

---

'DISSOLVING ALLEGIANCE TO THE ACKNOWLEDGED POWER SUPREME': MILTON,  
CASUISTRY AND THE COMMONWEALTH

Author(s): David Martin Jones

Source: *History of Political Thought*, Summer 2011, Vol. 32, No. 2 (Summer 2011), pp.  
316-344

Published by: Imprint Academic Ltd.

Stable URL: <https://www.jstor.org/stable/26225715>

---

JSTOR is a not-for-profit service that helps scholars, researchers, and students discover, use, and build upon a wide range of content in a trusted digital archive. We use information technology and tools to increase productivity and facilitate new forms of scholarship. For more information about JSTOR, please contact [support@jstor.org](mailto:support@jstor.org).

Your use of the JSTOR archive indicates your acceptance of the Terms & Conditions of Use, available at <https://about.jstor.org/terms>



JSTOR

is collaborating with JSTOR to digitize, preserve and extend access to *History of Political Thought*

# **‘DISSOLVING ALLEGIANCE TO THE ACKNOWLEDGED POWER SUPREME’: MILTON, CASUISTRY AND THE COMMONWEALTH**

*David Martin Jones<sup>1</sup>*

---

**Abstract:** Milton’s status as a political thinker has endured something of a checkered career. Recent scholarship has attended both to the complexity of Milton’s character and the classical ideals permeating his political thought. This essay seeks to clarify further Milton’s defence of the commonwealth, by situating his polemical writings of 1649 to 1653 in the context of the Engagement debate about the character and extent of loyalty to the new free state. This sheds an interesting and neglected light both on that debate, the presentation of the case of the commonwealth and Milton’s distinctive use of casuistry in that presentation.

---

Milton’s status as a political thinker has enjoyed a somewhat checkered career. Derided by the first Tory party, and always a questionable figure for conservatives, from Dr Johnson to Professor Leavis, his reputation as a republican and radical has also undergone a number of mutations.<sup>2</sup> A progressive figure for nineteenth-century history, by the late twentieth Milton fitted neatly into what J.C.D. Clark characterized as old hat and old Whig teleologies of political development.<sup>3</sup>

However, as English Civil War historiography has gone through its own revolutions of understanding, so too has Milton’s status as both a political theorist and polemicist-in-chief to the English Commonwealth free state. This article will briefly trace the shifting interpretation of Milton’s political thought before attempting to situate his political writing in the context of the great case of conscience concerning allegiance to the power in plenary possession of the free state of England between 1649 and 1653.

## **Milton’s Mutable Reputation**

In 1896, John Emerich Edward Dalberg, first Baron Acton, delivering his inaugural lecture in modern history at Cambridge University, traced ‘the

---

<sup>1</sup> School of Political Science and International Studies, University of Queensland, Brisbane, 4072, QLD, Australia. Email: d.jones2@uq.edu.au. The author would like to thank the two anonymous referees for their enormously helpful suggestions on revising and developing the argument that I present here.

<sup>2</sup> I cite the *Complete Prose Works of John Milton*, ed. D.M. Wolfe (New Haven, 1953–82) as *CPW* — followed in each instance by volume, or volume and part and then page.

<sup>3</sup> J.C.D. Clark, *Revolution and Rebellion: State and Society in England in the Seventeenth and Eighteenth Centuries* (Cambridge, 1986); and J.C.D. Clark, *English Society 1660–1832: Religion, Ideology and Politics During the Ancien Régime* (Cambridge, 2000).

**HISTORY OF POLITICAL THOUGHT. Vol. XXXII. No. 2. Summer 2011**

advance of moral over material influences, the triumph of general ideas, the gradual amendment. The line of march will prove . . . to have been from force and cruelty to consent and association, to humanity [and] rational persuasion'.<sup>4</sup> The Puritan Revolution played a seminal role in this progress. Acton considered that, 'the Commonwealth' represented the 'second stage on the road of revolution from the Netherlands and went on to America and France and is the centre of the history of the modern world'. From this stadial perspective, Acton contended that 'for a long time we meet with little that goes beyond Vane and Harrington and Milton and of Lilburne in his saner moments'.<sup>5</sup> In his classic liberal manifestation, Milton is a Whig *avant la lettre*. Indeed the Whig Party early adopted Milton as a progenitor and his key political writings were republished in 1688 to justify the Glorious Revolution.<sup>6</sup>

Eighty years after Acton traced the gradual amendment of modernity, Christopher Hill, from a radically different historical perspective, depicted Milton as 'a revolutionary, not a nineteenth century liberal'.<sup>7</sup> His political understanding, moreover, reflected not the humanist scholarship he imbibed at St Paul's school or on his Italian tour of 1639, but the street life of London and its radical, sectarian underworld of Levellers, Diggers, Ranters, Fifth Monarchists and Muggletonians. Of the bourgeois middling sort by background and inclination, Milton, from this Marxist perspective, stood on the cusp of a hidden third culture, beyond the court-country divide, where radical democracy, hermeticism, Arminianism, sexual revolution and chiliastic millenarianism existed in a highly combustible amalgam. Milton's political thought exhibited a 'tension between decorum and right reason on the one hand, and on the other the radical revolutionaries of individual consciences through which right reason was expressed'.<sup>8</sup>

More recently, a relativist tendency in historical scholarship has questioned historicist teleologies. It has also disturbed the understanding of both Milton's whig and radical revolutionary credentials and the purpose and import of his political writings.<sup>9</sup> In this enterprise, Milton's recent biographers, revising the

<sup>4</sup> J.E. Dalberg-Acton, *Lectures on Modern History* (London, (1906) 1930), p. 33.

<sup>5</sup> *Ibid.*, p. 205.

<sup>6</sup> In this context, see M. Zuckert, *Natural Rights and the New Republicanism* (Princeton, 1994), p. 78; and J. Scott, *Commonwealth Principles: Republican Writings of the English Revolution* (Cambridge, 2004), p. 351.

<sup>7</sup> C. Hill, *Milton and the English Revolution* (London, 1977), p. 157.

<sup>8</sup> *Ibid.*, p. 463.

<sup>9</sup> The current interest in Milton's political writings reflect a burgeoning contemporary interest in republicanism. As Johann P. Sommerville observes: 'While Marxism has been falling from fashion, republicanism and its history have been attracting increasing attention from scholars in general and early modernists in particular.' Johann P. Sommerville, 'English and Roman Liberty in the Monarchical Republic of Early Stuart England', in *The Monarchical Republic of Early Modern England: Essays in Response to Patrick Collinson*, ed. J.F. McDiarmid (Aldershot, 2007), p. 201.

earlier efforts of W.R. Parker,<sup>10</sup> like Barbara K. Lewalski and Gordon Campbell and Thomas N. Corns, offer a more 'complex',<sup>11</sup> 'janus faced',<sup>12</sup> but still radical Milton, deeply involved with the 'political issues of his time'.<sup>13</sup> More explicitly focusing on Milton's republicanism, Martin Dzelzainis has drawn attention to the civic humanist and neo-Roman values that permeated his political understanding.<sup>14</sup> Yet, even here, contemporary scholarship offers contested understandings, not only of the provenance of Miltonic republicanism, but also of what its values actually entailed. Thus, Quentin Skinner lumps Milton together with other neo-Roman writers like Harrington, Algernon Sidney and Francis Osborne, as a proponent of civil liberty inspired by Machiavelli's commentary upon the Roman historian Livy in *The Discourses*.<sup>15</sup> Somewhat differently, Jonathan Scott contends that Milton's 'classical republicanism had a Greek' and, more precisely, a Platonic, 'philosophical core'.<sup>16</sup> Differently again, Paul Rahe's Milton is 'a political moralist of the sort most abhorrent to Machiavelli . . . he presented himself as a Christian Aristotelian who believed not only that Christian virtue and the moral virtues prized in pagan times could be made compatible, but that together they provided the only proper foundation for the political virtue required in a republic'.<sup>17</sup> Meanwhile, Michael Zuckert considers Milton to be primarily a political theologian and that 'everything in Milton's politics flows from a conjunction of freedom, fallenness and creatureliness'.<sup>18</sup>

Elsewhere, and more adventurously, Michael Lieb's Milton discloses an Orphically challenged, sexually ambivalent neurotic, 'never able to dispel the anxiety of *sparagmos*',<sup>19</sup> whilst for Steven Zwicker Milton was a literary polemicist, who in his state-sponsored assault on monarchy, managed to 'politicize aesthetics' and drive 'the political in the direction of fancy and the

<sup>10</sup> See W.R. Parker, *Milton's Contemporary Reputation: An Essay* (Columbus, 1940); and W.R. Parker, *Milton: A Biography* (Oxford, 1968).

<sup>11</sup> B.K. Lewalski, *The Life of Milton: A Critical Biography* (Cambridge, 2000), p. xii.

<sup>12</sup> G. Campbell and T.N. Corns, *John Milton: Life, Work and Thought* (Oxford, 2008), p. 3.

<sup>13</sup> Lewalski, *The Life of Milton*, p. xxiii; Campbell and Corns, *John Milton*, p. 3.

<sup>14</sup> M. Dzelzainis, 'Introduction', in *John Milton: Political Writings*, ed. M. Dzelzainis (Cambridge, 1991), p. 10; M. Dzelzainis, 'Milton's Classical Republicanism', in *Milton and Republicanism*, ed. D. Armitage, A. Himy and Q. Skinner (Cambridge, 1995), p. 202; and Q. Skinner, *Liberty Before Liberalism* (Cambridge, 1998), p. 17.

<sup>15</sup> Skinner, *Liberty Before Liberalism*, p. 37.

<sup>16</sup> Scott, *Commonwealth Principles*, p. 156. See also Jonathan Scott, *Algernon Sydney and the English Republic 1623–73* (Cambridge, 1988), pp. 38–9, 106–7.

<sup>17</sup> P.A. Rahe, *Against Throne and Altar: Machiavelli and Political Theory under the English Republic* (Cambridge, 2008), p. 118.

<sup>18</sup> Zuckert, *Natural Rights*, pp. 84–7.

<sup>19</sup> M. Lieb, *Milton and the Culture of Violence* (Ithaca, 1994), p. 68.

imagination'.<sup>20</sup> By a curious irony, having stripped away the accretions of teleology, this more nuanced and deconstructive turn has only, it seems, imposed its own enthusiasms upon our erstwhile Whig revolutionary. Consequently, we encounter in contemporary scholarship a bewildering multiplicity of Miltons.

As Conal Condren observes in his important study of *Argument and Authority in Early Modern England*, there still prevails a propensity in the history of political thought to read into the past a hypothetical completion of ideas, concepts and ideologies.<sup>21</sup> Purporting to explain what we have, such abridgements of understanding 'are characteristically projected as an available reality, and this is used to redescribe surviving evidence, so preempting understanding'. Thus, the 'meta language of explanatory modeling is conflated with the evidence itself and the past is then easily, even inadvertently, reduced to a series of variations on the present'.<sup>22</sup> Particularly problematic, in the context of comprehending the language of English seventeenth-century political thought, has been the projection of an ideological framework of twentieth-century construction onto the categories of thought, modes of inquiry and conduct of debate in the seventeenth. Nor has the imposition of Habermasian public spheres upon the coffee shops of seventeenth-century London, or the discovery of post-structural self-fashioning in the Stuart court done much to mitigate this conflationary disposition.

The consequences of this propensity to hypothetical completion for the conditions of discourse in seventeenth-century England obscures, it will be argued, both the structure and terms of political debate and the language of self-understanding and self-disclosure in which it was conducted. In order to situate Milton's distinctive commentary upon the political and religious changes that vexed and troubled Englishmen of the mid-seventeenth-century political nation, it is first necessary to situate Milton's political writings, especially his purportedly 'regicide' tracts,<sup>23</sup> in the context of the heated mid-seventeenth-century debate about the true character of authority and allegiance.

### The Casuistic Background to Milton's Thought

Central to the seventeenth-century understanding of authority was its moral and theological dimension. For post-reformation protestant kingdoms and

<sup>20</sup> S.N. Zwicker, *Lines of Authority: Politics and English Literary Culture 1649–89* (Ithaca, 1993), p. 59.

<sup>21</sup> C. Condren, *Argument and Authority in Early Modern England: The Presupposition of Oaths and Engagements* (Cambridge, 2006), pp. 26–7.

<sup>22</sup> *Ibid.*, p. 3.

<sup>23</sup> Milton defended the justice of tyrant killing, not king killing. The tracts of 1649 to 1654 are, therefore, defences of tyrannicide. See Parker, *Milton: A Biography*, p. 347. Parker observes that in the tracts of 1649 Milton's 'concern was to justify the judging' in the king's trial.

republics this involved the challenge of deriving their authority from God's ordinance and demanding allegiance in terms of conscientious obligation. Indeed, Acton was sufficiently 'history minded' to recognize that theories about governance 'were first religious not political'<sup>24</sup> and the birth of what Acton termed 'the modern state' was profoundly connected to 'the psychology of conscience' that became closely studied for the first time in the sixteenth century. Similarly Hill, like Zuckert, recognized Milton to be a kind of political theologian<sup>25</sup> who favoured both liberty of conscience combined with an internalized, godly self discipline.<sup>26</sup>

Omitted from this discussion of conscience collapsing into an internalized right reason, however, is how the political theology of conscience evolved in the seventeenth century. Significantly, it first took political shape as an idiom of state security. Only latterly did conscience acquire a mode of individual self disclosure and liberation, the characteristic form of the puritan conscience, which Milton both embraced and helped to crystallize. In fact, the state and particularly the English state's preoccupation with conscience long predated that of those like Milton who favoured both its liberty and toleration.

Moreover, the evolution of a distinctive English state view of conscience and its casuistry itself represented a reaction to developments in continental casuistry that in turn had responded to the reformation and its rending of the fabric of European Christendom. Casuistry had evolved in the medieval church as the branch of moral theology that addressed cases of conscience. It constituted the technical method for resolving cases 'when conscience is in a strait between two or more courses' of action.<sup>27</sup> In other words, casuistry evolved out of the confessional. In this activity it evinced a concern with prudential or practical reasoning. As Thomas Aquinas observed, although divine providence had fixed the final end of human life, the means of achieving that end were 'of manifold variety according to the variety of persons and situations'.<sup>28</sup> Responding to this variety, the casuist attended not only to the general rule, that, for example, 'thou shalt not kill' but also to the extenuating circumstances that might affect a particular case of homicide.<sup>29</sup> Even in the late nineteenth century, when casuistry had fallen into desuetude, Benjamin

<sup>24</sup> Acton, *Lectures*, p. 205.

<sup>25</sup> Hill, *Milton*, p. 465.

<sup>26</sup> *Ibid.*, pp. 250, 256–7.

<sup>27</sup> R.M. Wenley, 'Casuistry', in *The Encyclopaedia of Religion and Ethics* (Edinburgh, 1910), p. 239. See also E. Rose, *Cases of Conscience* (Cambridge, 1975), p. 71.

<sup>28</sup> Cited in A.R. Jonsen and S. Toulmin, *The Abuse of Casuistry: A History of Moral Reasoning* (Berkeley, 1988), p. 130. See also T.C. Potts, *Conscience in Medieval Philosophy* (Cambridge, 1980).

<sup>29</sup> See in this context, Jonsen and Toulmin, *The Abuse of Casuistry*, p. 2. Jonsen and Toulmin view casuistry as a species of situational ethics that 'pays closest attention to the specific details of particular moral cases and circumstances' (*ibid.*). The case of murder and the circumstances governing it featured regularly in case books. Both the Jesuit casu-

Jowett still maintained that 'casuistry begins where the law ends. It goes where law refuses to go . . . into the domain of morality. It weighs in the balance of precedent and authority the impalpable acts of a moral being'.<sup>30</sup>

It was, however, in the century after the publication of the Augustinian Friar Martin Azpilcueta's (Navarrus) *Enchiridion, sive Manuale Confessariorum et Poenitentium* (1549) that casuistry achieved both ubiquity and methodological coherence.<sup>31</sup> Casuistry, the confession, rhetoric and prudence subsequently came together in a compelling politico-theological package. In this period, and under growing Jesuit influence, as Harro Hopfl argues, casuistry 'applied the general principles of natural and divine law to specific cases, and merged seamlessly with theology and controversies'.<sup>32</sup> Questions of ruling, statecraft and the nature and limits of obedience, like any other practice or activity, fell within its increasingly capacious embrace. Moreover, despite the rhetorical polemics which saw, as Condren observes, casuistry 'deplored in name and deployed in spirit', the denominational divide between Catholic and Protestant case divinity 'was deceptively negotiable'. Indeed, for Catholic and Protestant alike, 'the rules and criteria, the meta-language used to appraise ordinary and extraordinary cases, were likely to lead to probably right and wrong courses of action, [and] hence to the notorious Jesuit doctrine of moral probabilism'.<sup>33</sup>

This notwithstanding, English case divinity developed its own distinctive style that reflected the particular political and religious circumstances the English monarchy confronted at the end of the sixteenth century.<sup>34</sup> In this context, from the early seventeenth century, English state casuists sought to establish that conscience properly understood served as an instrument for securing civil peace.<sup>35</sup> It constituted the 'best bit and bridle' that a government

---

ist Escobar y Mendoza and the Anglican Joseph Hall discussed it. See D. Cathcart, *Doubting Conscience: Donne and the Poetry of Moral Argument* (Ann Arbor, 1974), p. 35.

<sup>30</sup> Benjamin Jowett, 'Casuistry', in *Theological Essays of the late Benjamin Jowett*, ed. L. Campbell (London, 1906), p. 96. In an analogous vein G.E. Moore contended that casuistry attended not only to the general rule that, for example, charity is a virtue, but also attempts to discover 'the particular merits of every different form of charity'. G.E. Moore, *Principia Ethica* (Oxford, 1927), p. 4.

<sup>31</sup> Jonsen and Toulmin, *The Abuse of Casuistry*, p. 152.

<sup>32</sup> H. Hopfl, *Jesuit Political Thought: The Society of Jesus and the State, c. 1560–1630* (Cambridge, 2004), p. 5.

<sup>33</sup> Condren, *Argument and Authority*, p. 174.

<sup>34</sup> See Jonsen and Toulmin, *The Abuse of Casuistry*, p. 159.

<sup>35</sup> The particular case that determined the evolution of a distinctive English casuistic tradition was the controversy that enveloped the Oath of Allegiance (1606), designed to sift the loyal wheat from the recalcitrant chaff amongst James I's Catholic subjects in the aftermath of the gunpowder plot (1605). See M.C. Questier, 'Loyalty, Religion and State Power in Early Modern England: English Romanism and the Jacobite Oath of Alle-

could have for its security.<sup>36</sup> Conscience, from this official Stuart perspective, could never commit a subject to an act of rebellion. Indeed, constitutional royalists like Edward Hyde, the architect of the restoration settlement, in a telling recourse to mainstream Protestant casuistry, maintained that dissenters to the regime in church and state used their 'tender' consciences to 'exercise a tyrannical power over the actions and thoughts of other men, condemn all Princes and Magistrates, infringe all orders and laws of government and out of tenderness to themselves exercise all manner of cruelty to others'.<sup>37</sup> Justifying rebellion on conscientious grounds, for Laudian or state church divines like Robert Sanderson and Henry Hammond, committed a 'camell-sin', for it was 'no very tender thing that straineth at a gnat and swalloweth a camel'.<sup>38</sup>

Indeed, after the Elizabethan settlement in church and state, crown officials went to considerable lengths to demonstrate that the lawful ruler had a right to overrule all doubts concerning conscience in temporal and spiritual matters. State casuists sedulously promulgated the view that all subjects owed a conscientious duty of obedience to the monarchy. The English government and protestant divines, in other words, sought to demonstrate that the good or rightly ordered conscience was a quiet one that responded positively to the commands of the lawful ruler. Consciences variously described in Protestant case books as scrupulous, doubting, tender or erroneous were, in the opinion of Hyde, not properly conscience at all, but the fantastic product of the 'light and sick brains of phrenetique preachers'.<sup>39</sup>

Nevertheless, by the mid-century frenetic preachers as well as more established Puritan authorities like William Ames and the Calvinist Reader in Divinity at Christ's College, Cambridge, William Perkins, together with respected Anglican divines like Robert Sanderson, Joseph Hall, Henry Hammond and Jeremy Taylor had, over time, developed a comprehensive taxonomy of consciences and the cases that might afflict them. The casuistic guidance they afforded established a framework for assessing the duties involved in the performance of offices that might range from that of a husband

---

giance', *The Historical Journal*, 40 (1997), pp. 311–30; Hopfl, *Jesuit Political Thought*, pp. 323–8; and Jonsen and Toulmin, *The Abuse of Casuistry*, p. 159.

<sup>36</sup> H. Hammond, *Of Conscience* (London, 1646), p. 12. See also, for the structure of this debate: H.R. Macadoc, *The Structure of Caroline Moral Theology* (London, 1949); T. Wood, *English Casuistical Divinity* (London, 1952); P. Zagorin, *Ways of Lying: Dissimulation, Persecution and Conformity in Early Modern Europe* (Cambridge, MA, 1990); and *Conscience and Casuistry in Early Modern Europe*, ed. E. Leites (Cambridge, 1988).

<sup>37</sup> E. Hyde, 'Of Conscience', in *A Collection of Several Tracts of Edward Earl of Clarendon* (London, 1727), pp. 162–3.

<sup>38</sup> Hammond, *Of Conscience*, p. 13; and R. Sanderson, *The Works of Robert Sanderson now first collected by William Jacobson* (6 vols., Oxford, 1854), Vol. 2. p. xxiv.

<sup>39</sup> Hyde, 'Of Conscience', p. 163.

or wife to that of a privy counsellor to the king.<sup>40</sup> In the view of state officials and the protestant political nation more generally, this efflorescence of casuistic skill expanded the regulatory reach of the state. Requiring conscientious subjects to control themselves through an ethical practice that supported an official understanding of duty reinforced the moral and political authority of the prevailing regime in church and state.<sup>41</sup>

This state interest in conscience, moreover, assumed a distinctively political character in seventeenth-century England. Dating from the reformation, first the Tudors and later the Stuarts devised an elaborate machinery of state oaths, widely tendered and widely taken, in order to secure allegiance both in law and conscience to the frequently insecure head that wore the crown.

The tendering of state oaths of allegiance and supremacy in turn evoked a countervailing theory of conscience elaborated initially by counter reformation Catholics who contested the extensive loyalty in church and state claimed by James and, subsequently, Charles in the widely tendered Oath of Allegiance (1606), introduced in the wake of the Gunpowder Plot in order to separate the sheep from the goats amongst their subjects. Rejecting the claim that the monarchy could in conscience assert such an extensive allegiance, Catholic casuists maintained the new oaths might only be taken in an equivocal sense. To counter this casuistic construction, the state oath further required the asseverator to swear without employing the strategies of equivo-

<sup>40</sup> William Perkins wrote the first English guide. W. Perkins, *A Discourse of Conscience Wherein is set down the Nature, Properties and Differences Thereof* (Cambridge, 1596), followed by *The Whole Treatise of the Cases of Conscience, Distinguished into Three Bookes* (Cambridge, 1608). A number of prominent theologians subsequently published influential case books. See W. Ames, *Conscience and the Powers Thereof* (London, 1639); Hammond, *Of Conscience*; J. Hall, *Resolutions and Decisions of Divers Practicall Cases of Conscience in Continuall Use Amongst Men* (London, 1649). In this context, Robert Sanderson emerged as the leading Anglican authority on matters of conscience. See R. Sanderson, *Several Cases of Conscience Discussed in Ten Lectures Delivered at the Divinity School at Oxford* (London, 1660); and R. Sanderson, *Nine Cases of Conscience Occasionally Determined* (London, 1678). The production of comprehensive case books continued into the Restoration. See J. Taylor, *Ductor Dubitantium, or the Rule of Conscience in all Her Generall Measures Serving as a Great Measure for the Determination of Cases of Conscience* (London, 1660); and Richard Baxter, *A Christian Directory or Body of Practicall Divinity and Cases of Conscience* (London, 1677). See also the popular *The Whole Duty of Man Laid Down in a Plain and Familiar Way for the Use of All* (London, 1684). In the context of the basic requirements of office that could pose difficulties of conscience, see *The Book of Oathes and the Severall Forms Thereof, both Antient and Modern Faithfully Collected out of Sundry Authoritative Books and Records* (London, 1649).

<sup>41</sup> J. Tully, 'Governing Conduct', in *Conscience and Casuistry*, ed. Leites, p. 40.

cation and mental reservation to evade the bond that the Oath imposed to the authority of the crown in church and state.<sup>42</sup>

### **Casuistry and Conscience in Seventeenth-Century English Political Thought**

Central to this treatment of conscience, therefore, was the way the early modern state co-opted a branch of medieval theology for its own security purposes and the manner in which dissenters contested this political innovation. In this evolving dialectic, a commonly acknowledged structure for conscience and the conditions that determined its resolution evolved over the course of the seventeenth century and established the framework for the debate over the grounds for resistance to the authority of the crown during the Civil War. State casuistry and the countervailing view of conscientious obligation it evoked complemented and reinforced a related understanding of state oaths, their object, form and bond, the terms upon which they might be widely tendered and taken by subjects, as well as the circumstances governing their dissolution.<sup>43</sup>

More particularly, from the early years of the Civil War, English common law and casuistry framed the debate between king and parliament and constituted the moral and legal framework in which the King justified his breach with Parliament and Parliament legitimated its resistance to the King.<sup>44</sup> Thus, parliament justified raising arms against the King's evil counsellors by drawing a casuistic distinction between the king's person and his office in order to demonstrate that their actions were both lawful and loyal to their particular interpretation of the constitution. Royalists maintained, by contrast, that state oaths, common law and a rightly functioning conscience bound all subjects both to the person and the office of the king (a point they reinforced with the fact that the Parliament of Edward III had classified the distinction between the person and the office of the king as high treason).<sup>45</sup>

<sup>42</sup> See M.C. Questier, 'Loyalty, Religion and State Power in Early Modern England', pp. 311–30; and Hopfl, *Jesuit Political Thought*, pp. 323–8.

<sup>43</sup> For an analysis of this evolving debate see D.M. Jones, *Conscience and Allegiance in Seventeenth Century England* (Rochester, 1999).

<sup>44</sup> As J.G.A. Pocock observed, seventeenth-century English political thought was 'predominantly casuist'. See J.G.A. Pocock, *Obligation and Authority in Two English Revolutions* (Wellington, 1973), p. 6. Condren analogously maintains that, 'much of what we inadvertently reclassify as political thought was pervasively casuistical' (Condren, *Argument and Authority*, p. 173).

<sup>45</sup> See B. Wilkinson, *Constitutional History of Medieval England, 1216–1399* (2 vols., Cambridge, 1952), *Politics and the Constitution*, Vol. 2, p. 197; and C. Carpenter, 'Resisting and Deposing Kings in England in the Thirteenth, Fourteenth and Fifteenth Centuries', in *Murder and Monarchy: Regicide in European History 1300–1800*, ed. R. von Freidenberg (London, 2004), p. 209.

In order to defend their resistance and clarify further their evolving view of allegiance, Parliament explored the oath mechanism, promulgating a number of devices not only to secure its position in law and conscience, but also to test or 'sift' the loyalty of those within parliament's jurisdiction. These devices, namely the Protestation of 1641, the Vow and Covenant 1642 and the widely tendered and politically definitive parliamentary oath of 1643, the Solemn League and Covenant, elaborated the official parliamentary understanding of a mixed and balanced constitution as well as justifying its resistance to the King's misled person.<sup>46</sup> Finally, after the trial and execution of the King, for attempting 'to alter and subvert the Fundamental Law, and introduce an Arbitrary and Tyrannical Government', the Rump Parliament, redescribed as a commonwealth or free state, tendered an Engagement of Loyalty to all males over the age of sixteen in February 1650.<sup>47</sup> Unlike the elaborate terms of subscription required by the Stuart Oath of Allegiance or parliament's Solemn League and Covenant, the Engagement merely required a simple declaration and promise of loyalty 'to the Commonwealth as it is now constituted without King or Lords'.<sup>48</sup>

### Milton, Casuistry and the Engagement Controversy, 1649–53

The tendering and taking of the new device occasioned a polemical debate about the character of the new state and the nature of the allegiance it was owed. Moreover, the arguments rehearsed to justify or refute the authority and obedience required by the commonwealth were later revived, revised and applied to the context of James II's abdication and the constitutional revolution of 1688. In other words, the Engagement Controversy raised, in an acute form, an enduring constitutional concern about the nature and limits of political allegiance. This controversy has also been the subject of an enduring

<sup>46</sup> The Solemn League and Covenant evoked a wide-ranging debate about the legitimacy of its tendering and taking. It was comprehensively rejected by a committee of Anglican Divines at Oxford, see R. Sanderson, H. Hammond, G. Morley, G. Sheldon and R. Zouch, *Reasons of the Present Judgement of The University of Oxford concerning 1. The Solemn League and Covenant. 2. The Negative Oath. 3. The Ordinance Concerning Discipline and Worship Approved by Generall Consent of a Full Convocation* (Oxford, 1647).

<sup>47</sup> John Cook, *King Charles his case: or, An Appeal to All Rational Men, Concerning His Tryal at The High Court of Justice* (London, 1649), p. 8. See also G. Burgess, 'Regicide: The Execution of Charles I and English Political Thought', in *Murder and Monarchy*, ed. von Freidenberg, pp. 223–9.

<sup>48</sup> S.R. Gardiner, *Constitutional Documents* (Oxford, 1979), p. 391. See also B. Worden, *The Rump Parliament 1648–53* (Cambridge, 1974); and A. Woolrych, *Commonwealth and Protectorate* (Oxford, 1984).

scholarly debate about the new state's distinctive treatment of obligation to the power in plenary possession.<sup>49</sup>

One of the unforeseen problems that the Council of State, that tendered the Engagement, encountered was that it dramatically failed to fulfil the purpose for which it was designed. It was intended to separate those 'maligants' — intransigently opposed to the new commonwealth — from moderate parliamentarians who opposed the king in 1642 but refused to contemplate his trial and execution in 1649. For the proponents of the Engagement an acute problem of political presentation occurred almost immediately it was tendered. Royalists and radical sectarians, whom the device sought to isolate, took it freely, on the casuistic ground that an equivocal oath could only bind in an equivocal sense to a doubtful authority.<sup>50</sup> By contrast, presbyterian and moderate parliamentarian opinion, that the device sought to secure to the new regime, rejected it on the alternative casuistic ground that it was a contradictory oath, tendered by a doubtful authority that contradicted obligations previously sworn in parliament's Solemn League and Covenant.

Somewhat curiously, recent scholarship has either overlooked or significantly discounted Milton's role in this controversy.<sup>51</sup> This is somewhat surprising

<sup>49</sup> See Q. Skinner, 'The Ideological Context of Hobbes' Political Thought', *Historical Journal*, 9 (3) (1966), pp. 286–317; and Q. Skinner, 'Conquest and Consent: Hobbes and the Engagement Controversy', in *The Interregnum*, ed. G.E. Aylmer (London, 1973); J.M. Wallace, 'The Engagement Controversy, An Annotated Checklist of Pamphlets', *Bulletin of the New York Public Library*, 68 (6) (1964); J.M. Wallace, *Destiny His Choice: The Loyalty of Andrew Marvell* (Cambridge, 1960); and Perez Zagorin, *A History of Political Thought in the English Revolution* (New York, 1977). More recently, Lisa Steffen and Edward Vallance have examined the Engagement and *de facto*ist thought in the context of the evolving statute of treason and national covenants respectively. See L. Steffen, *Defining a British State Treason and National Identity, 1608–1820* (London, 2001), pp. 41–5; and E. Vallance, *Revolutionary England and the National Covenant: State Oaths, Protestantism and the Political Nation 1553–1682* (Woodbridge, 2005), pp. 171–8. Elsewhere, Jonathan Scott contends that acceptance of historical change and consequent political change featured in 'de facto defences of the republic in 1650 and 1651', Scott, *Commonwealth Principles*, p. 201. Meanwhile, Conal Condren has reappraised the controversy in his *Argument and Authority*, p. 295.

<sup>50</sup> For the most thoughtful Anglican defence of an equivocal reading of the engagement see R. Sanderson, 'The Case of the Engagement', in *Nine Cases of Conscience Occasionally Determined*; and Sanderson, *The Works*, ed. Jacobsen, Vol. 5, pp. 17–33. John Lilburne provided the most plausible Leveller defence of an ambivalent construction in *The Engagement Vindicated and Explained* (London, 1650).

<sup>51</sup> This is true not only of those scholars who have focused directly on the Engagement debate following Professors Wallace and Skinner's identification of its significance, but also in the most recent biographies of Milton where the controversy figures only tangentially (Lewalski, *The Life of Milton*, p. 249) or not at all (Campbell and Corns, *John Milton*, part 4) in Milton's political service to the commonwealth. The only exception to this general neglect is Go Tagashi, 'Milton and the Presbyterian Opposition 1649–50: The Engagement Controversy and *The Tenure of Kings and Magistrates*, Sec-

given that the Council of State appointed Milton Chief Secretary for Foreign Tongues in March 1649 and commissioned him to write the official defence of the new regime. Milton also played a crucial role overseeing the promulgation of tracts supporting the Engagement. Milton was closely associated with John Dury, commissioned by the Council of State to write the official defence of the Engagement, and supervised the 'drollings' of the former royalist, and his 'great crony', Marchamont Nedham, who wrote one of the more original, neo-Machiavellian defences of the Engagement, *The Case of the Commonwealth Stated* (1650).<sup>52</sup> Milton also licensed the commonwealth newspaper, *Mercurius Politicus*, that Nedham edited, and which promulgated a distinctively republican view of the 'excellency of free states' and the allegiance citizens lawfully owed them.<sup>53</sup>

It appears something of a lacuna, therefore, that modern scholars have not evaluated Milton's 'regicide' writings, published between 1649 and 1654, in the context of the Engagement debate. These works include *inter alia*, *The Tenure of Kings and Magistrates* (the second edition of which was probably published shortly after the Rump parliament took the Engagement in October 1649),<sup>54</sup> *Eikonoklastes*, Milton's officially commissioned refutation of the late King's best selling *Eikon Basilike*, published in October 1649, the official reply to Claude Saumaise's (Salmasius) royalist, *Defensio Regia*, the *Pro Populo Anglicano Defensio* 1651, and the second defence, *Pro Populo Anglicano Defensio Secunda*, of 1654 that justified the actions of the new state to a European audience.<sup>55</sup>

ond Edition 1649', *Milton Quarterly*, 39 (2) (2005), pp. 5–9, 81, which attributes amendments to the conditions of resistance in the second edition of *The Tenure* to the tendering of the Engagement.

<sup>52</sup> Rahe, *Against Throne and Altar*, p. 175. On the close relationship between Nedham and Milton between 1650 and 1654, see B. Worden, 'Milton and Nedham', in *Milton and Republicanism*, ed. Armitage, Himy and Skinner, pp. 166–72.

<sup>53</sup> See M. Nedham, *A True State of the Case of the Commonwealth of England, Scotland and Ireland in reference to the late established Government by a Lord Protector and Parliament* (London, 1653), pp. 8–9. For the similarities and differences in Milton and Nedham's views of republicanism, see Rahe, *Against Throne and Altar*, pp. 187–9; Scott, *Commonwealth Principles*, pp. 170–81; and Scott, *Algernon Sydney and the English Republic*, p. 110.

<sup>54</sup> See Dzelzainis, 'Introduction', in *John Milton Political Writings*, p. xviii; M. Dzelzainis, 'Milton's Classical Republicanism', in *Milton and Republicanism*, ed. Armitage, Himy and Skinner, pp. 32–3, and Togashi, 'Milton and the Presbyterian Opposition', p. 67.

<sup>55</sup> *Eikon Basilike The Portraiture of his Sacred Majestie in his Solitudes and Sufferings* (Leyden, 1649) was probably composed by Bishop John Gauden. Claude (Saumaise) Salmasius, *Defensio Regia, pro Carolo I. ad serenissimam Magnae Britanniae regem Carolum II* (1649); John Milton, *Eikonoklastes* (London, 1651); John Milton, *Pro Populo Anglicano Defensio* (London, 1651); John Milton, *Pro Populo Anglicano Defensio Secunda* (London, 1654).

One reason why scholars have either neglected or misrepresented this prolific activity reflects the narrow, academic focus on the distinction between *de facto* and *de jure* notions of authority raised in the course of the Engagement Controversy and subsequently revived three decades later during the constitutional crisis generated by James II's 'abdication' in 1688. This has led scholars to neglect both the new state's official defence of its lawful, just and full authority as well as the royalist dimension of this controversy, whilst concentrating too exclusively perhaps on the presbyterian anti-engagers case for refusing the new device.

Clearly, Milton's triumphalist polemical tone and republican advocacy did not really suit the Engagement debate, conducted as it was in determinedly prudential terms.<sup>56</sup> Yet this triumphalism reflected the fact that the new regime advanced a rhetorical strategy along two fronts to defend its authority. On the one hand, as Paul Rahe shows, 'Milton, for the most part writing in Latin, sought to rally to the Commonwealth's banner classically educated gentlemen already sympathetic to the republican cause and to propagate within Christendom more generally a principled defense'. On the other, writers like Antony Ascham, Nedham and Dury addressed, in English, those 'who were in a moral predicament'.<sup>57</sup>

Interestingly, Conal Condren has recently revisited the Engagement Controversy, in the context of a wider discussion of office holding and its casuistry. He contends that the prevailing scholarly orthodoxy, which holds that those who defended the authority of the new free state did so on purely *de facto* grounds, has distorted the character of the controversy.<sup>58</sup> As Condren argues, 'the *de facto* origination [of the new regime] was not the issue'. Rather, the controversy concerned the implications of the moral obligation demanded by the Engagement. 'This', in fact, 'rendered the very distinction between the *de facto* and the *de jure* contentious, it was insisted upon by the anti-engagers, but resisted by their opponents who, curiously are the ones who have since been described as the *de facto* theorists'.<sup>59</sup>

In other words, writers like Milton, or the republican polemicists more generally associated with this debate Nedham, Dury and Ascham, never

<sup>56</sup> As Jonathan Scott observes, 'the focus of the government propaganda effort in 1650 was the solicitation of that public submission necessary for its immediate domestic security' (Scott, *Commonwealth Principles*, p. 159).

<sup>57</sup> Rahe, *Against Altar and Throne*, p. 188.

<sup>58</sup> See Condren, *Argument and Authority*, p. 14.

<sup>59</sup> C. Condren, 'Marvell's "Horatian Ode on Cromwell's Return from Ireland" and the Context of the Engagement Controversy', in *Renaissance Drama and Poetry in Context: Essays for Christopher Wortham*, ed. A. Lynch and A.M. Scott (Perth, 2008), p. 260. See also, Condren, *Argument and Authority*. 'We might even conclude', Condren maintains, 'that modern scholars, in swallowing the refusers' formulation of the issues, have simply attached the right label, *de facto*, to the wrong people, but the problem goes deeper' (*ibid.*, p. 296).

considered the authority vested in the commonwealth to be merely *de facto*. In fact, Milton's officially commissioned political writings aggressively promoted the legality, justice and virtue of the commonwealth's conduct rather than elaborating the conditional or *de facto* character of its authority.

Consequently, if, following Condren's revisionism, we expand the terms of the controversy beyond the narrow confines of *de facto* and *de jure* claims to loyalty, to a more general concern with the rhetoric of republican justification that vitally engaged the new state from its inception, Milton's contribution to the defence of the free state moves from the margins to assume a far more important place. The reason perhaps that Milton's name does not surface in the course of the pamphlet controversy no doubt reflected his role as official spokesman for the legitimacy of the republic that made it rhetorically prudent to by-pass him when appealing to the consciences of anti-engagers and those enduring the pangs of an acute moral dilemma.

### **Presentation and Deliberation: Casuistry and *Raison d'État* in the Case of the Commonwealth**

To begin this exercise in re-evaluation requires us to attend a little more closely to the casuistic terms in which the commonwealth advanced its claim to authority. It also requires attention to how the new state sought to re-present the understanding of state oaths within an evolving republican understanding of state right, often misleadingly termed *raison d'état*. Here once more the prevailing scholarship's propensity to treat *raison d'état* and republican thinking as innovating a radical departure from the practice of seventeenth-century political theology has served only to obscure the idiom in which the free state attempted to present and justify its authority.

More precisely, the Engagement and its official justification needs to be situated in terms of the politics of its presentation. 'Politics', as Kenneth Minogue has observed, 'is mostly about words and these words are used to persuade people to take up attitudes to what is happening'.<sup>60</sup> Every political actor seeks to persuade his audience to view his acts in one way rather than another. This justificatory dimension of rule Minogue terms presentation and it draws upon the dominant legitimating ideas available at the time. In the seventeenth-century context, these concepts might include justice, authority, law, right, *salus populi*, conscience and allegiance or duty.

Justificatory presentation, moreover, would necessarily demand, in the contested casuistic circumstances of the Engagement debate, a counter presentation using the same set of ideas but organized in a significantly different configuration or alignment. Milton in his role as Chief Secretary for Foreign

---

<sup>60</sup> K.R. Minogue, 'Remarks on the Relation between Social Contract and Reason of State in Machiavelli and Hobbes', in *Staatsrason Studien zur Gesichte einen Politischen Begriffs*, ed. R. Schnur (Berlin, 1975), p. 269.

Tongues would, moreover, have been acutely conscious of this predicament of presentation.

This predicament, moreover, must be carefully distinguished from the separate and very different process of deliberation that led political actors to make particular decisions, for example to commit to trial and subsequently to execute Charles Stuart or to tender the Engagement to all males aged sixteen or over. As Minogue again notes 'reasons for actions that feature in deliberation do not have the same weight in presentation and may be suppressed'.<sup>61</sup>

The test of successful presentation is whether the audience to which it is addressed finds it convincing. The conflict between presentation and counter presentation will typically occur over a political act depicted in idealist or normative terms (the justice or rightness of the act), whilst the counter move will seek to accuse the presenter of self interest, hypocrisy and illegitimacy.

In both France and England in the course of the sixteenth and seventeenth century political actors attempting to present themselves in excessively idealistic terms could, as a consequence, lose credibility. More particularly, in the context of the Engagement debate, the presentation and counter presentation of the device expressed in terms of competing moral justifications for action could undermine its effectiveness. This was particularly the case where puritan, conscientious, high mindedness could be redescribed by an Edward Hyde or a William Prynne as seditious wilfulness intimating a condition of moral, social and political anarchy.

In such circumstances, conflict over presentation generated the conditions for two further possibilities. First, the recourse to a more vigorous reassertion of a single standard of rightness and the identification of dissenters, or, to use the vocabulary of the 1640s, 'delinquents' and 'malignants' as morally corrupt, duplicitous and vicious.

The alternative response is to distinguish between different spheres of human life, allowing each a limited rightness of its own. This strategy is often associated, in accounts of its seventeenth-century development, with Machiavelli. In fact, this response is more properly viewed as the work of later purportedly *raison d'état* thinkers influenced by the evolving sixteenth-century interest in Cicero, Tacitus, Seneca and a view of politics adumbrated by a casuistic concern with prudence and circumstance. Here, the philological exegesis of Justus Lipsius and his neo-Stoic and aphoristic deliberations on politics, utility and constancy facilitated this development at the end of the sixteenth century.<sup>62</sup>

<sup>61</sup> *Ibid.*, p. 270.

<sup>62</sup> As Harro Hopfl shows, casuistry and reason-of-state thinking enjoyed a complex and evolving relationship in the sixteenth century. This was, in part, because reason of state shared a family resemblance with and, in time, became associated with prudence and circumstance. See Hopfl, *Jesuit Political Thought*, pp. 164–81; J. Lipsius, *On Constancy*, ed. J. Sellars (Bristol, 2006), p. 4; and J. Lipsius, *Politiorum Sive Civilis*

As Richard Tuck shows, by the first decade of the seventeenth century, 'étatist thinkers sought to distance themselves from Machiavelli. The Florentine delighted too much in the shock value of demonstrating the utility of amoral political action in extreme circumstances'.<sup>63</sup> The new humanist style preferred, instead, the cool, prudential application of the material of deliberation to the requirements of presentation. In this developing idiom of political disclosure, of which Milton was both profoundly aware, and, as we shall see, a skilled practitioner, political acts may now be represented in terms more powerfully persuasive than goodness or morality, namely, those of necessity and prudence.<sup>64</sup>

Necessity and prudence, the latter itself a form of practical reason, recognized and accepted the potential for the dissolution of Christian living into different and sometimes competing spheres of life. Because of its pejorative characterization as preoccupied entirely with the deliberations of government and its darker arts, this approach to rule, evident both in Milton's most impressive political tract, *The Tenure of Kings and Magistrates*, and in Nedham's 'drollings' in *Mercurius Politicus*, is often misunderstood. As J.H. Hexter observed, the English phrase reason of state is an inadequate translation of the French *raison* and Italian *ragioni*. Unfortunate, because it obscures the fact that in French and Italian the phrase implies a guiding concern with the actual *right* of the state.<sup>65</sup>

This right, moreover, may be expressed in terms of the right of the state's survival as well as the conditions for preserving and developing civilization or, in the language of Miltonic republicanism, maintaining liberty and virtue. Applying these considerations to Milton's writings between 1649 and 1654 suggests that we may find in them both a concern with presentation that reflects the casuistic conventions of oath discourse together with a less evident concern with a representation of the free state conceived in terms of its 'right' and capacity to instantiate a condition of civic virtue. Let us next examine whether this is, in fact, the case.

---

*Doctrinae Libri Sex* (1589), or *Politica* for short. Lipsius devoted four of its six books to prudence. See Justus Lipsius, *Politica: Six Books of Politics or Political Instruction*, ed. Jan Waszink (Cambridge, 2004).

<sup>63</sup> Richard Tuck, *Philosophy and Government* (Cambridge, 1982), pp. 55–6.

<sup>64</sup> As Jonsen and Toulmin observe, 'Milton's mind moved in casuistical ways' (Jonsen and Toulmin, *The Abuse of Casuistry*, p. 164). Milton evidently found classic stoic ideas attractive. However, somewhat contradictorily, he criticized Lipsius for his aphoristic style of presenting those ideas without sufficiently attending to the circumstances of their promulgation. See M. Dzelzainis, 'Milton's Classical Republicanism', in *Milton and Republicanism*, ed. Armitage, Himy and Skinner, p. 67.

<sup>65</sup> See J.H. Hexter, *The Vision of Politics on the Eve of the Reformation* (London, 1973), p. 168. Hopfl also explores the ambiguities of reason-of-state thinking and its relationship to Jesuit and *politique* political thinking. See Hopfl, *Jesuit Political Thought*, pp. 106–12.

### Milton and the Virtue of Tyrannicide

In terms of the presentation of the Engagement of loyalty to the commonwealth, Milton adopted a conventionally humanist polemical style as a rhetorical tactic, 'talking for victory' as Boswell termed it.<sup>66</sup> This polemic, moreover, was devoted primarily to counter presentation. Milton's use of casuistry sought to refute both the king's claims to martyrdom in *Eikon Basilike* and Salmasius' royalist defence of the Stuart monarchy in *Defensio Regia* that, irrespective of the king's execution, maintained the continuing *de jure* authority of the Stuart line. Royalist critics of the new free state additionally accused it of innovation, breach of allegiance, seditious wilfulness, hypocrisy, erroneous conscience and the abuse of the constitution. From this perspective, the morally corrupt regime had undermined all norms of conscience, law and allegiance and treason had triumphed.

Equally troubling for the security and self image of the new regime were those parliamentarians who had opposed the King in 1641–2 and proposed a mixed and balanced solution to the constitutional impasse that subsequently arose. This 'Presbyterian party' also condemned the new republic for violating the allegiance to the King acknowledged in 1643 in parliament's Solemn League and Covenant, by executing him.<sup>67</sup> The free state had further compounded this breach by promulgating an Engagement that forced the consciences of those who remained loyal to the parliamentary formula of king-in-parliament.

To refute these claims, Milton tried to show, according to the established, casuistic conventions of political controversy, that it was the King and not Parliament that had usurped an unnatural power. The new state, in other words, faced the crucial presentational test of justifying that the King had been lawfully punished by a legitimate authority and not martyred. The King had to be re-described, not as a constitutional monarch, but as a tyrant who had received his just desert. To demonstrate this, Milton drew upon an extensive classical, theological and post-Reformation resistance literature that legitimated, in particular circumstances, the execution of the 'tyrant by practice'.<sup>68</sup> By the sixteenth century, the view that the office of the monarch and the conduct of a tyrant were incompatible had achieved the status of a casuistic convention. A number of commentators drew the further conclusion that, in certain circumstances, tyrannicide was justified. Marian exiles like John Ponet and Christopher Goodman, and Catholic theologians like Cardinal William Allen

<sup>66</sup> James Boswell, *The Life of Johnson* (2 vols., London, 1958), Vol. 1, p. 372.

<sup>67</sup> Milton, in *Political Writings*, ed. Dzelzainis, p. xi.

<sup>68</sup> The medieval and reformation political theological tradition distinguished between the tyrant *absque titulo* who usurped an authority, and *tyrannus exercitio* a tyrant by practice. As Hopfl observes, the Jesuits earned an undeserved reputation for tyrannicide merely for repeating these conventional medieval distinctions outlined in text books on theology and law. See Hopfl, *Jesuit Political Thought*, p. 314.

and the Jesuit casuist Francesco Suarez, had at various times made the case for executing tyrants to preserve the commonwealth.<sup>69</sup> Milton also defended the case that the free state would have mounted if Charles I had recognized the authority of the High Court of Justice established to try him in 1649. As Glenn Burgess observes, 'at the core of the justification for the king's execution was the understanding of the royal office as an office of trust', that the king had breached.<sup>70</sup>

Milton thus applied the accepted conventions governing tyrannicide to the particular case of Charles Stuart. In the process he notably conflated the conventional casuistic distinction between tyrants in practice and usurpers.<sup>71</sup> At the same time, in *Eikonoklastes*, the officially commissioned response to the king's posthumous defence, the *Eikon Basilike*, he drew heavily upon the resources of Protestant casuistry and common law to counter the claim of Charles's supporters that the former monarch had performed his office lawfully and was illegitimately martyred by an arbitrary power.

In this Milton adopted an interesting rhetorical strategy, demonstrating from Charles's own defence of his conduct in the *Eikon Basilike* that the King had possessed an erroneous rather than a good conscience. In a monarch an erroneous conscience intimated a tyrannical disposition rather than a propensity to just rule. To expose this fault that vitiated both Charles's character and his regime, Milton forensically examined the King's Penitentiary confession given to Bishop Juxon on the scaffold at Whitehall. On that dramatic occasion, Charles had asked forgiveness for his 'sin' in signing 'the bill of Strafford's execution' in 1641. This 'sin', Milton alleged, evinced not a moral awareness of wrong but a 'privat conscience (that) sorts not with a public calling'. The King's conscience 'were so narrow and peculiar to itself it was not fitt his Authority should be so ample and Universall over others'.<sup>72</sup> For, somewhat problematically, Protestant case divinity maintained that, 'he whose conscience thinks it sin to put to death a capital Offender [as parliament's

<sup>69</sup> See J. Ponet, *A Short Treatise of Politike Power* (Geneva, 1556), ch. 6; C. Goodman, *How Superiour Powers ought to be obeyed of their Subjects and wherein . . . lawfully be by God's Word discharg'd and resisted* (Geneva, 1558); W. Allen, *A True, Sincere and Modest Defence of the English Catholics* (1584), reprinted with the *Execution of Justice in England* by W. Cecil, ed. R.M. Kingdon (Ithaca, 1965); and F. Suarez, *Defensio fidei Catholicae et Apolosticae adversus Anglicanae sectae errores cum responsione ad Apologiam pro Iuramento fidelitatis et Praefationem Monitoriam Sereni. Jacobi Angliae Regis* (Madrid, 1613).

<sup>70</sup> G. Burgess, 'Regicide: The Execution of Charles I and English Political Thought', in *Murder and Monarchy*, ed. von Freidenberg, p. 213. See also D. Allan Orr, *Treason and the State: Law, Politics and Ideology in the English Civil War* (Cambridge, 2002), p. 205.

<sup>71</sup> In *The Tenure* he treated both varieties of tyrant as 'savage monsters'. In this Milton demonstrated the influence of Cicero's *De Officiis*. See Milton, *Political Writings*, ed. Dzelzainis, p. xiii.

<sup>72</sup> Milton, 'Eikonoklastes', *CPW*, III, p. 359.

attainder proved Strafford to be] will as oft think it meritorious to kill a righteous person'.

A careful analysis of Charles's doubts and subsequent tergiversation over the prosecution of Strafford in 1641, in fact exposed him as a dissembling hypocrite rather than a just monarch. He 'seemes not one but double; either heer we must not believe him professing that his satisfaction was but seemingly receav'd and out of fear, or els we may believe him heer against himself before that the satisfaction then receav'd was no real satisfaction; of such a variable and fleeting conscience what hold can be tak'n?'<sup>73</sup>

This critical examination of the King's conscience led to the diagnosis that Charles suffered from the casuist's erroneous conscience, which, Calvinist authorities like Ames and Perkins had shown, strained at a gnat whilst swallowing a camel.<sup>74</sup> The King's subsequent rejection of parliament's nineteen propositions and his refusal to remove his evil counsellors gave further proof of this fatal proclivity. Indeed, 'to be importun'd' to eliminate 'evil counsellors was to him an intolerable oppression'.<sup>75</sup> Thus, when Charles in the *Eikon Basilike* claimed that the royal conscience 'must chew such Morsels as propositions ere he let them down', Milton responded, 'so let him, but if the kingdom shall tast nothing but after his chewing, what does he make of his kingdom but a great baby? But what Camells of Injustice he could devoure all his three realms were witness, which was the cause that they almost perisht for want of parliaments'.<sup>76</sup> Ultimately, it was the three kingdoms 'evil happ to be pestered by one conscience' that was so misguided.<sup>77</sup> The actions of an erroneous conscience corrupted the office of the king and distorted the obligations of subjects enjoined in the state oaths of allegiance and supremacy. In particular, Charles's erroneous conscience placed itself above the law and inexorably led to tyranny.<sup>78</sup>

In this casuistic examination of the abuse of the kingly office, the further royalist claim that the king possessed a negative voice or veto to overrule parliament, Milton equally exposed as, 'never any law, but an absurd and reasonless custom'. To demonstrate this, Milton developed the argument, widely promulgated by Parliament in 1642, that Archbishop Laud had deliberately altered a critical clause in Charles's Coronation Oath in order to facilitate a

<sup>73</sup> *Ibid.*, p. 371.

<sup>74</sup> Ames, *Conscience*, pp. 19–20; Perkins, *Discourse*, p. 51. Ames further observed in this context of tyranny that erroneous conscience could be mutually reinforcing between Prince and subject, thus 'if one do verily believe he is his Prince that is, in truth, a Tyrant, or that he is a lawful magistrate who indeed usurps the title', an erroneous conscience is somewhat problematically, 'bound to yield due obedience' (Ames, *Conscience*, p. 11).

<sup>75</sup> Milton, 'Eikonoklastes', *CPW*, III, p. 408.

<sup>76</sup> *Ibid.*, p. 469.

<sup>77</sup> *Ibid.*, p. 439.

<sup>78</sup> See also Burgess, 'Regicide', in *Murder and Monarchy*, ed. von Freidenberg, p. 232.

royal veto power. The traditional Coronation Oath bound the king to enforce the laws that the people *shall have* chosen. Laud, however, had, in the view of Parliament, treasonously altered the oath that Charles swore in 1624 to read 'have chosen'.<sup>79</sup>

Properly understood, therefore, the King's assertion of a negative voice to refuse a law passed by both houses of Parliament was 'both against the Oath of his coronation and his Kingly Office'.<sup>80</sup> Consequently, 'if the king may deny to pass what the parliament have chos'n to be law, then doth the king make himself superiour to his whole kingdom which not only the general maxims of policy gainsay but ev'n our own standing laws'. More precisely, the coronation oath never bound him to his own 'particular conscience and reason, but to our condition as a free people, which requir'd him to give us such lawes as ourselves shall choose'.<sup>81</sup>

Elaborating this casuistry of office in *A Defence of the People of England* (1651), Milton further alleged that such a violation of parliamentary right indicated that Charles and his misguided counsellors had contemplated tyranny from the outset of his reign. Indeed, 'what treachery could have been greater'?<sup>82</sup> Milton asked rhetorically. The oath was altered, Milton averred, 'so he might not be said to have perjured himself'. In so doing, 'he turned the very oath into perjury'. Guided by his misguided conscience, the king had abrogated a vital condition of his office.

Milton, therefore, contended that the breach of the Coronation Oath, and by extension the office of the king, cancelled his subjects' oaths of allegiance and supremacy to Charles. For if the tyrant treated his oath as 'a mere brutish formality, then the state oaths 'tak'n absolute on our part, may justly appear to us in all respects as brutish and formal and so by his own sentence no more binding to us'.<sup>83</sup> In an analogous vein, in *The Tenure*, Milton maintains that to say, as royalists did, that kings are accountable to God alone, 'is the overturning of all law and government and all covenants made with them at coronation are in vaine and the laws they swear to keep made to no purpose'.<sup>84</sup>

The careful application of protestant casuistry to demonstrate that Charles's erroneous conscience facilitated tyranny rather than constitutional rule, elaborated

<sup>79</sup> The controversy resulted from Laud's English translation of the coronation oath that James I had sworn in Latin. Charles took his oath in English and Laud translated the phrase 'quam vulgus elegerit' as 'that the people had chosen', instead of the more grammatically accurate 'shall have chosen'. See J. Wickham-Legg, *The Coronation Order of James I* (London, 1902); H.G. Wickham-Legg, *English Coronation Records* (London, 1901); and B. Wilkinson, *The Coronation in History* (London, 1951).

<sup>80</sup> Milton, 'Eikonoklastes', *CPW*, III, p. 415.

<sup>81</sup> *Ibid.*, p. 519.

<sup>82</sup> J. Milton, 'A Defence of the People of England' (London, 2nd edn., 1658), in *Political Writings*, ed. Dzelzainis, p. 246.

<sup>83</sup> Milton, 'A Defence of the People of England' (1651). *CPW*, III, p. 415.

<sup>84</sup> Milton, 'The Tenure of Kings and Magistrates', *CPW*, III, p. 11.

in *Eikonoklastes*, permeates Milton's presentation of the nature of lawful rule in his other political writings. The problem is explored further, and its deleterious political consequences more fully exposed, in both the first two editions of *A Defence of the People of England* (1651, 1658) and in the first and second editions of *The Tenure of Kings and Magistrates* (1649, 1650).

Further elaborating the character of conscience and lawful allegiance conveyed in the state oaths, in his polemical refutation of the prominent Protestant scholar Claude de Saumaise' (Salmasius) *Defensio Regia*, Milton demonstrates that in both the Old Testament and the Gospels no subject swore to obey a king unless the king in turn swore to obey the laws of God and his native land.<sup>85</sup> More precisely, no one should believe that kings 'who are almost the most worthless of mortals' are valued so highly in God's estimation 'that the whole world hangs upon and is governed by their nod'.<sup>86</sup>

If divine law and the law of nature recognized that kings were accountable for their authority, so too did English common law. Deploying constitutional authorities ranging from Henry de Bracton, the *Fleta* and Ranulf de Glanvill to Sir John Fortescue and the seventeenth-century oracle of the English common law, Sir Edward Coke, Milton further contended that a political not an arbitrary power governed the English people.<sup>87</sup> This '*dominium*', moreover, required the people's representatives to choose the laws that regulated them.

Consequently, where a tyrant's erroneous conscience progressively subverted the law, the process of constitutional corruption rendered the conscientious performance of loyalty oaths to the ruler unsustainable, and inexorably dissolved the bonds and bounds of government and obedience. For if kings 'do not receive the crown with solemn ritual and do not swear and still rule, the same reply can be made about the people, of whom a large part have never sworn allegiance'. If the king 'will be unbound for that reason, so will the people be also'.<sup>88</sup> Tyranny abrogated lawful allegiance.

Charles had betrayed both his office and his trust by betraying his oath. The state, therefore, acted justly in prosecuting Charles as a tyrant who sought his own advantage at the expense of the people and as a traitor whose actions in declaring war on his subjects had dissolved 'the mutual ties' of protection.<sup>89</sup>

<sup>85</sup> Milton, 'A Defence of the People of England', in *Political Writings*, ed. Dzelzainis, p. 82.

<sup>86</sup> *Ibid.*, p. 94. Hobbes, whom Milton respected but did not like, wrote of the rival books in *Behemoth*, 'both are very good Latin so that I know not which is the best, and both are very bad reasoning so that I know not which is the worst'. Parker, *Milton's Contemporary Reputation*, p. 40.

<sup>87</sup> The anonymous *Fleta* probably written in the reign of Edward I was first published by John Selden in 1647.

<sup>88</sup> Milton, 'A Defence of the People of England', in *Political Writings*, ed. Dzelzainis, p. 247.

<sup>89</sup> *Ibid.*, p. 245.

From this perspective, both royalists and parliamentarians who refused to accept the necessity of prosecuting and executing a tyrant were either hypocrites or practised equivocation. Royalists were evidently dissemblers. They consistently opposed both the Commonwealth and the trial of the King and 'in other matters express so little fear of either God or man'. Yet, 'should in this one particular outstrip all precisianism with their scruples and cases and fill all men's ears continually with the noise of their conscientious loyaltie and Allegiance to the King'. This only showed that royalists were, 'rebels in the meanwhile to God in all ther actions beside'.<sup>90</sup>

If royalists displayed a predictable contempt for the new regime and its devices to secure loyalty, it was the stance of moderate presbyterian, anti-engagers who particularly disturbed the equanimity of the new republic. The Council of State considered that the covenanters of 1643, who now refused the Engagement, were a worrying source of potential resistance. This was reflected in their angry rejection and confused reasoning about the character of the new dispensation. Analysing the anti-engagers' posture, Milton found it both perverse and irrational. The covenanters, who in 1649 professed their implacable loyalty to the crown had, for the previous seven years, directed their arms against the king's person. As Milton ironically observed, they evidently 'thought him nothing violated by the Sword of Hostility drawn by them against him', yet 'now in earnest think him violated by the unsparing Sword of Justice'.<sup>91</sup> Indeed, those who 'seem'd of late to stand up hottest for the [Solemn League and] Cov'nant now sit mute'.<sup>92</sup>

Addressing the arguments of those who in 1649 advanced their obligation under the Solemn League and Covenant to evade any commitment to the commonwealth, Milton, in *The Tenure*, carefully dissected the nature of allegiance. He observed that 'nothing so actually makes a King of England as rightful possession and supremacy and nothing so actually makes a subject as the Oaths of Allegiance and Supremacy'. In a monarchical regime, obedience is the 'true essence' of a subject.

However, when the people 'rise against the King, I doe not say it is a rebellion, but I say it is an absolute renouncing both of Supremacy and Allegiance which in one word is an actual and total deposing of the King'.<sup>93</sup> Those who refused the Engagement in 1649 had by their past actions already 'made void' the oaths that were 'the straitest bond of an English subject in reference to the king'. It follows, therefore, that from that time the King was 'by them in fact absolutely depos'd'.

<sup>90</sup> Milton, 'Eikonoklastes', *CPW*, III, p. 346.

<sup>91</sup> *Ibid.*

<sup>92</sup> *Ibid.*, p. 347.

<sup>93</sup> Milton, 'The Tenure of Kings and Magistrates', in *Political Writings*, ed. Dzelzainis, p. 27.

Consequently, presbyterians who clung to the 'fine clause' in the Solemn League and Covenant, 'to preserve his person, Crown and dignity', in order to justify their aversion to the new regime and the allegiance it claimed, exhibited perversity and irrationalism rather than tender conscience.<sup>94</sup> Indeed, 'the fine clause' in the Covenant was merely 'set ther by some dodging casuist with more craft than sincerity' as an insurance policy against the possible failure of Parliament's resistance in 1643, 'to mitigate the matter in case of ill success, and not taken I suppose by any honest man but as a condition subordinat to evry least particle that might concern religion, liberty or the public peace'.<sup>95</sup>

In *The Tenure*, Milton further evaluated the bonds of authority and allegiance that had sustained the old order and which had, as a consequence of civil war, dissolved. He also clarified the new state's grounds for the trial and execution of the King and their adoption of a more just, rational, free and, for Milton, virtuous republican form of rule. In this enterprise, Milton logically explored the prevailing understanding of state oaths in general and the practice of covenanting anti-engagers in particular.

'To prove it yet more plainly, that they [the presbyterian party] are the men that have depos'd the king', Milton resorted to a logical method that emphasized clear distinctions between paired concepts to form dichotomies of even greater precision. This method, derived from the logic of Petrus Ramus, sought to purge language of ambiguity.<sup>96</sup> He reasoned thus:

We know that Kings and Subjects are relatives and relatives have no longer being then in the relation; the relation between King and Subject can be no other then regal authority and subjection. Hence I infer that if the subject who is one relative take away the relation, of force, he takes away also the other relative; but the Presbyterians who were one relative, that is to say subjects have for this seven years tak'n away the relation, that is the King's authority, or to speake more in brief have depos'd him.<sup>97</sup>

---

<sup>94</sup> Calvinist divines like Ames and Perkins had disagreed with Anglican casuists like Sanderson, Taylor and Hammond over the nature of the tender or scrupulous conscience. Thus for Jeremy Taylor the scrupulous conscience was 'over righteous' and its scruples a bit 'like a little stone in the foot; if you set it upon the ground it hurts you . . . it is a trouble where the trouble is over. A doubt when doubt is resolved'. Taylor, *Ductor*, p. 172. By contrast, Ames distinguished between a scruple which, 'as a little stone that cannot be discerned in a man's shoe paineth his foot', which often constituted 'a useful trial by God and a tender conscience easily moved by God's word'. Ames, *Conscience*, pp. 19–20.

<sup>95</sup> Milton, 'The Tenure of Kings and Magistrates', in *Political Writings*, ed. Dzelzainis, p. 27.

<sup>96</sup> In this context, see Walter J. Ong, *Ramus, Method and the Decay of Dialogue from the Art of Discourse to the Art of Reason* (Chicago, 1958), p. 33. Milton wrote *A Fuller Course on the Art of Logic Conformed to the Logic of Ramus* (London, 1672), in *CPW* VIII, pp. 206–467.

<sup>97</sup> *Ibid.*, pp. 27–8.

Once one party to a relationship abrogates it, it is, by that act, logically dissolved. Having, to all intents and purposes, deposed the King, the presbyterians had also 'tak'n from him the life of a King'.<sup>98</sup> The logical argument reinforced the casuistic point that, 'by deposing him, they have long since tak'n from him the life of a king, his office and his dignity, they in the truest sense may be said to have kill'd the king'.<sup>99</sup> Separated from his office, Charles was at best an irrelevance at worst an embarrassment.<sup>100</sup>

Consequently, for anti-engagers to have recourse to one clause in the Covenant in order to deny the legitimacy of the process followed by the free state between 1649 and 1650 was to 'juggle and palter with the world', and 'not only turne revolvers from those principles which only could at first move them, but lay the staine of disloyaltie and worse on proceedings, which are the necessary consequences of their own former actions'.<sup>101</sup> The parliamentarians and royalists who objected to the trial of the King were either hypocrites, confused or squeamish. For, 'having extinguisht all that was in him of a King they left in his person dead as to law, the life only of a prisoner, captive, and malefactor. Whom the impartial hand of justice finding was no more to spare than any other man'.

Exposing this 'ridling covenant', by a process of prudential reasoning, ultimately revealed the

hypocrisie and self repugnance of our dancing divines, who have the conscience and the boldness to come with Scripture in their mouthes gloss'd and fitted for thir turnes with a double contradictory sense transforming the sacred verity of God to an idol with two faces, looking at once two several wayes and with the same quotations to charge others which in the same case they made serve to justifie themselves.<sup>102</sup>

### Miltonic Republicanism and the Free State's Right

Countering the royalist presentation of the King as a martyr with his characterization of a tyrant enabled Milton to adduce further support for the new commonwealth without a king or house of lords. Common law, the constitution and English history supported the right of the commonwealth to protect itself against potential subversion and could, from Milton's perspective, serve a republican and moral purpose. As Patrick Collinson and others have argued, English governance during the reign of Elizabeth already disported character-

<sup>98</sup> *Ibid.*, p. 30.

<sup>99</sup> *Ibid.*

<sup>100</sup> *Ibid.*, p. 31.

<sup>101</sup> *Ibid.*

<sup>102</sup> *Ibid.*, p. 7.

istics of a monarchical republic.<sup>103</sup> More precisely, the idea of a republic or commonwealth conveyed to the early modern mind a politically neutral understanding not necessarily incompatible with monarchy. As Collinson maintains, 'to be sure, *republica* in sixteenth century parlance did not mean, as it has meant since the late eighteenth century, a type of constitution incompatible with monarchy'.<sup>104</sup> In this context, Johann P. Sommerville argues that neo-Roman theories of republicanism had minimal impact on English understandings of constitutional freedom prior to 1642.<sup>105</sup>

Recent scholarship, nevertheless, has presented Milton's republicanism in determinedly classical terms. Thus, although Michael Zuckert considers the Miltonic concern with republican liberty symptomatic of the regeneration of the rightly ordered conscience, other commentators view it instead as a reflection of Milton's civic humanism. For Dzelzainis the Ciceronian rather than the Christian or English constitutional influence was uppermost.<sup>106</sup> More broadly, Quentin Skinner considers that Milton's political writings functioned within a neo-Roman school of English republican thought that collectively promulgated a 'subversive ideology' of liberty.<sup>107</sup> In this view, Milton, like fellow members of this school, Sydney, Neville, Harrington, Vane and Nedham, read the *Discorsi* closely and applied a synthesis of Livy, Sallust and Machiavelli to the English political situation of the 1650s.<sup>108</sup> Meanwhile, Jonathan Scott distinguishes the Platonic and Aristotelian roots of Milton's classical republicanism from those commonwealth thinkers more susceptible to neo-Romanism and Machiavelli's radical break with classical forms.<sup>109</sup> From this perspective, Milton's *Tenure* and *Defence* applied a classical understanding of liberty to an English 'political situation charged with religious significance'.<sup>110</sup> Differently again, Paul Rahe considers that Milton from the outset 'presented himself to the public as a classical republican. In none of what he wrote for publication is there the slightest sign that he found anything of value in Machiavelli that was not already present in the classical authors he

<sup>103</sup> P. Collinson, 'Afterword', in *The Monarchical Republic of Early Modern England*, ed. J.F. McDiarmid, (Aldershot, 2007), pp. 247–53.

<sup>104</sup> P. Collinson, 'The Monarchical Republic of Elizabeth 1', in *The Tudor Monarchy*, ed. J. Guy (London, 1997), p. 114.

<sup>105</sup> J.P. Sommerville maintains that there was no 'developed tradition of republican or neo-Roman thought before the Civil War'. See J.P. Sommerville, 'English and Roman Liberty in the Monarchical Republic of Early Stuart England', in *The Monarchical Republic of Early Modern England*, ed. McDiarmid, p. 216.

<sup>106</sup> Dzelzainis, 'Milton's Classical Republicanism', in *Milton and Republicanism*, ed. Armitage, Himy and Skinner, p. 9.

<sup>107</sup> Q. Skinner, *Liberty Before Liberalism* (Cambridge, 1998), p. 59.

<sup>108</sup> *Ibid.*, p. 47.

<sup>109</sup> Scott, *Algernon Sydney and the English Republic*, p. 15.

<sup>110</sup> Scott, *Commonwealth Principles*, p. 153.

so esteemed'.<sup>111</sup> Milton, in fact, 'regretted the influence that Machiavelli exercised over his compatriots' precisely because he valued the classical moral virtues that Machiavelli eschewed as an impediment to effective statecraft.<sup>112</sup>

This imposition of a hypothetically completed neo-Roman republican ideology of recent scholastic fashioning upon the conduct of the casuistic debate over the free state has perhaps distorted both the character of this debate and Milton's contribution to it. Given the different and sometimes contradictory classical, Christian, common law and Machiavellian influences that scholars have discerned in his defence of the free state, how, we might finally ask, did Milton actually present an English *res publica* through his casuistic defence of a free state?

In Milton's presentation of the case of the commonwealth, reason of state, or more precisely the free state's right to defend itself, gave additional credence to the casuistry employed to defend the trial and execution of the king and the new state without a king or house of lords. Foreshadowing John Locke's account of the evolution of political society and the 'strange doctrine' of the executive power of the state of nature originally invested in all men in that condition, Milton, in *The Tenure*, contended that all political authority ultimately derived from the communication of the 'authoritie and power of self defence and preservation'. For ease, order and 'lest each man should be his own partial judge', they 'deriv'd' government either to kings or magistrates.<sup>113</sup>

Government, therefore, was merely a convenient superstructure. It followed that since kings and magistrates hold authority from the people, 'both originally and naturally for their good in the first place, and not for his own, then may the people as oft as they shall judge it for the best, either choose' the king or reject him 'merely by the liberty and right of free born men to be govern'd as seems to them best'.<sup>114</sup>

Royalists and absolutists like Robert Filmer, had argued, by contrast, that the king exercised a patriarchal authority over his people and possessed his kingdom as a personal property. In *A Defence of the People of England*, Milton countered the claim that the king was 'master' of the kingdom, maintaining instead that 'it is privat things not public ones that have a master'.<sup>115</sup> The new free state was, like any political arrangement properly understood, the public thing (*res publica*) and the property of no one. Its purpose was to preserve and maintain liberty and virtue. Consequently, Milton's version of

<sup>111</sup> Rahe, *Against Altar and Throne*, p. 137.

<sup>112</sup> *Ibid.*, pp. 118–19.

<sup>113</sup> Milton, 'The Tenure of Kings and Magistrates', in *Political Writings*, ed. Dzelzainis, p. 9.

<sup>114</sup> *Ibid.*, p. 13.

<sup>115</sup> Milton, 'A Defence of the People of England', in *Political Writings*, ed. Dzelzainis, p. 73.

resistance theory offers only a vague notion of a social contract limiting the sovereign power and is 'silent about natural rights'.<sup>116</sup>

In both the *Tenure* and *Defence*, Milton applied instead Cicero's understanding of *res publica*, 'the public thing' to the perplexed condition of the English state in 1650. In the context of the trial and execution of the King this required, following protestant resistance theory, that the lesser magistrates of the Council of State acted justly and constitutionally in both removing malefactors against the public and issuing an Engagement to secure loyalty to the public thing.

In his condemnation of the character, conscience and conduct of the King, Milton's *Tenure* not only followed a Ciceronian model of exposition, it also exhibited a classic and neo-Stoic contempt for tyrants as monsters and savage beasts.<sup>117</sup> In this presentation of the right of the new state, moreover, a distinctive *étatist* concern with the most prudent means of preserving the people and maintaining a condition of reason and virtue, free from the corruption of passion and custom, also emerges.

This is evident in Milton's studied contempt for those who mawkishly sentimentalized the King's fate. To pity the fate of a tyrant, Milton averred, 'can be no true and Christian commiseration but either levity and shallowness of mind, or else a carnall admiring of that worldly pomp from whence they see him fall'n'.<sup>118</sup> Reflecting this Christian, neo-Stoic understanding of *aphasia* and prudence elaborated by the influential Belgian humanist Justus Lipsius,<sup>119</sup> Milton considered pity and sentimentality to be misguided passions, which, when combined with custom and an irrational practice of loyalty, undermined freedom, rational political conduct and the possibility of a free state.

The 'double tyrannie of custom from without and blind affection within' constrained the freedom of virtuous men to follow a public moral code.<sup>120</sup> More precisely, as Milton explains in *The Tenure*, it is the tyranny of the passions combined with the blind adherence to custom that 'uphold[s] the tyrant of a nation. But being slaves within doors, no wonder that they strive so much

<sup>116</sup> Zuckert, *Natural Rights*, p. 90.

<sup>117</sup> Milton, 'The Tenure of Kings and Magistrates', in *Political Writings*, ed. Dzelzainis, pp. 17, 33. Cicero considered that, 'tyrants have no part in human society', Marcus Tullius Cicero, *De Officiis*, in J. Higginbotham, *Cicero on Moral Obligation: A New Translation of Cicero's De Officiis* (London, 1967), p. 146. See also P.A. Rahe, 'The Classical Republicanism of J. Milton', *History of Political Thought*, 25 (2) (2004), pp. 248–50.

<sup>118</sup> Milton, 'The Tenure of Kings and Magistrates', in *Political Writings*, ed. Dzelzainis, p. 5.

<sup>119</sup> See Lipsius' discussion of 'commiseration or pitying as a vice', in Lipsius, *On Constancy*, ed. Sellars, pp. 52–3. For the influence of Lipsius on English prudence and Taciteanism see Scott, *Algernon Sydney and the English Republic*, p. 18.

<sup>120</sup> Milton, 'The Tenure of Kings and Magistrates', in *Political Writings*, ed. Dzelzainis, p. 3.

to have the public State conformably govern'd to the inward vitious rule by which they govern themselves'.<sup>121</sup>

Milton contended that tyrants 'are not oft offended, nor stand much in doubt of bad men, as being all naturally servile'. Indeed, custom and passion deluded 'bad men', like royalists and anti-engagers. Consequently, they 'have been always readiest with the falsified names of Loyalty and Obedience, to cover over thir base compliances'.<sup>122</sup> Logically, therefore, tyrants feared good men 'in whom vertue and true worth most is eminent'.

By contrast, the virtuous and prudent, guided by reason rather than passion, could discern tyranny both within and without. It followed that 'none can love freedom heartily, but good men; the rest love not freedom but license; which never hath more scope or more indulgence than under Tyrants'.<sup>123</sup>

This evolving relationship between prudence, virtue and political order leads Milton to a distinctively Ciceronian and Tacitian, rather than a Machiavellian, conception of liberty. At the core of this view of the relationship between liberty and political order, as Rahe observes, is 'Milton's classical principle of differential moral and political rationality'. Milton understood liberty, not in terms of freedom from constraint, but freedom from dependence either upon the passions or upon a form of customary rule that requires unquestioning obedience and loyalty rather than virtuous and prudentially reasonable consent. Milton, therefore, contrasts loyalty with prudence, custom with reason and unseemly passion with individual virtue. Given this dyadic understanding, only a free state could sustain the conditions of liberty. Monarchy, by its preoccupation with custom, loyalty and prejudice inexorably corrupted it.

Ultimately, Milton's writings throughout the 1650s inclined towards a classical republican ideal, where a virtuous aristocracy maintained a regime conducive to freedom and reason and where the occasional resort to expediency only reinforced the good.<sup>124</sup> The alternative was dependence upon a monarch which intimated uncritical obedience and, ultimately, servility. This advocacy of a classical republicanism, however, emerges only in the context of a casuistry defending the legitimacy of the King's trial and the new authority of the free state. Classical republicanism and its differential political morality offered a prudential solution to an ongoing constitutional dilemma. Indeed, as he subsequently concludes his *Readie and Easie Way to Establish a Free Commonwealth* (1660) 'freedom consists in the civil rights and

<sup>121</sup> *Ibid.*

<sup>122</sup> *Ibid.*

<sup>123</sup> *Ibid.*

<sup>124</sup> Cicero, *De Officiis* in Higginbotham, *Cicero on Moral Obligation*, p. 147. It is this problem of reconciling the good and the expedient in practical morality that as Jonsen and Toulmin observe gives rise to the cases that the casuistic method seeks to address. See Jonsen and Toulmin, *The Abuse of Casuistry*, p. 86.

advancement of every person' and 'the enjoyment of those (is) never more certain and the access to these never more open, than in a free Commonwealth'.<sup>125</sup> To practice civil liberty required a free state.

### Conclusion

Milton's misunderstood political writings from 1649 to 1654 confronted the difficult and controversial problem of presenting the new commonwealth as a just and lawful form of rule. In order to achieve this Milton devoted his considerable polemical skill to countering the royalist and moderate parliamentary presentation of the king and constitutional order. Applying Protestant casuistry to expose the erroneous conscience of the King, enabled Milton to counter the presentation of Charles as a martyr with his tyrannical abuse of his office. It further facilitated the presentation of the trial and execution of the King as prudent, necessary, constitutionally lawful and just. *The Tenure*, in fact, showed, in classic Ciceronian style, that in executing a tyrant the expedient prevailed because the action was right.<sup>126</sup>

In this exercise, Milton imaginatively applied the conventions of casuistry to the justification of tyrannicide. He carefully adapted the casuistic mode to facilitate the presentation of the free state not as a mere *de facto* authority, but as a *res publica*, restoring the English people to a condition of virtue, liberated from the shackles of custom and emotional and political dependence by a fortuitous conjunction of constitutional necessity, prudence and reason.

David Martin Jones

UNIVERSITY OF QUEENSLAND

<sup>125</sup> J. Milton, 'The Readie and Easie Way to Establish a Free Commonwealth', *CPW*, VII, p. 458.

<sup>126</sup> Cicero, *De Officiis*, in Higginbotham, *Cicero on Moral Obligation*, p. 150.