.<sup>213</sup> In the *Summa*, legislating through custom is not a “scarcely intellectual” process of “trial and error” and neither is custom an inert frame of laws firmly established in past. It is an ongoing process that, in the present tense, expresses the legislative authority and rationality of the people.

By not taking into account Aquinas’s notion of practical reasoning, Pocock fails to see that in the *Summa* custom is an expression of the rationality of the people. In turn this leads to a false dichotomy between the rationality of a would-be law-maker and the

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<sup>211</sup> Ia-IIae, q. 97, art. 3.

<sup>212</sup> Ia-IIae, q. 97, art. 3; emphasis mine.

<sup>213</sup> It is worth remembering that, as discussed earlier, Aristotle’s conception of the deductive logic involved in a practical syllogism is the *same* as that involved in a theoretic syllogism (MacIntyre, *Whose Justice? Which Rationality*, 141; see my discussion above on page 28). For Aquinas’s integration of Aristotle’s account of action, see MacIntyre, *Whose Justice? Which Rationality*, 188-9.

process of experience producing custom and “operating at the lowest and least articulate level of intelligence.”<sup>214</sup> This becomes particularly evident when Pocock turns to the role of the prince as legislator in *De Laudibus*. Pocock argues that Fortescue’s prince cannot justly reform customary laws because “[t]here is no method, other than that of experience itself, by which the intellect can reason from the needs and nature of the people to their customs.” Consequently, the experience of one man, the prince’s, cannot be pitted against the experience of the generations upon generations that have vetted England’s long-standing customs.<sup>215</sup> It is only when contingencies arise which require that law be promulgated in a shorter time frame than it would take for a custom to develop that the individual law-maker’s reason comes into play. While overall, experience, in the form of the collective prudence of the Parliament, is better suited to frame laws than the reason of one individual, there are rare occasions when the prince must act on his own.<sup>216</sup> When a truly novel emergency arises, since action must be taken quickly and it might not be possible to convene a group of advisors, the prince’s own reason can then take precedence over custom or collective prudence. However, while in these occasions the prince is not bound by either custom or counsel, his decisions do not become laws unless further repetition and experience confirm them as such.<sup>217</sup> From this discussion of the prince’s legislative action in emergencies, Pocock generalizes how any

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<sup>214</sup> Pocock, *The Machiavellian Moment*, 17.

<sup>215</sup> Pocock, *The Machiavellian Moment*, 18.

<sup>216</sup> Pocock, *The Machiavellian Moment*, 18-9.

<sup>217</sup> Pocock, *The Machiavellian Moment*, 25-6.



“individual” situates himself in social and political life in a “traditional territorial monarchy.” In the account of *The Machiavellian Moment*, an individual employs his reason to place himself within a hierarchical, unchanging, natural system by prudentially matching his experience to the traditional actions which custom dictates. He also accepts that in unique emergent occasions, the monarch should employ his own decision-making process to respond to the situation.<sup>218</sup> With this understanding of the very limited scope for human reason to act in political life, Pocock sees the individual in a “territorial monarchy” as choosing the contemplative over the active social life: “the individual of Fortescue, obedient to natural law and custom and politically active only on the rare occasions when statutes were to be made, could scarcely imagine his civic life as in serious rivalry with his philosophic contemplation, if he engaged in the latter at all.”<sup>219</sup>

Pocock describes the concept of a citizen in an Aristotelian republic in contrast to this understanding of the role of a subject in a traditional monarchy. A citizen, unlike Fortescue’s subject, cannot rely on custom and a conception of a universal order to organize political life and is therefore “constantly involved with his fellows in the making of public decision.”<sup>220</sup> Most importantly, in Pocock’s account, the form of decision making undertaken by the citizen of a republic closely resembles the very rare

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<sup>218</sup> Pocock, *The Machiavellian Moment*, 49.

<sup>219</sup> Pocock, *The Machiavellian Moment*, 56.

<sup>220</sup> Pocock, *The Machiavellian Moment*, 49-50.

occurrences of rational political activity in Fortescue's *De Laudibus*: "both acts of knowledge and acts of decision assume some of the character of what Fortescue called 'statutes'; they are agreed upon by living men, located in time and employing the intellectual resources possessed by beings so located."<sup>221</sup> But there is difference of crucial importance between the prince's decision making and the citizen's as described in *The Machiavellian Moment*. Central to Pocock's reading of civic humanism in both its "intellectual" dimension (knowledge-making) and its political dimension (decision-making) is the idea of conversation. As we have just seen, Pocock argues that in Fortescue's description of political activity, the prince can act according to his own reason and prudence only when he must act in response to an emergency that precludes resorting to shared experience and counsel with Parliament. This means that Pocock's account of medieval political theory creates two opposed poles. On the one hand, truly *social* and *shared* political action is less than rational because based on custom and experience. On the other, rational political action is the province of the prince *acting alone*. By contrast, Pocock describes rational political activity as understood by civic humanists as dependent on the idea of rational conversation.<sup>222</sup> This, in turn, relies upon Pocock's reading of Aristotle and Renaissance Aristotelianism as the basis for the humanist view of citizenship.

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<sup>221</sup> Pocock, *The Machiavellian Moment*, 62.

<sup>222</sup> Pocock, *The Machiavellian Moment*, 62.

Pocock's account of Aristotle's thought forms the basis for his explanation for the integration of the idea of active citizenship into seventeenth-century English political thought. However, Pocock distorts Aristotle's account of citizenship in a fundamental way. *The Machiavellian Moment's* discussion centers on the *Politics* as the most influential and fullest exposition of Aristotle's "theory of citizenship and polity."<sup>223</sup> Pocock argues that in, the *Politics*, Aristotle portrays all human activity as "value-oriented" — in pursuit of some good — and "social" — goods are pursued in association with other humans. The *polis* is "the association within which all particular associations pursued their particular ends."<sup>224</sup> These "particular ends" are united in the *polis* in the pursuit of a "universal" good, participation in the association itself: "participation in the association whose end was the good of all particular associations, and the attainment of all particular goods, was in itself a good of a very high, because universal, character."<sup>225</sup> That is, in Pocock's account, life in the *polis* is a universal good in so far as it allows for the pursuit of particular ends and goods. These numerous "individual value-priorities" create equivalent particular associations, each of them constituting an "elite," whose aim is to pursue these priorities: "it is important to remember that such elites were in theory as many as the identifiable value-goals which men pursued, and that since every citizen had been defined as possessing his own value-priorities, there was in principle no

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<sup>223</sup> Pocock, *The Machiavellian Moment*, 67.

<sup>224</sup> Pocock, *The Machiavellian Moment*, 67; emphasis mine.

<sup>225</sup> Pocock, *The Machiavellian Moment*, 67.

citizen who did not belong to as many of these elites as he had chosen values for special emphasis."<sup>226</sup> According to Pocock, there is, however, a fundamental problem facing the *polis*. Association in the *polis* is a necessary condition in order for each individual to pursue his own particular ends and goods. For this universal good of political association to be achieved, each individual must function as a "citizen," that is, someone who both "rules and is ruled." It is in assigning each citizen his specific role in the "universal activity of making decisions aimed at distributing the common good" that the central problem of political association arises: each citizen, *qua* citizen, is equal to all others, but each individual, as a "result of their individual value-priorities," attains a distinct "social personality" fitting him for a particular role in participating to the rule of the *polis*.<sup>227</sup> The problem is how to reconcile the two: "On the one hand, it was his pursuit of particular goods as an individual that made him a citizen; on the other, it was only in his concern for and awareness of the common universal good that his citizenship could persist; and there was always the possibility of conflict between the two."<sup>228</sup> This conflict becomes one of the central threads in Pocock's thesis. *The Machiavellian Moment* is an account of the solutions proposed by civic humanists to this problem and their afterlives.<sup>229</sup> More broadly, on a conceptual level, Pocock claims that this problem of

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<sup>226</sup> Pocock, *The Machiavellian Moment*, 69; emphasis mine.

<sup>227</sup> Pocock, *The Machiavellian Moment*, 68; emphasis mine.

<sup>228</sup> Pocock, *The Machiavellian Moment*, 74-5.

<sup>229</sup> Pocock, *The Machiavellian Moment*, 80.

political participation is the hallmark of European *political* theory distinguishing it from the “social” concerns of juristic and medieval modes of thought.<sup>230</sup>

This distinction, however, may not be as stark as Pocock argues. Two points stand out from his reading of Aristotle’s *Politics*. First, Pocock describes each individual as “choosing” values and associating into particular elites. For this description, he relies on the *Politics* 1289b-1290a. In Pocock’s paraphrase, Aristotle lists the following elites in a *polis*: “the good, the wise, the brave, the rich, the wellborn, and so on.”<sup>231</sup> However, in the original, Aristotle’s description of “elites” does not give general categories, such as “the brave,” but rather focuses on specific differences of wealth, occupation, and merit: the various members of the *polis* belong to different families, characterized by “differences in wealth and property” as well as “differences in rank and merit.”<sup>232</sup> In the

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<sup>230</sup> Pocock, *The Machiavellian Moment*, 83-4 and *Virtue, Commerce, and History*, 42-5. In *The Machiavellian Moment*, Pocock assigns the blame for the lack of a truly *political* concept of social life in the middle ages to a tradition of thought that stems from Augustine. While civic humanists “depicted human social life as a universality of participation,” the “patristic intellect,” influenced by Augustine, focused on “depicted human social life as [...] a universal for participation” (Pocock, *The Machiavellian Moment*, 75; see page 32 for his use of the broad-sweeping term “patristic intellect”). Augustine and his heirs, then, are portrayed by Pocock as forming a framework that incapacitated political life by devaluing membership in the *civitas terrena* (Pocock, *The Machiavellian Moment*, 34).

<sup>231</sup> Pocock, *The Machiavellian Moment*, 69.

<sup>232</sup> “In the first place we see that all states are made of families, and in the multitude of citizens there must be some rich and some poor, and some in a middle condition; the rich possess heavy armour, and the poor not. On the common people, some are farmers, and some are traders, and some artisans. There are also among the notable differences of wealth and property [...]. Besides differences of wealth there are differences of rank and merit, and there are some other elements which were mentioned by us when in treating of aristocracy we enumerated the essentials of a state. [...] It is evident then that there must be many forms of government, differing in kind, since the parts of which they are composed differ from each other in kind. For a constitution is an organization of offices, which all the citizens distribute among themselves, according to the power which different classes possess (for example the rich or the poor), or according to some principle of equality which includes both” (Aristotle, *The Politics*, trans. Jonathan Barnes, ed. Stephen Everson (Cambridge: Cambridge University Press, 1988), 84; 1289<sup>b</sup>-1290<sup>a</sup>).

*Politics*, these examples of elites clearly owe much to tradition and accidents of birth. In *The Machiavellian Moment*, however, they are generalized into a list of elites which can be expanded to include as many categories as *individuals can formulate* “identifiable value-goals.”<sup>233</sup> This generalization obscures the fact that these categories are dependent on accidents rather than on a “rational choice” of “value-goals.”<sup>234</sup> In turn, this elision allows Pocock to emphasize his original dichotomy between, on the one hand, the “other than rational” reliance on tradition and custom in the political life of territorial monarchies and, on the other, the rational, conversation-based, and participatory humanist view of the citizen. The second point regards Pocock’s account of the conflict between each individual’s “value-priorities” and the “universal good” of association. In describing this conflict, Pocock is extrapolating from the *Politics* and does not give a direct reference to Aristotle’s text.<sup>235</sup> This is of course not a problem on its own, as a reading of the *Nicomachean Ethics*, for instance, would be appropriate in explaining the *Politics*. The question, however, arises of whether Pocock’s characterization of the

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<sup>233</sup> Pocock, *The Machiavellian Moment*, 68.

<sup>234</sup> Even when he does recognize a “traditional” element in Aristotle’s distinction of rank and wealth, Pocock elides Aristotle’s attention to, for instance, to differences in profession or their contribution to military efforts (see note 232 just above). Pocock divides Aristotle’s discussion of elites between the categories of “theoretical” and “traditional” elites. “Theoretical elites” are those that can be based on the “indefinitely many [...] values which human activity aimed at achieving,” while the “traditional elites” are based on the “habit of distinguishing citizens into two main groups, the ‘few’ and the ‘many’” (*The Machiavellian Moment*, 68-9). It is in his description of the “theoretical elites” that Pocock gives reference the *Politics* 1289<sup>b</sup>-1290<sup>a</sup> (*The Machiavellian Moment*, 69, see note 29). However, while Pocock acknowledges a “traditional” element in Aristotle’s (and his humanist heir’s) discussions of elites, he does not register the possibility that such an element may distort his account of how the “balance” of “value goals” is obtained.

<sup>235</sup> Pocock, *The Machiavellian Moment*, 68.

conflict between “individual value-priorities” and how to allocate resources in the “universal good” of association is faithful to Aristotle and to subsequent Aristotelian traditions. Central to the overall argument of *The Machiavellian Moment* is Pocock’s reading of Aristotle’s conception of “tyranny”: in order to avoid “tyrannical” government in the *polis*, the “particular good” of any one group of citizens could not be pursued to the detriment of the goods of other groups of citizens.<sup>236</sup> However, since the goods of different groups of citizens cannot be ranked, the problem of government is to formulate an arrangement that allows for the pursuit of the “universal good” of association in the *polis* without neglecting the pursuit of particular goods, which are incommensurable.<sup>237</sup> As Pocock sums up the problem: “what was the common good if it led to the abnegation of all particular goods?”<sup>238</sup> In this account, the constant threat of conflict is built into the very definition of political life: each individual’s chosen good is equivalent to any other’s and there is no *a priori* way to decide between conflicting goods. The solution to this problem, according to Pocock, is not to be found in Aristotle’s political theory. It rather had to wait until Italian humanists set aside the alternative language of civil and canon law to formulate a theory of *vivere civile*.<sup>239</sup>

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<sup>236</sup> Pocock, *The Machiavellian Moment*, 71.

<sup>237</sup> Incommensurable is my term, but I do not think that it distorts Pocock’s account as he notes that the only good that could be ranked above other goods was the universal good of association itself (*The Machiavellian Moment*, 70).

<sup>238</sup> Pocock, *The Machiavellian Moment*, 74.

<sup>239</sup> Pocock, *The Machiavellian Moment*, 78-83.

Is conflict, however, truly an intrinsic part of Aristotle's conception of life in the *polis*? In his discussion, Pocock fails to note that Aristotle gives various "value-goals" different rankings within the *polis*. Crucially, such ordering remains central to the Aristotelian conception of political life embodied in Aquinas's questions on legislation and laws. In the *Summa*, Aquinas's account of natural law and political life presupposes an Aristotelian ordering of goods in the political community and it tackles what Pocock views as the central problem of *political* association. What is the basis for Aquinas's account? It is founded on a central, and well-known, claim of *The Nicomachean Ethics*. There, Aristotle argues that practical reason and the virtues are fundamentally interrelated: all practical syllogisms stem from a first principle of what is good in a given situation for a given individual and what is good "is evident to the good person alone."<sup>240</sup> To be practically rational, then, one must be habituated in the virtues. The importance of the connection between virtue and practical rationality is brought out by MacIntyre in both *Whose Justice? Which Rationality?* and *After Virtue*. The unity of the virtues and their connection to rationality has important consequences for Aristotle's account of the life in the *polis*. It is only by living in the *polis* that an individual can

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<sup>240</sup> Aristotle, *The Nicomachean Ethics*, 1144a. For this account of practical reason, I am indebted to MacIntyre, *After Virtue*, 143-164.



become educated in the virtues.<sup>241</sup> Conversely, the unity of the virtues and rationality imposes an intrinsic shared agreement on the life of a well-ordered *polis*:

The interrelationship of the virtues explains why they do not provide us with a number of distinct criteria by which to judge the goodness of a particular individual, but rather with one complex measure. The application of that measure in a community whose shared aim is the realization of the human good presupposes of course a wide range of agreement in that community on goods and virtues, and it [is] this agreement which makes possible the kind of bond between citizens which, on Aristotle's view, constitutes the *polis*.<sup>242</sup>

For Aristotle, conflict within the *polis* is not an intrinsic aspect of constructing a shared political life by individuals pursuing various, incommensurable, "value-priorities," it is rather an *avoidable* defect that needs to be overcome: "the good life for man is itself single and unitary, compounded of a hierarchy of goods."<sup>243</sup>

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<sup>241</sup> MacIntyre, *Whose Justice? Which Rationality?*, 97-99. For how this feature of Aristotle's thought is developed by Aquinas in the *Summa*, see above, chapter three, page 313-17.

<sup>242</sup> MacIntyre, *After Virtue*, 155. For my discussion of how not all know the good equally, see above, page 30.

<sup>243</sup> MacIntyre, *After Virtue*, 157. It is striking that Pocock's account of the pursuit of "value-priorities" in the *polis* in *The Machiavellian Moment* closely resembles what MacIntyre calls the ethos of "effectiveness." If social life lacks a unifying agreement of what the good is and, to use Pocock's language, each individual pursues his own "chosen goods," then he will cultivate those qualities that "enable that person [...] to identify which means will be effective in securing such goods" (*Whose Justice? Which Rationality?*, 32). Pursuing these goods and the qualities that can enable achieving them involves cooperating with others and, in turn, this will involve organizing social life according to rules that allow for this kind of cooperation (*Whose Justice? Which Rationality?*, 36-8). MacIntyre's description of the conception of political life that is organized along the rules of "effectiveness" sounds strikingly like Pocock's description of Aristotle's *polis*: "Politics as a theoretical study will from this point of view be primarily concerned with how far rival interest can be promoted and yet also reconciled and contained within a single order" (*Whose Justice? Which Rationality?*, 39). For Aristotle, on the other hand, such conflict of interests precludes rational action because the virtuous, and hence rational, individual will have transformed his desires in his education in the virtues (*Whose Justice? Which Rationality?*, 108-9). Aristotle recognizes that conflicts between *apparent* goods do form part of political life, but they are not an essential feature of it: "[t]he apparent and tragic conflict of right with right arises from the inadequacies of reason, not from the character of moral reality" (*Whose Justice? Which Rationality?*, 142).

How does Aquinas incorporate Aristotle's account of political life? As we saw earlier, Aquinas acknowledges that not all persons will equally know what the good is. While human reason comprehends as good that "towards which man has a natural tendency [naturalem inclinationem]," we need further direction in deciding how to act.<sup>244</sup> Our natural tendencies can be classified and ordered based on how they relate to humans as considered according to their natures as, first, beings; second, animals; and, third, rational creatures. Just as these aspects of human nature can be ordered, so can natural tendencies. In turn, the ranking of natural tendencies corresponds to the ranking of the commands of natural law: "[t]he order in which commands of the law of nature are ranged corresponds to that of our natural tendencies."<sup>245</sup> On the first order, we find the natural inclination which man shares with all beings, namely, self-preservation. Next, we see that there are natural tendencies that man shares with other animals, such as sex and rearing of the young. Third, we find the natural tendencies that man has as a rational creature: "there is in man an appetite for the good of his nature as rational, and this is proper to him, for instance, that he should know truths about God and about living in society. Correspondingly whatever this involves is a matter of natural law, for instance that a man should shun ignorance, not offend others with whom he ought to

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<sup>244</sup> Ia-IIae, q. 94, art. 2. See, MacIntyre, *Whose Justice? Which Rationality?*, 173.

<sup>245</sup> Ia-IIae, q. 94, art. 2.

live in civility, and other such related requirements.”<sup>246</sup> As MacIntyre argues, this ordering is important in Aquinas’ account:

we educate our children for the sake of their being able to participate in the pursuit of knowledge; we subordinate our need for self-preservation if the lives of our children or the security of our community are gravely endangered. It is not of course that everyone always order their inclinations this way, but that the general patterns of distinctively human behavior evince those directednesses in such a way that it is the ends toward which they are directed that provide our primary experiences of the pursuit of particularized good.<sup>247</sup>

Aquinas’ account that inclinations are ordered is in agreement with Aristotle’s discussion of rationality and practical reason. In Aristotle’s account, acting rationally involves acting according to a practical syllogism and, in order to do so, a rational agent has to construct his premises in a way that identifies a true good to be pursued in a given situation.<sup>248</sup> But a good will only be a true good if it can be derived through deliberation from “the set of ultimate first principles and concepts which specifies the good and the best for human beings as such.”<sup>249</sup> Such process of deliberation sets up a series of hierarchical relationships in which particular goods are ordered for the sake of obtaining *the good*.<sup>250</sup> Both Aquinas and Aristotle, then, present a conception of political life in

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<sup>246</sup> Ia-IIae, q. 94, art. 2.

<sup>247</sup> MacIntyre, *Whose Justice? Which Rationality?*, 173, commenting on Ia-IIae, q. 94, art. 2.

<sup>248</sup> MacIntyre, *Whose Justice? Which Rationality?*, 129-130.

<sup>249</sup> MacIntyre, *Whose Justice? Which Rationality?*, 130. A rational agent, however, need not deliberate in every occasion. An individual is acting rationally if he acts as if he had so deliberated and if he can then give an account of why he acted in such way (MacIntyre, *Whose Justice? Which Rationality?*, 131).

<sup>250</sup> MacIntyre, *Whose Justice? Which Rationality?*, 131-2.

which the fundamental political activity of citizens is not, as Pocock argues, to balance “individual value-priorities,” but to engage in rational activity in pursuit of the good.<sup>251</sup>

Pocock’s account of republicanism has an important consequence for the understanding of Milton’s political thought. By discounting custom as an expression of the people’s rationality, Pocock depicts republican discursive reason as the model for *all* rational political participation. In turn, given the influence of his account, Pocock’s emphasis on rational and virtuous political participation frames the discussion of seventeenth-century literature, in general, and Milton’s works, in particular.

Consequently, when, for instance, Nigel Smith argues that the second edition of *The Ready and Easy Way* is “less democratic but equally republican,” he is arguing that Milton is committed to a form of government that requires (some) English citizens to rationally participate in the decision-making process of the commonwealth. But how do such accounts portray the disagreement between Milton’s republicanism and the royalist demands of the “rabble”? As we have seen, critics largely side with Milton’s representation and argue that it is a disagreement between Milton’s attempt to refashion Englishmen into rational citizens and his fellow countrymen’s desire for a settled and customary—and therefore not fully rational—form of government after the tumults of the Civil Wars and the Interregnum. Sharon Achinstein’s comments in *Milton and the*

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<sup>251</sup> MacIntyre, *Whose Justice? Which Rationality?*, 133-4. For MacIntyre’s explanation of how this enquiry into an account the supreme good is directed, see his discussion of on pages 79-81.

*Revolutionary Reader* are typical: Milton's depiction of the people in his prose works are meant to "define what I call the 'revolutionary public' as a political entity by fashioning his audience as a valuable participant in political discussion. [...] It is true that in many places Milton scorns the rabble, but it is equally true that in many instances, including [*The Ready and Easy Way*], Milton explains how any rank of citizen may become virtuous—by proper discipline, trial, and reading."<sup>252</sup> The problem with this statement, however, is that it assumes that the "rabble" is not already "a valuable participant in political discussion" during the constitutional crises of the mid-seventeenth-century. As I will argue in the rest of this chapter, in *The Ready and Easy Way*, Milton's scorn for "the rabble" has disastrous consequences for his argument for virtuous citizenship in a commonwealth. In the pamphlet, Milton's plan for self-government is presented as necessary for preserving civic and religious liberty. However, Milton's view of the people as irrational and therefore incapable of participating in shared political reasoning at a time of disagreement ultimately undermines the claim that *The Ready and Easy Way* aims at promoting virtuous and rational citizenship.

Milton's conception of the prerequisites for shared political reasoning begins to surface at the very opening of *The Ready and Easy Way*. On the eve of the Restoration, the second edition of the pamphlet reflects on earlier constitutional crises. The struggles

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<sup>252</sup> Sharon Achinstein, *Milton and the Revolutionary Reader* (Princeton, NJ: Princeton University Press, 1994), 16; emphasis mine.

of the Civil Wars and the Interregnum are used as examples to urge Milton's readers not to abandon the project of the commonwealth. On 5 March 1660, with the return of its Presbyterian members, Parliament had reestablished the Solemn League and Covenant, including its third article promising to safeguard the king.<sup>253</sup> Milton, revisiting the events and debates of 1648 in the opening pages of *The Readie and Easie Way*, reminds his readers of the reasons for Parliamentary opposition to Charles I. Having defeated and brought to trial the king, the "Parliament of *England*, assisted by a great number of the people who appeared and stuck to them faithfulest in defence of religion and thir civil liberties, judging kingship by long experience a government unnecessary, burdeson and dangerous, justly and magnanimously abolishd it" (CPW VII:409; emphasis original). Milton insists that those republican members of Parliament who condemned Charles I and broke the Covenant: "took themselves not bound by the light of nature or religion, to any former covnant, from which the King himself by many forfeitures of a latter date or discoverie, and our own longer consideration theron had more & more unbound us, both to himself and his posteritie as hath bin ever the justice and the prudence of all wise nations that have ejected tyrannie" (CPW VII:409).<sup>254</sup> These opening passages capture

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<sup>253</sup> Introduction to *The Readie and Easie Way*, CPW VII:397.

<sup>254</sup> This statement is added to the second edition of *The Readie and Easie Way*. The original passage had been attacked by the anonymous *The Censure of the Rota* (J. H. [Samuel Butler], *The Censure of the Rota upon Mr. Miltons Book* in William R. Parker, *Milton's Contemporary Reputation* (New York: Haskell House Publishers, 1940). The pamphlet was attributed, based on textual evidence, to Samuel Butler by Paul Bunyan Anderson in "Anonymous Critic of Milton: Richard Leigh? Or Samuel Butler?" in *Studies in Philology* 44 (1947): 504-518. For a review of subsequent confirmation of Anderson's attribution, see Nicholas von Maltzahn, "Samuel Butler's Milton," in *Studies in Philology* 92 (1995): 482-495; particularly pages 482-489. *The Censure*

two central features of *The Readie and Easie Way*. In the first passage, the verb “assisted” allows Milton to blur the distinction between the Parliament and “a great number of the people.” As the sentence develops, the concatenation of clauses obscures whether the subject of “judging” and “abolishd” is Parliament or the people.<sup>255</sup> It is also worth noting that the sentence works hard to obscure how many of “the people” assist Parliament and for which reasons. The clause, “a great number of the people who appeered and stuck to them faithfullest in defence of religion and thir civil liberties,” raises a series of questions. For instance, how do the first six words parse: “a great number of {the people who}” or “{a great number of the people} who”? The second option indicates a larger support for Parliament’s actions. Does “faithfullest” modify “them,” indicating that the members of Parliament are “faithfullest,” or does it modify “the people who”? And, finally, what is the antecedent of “thir”?<sup>256</sup> Throughout the pamphlet, the effect of this

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presents itself as written by James Harrington and as reporting a meeting of the Rota in which *The Readie and Easie Way* was discussed. Butler attacks the opening of the first edition of *The Readie and Easie Way*, “The Parliament of *England* assisted by a great number of the people who appeered and stuck to them faithfullest in the defence of religion and thir civil liberties, judging kingship by long experience a government burdensome, expensive, useless and dangerous, justly and magnanimously abolishd it; turning regal-bondage into a free Commonwealth” (CPW VII:355), by mocking Milton’s claim of a large support for the rebellion against the king: “for they were a very sleight number in respect of the whole, and none of the faifhfullest that foreswore themselves, to maintain and defend that which they judg’d dangerous, and resolv’d to abolish” (*The Censure*, 5). Here, Butler turns around Milton’s praise of those who supported the Parliamentary cause as being the “faifhfullest in the defence of religion and thir civil liberties” by pointing out that, if “long experience” had indeed led them to judge kingship dangerous, they foreswore themselves by taking The Solemn League and Covenant.

<sup>255</sup> “Abolishd” is eventually resolved in favor of “Parliament” once we reach the end of the sentence.

Nonetheless, the reader has to wait until the period to be certain of this.

<sup>256</sup> There are a number of other ambiguities in this sentence, but I focus on a few of the most relevant ones.

form of grammatical complexity is to hide or blur political and power relationships. In the second passage, Milton argues that English law and the Parliament's oaths and promises may be broken if "justice" and "prudence" dictate. However, Milton's use of the example of recent history raises a problem that echoes throughout *The Readie and Easie Way*. Why is England now rushing back to monarchy if in abolishing it Parliament took the most rational and prudent course of action? Milton's answer to this question is tied to his conception of rational political deliberation. As I will argue, the two passages taken together point to central tension in *The Readie and Easie Way*: while Milton's republicanism implies a commitment to shared reasoning within a commonwealth, at a time of political and constitutional crisis, he subordinates this commitment to the task of forestalling the Restoration.

How does this tension arise in the pamphlet? Milton warns his readers that they will suffer the scorn of Europe if England allows the return of the Stuarts. Comparing the commonwealth to a building, Milton uses Christ's parable in Luke 14 to admonish those who will not commit to completing the construction of the Commonwealth: "what will they at best say of us and of the whole *English* name, but scoffingly as to that foolish builder, mentiond by our Saviour, who began to build a tower, and was not able to finish it" (CPW VII:423).<sup>257</sup> The image suggested by the parable in Luke 14 is one of poor

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<sup>257</sup> "For which of you, intending to build a tower, sitteth not down first, and counteth the cost, whether he have sufficient to finish it?/ Lest haply, after he hath laid the foundation, and is not able to finish it, all that



planning. Laying the foundations without a full commitment to the resources necessary to finish the project is what a “foolish builder” would do. In Milton’s text, this image develops into that of a different, and this time sinful, building of a biblical tower: “Where is this goodly tower of a Commonwealth, which the English boasted they would build to overshadow kings, and be another *Rome* in the west? The foundation indeed they laid gallantly; but fell into a worse confusion, not of tongues, but of factions, then those at the tower of *Babel*; and have left no memorial of their work behind them remaining, but in the common laughter of *Europ*” (CPW VII:423). The cacophony of the linguistic confusion of the tower of Babel is turned into the “common laughter of *Europ*” with its different languages united in a shared contempt of divided England. In this second image, as in the previous, the foundations have been laid, but in this case what is missing is not commitment, but rather harmony. England has been divided by factions and the building of the commonwealth cannot proceed. The image of the tower of Babel had been used by Charles I in *Eikon Basilike* to predict the fall of the cause of the regicides. “God” warned *Eikon Basilike*, will not “suffer those men long to prosper in their *Babel*, who build it with bones and cement it with the blood of their Kings.”<sup>258</sup> In *Eikonoklastes*, Milton replied that the Saints’ work was “not to build *Babel* (which was

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behold it begin to mock him,/ Saying, This man began to build, and was not able to finish” (Luke 14.28-30, KJV).

<sup>258</sup> Charles I [Gauden, John], *Eikon Basilike: The Portraiture of His Sacred Majesty in His Solitudes and Sufferings*, ed. Philip A. Knachel (Ithaca, N.Y.: Cornell University Press, 1966), 175.

*Nimrods* work the first King, and the beginning of his Kingdom was Babel) but to destroy it, especially that spiritual *Babel*" (CPW III:598). Turning upside-down the royalist image of the rebellion as the building of a new Babel, in *Eikonoklastes* Milton associates the sinful tower with the "first King," Nimrod. In *The Readie and Easie Way*, the image of the tower of Babel returns to warn Milton's audience. The building of the commonwealth will fail not because it was founded on the "blood of their King," but rather because the builders divided into factions and allowed for the return of a new king. In this image, division, confusion, and disagreement prevent the foundations that had been "laid gallantly" from coming to fruition. Much of the body of the pamphlet is dedicated to showing why the building of the commonwealth was not completed and, at the same time, how England can finally build on those foundations.

In *The Likeliest Means*, Milton had called the Protectorate a "short but scandalous night of interruption."<sup>259</sup> In *The Readie and Easie Way*, Milton reflects that the commonwealth should have been firmly installed as soon as the regicide was accomplished: "Tis true indeed, when monarchie was dissolv'd, the form of a Commonwealth should have forthwith bin fram'd; and the practice thereof immediately

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<sup>259</sup> *The Likeliest Means*, CPW VII:274. For the identification of this quote with the Protectorate, see Austin Woolrych, "Milton and Cromwell: 'A Short but Scandalous Night of Interruption'?", in *Achievements of the Left Hand: Essays on the Prose of John Milton*, ed. Michael Lieb and John T. Shawcross (Amherst: University of Massachusetts Press, 1974), 185-218; and Martin Dzelzainis, "Milton and the Protectorate in 1658," in *Milton and Republicanism*, ed. David Armitage, Armand Himy and Quentin Skinner (Cambridge: Cambridge University Press, 1995), 3-24.

begun" (CPW VII:430). Why wasn't it? If this had been done, the people of England would have quickly learnt to enjoy that form of government:

that the people might have soon bin satisfi'd and delighted with the decent order, ease and benefit therof: we had bin then by this time firmly rooted past fear of commotions or mutations, & now flourishing: this care of timely settling a new government instead of y<sup>e</sup> old, too much neglected, hath bin our mischief. Yet the cause therof may be ascrib'd with most reason to the frequent disturbances, interruptions and dissolutions which the Parlament hath had partly from the impatient or disaffected people, partly from som ambitious leaders in the Armie. (CPW VII:430).

In this passage, Milton faults the constant "fear of commotions or mutations" for the English people's desire for the return of the king.<sup>260</sup> If a commonwealth had been quickly established immediately after the regicide, Milton argues that the people of England would have been persuaded against monarchy by the "decent order, ease and benefit" of living in a republic. Strikingly, however, the passage depicts "the people" as both those who would have been convinced by the advantages of a free commonwealth, and, at the same time, as one of the causes of the "commotions or mutations" that have prevented its establishment in the first place. Similarly, in a passage closely preceding the one quoted above, Milton concludes that only a mad or irrational people could pine for the return of the king: "Certainly then that people must need be madd or strangely infatuated, that build the chief hope of thir common happiness or safetie on a single

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<sup>260</sup> In chapter three, I had argued that Milton in *The Tenure of Kings and Magistrates*, unlike Parliamentary writers such as Henry Parker, deemphasized the dangers inherent in the dissolution and reformation of governments (292). In *The Readie and Easie Way*, instead, the "fear of commotions or mutations" is presented as a constant background of the hope to construct a free Commonwealth in the early 1650s.

person [...]. The happiness of a nation must needs be firmest and certainest in a full and free Council of thir own electing, where no single person, but reason only swaies" (CPW VII:427; underlining mine). Here, Milton juxtaposes the rule of reason in an elected council to the madness and infatuation of those who want the return of the king. Problematically, the structure of the passage indicates that those same subjects who are under the sway of a "strange infatuation" with monarchy are those citizens who ought to realize that a representative council elected by them is the most rational form of government.

Such double depictions of the English people recur throughout *The Readie and Easie Way*. Milton represents the people as both "mad and strangely infatuated" with monarchy and capable of self-government as rational members of a commonwealth. But does *The Readie and Easie Way* provide an account of how to turn the madness of the people into rational self-government? Or are there members of the community that are so irrational that they must be excluded from shared political reasoning? To illustrate how a rational commonwealth should govern itself, Milton turns to the advice in Proverbs 6.6-8: the citizens of a commonwealth should be like the wise and self-governing ant who industriously gathers her food in the summer without the need of a ruler.<sup>261</sup> In the first edition of *The Readie and Easie Way*, Milton briefly glosses this passage

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<sup>261</sup> "Go to the ant, thou sluggard; consider her ways, and be wise:/ Which having no guide, overseer, or ruler,/ Provideth her meat in the summer, and gathereth her food in the harvest" (KJV). Comparisons between animal and human government were, of course, quite common. For medieval examples of defenses

to scold those who want the return of the king: rather than behaving like rational citizens, they “have not so much true spirit and understanding in them as a pismire” (CPW VII:363). In the second edition, Milton substantially expands his commentary on this Scriptural passage: “neither are these diligent creatures hence concluded in lawless anarchie, or that commended, but are set the example to imprudent and ungoverned men, of a frugal and self-governing democratie or Commonwealth; safer and more thriving in the joint prudence and counsel of many industrious equals, then under the single domination of one imperious Lord” (CPW VII:427). The Biblical ants behave like ideal citizens who “need depend on none but God and our own counsels, our own active vertue and industrie” (CPW VII:427). While for Milton the society of ants is exemplary in its self-rule, Roman history provides an example of failed self-government. Describing the struggle for power between the Roman tribunes and the Senate, Milton finds a clear depiction of the instability that follows upon allowing the people a voice in government. Milton interprets the fight between tribunes and patricians as a proof that the common people hanker after power as much as the patricians: “the main reason urg’d why popular assemblies are to be trusted with the peoples liberties, rather than a Senat of principal men, because great men will be still endeavoring to inlarge thir

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of societal hierarchy based on the pecking order of chickens and the rule of “the king of the bees,” see Brian Tierney, *Religion, Law, and the Growth of Constitutional Thought*, 44.

power, but the common sort will be contented to maintain thir own libertie, is by experience found false; none being more immoderate and ambitious to amplifie thir power, then such popularities" (CPW VII:438-9). Strikingly, this is not simply an argument against direct democracy.<sup>262</sup> The "common sort" cannot be trusted with any say in government as their representatives will attempt to gain ever more power: the Tribunes "little availd the people or brought them to such licentious and unbridl'd democratie, as in fine ruind themselves" (CPW VII:438). This passage indicates a break with Milton's earlier account of the role of "the common sort" in political life. In a note from 1651-52(?) in the *Commonplace Book*, Milton comments that "[t]he rebellion of a people has often been the means of their regaining their freedom, and therefore they should not be blamed, because very often they act from just causes and complaints" (CPW I:505).<sup>263</sup> There, he supports this conclusion with his own paraphrase of Machiavelli's argument in book one, chapter four of the *Discorsi* that discord and "disturbances" between the common people and patricians leads to "good laws" (CPW I:505). In *The Readie and Easie Way*, disagreement and the "disturbances" of the people are no longer seen as a source of good laws.

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<sup>262</sup> As we saw in chapter three with the example of Henry Parker, representative government was touted by Parliamentary writers as necessary to both safeguard the rights of the people and to "to regulate the motions of the peoples moliminous body" by providing an outlet for their grievances (209). In this passage, Milton breaks with this strand of argument.

<sup>263</sup> On the dating of the entries of the *Commonplace Book*, see Ruth Mohl's introduction, CPW I: 347-52.

At the same time, Milton argues that the actions of the army and the people during the Interregnum stand witness to the fact that the English people are “well fitted” for liberty and self-government: “Nor were thir actions less both at home and abroad then might become the hopes of a glorious rising Commonwealth: nor were the expressions both of armie and people, whether in thir publick declarations or several writings other then such as testif’d a spirit in this nation no less noble and well fitted to the liberty of a Commonwealth, then the ancient *Greeks* or *Romans*” (CPW VII:420). While the promising actions of the “armie and the people” could not firmly establish a Commonwealth, Milton exhorts England to not give up hope for self-government and avoid a relapse into monarchy. He dismisses the lapses in the republican cause as “interruptions” which are now passed: “After our liberty and religion thus prosperously fought for, gaind and many years possessd, except in those unhappie interruptions, which God hath remov’d, now that nothing remains, but in all reason the certain hopes of a speedie and immediate settlement for ever in a firm and free Commonwealth” (CPW VII:421; underlining mine).<sup>264</sup> The past obstructions to a free nation are reduced to “unhappie interruptions” on already “possessd” liberty and religion. At the writing of the pamphlet, Milton insists, these interruptions have been completely removed by God. The syntax of the underlined clause — “except in those unhappie interruptions, which

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<sup>264</sup> The first edition of *The Readie and Easie Way* represented an even more secure attainment of liberty by saying “thus successfully fought for” (CPW VII:356) rather than “thus prosperously fought for.” In *The Censure of the Rota*, Butler attack Milton on this very point: “for if by liberty, you mean Common-wealth, (as you do) There was never such thing, as either the one, or the other” (7).

God hath remov'd, now that nothing remains, but in all reason the certain hopes" — works to minimize the effects of the breaks in free government and religion. In this line, "nothing remains" is placed as a hinge between two clauses with complex temporality. It links the now-past interruptions with the present hopes. These, in turn, point to the near-future, "speedie and immediate," settlement of a "firm and free Commonwealth"; a settlement that once achieved will be permanent, "settlement for ever." Thus, at first, the "nothing remains" can be read to refer to the now-removed *past* interruptions. However, as we move through the line, the "but" tips over the sentence and "nothing remains" points to the lack of *present* and *future* obstacles to the perpetual settlement of a free commonwealth.<sup>265</sup> In this passage, the obstacles to the forming of a free commonwealth are made to disappear in a forward move that indicates that the republican ideal can easily be reached if the English people only recollect how close they came to achieving it.

These kinds of exhortative moves are in tension with passages that depict England as rushing back into the slavery of monarchy. The people of England are depicted as unthinkingly rushing towards the restoration: "On the contrarie, if ther be a king, which the inconsiderate multitude are now so madd upon, mark how far short we

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<sup>265</sup> This vision of an almost achieved liberty is reflected in the passage which we considered earlier (CPW VII:430). There, we saw that the commonwealth was not securely established because "the frequent disturbances, interruptions and dissolutions" of Parliament due to "the impatient or disaffected people" and "som ambitious leaders in the Armie" (CPW VII:430). But Milton quickly diminishes this threat by rehabilitating the army itself, as opposed to "som ambitious leaders." The dissolutions of Parliament were "much contrarie, I believe, to the mind and approbation of the Armie it self and thir other Commanders, once undeceivd, or in thir own power" (CPW VII:430).



are like to com of all those happinesses" (CPW VII:446; emphasis mine). The desire for the return of the monarchy is presented as an illness that leads the people to erring judgment based on incorrect premises: "this noxious humour of returning to old bondage, instilld of late by som deceivers, and nourished from bad principles and fals apprehension among too many of the people" (CPW VII:407-8). Those who wish for the return of Charles II are "past reason and recovery [...] devoted to kingship" (CPW VII:455). In the last section of the pamphlet, Milton depicts the English people as lured back to Egypt by the false idols of wealth and prosperity. Forgetting the "frequent plagues and pestilences" that affected England under Charles I, the nation yearns for the return of Charles II under the misapprehension that a settled monarchy will bring prosperity. The people are "so affected, as to prostitute religion and libertie to the vain groundless apprehension, that nothing but kingship can restore trade" (CPW VII:461). In hope of prosperity, the English people are willingly relinquishing "all this [religious] light among us": "the same reason shall pass for current to put our necks under kingship, as was made use of by the *Jews* to returne back to *Egypt* and to the worship of thir idol queen, because they falsly imagind that they then livd in more plentie and prosperity, our condition is not sound but rotten" (CPW VII:462). These false apprehensions, the disease spread by "som deceivers," are representative of the very essence of kingship, which, unlike a free commonwealth, aims to keep its subjects docile: "Monarchs will never permit: whose aim is to make the people, wealthie indeed perhaps

and well fleec't, for thir own shearing and the supplie of regal prodigality; but otherwise softest, basest, vitioussest, servilest, easiest to be kept under; and not only in fleece, but in minde also sheepishest" (CPW VII:460).

The corrupting nature of life under the rule of a king informs Milton's response to royalist arguments that most Englishmen want a monarchy and that "the rest therfor must yield." For Milton, royalists do not have a right to participate in the government of the country. Those who fought against Parliament in the Civil Wars have lost such right by their military defeat: "Not so much to convince these, which I little hope, as to confirm them who yield not, I reply; that this greatest part have both in reason and in the trial of just battle, lost the right of their election what the government shall be" (CPW VII:455). More broadly, all who desire the return of monarchy are to be deprived of the right to determine the form of government whether they fought for Charles I or not: of them who have not lost that right, whether they for kingship be the greater number, who can certainly determin? Suppose they be; yet of freedom they partake all alike, one main end of government: which if the greater part value not, but will degenerately forgoe, is it just or reasonable, that most voices against the main end of government should enslave the less number that would be free? [...] They who seek nothing but thir own just libertie, have alwaies right to winn it and to keep it, when ever they have power, be the voices never so numerous that oppose it. (CPW VII:455)

In defending liberty by suppressing the participation in government of potentially the majority of the nation, Milton can envision that this liberty will benefit all, even those who would “degenerately forgoe” it. As we have seen, Milton insists that living in a free commonwealth will persuade the people of its advantages, even if they now oppose it. In this passage, however, those who desire the return of the king are characterized as so unreasonable or “degenerate” that they cannot be argued or reasoned with. In *The Readie and Easie Way*, shared reasoning is subordinated to the good of establishing a free commonwealth.

Warning that “if we returne to Kingship, and soon repent, as undoubtedly we shall, [...] we may be forc’d perhaps to fight over again all that we have fought” (CPW VII:423), Milton urges his readers not to give up the liberty that they will certainly obtain in a commonwealth. Unlike an idolatrous monarchy, a commonwealth is seen as the only form of government that is Scripturally prescribed:

[it is] held by the wisest men in all ages the noblest, the manliest, the equallest, the justest government, the most agreeable to all due libertie and proportiond equalitie, both human, civil, and Christian, most cherishing to vertue and true religion, but also (I may say it with greatest probabilitie) planely commended, or rather enjoind by our Saviour himself, to all Christians. (CPW VII:424)

Quoting Matthew 20.25-7 or Luke 22.25-6 in support of this characterization, Milton argues that Christ’s words spoken to curb the “ambitious desire of *Zebede’s* two children” forbid “heathenish” kingship and enjoin life in a commonwealth (CPW

VII:424-5).<sup>266</sup> In both Matthew and Luke's versions, Jesus urges the apostles to serve one another and reminds them of his own ministry as an example of fellowship (Matthew 20.28 and Luke 22.27). From this Scriptural passage, Milton proceeds to argue that this ideal Christian community can be realized in a free commonwealth, where the rulers are "perpetual servants and drudges to the public."<sup>267</sup> In Luke 22, Christ's injunction is uttered at the Last Supper and it links Passover—the old covenant between God and the nation of Israel—with the new covenant and the Second Coming.<sup>268</sup> The use of these passages from the gospels echoes in Milton's proposal for the establishment of a permanent governing "Grand Council." Milton argues that if such a form of government is adopted, England will enjoy the benefits of a Christian commonwealth that will last until the eschaton:

The Grand Council being thus firmly constituted to perpetuities, [...] there can be no cause alleag'd why peace, justice, plentiful trade and all prosperities should not thereupon ensue throughout the land; with as much assurance as can be of human things, that they shall so continue [...] even to the coming of our true and rightfull and only expected King. (CPW VII:444-5)

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<sup>266</sup> Zebedee is mentioned only in Matthew 20 and not in Luke 22. However, Milton's rendition of Jesus' words follows Luke's more closely than Matthew's.

<sup>267</sup> "And what government comes neerer to this precept of Christ, than a free Commonwealth, wherein they who are greatest, are perpetual servants and drudges to the public at their own cost and charges, neglect their own affairs yet are not elevated above their brethren; live soberly in their families, walk the street as other men, may be spoken to freely, familiarly, friendly, without adoration" (CPW VII:425)

<sup>268</sup> For Passover: "And he sent Peter and John, saying, Go and prepare us the passover, that we may eat" (Luke 22.8). For the coming of the Kingdom of God: "For I say unto you, I will not any more eat thereof, until it be fulfilled in the kingdom of God" (Luke 22.16); and "That ye may eat and drink at my table in my kingdom, and sit on thrones judging the twelve tribes of Israel" (Luke 22.30).

Just as Milton sweeps away as easily overcome the “unhappie interruptions” of the Protectorate, he represents establishing a permanent governing council as sufficient to secure the Christian commonwealth described in Matthew and Luke. Ironically, this proposal is undermined by Milton’s own comment on the request of the mother of Zebedee’s children: they desired “to be exalted above thir brethren in his kingdom, which they thought was to be ere long upon earth” (CPW VII:424). The words of Jesus at the Last Supper promise the coming of Christ’s kingdom, but this promise is not to be fulfilled on earth soon. Milton’s comment on Matthew 20 acknowledges that Christ’s sacrifice and the establishment of the Church do not coincide with His rule on earth.

Running against the grain of this acknowledgment, the description of the “Grand Council” equates the foundation of the commonwealth with the institution of a changeless, ideal government; England’s political life is frozen until the Second Coming. The description of the rule of the grand council is strikingly static and lifeless. England becomes a homogenous “land” in which “peace, justice, plentiful trade and all prosperitie” “ensue” upon the election of the council. The passage stands in striking contrast to the unruly and ever-changing history of the Interregnum presented in the rest of *The Readie and Easie Way*. The affirmation that “there can be no cause alleag’d why peace, justice, plentiful trade and all prosperitie should not thereupon ensue throughout the land” strains against the repeated reminders throughout the pamphlet of the failed attempts at securing a stable commonwealth. To hide this strain, Milton’s

grammatical construction suppresses all agency in the passage. The clause is organized around two negatives, "there can be no cause alleag'd" and "should not ensue." These two negatives avert the reader's attention away from any questions of political agency and relationships. The first negative, "there can be no cause alleag'd," hides agency in two ways. As a passive, it suppresses the agent of "alleag'd." More importantly, alongside "should not ensue," it shifts the focus *away from* the agency by which the goals "peace," "justice," "plentifull trade," and "all prosperitie" are achieved *and towards* the (suppressed) agent of "alleag'd." The result is to focus the reader's attention on the presumably automatic ensuing of these goals.

The frozen quality of Milton's commonwealth is reflected in his model for electing the permanent council. Rejecting proposals for the frequent rotation of ruling magistrates, Milton argues that England could avoid a return of the recent instabilities by eliminating frequent elections and the consequent changes in government: "The much better way doubtless will be in this wavering condition of our affairs, to deferr the changing or circumscribing of our Senat, more then may be done with ease, till the Commonwealth be thoroughly setl'd in peace and safetie" (CPW VII:441). In developing his proposal for a permanent council, Milton reiterates his warning against allowing the "rude multitude" to participate in electing magistrates: "not committing all to the noise and shouting of a rude multitude, but permitting only those of them who are rightly qualif'd, to nominat as many as they will" (CPW VII:442-3). Ironically, Milton follows

this warning with a characterization of the new Commonwealth as teaching the English people to become progressively educated in the electing and running of government: “To make the people fittest to chuse, and the chosen fittest to govern, will be to mend our corrupt and faulty education, to teach the people faith not without vertue, temperance, modestie, sobrietie, parsimonie, justice; not to admire wealth or honour; to hate turbulence and ambition; to place every one his privat welfare and happiness in the public peace, libertie and safetie” (*CPW VII:443*). Here again, the grammatical structure points to a tension between Milton’s stated purpose in establishing a commonwealth and his plans for bringing it about. This sentence is dominated by verbs in the infinitive: “to make,” “to chuse,” “to govern,” “to mend,” “to teach,” “not to admire,” “to hate,” and “to place.” The clause starting with “will be to mend” is dependent on the first clause of the sentence. In turn, this first clause, “to make the people fittest to chuse,” represents the process by which “our corrupt and faulty education” will be mended. However, the infinitive “to make,” which governs the opening clause, hides who or what will make “the people fittest to chuse, and the chosen fittest to govern.” The passage develops Milton’s image of civic and religious virtue that will lead to a stable and free Commonwealth. Its grammatical structure, however, implies that the process of education will follow automatically upon the implementation of Milton’s version of a permanent ruling council. Thought citizens are not to participate in the process of decision-making, they are nonetheless to be made into “people fittest to chuse, and the

chosen fittest to govern." Milton's use of infinitives begs two questions: by *whom* and *how*?

If it is dangerous for the "common sort" to have a voice in government, how are political decisions to be made and how are the people to be educated in virtuous citizenship? Milton turns again to the history of the Civil Wars and recalls the divisions within Parliament over negotiations with the king: "[t]he best affected also and best principl'd of the people, stood not numbring or computing on which side were most voices in Parliament, but on which side appeerd to them most reason, most safetie, when the house divided upon main matters" (CPW VII:414; underlining mine). Milton insists that the "best principl'd of the people" supported the best arguments, not the "most voices." However, the yoking of "appeerd" with "most reason, most safetie" is loud reminder that the history of the Civil Wars and Interregnum can undermine the argument of *The Readie and Easie Way*. What may have appeared as the most reasonable policy at the time did not result in a well-established commonwealth. In case of disagreement, then, how do we discern which argument has the "most reason"? As the paragraph develops, Milton adds further criteria for political judgment:

what was well motiond and advis'd, [the best affected also and best principl'd of the people] examind not whether fear or perswasion carried it in the vote; neither did they measure votes and counsels by the intentions of them that voted; knowing that intentions either are but guessed at, or not soon enough known, and although good, can neither make the deed such, nor prevent the consequence from being bad: suppose bad intention in things otherwise welldon; what was welldon, was by them who so thought, not the less obey'd or followd in the state. (CPW VII:414; underlining mine)



These criteria are, however, all in the negative; the reader is told what is *not* a basis for judgment, “they examind not whether fear or perswasion carried it in the vote; neither did they measure votes and counsels by the intentions.” More problematically, the passage moves from stating that a minority in Parliament may choose and advocate a better action than a majority to arguing that neither the intentions nor the methods of carrying a motion through, if “well motiond and advis’d,” matter. Here, Milton splits doing well from intending well in the crucial activity of political deliberation.

In this account, a political action can be judged as “welldon” independently of the intentions of the actors or the means they employ to carry it through. Earlier in the pamphlet, Milton argued that the Long Parliament acted according to “prudence” and “the light of nature” in rebelling against the king. In the passage just quoted, however, Milton indicates that such actions, though “welldon,” could have been carried through by members of Parliament who acted from “fear” or other poor intentions. Taken together, the two passages indicate that the “best principl’d of the people” can judge the “prudence” and rationality of the actions of rulers independently of the intentions motivating those actions. This indicates that, in *The Readie and Easie Way*, the rationality of “the rabble” and of the “best principl’d of the people” are represented in profoundly different terms. On the one hand, the “rabble” is to be excluded from political deliberation at a crucial moment of disagreement because incapable of judging correctly in political matters. The already-virtuous few, on the other hand, can discern the most

prudent actions in government even if proposed by potentially vicious magistrates.<sup>269</sup> At the same time, as we have just seen above, Milton argues that the implementation of his Grand Council will “mend our corrupt and faulty education,” teach the “common sort” virtuous political participation, and secure liberty even for those who “degenerately forgoe” it. More strikingly, Milton justifies the permanent membership in the council by appealing to the need for common deliberation. This argument is framed in opposition to the proposals of James Harrington’s *Oceana*. In Pocock’s reading, Harrington maintains that frequent rotation in office is necessary to ensure that individuals participate in the civic functions of the commonwealth.<sup>270</sup> This process also selects a natural ruling aristocracy: “aristocracy, although a function of property as well as personality, was a natural rather than institutional phenomenon, which worked best

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<sup>269</sup> Milton argues that it is better to “follow *Iscariot* or *Simon* the magician, though to covetous ends, preaching, then *Saul*, though in the uprightness of his heart persecuting the gospel” (CPW VII:415). Recently, Bryan Adams Hampton has argued that Milton’s conception of “prudence” is a version of Aristotelian *phronēsis* (*Fleshly Tabernacles: Milton and the Incarnational Poetics of Revolutionary England* (Notre Dame, IN: University of Notre Dame Press, 2012), 170). However, Milton’s separation of doing well from intending well in political deliberation indicates a problem with this characterization. For Milton, the “best principl’d of the people” do not need to examine the intentions of those who voted in Parliament; “what was well don” was obeyed by “them who so thought.” But, as we have seen above, for Aristotle, only the individual habituated in the virtues can be practically rational. This has a profound consequences for Aristotle’s conception of political life. To become practically rational and habituated in the virtues, one must learn from those who have already acquired the virtues. In turn, this requires that political life be organized so as to promote education in the virtues and, most importantly, that those who rule adhere to the virtue of justice (*Whose Justice? Which Rationality?*, 37-9). While Milton’s reference to the “best principl’d of the people” may gesture in the direction of the Aristotelian conception of the virtuous citizen, Aristotle’s *phronimos* would not “follow *Iscariot* or *Simon* the magician [...] preaching” because a vicious ruler cannot possess the practical rationality necessary to organize the life of the *polis*.

<sup>270</sup> Pocock, *The Machiavellian Moment*, 393-4. As Pocock explains, this was Harrington’s “method of mechanizing virtue, of distinguishing and distributing the elements of the decision process so that men were obliged to act disinterestedly” (*The Machiavellian Moment*, 394).

when it was not entrenched but left to the recognition of the many."<sup>271</sup> In *The Readie and Easie Way*, Milton attacks Harrington's proposal as trusting too much in the process of mechanical selection. In Harrington's assembly, Milton sees the members "unweildie with thir own bulk, unable in so great a number to mature thir consultations as they ought, if any be allotted them" (CPW VII:441). By voting without deliberation in Harrington's system,<sup>272</sup> they choose "without reason shewn or common deliberation" (CPW VII:441). Those who participate in political life should not do so silently, but ought to deliberate together and give reasons for their choice. What of the "inconsiderate multitude" who are to benefit from the "liberty" of a commonwealth they did not choose? That is, what is the consequence of excluding from deliberation those who disagree with the proposed commonwealth on the grounds that they are unreasoning?

To see the consequences of Milton's restriction of participation, I turn back to Aquinas' account of the law and custom. For Aquinas, human laws need to be drafted with the understanding that they govern the actions of human subjects, that is, rational animals. That means that laws must appeal to human reason and that ultimately even punishment must have an educational role, habituating the subject into political and social life.<sup>273</sup> It is important that in this account Aquinas follows Aristotle because, as we

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<sup>271</sup> Pocock, *The Machiavellian Moment*, 395.

<sup>272</sup> As Ayers explains in n. 150 to CPW VII:441, Harrington had proposed a system of silent voting as safeguarding free choice in elections.

<sup>273</sup> Like Aristotle, and unlike Rogers, Aquinas then argues that just laws bind individuals because, in breaking them, a person harms himself as well as others (see Ia-IIae., q. 90, art. 1 and Ia-IIae., q. 94, art. 3).

have seen earlier, Aristotle considers conflict in a community as a defect to be avoided, not as an integral part of political life.<sup>274</sup> The question is, then, how is conflict resolved? Aquinas's approach to the question of political disagreement can further bring into relief the importance of rational shared decision making in his political theory. In considering Aquinas' response to the fact of disagreement in political life, therefore, I aim to compare an Aristotelian *natural law* solution to conflict with Milton's "republican" answer. As we will see, *pace* Pocock, Aquinas's formulation requires a commitment to shared deliberation. What happens when there is a disagreement about which laws to adopt or, on a larger scale, which form of government to implement? To see Aquinas' answer to this question, we need to return to the distinction between practical and theoretic reason. In understanding Aquinas' treatment of rational solution to disagreement, I follow MacIntyre's discussion in "Aquinas and the Extent of Moral Disagreement" in *Ethics and Politics*.<sup>275</sup> In this essay, MacIntyre begins by considering a set of fundamental contemporary moral disagreements, disagreements that arise out of rival accounts of the "first principles" of moral life grounded in "some account of human nature and action, and more especially in some account of how the reasons that

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For the educational role of punishment, see Ia-IIae., q. 95, art. 1. On Aristotle's version of this account, see *Whose Justice? Which Rationality?*, 37-8.

<sup>274</sup> See my discussion on page 33 above.

<sup>275</sup> Alasdair MacIntyre, *Ethics and Politics: Selected Essays*, vol. 2, (Cambridge University Press, 2006).

justify actions are related to the causes of actions."<sup>276</sup> Aquinas' account of rationality presupposes a specific conception of human flourishing aimed at a specific good and thus, acting rationally involves taking actions that move us towards that good.<sup>277</sup> The nature of that ultimate good is a matter of theoretic reason; the specific actions to be taken in a given situation by a given human being are matters of practical reason. Thus, which actions we take at any given time will depend on our conception of the good, and, conversely, our daily actions, if we act rationally, will bear witness to our notion of human flourishing. This means that disagreement about matters of practical reason can point towards disagreements about the ultimate good.<sup>278</sup>

Both Aristotle and Aquinas point out that in important matters we must deliberate with others, including those with whom we disagree.<sup>279</sup> This is true both for theoretic and practical reasoning, since in either type of thinking we are limited by our own point of view and deliberating with others allows us to consider their standpoint.<sup>280</sup> However, deliberating with others is particularly important in the case of practical reason. This is because in matters of practical thinking we are prone to deceive ourselves about our desires. What we desire isn't necessarily what is good and we "have to recognize that we always remain liable to suppose that we want this or that because and

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<sup>276</sup> MacIntyre, "Aquinas and the Extent of Moral Disagreement," 69.

<sup>277</sup> MacIntyre, "Aquinas and the Extent of Moral Disagreement," 70-1.

<sup>278</sup> MacIntyre, "Aquinas and the Extent of Moral Disagreement," 71-2.

<sup>279</sup> MacIntyre, "Aquinas and the Extent of Moral Disagreement," 71-3; quoting Aristotle, *Nicomachean Ethics*, 1112<sup>b</sup>10-11, and Aquinas, *Summa Theologiæ*, Ia-IIae, q. 14, art. 3.

<sup>280</sup> MacIntyre, "Aquinas and the Extent of Moral Disagreement," 73.

only because it is good, when in fact what will primarily be satisfied by our obtaining or achieving this or that is our desire for pleasure or power or money or some such."<sup>281</sup> This means that we "should always therefore treat solitary deliberation as peculiarly liable to error."<sup>282</sup> This is not to say that deliberating with others will unerringly guide us towards the good. Others can be a source of "deliberative corruption" and we "need from others, as they need from us, the exercise of the virtues of objectivity."<sup>283</sup>

At this point in his discussion of disagreement and deliberation, MacIntyre turns to Aristotle's and Aquinas' statements that deliberation is about means and not ends.<sup>284</sup> However, shared deliberation and, in particular, deliberation done with others with whom we disagree can lead us to better understand our ultimate end. How does deliberation about means help us in understanding our *telos*? As we have seen earlier, while Aquinas in the *Summa Theologiæ* describes practical reason in analogy with theoretic reason, the two do not work in the exact same way. When we develop practical knowledge of our *telos*, we do so differently than when we gain theoretical knowledge of a proposition.<sup>285</sup> With practical knowledge of our ultimate end, "we begin by discovering a directedness in our particular actions and in our particular deliberation, so

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<sup>281</sup> MacIntyre, "Aquinas and the Extent of Moral Disagreement," 73.

<sup>282</sup> MacIntyre, "Aquinas and the Extent of Moral Disagreement," 74.

<sup>283</sup> MacIntyre, "Aquinas and the Extent of Moral Disagreement," 74. How to exercise the virtue of objectivity will turn out to depend on deliberating alongside others while conforming, and knowing that our partners in deliberation also conform, to the law of nature as understood by Aquinas (80).

<sup>284</sup> MacIntyre, "Aquinas and the Extent of Moral Disagreement," 74; quoting Aristotle, *Nicomachean Ethics*, 1112<sup>b</sup>13-14, and Aquinas, *Summa Theologiæ*, Ia-IIae, q. 14, art. 2.

<sup>285</sup> MacIntyre, "Aquinas and the Extent of Moral Disagreement," 75.

that we find ourselves inclined, first by nature, then by habituation acquired through education by others, to move towards certain types of goal, ordered and understood in certain specific ways."<sup>286</sup> In the process of acquiring such knowledge and discovering such directedness, we will find out that some of our inclinations and part of our education are inadequate. This kind of realization will often come about through "the discovery of disagreement with others as to whether this or that particular judgment or action, choice or project, is or was the best to undertake in this or that particular set of circumstances. [...] theoretical disagreements about the nature of the end of human life emerge from immediate practical disagreements in the context of shared deliberation."<sup>287</sup> By following Aristotle in ordering goods, Aquinas finds a positive function for certain types of disagreement. In shared practical reasoning in case of disagreement we can come to realize that some of our inclinations are inadequate in the pursuit of the good. Crucially, such positive forms of disagreement presuppose that an ordering of the goods of moral life is possible. Pocock's representation of Aristotle's elites as pursuing incommensurable goods does not allow for the kind of positive disagreement presented by Aquinas.

The difference between a form of political life presupposing an ordering of the goods, as I have argued both Aristotle and Aquinas propose, and a form of political life

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<sup>286</sup> MacIntyre, "Aquinas and the Extent of Moral Disagreement," 75.

<sup>287</sup> MacIntyre, "Aquinas and the Extent of Moral Disagreement," 75.

presupposing no *a priori* ranking of each elite's "value priorities," as found in Pocock's account of republicanism, leads to fundamentally different views of political disagreement. In Aquinas's and MacIntyre's account, if there can be no way to order the goods in political life shared rational deliberation will fall apart. But, in situations where shared deliberation breaks apart and a community can no longer come to a decision on which actions to take based on practical reason, the members of the community:

will have to base their communal decision-making either on inherited patterns of authority that are endowed with nonrational legitimacy or on some implicit or explicit social contract whereby individuals and groups, each trying to maximize their own advantage, arrive at some arrangement about the allocation of costs and benefits. In both cases it will be inequalities of power that determine the outcomes of decision-making processes. Power rather than practical reason will now have the last word.<sup>288</sup>

In *The Readie and Easie Way*, Milton turns to this form of non-rational resolution of political disagreement by excluding "the rabble" from political participation. Milton argues that those who wish for the return of the monarchy are not to be included in settling the new government. However, in the argument of *The Readie and Easie Way*, once a republican government has been securely in place for a long enough time—as it should have been done immediately after the regicide—those who now long for the return of monarchy will learn to enjoy living in a commonwealth. But by persistently avoiding the question of *how* "the rabble" will be rationally persuaded of the benefits of life in a commonwealth, Milton suppresses the necessary function of shared reasoning in

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<sup>288</sup> MacIntyre, "Aquinas and the Extent of Moral Disagreement," 76.



resolving disagreement. Problematically, *The Readie and Easie Way* short-circuits the very rational debate that it portrays as a necessary element in the life of a free commonwealth. Pocock's distortion of Aristotle's account of life in the *polis* has served to hide that, in championing "republican" virtue and rationality in *The Readie and Easie Way*, Milton ends up undermining the form of rational activity that helps members of a political community better understand the *telos* of human life.

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## **Biography**

Astrid Adele Giugni was born in Lecco, Italy in 1977. She received her Bachelor of Science in Physics and Mathematics from the University of California at Irvine in 1999 and her Master of Science in Mathematics from the Massachusetts Institute of Technology in 2003. While at Duke, Astrid's final year of graduate studies was supported by the Katherine Goodman Stern Fellowship.