

## LOYALTY, RELIGION AND STATE POWER IN EARLY MODERN ENGLAND: ENGLISH ROMANISM AND THE JACOBAN OATH OF ALLEGIANCE\*

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**ABSTRACT.** *This article explores the Jacobean oath of allegiance as an act of government. It suggests that historians have misread the intentions of the regime in its formulation and enforcement of the oath. Consequently they have underestimated the capacity of the regime to enforce its will on catholic nonconformists. An analysis of contemporary reaction to the oath demonstrates that early modern government could exert its power in ways which revisionist historians have either missed or denied. The oath should be understood as an exceptionally subtle and well-constructed rhetorical essay in the exercise of state power, and this we see in the devastating effect it had on the structure of Jacobean Romanist dissent. The evidence presented here suggests that this statutory oath was not a simple profession of civil allegiance to which English Romanist dissenters responded with a characteristic mixture of paranoia and politically illiterate confusion. Rather it was an exceedingly complex association of religious and political ideas, a diabolically effective polemical cocktail, which did not have to rely merely on the mechanics of a bureaucracy to work its intended course against the Romanist fraction within the English state.*

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Romanist dissenters in the reign of James I generally seem to have had an easy time. Perhaps this is not surprising. After all, in the succession race, James had been the candidate of a sizeable number of them. Powerful people with catholic sympathies moved into the higher reaches of government and for a time even seemed to dominate it. Peace with Spain had cut the ground from under the more extreme anti-popish activists. The beginning and end of James's reign saw limited toleration. Even if legal proscription of Roman catholicism never actually ceased, it was in practice greatly moderated. After 1603, despite the slight *faux pas* of the Gunpowder Plot, the Elizabethan treason legislation was much more rarely employed to its savage permitted limit. And all of this was because, with the exception of the lunatic fringe, catholics had no active plans for violent opposition to the Stuart monarchy. They were, by and large, moderate and loyal.

Such are the commonplaces of the modern historiography of the Jacobean regime's relations with papists. Historians have therefore interpreted the regime's approach to Romanist dissent as a combination of subtle moderation on James's part (a studied effort to incorporate moderates in his ecclesiastical

\* I am very grateful to Peter Lake and Kenneth Fincham for their advice on the writing of this paper.

polity and exclude the extremists from it<sup>1</sup>), and the normal bungling common to all early modern administration, as Romish recusants tweaked the government's nose and collapsed laughing when the various judicial bodies supposed to penalize their dissenting ways, notably the high commission and the exchequer, blundered about in hopeless confusion.<sup>2</sup> Even if the regime wanted to enforce widespread conformity it had no chance, for it lacked the administrative machinery to impose its will effectively on its Romish-minded subjects.<sup>3</sup> This thesis of theoretical moderation merged with practical incompetence has not yet been seriously challenged. In particular, historians of Jacobean politics and administration have affirmed it by reference to the formulation and enforcement of the notorious Jacobean oath of allegiance. They argue that the anti-Romanist legislation introduced into parliament in 1606 and notably the new oath of allegiance contained in 3 James I, c.4 was a deliberately moderate attempt to restrict a potentially violent reaction against papists after the Gunpowder treason.<sup>4</sup> Subsequently, moderation in statute was unintentionally supplemented by the authorities' normal and complete incompetence when they tried and failed to enforce the oath.

The oath was an unequivocating acknowledgement that King James was 'lawful and rightful' king of his dominions, a denial of the papal deposing power direct and indirect, and an affirmation that the swearer would actively defend the king's rights against papal sentence of excommunication or deprivation. And, says the swearer, 'I do from my heart abhor, detest and abjure as impious and heretical this damnable doctrine and position that princes which be excommunicated and deprived by the Pope may be deposed or murdered by their subjects or any other whatsoever'.<sup>5</sup> In intention, and even in form, it advertised itself as a profession of merely civil allegiance. Catholics who were not so obstinate as to tie their purely religious beliefs into an unreasonable scheme of political disloyalty based on outrageous papal pretensions to dispose of kingdoms would be left in relative peace.

<sup>1</sup> K. Fincham and P. Lake, 'The ecclesiastical policy of King James I', *Journal of British Studies*, xxiv (1985), 170–206.

<sup>2</sup> J. C. H. Aveling, *Northern Catholics* (London, 1966), pp. 125–7; V. Burke, 'Catholic recusants in Elizabethan Worcestershire' (unpublished M.A. dissertation, University of Birmingham, 1972), pp. 278–80; J. T. Cliffe, *The Yorkshire gentry* (London, 1969), pp. 213–16.

<sup>3</sup> Arguably, though, the financial penalties against recusants were more to do with a sensible system of tax-farming rather than the eradication of popery; M. C. Questier, 'Sir Henry Spiller, recusancy and the efficiency of the Jacobean exchequer', *Historical Research*, LXVI (1993), 251–66.

<sup>4</sup> For the passage of 3 James I, c.4 through parliament, J. V. Gifford, 'The controversy over the oath of allegiance of 1606' (unpublished D.Phil. dissertation, University of Oxford, 1971), pp. 41–3; J. P. Sommerville, 'Jacobean political thought and the controversy over the oath of allegiance' (unpublished Ph.D. dissertation, University of Cambridge, 1981), pp. 3–4. In the negotiations between the secular clergy and the regime starting in the late 1590s there had been proposed several forms of oaths and declarations of loyalty. J. Bossy, 'Henri IV, the appellants and the Jesuits', *Recusant History*, VIII (1965), 80–122, at pp. 87–90, 96–100; J. Bossy, *The English Catholic Community, 1570–1850* (London, 1975), pp. 39–41; Gifford, 'Controversy', pp. 46–55; D. Lunn, *The English Benedictines, 1540–1688* (London, 1980), pp. 38–9; R. G. Usher, *The reconstruction of the English church* (2 vols., London, 1910), II, 103, 312–13; cf. P.R.O. (Public Record Office), S.P. 14/8/125.i; B.L. (British Library), Lansd. MS 487. fo. 31v.

<sup>5</sup> J. P. Kenyon, *The Stuart constitution* (Cambridge, 1966), pp. 458–9.

But exactly how moderate *was* the oath? For all the painstaking modern analysis of the elements of political theory that the oath incorporates, the actual intention of the regime has remained less clear. If the oath were a genuinely moderate measure, why should some English catholics have reacted so violently against it, for example the influential Jesuits Robert Persons, Richard Holtby and Robert Jones, who saw its central tenets as a horrendous invasion of catholic consciences, just as the praemunire penalty for refusal was a dire invasion of their purses?<sup>6</sup> Equally, if the oath denied (as some argued) central tenets of Roman doctrine, why should some catholics have found it unobjectionable, and even supported it, though the oath was condemned by two papal breves in September 1606 and August 1607?<sup>7</sup> Prominent clerics like John Mush, the Benedictine Thomas Preston and the archpriest George Blackwell started to think of reasons why the oath could be taken, and Blackwell's successor, George Birkhead, was quite unable to maintain even the semblance of uniformity among his clergy.<sup>8</sup> Many English lay catholics were quite happy to ignore papal commands and take the oath. They, apparently, did not regard it as a moral dilemma. Unswerving Yorkshire recusants like Richard Cholmeley swore it without hesitation.<sup>9</sup> John Aveling suggests that in Yorkshire the majority of recusants and non-communicants 'must have taken the oath' even if with the odd qualm of conscience.<sup>10</sup>

Real moderation would surely not have caused such divisions. To what extent, then, did the oath's draftsmen actually plan this cataclysm of dissension and disobedience among English papists, or was it just an unforeseen spin-off from a simple loyalty-test? What, in other words, did the government think it was doing? I suggest that the oath was possibly the most lethal measure against Romish dissent ever to reach the statute book, even though it appears

<sup>6</sup> A.A.W. (Archives of the Archdiocese of Westminster), A Series [paginated], viii, 17–20; H. Foley, *Records of the English province of the Society of Jesus* (7 vols., London, 1875–83), iv, 377, cf. 284; Sommerville, 'Jacobean political thought', p. 29; *C.S.P.V. (Calendar of state papers Venetian) 1603–1607*, p. 322.

<sup>7</sup> Sommerville, 'Jacobean political thought', pp. 32–3, 37.  
<sup>8</sup> Sommerville, 'Jacobean political thought', pp. 30–1; C. J. Ryan, 'The Jacobean oath of allegiance and English lay catholics', *Catholic Historical Review*, xxviii (1942), 159–83, at pp. 166–7; W. K. L. Webb, 'Thomas Preston O.S.B., alias Roger Widdrington (1567–1640)', *Biographical Studies*, II (1953–4), 216–69, at p. 222; Gifford, 'Controversy', pp. 58–9; A.A.W., A viii, 31, 233, 237–9, 241–2; Bodl. (Bodleian Library), Tanner MS 75, fos. 238r–9r; *Mr. George Blackwell... his answers* (London, 1607); *A large examination... of M. George Blakwell* (London, 1607); Lunn, *English Benedictines*, pp. 40–53; L. J. Hicks, ed., *Letters of Thomas Fitzherbert, 1608–1610* (C.R.S. (Catholic Record Society) xli, London, 1948), 13; A.A.W., A ix–xv, passim.

<sup>9</sup> *The memorandum book of Richard Cholmeley of Brandsby, 1602–1623* (North Yorkshire county record office publications, no. 44, 1988), p. 44; Borthwick Institute, H.C.A.B. 12, fos. 84r, 89v for the leading Yorkshire recusants who took the oath in October 1607 before John Thornborough in York minster. Peter Brasse, whose property was subject to sequestration for recusancy on more occasions than any other Yorkshire recusant, took the oath in July 1613. J. C. Atkinson, ed., *Quarter sessions records* (North Riding record society, I–III, London, 1884), II, 23.

<sup>10</sup> J. C. H. Aveling, *Catholic recusancy in the city of York, 1558–1791* (London, 1970), p. 83. The Venetian ambassador in England in 1610, Antonio Foscarini, reported its contents as if there were nothing in it that was objectionable; likewise the French diplomat Marshal de Vitry said he could not see why catholics should refuse it. *C.S.P.V. 1610–1613*, 170; A.A.W., A x, 173 (printed in Tierney (M. A. Tierney, *Dodd's Church history of England* (5 vols., London, 1839–43)), IV, clxxiii–clxxv).

restrained by comparison with the Elizabethan treason legislation. Secondly, I argue that an analysis of its, to some, poisonous potential may allow us to make significant revisions in our perception of Jacobean ecclesiastical politics and of the power of the state to enforce its will in matters of religion.

Historians' opinions about the purpose of the oath have drawn on the official statements put about by the regime – namely that it was an essentially tolerant measure, designed to divide radicals from loyalists. Kenneth Fincham and Peter Lake have argued cogently that it 'may be viewed as a formal offer to moderate papists to accommodate themselves to the Jacobean regime by affirming their civil obedience and by repudiating the deposing power of the papacy'. J. P. Sommerville suggested that it was a test of loyalty pure and simple, not an act either of toleration or persecution but merely for ascertaining information about catholics' opinions.<sup>11</sup> (J. V. Gifford has stepped out of line with his view that the oath was a religious as much as a political measure, and could drive catholics into full religious conformity.<sup>12</sup>) James's justification of the oath said that he wanted to make 'a separation betweene so many of his...Subjects, who although they were otherwise Popishly affected, yet retained in their hearts the print of their naturall duetie to their Sovereigne'. This was the intention stated in his speech to parliament on 9 November 1605 (before the oath was drafted), and declared again in the proclamation of 1610, even after the assassination of Henri IV. In 1613 James further reiterated his desire that 'he cold be glad to know those catholickes from the rest, that wold adhere only to the P[ope] in spirituall matters and not in this point of deposition'.<sup>13</sup> James was appealing here to a widely recognized distinction. Even the puritan Sir Francis Hastings seemed to subscribe, in 1600, to the idea that there might be a large body of loyal catholics, however erroneous their religious opinions.<sup>14</sup> Blackwell specifically tied his approval of the oath to James's statement that it concerned temporal matters only.<sup>15</sup>

And yet, in practice, the oath did not work quite like this. There was a distinct mismatch between the regime's stated intention of a simple separation between loyal and disloyal (with the implication that loyal catholics would find the oath really quite welcome) and what actually happened when catholics were faced with it. Although it caused dissensions between clerical interest groups like the secular clergy and the Jesuits<sup>16</sup> (who are often regarded as

<sup>11</sup> Fincham and Lake, 'Ecclesiastical policy', pp. 171, 185–6; Sommerville, 'Jacobean political thought', p. 25; cf. M. Nicholls, *Investigating Gunpowder Plot* (Manchester, 1991), p. 49; J. C. H. Aveling, *The catholic recusants of the West Riding of Yorkshire, 1558–1790* (Proceedings of the Leeds philosophical and literary society, literary and historical section, vol. x, pt. 6, Leeds, 1963), pp. 230–1.

<sup>12</sup> Gifford, 'Controversy', p. iv.

<sup>13</sup> Gifford, 'Controversy', pp. 40–1; James I, *Triplici nodo, triplex cuneus* (London, 1607), p. 3; A.A.W., A x, 173 (printed in Tierney iv, clxxiii–clxxv), A xii, 511.

<sup>14</sup> Sir Francis Hastings, *An apologie or defence of the watch-word* (London, 1600), p. 170.

<sup>15</sup> A.A.W., A xi, 269.

<sup>16</sup> A.A.W., A x, 409, for John Jackson's fury at the hypocrisy of the Jesuits in holding up their hands and wondering 'to hear that thear came owt any declaration against... [Blackwell], as though they had been innocent'; cf. Foley, *Records*, vii, 1059, the annual letter for 1614 repeating the sharp attack on some of the prominent secular clergy by Robert Jones S.J. that they failed to

having been respectively moderate and radical), the oath-inspired divisions among the clergy never actually developed along such a clear fault-line. In practice all the different clerical groups were internally fractured by it. Across the catholic clerical spectrum discipline over the problem of the oath seemed to the archpriest Birkhead to have quite broken down. The Jesuits were outspoken in their denunciation of the godless oath, but some of them, notably the violent anti-appellant Thomas Lister, were suspected of teaching that it was possible to take the oath unabridged as a matter of temporal loyalty.<sup>17</sup> William Bishop reported with glee in May 1614 that the society's forthright public polemical stance against it, combined with their laxity and casuistic attitude when hearing confessions, had set them at odds.<sup>18</sup> Even the Benedictines, with the likes of Thomas Preston on one side and Rudesind Barlow on the other, were quarrelling with each other.<sup>19</sup> We might think that the regime would have wanted to keep the secular clergy with its anti-Jesuit element firmly on side, but the oath caused utter chaos among them. While Blackwell and several other priests persisted in arguing that the oath could be taken because James said it was concerned only with temporal loyalty, Birkhead continued, under orders from Rome, to militate against taking it in any form. John Mush, a former appellant who had initially sided with Blackwell in favour of the oath, by 1611 had evolved a variant version of it, which he wanted Rome to approve, and

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'lay before the faithful the Apostolic precepts about the profane oath', and in consequence many take it, attend heretical churches and 'swallow the Calvinist bread'; Foley, *Records*, iv, 377. Even the moderate archpriest Birkhead thought that the Society was undermining the seculars' position in England by making accusations that they compromised over the oath, when Birkhead was doing all that he could to ensure discipline among the seculars; A.A.W., A xi, 213. This was particularly galling to the seculars when the Jesuits themselves were rumoured to be remarkably lenient towards their own penitents about whether and when it was possible to take the oath. Jesuit-secular disagreements were exploited by renegade catholic polemicists like Richard Sheldon, *The motives* (London, 1612), sigs. T4r, X4r-v, K2v, who alleged that a loyalist priest was 'denied absolution for the... cause of the Oath by an Ignatian Priest; who not withstanding easily absolved and admitted to the dreadfull Sacrament one who often fell into the sin of Bestiality'. The opinions of leading secular clergy like Richard Smith and William Bishop certainly gave the Jesuits a polemical field day. Views about the deposing power were behind the bitter dispute between Robert Persons and Richard Smith in Rome in 1609; Hicks, *Letters*, pp. 122-3. The clergy agent there, Thomas More, got into the Jesuits' bad books over his denunciation of Persons' line on the oath; A.A.W., A x, 411, 414. When William Bishop refused it in May 1611 he did it in such a way as to show that he was not in sympathy with the Jesuit-led official polemical opposition to the oath; P.R.O. S.P. 14/63/74, fos. 108r-9r; cf. Bishop's similarly 'loyal' though specious replies to Abbot in the same month; A.A.W., A x, 119, 125 (Abbot said Bishop's reasons were 'the best he had hard for the denial thereof'). His essay in moderation led to accusations of backsliding in 1612; A.A.W., A xi, 347-8. He was still in trouble about his opinions on the deposing power in 1615 (expressed in what were regarded as suspect passages of his book *A disproofe of D. Abbots counterproofe*); A.A.W., A xiv, 100, 237, 457, 469, 593.

<sup>17</sup> A.A.W., A x, 57, 413. The Jesuit Nicholas Smith thought the oath could be taken by an equivocating catholic because it was not *de fide*; Sommerville, 'Jacobean political thought', p. 39.

<sup>18</sup> A.A.W., A xiii, 230. The European reaction to the Jesuit Suarez's definitions of the pope's temporal power caused the Society some considerable embarrassment; A.A.W., A xiii, 355.

<sup>19</sup> D. Lunn, 'English Benedictines and the oath of allegiance, 1606-1647', *Recusant History*, x (1969), 146-63, at pp. 149, 151-2.

Birkhead had to work hard to get him to change his mind and to limit the damage done by this rather public split among the secular leaders.<sup>20</sup> Mush's indiscretion allowed Blackwell and others in the Clink to 'triumph... and say he is of the same opinion with them'; they cared 'not three chipps' for the archpriest's authority.<sup>21</sup> Others, like the secular priest Matthew Britton, took up a complex middle position. They denied the lawfulness of the oath but were prepared to compromise and 'deale in sacramentes' with other priests who themselves did not reprove their penitents who subscribed to Thomas Preston's justification of the oath.<sup>22</sup> Birkhead found himself in conflict even with his agent in Rome, Thomas More, over More's rather too active campaign against Jesuit opinion on the oath, and his attempt to obtain a papal censure of some of Robert Persons's comments in *A Treatise Tending to Mitigation* of 1607.<sup>23</sup> Most of all the archpriest was worried that his open lack of authority would allow all to do as they pleased and that 'we shall in tyme fall into horrible schismes and devisions amongst our selves' and that 'yf any be once discontented and cannot have his will, he presently beginneth to imagin his flight to the enemy'.<sup>24</sup>

In other words, Birkhead foresaw the destruction of English Romanism from within through the regime's new stratagem. The limited restoration of Roman forms of religion in England relied entirely on maintaining a clear and united front towards a regime, by turns hostile or tolerant. It also relied on the maintenance of the precarious balance between the interests and programmes of the different types of Romish cleric operating in a state where there was no Roman establishment on which catholic clergy and laity could rely for regulation and direction. This complex dual balancing act was being rapidly undermined by the oath, and mayhem ensued. The signs were readily apparent by 1612. William Warmington published a polemical work in defence of the oath, while other priests in the Clink (like Warmington's friend Richard Sheldon, and Edward Collier), after a period when they defended the oath, quarrelled with Blackwell and actually proceeded to change religion.<sup>25</sup> (Sheldon became a writer of violent anti-popery polemic.) Views about the lawfulness of the oath had a worrying tendency to link up with older disputes about occasional conformity.<sup>26</sup> Francis Barnaby, a secular priest whose family

<sup>20</sup> A.A.W., A x, 307–8 (part printed in Tierney, iv, clxxvi–clxxx), 347, 389, 513; cf. A.A.W., A x, 41, 73, 74, 93, xi, 64. <sup>21</sup> A.A.W., A x, 57. <sup>22</sup> A.A.W., A viii, 39, xvi, 119.

<sup>23</sup> Birkhead told More in August 1612 that he was 'ever remisse in havinge any thinge don [even] against Mr Blackwell'; More's continued dissent, said Birkhead, 'maketh me at my wittes end', and he threatened to get another agent; A.A.W., A xi, 351–3, cf. A x, 411, 435, 441, 453–5, xi, 1, 5 (entreating More in January 1612 'not to write so favorably to Mr Blackwell or others in the Clink for he told a frend of the Jesuites, that yow were wholly for them and that the intelligence yow send to me, is nothinge in respect of that which yow give to them').

<sup>24</sup> A.A.W., A xi, 63.

<sup>25</sup> A.A.W., A x, 57; Sheldon, *Motives*, sig. Rr.

<sup>26</sup> A.A.W., A xii, 387; John Clinch, a secular priest in the north (and confessor to Sir Roger Widdrington the loyalist catholic whose name concealed the polemical authorship of Thomas Preston), was reported in August 1612 to be 'of opinion with Mr Blackwell and the rest'; it seems that he may have been among the priests in the north in the 1590s who supported some compromise position over attendance of protestant churches, opinions which he was still maintaining in 1612; A.A.W., A xi, 352–3, 521; G. Anstruther, *The seminary priests* (4 vols., Ware and Great Wakering, 1968–77), 1, 81; Aveling, *Northern catholics*, p. 168.

was actively conformist, had come close to apostasy while he was involved in the appellant controversy. He never completely abandoned his catholic clerical orders but was heavily involved in persuading lay catholics to take the oath.<sup>27</sup>

In May 1612, Birkhead reported to Rome what was now plainly obvious – that the recent enforcement of the oath had fractured English catholic ideological unity into an uncontrollable variety of opinion: some now thought that the pope's powers were limited to the censure of excommunication; many others 'hold that he hath such an autoritie, but varie in this respect; that they hold it not to be de fide', and 'some lastly that seinge it is holden by great divines not be de fide, they may safely adventure to take it, rather then to loose their livinges'. The seculars were trapped between the Scylla of Roman curial orders that they enforce the papal breves against the oath strictly, and the Charybdis of splintering catholic lay opinion, the open conflict between Roman and Gallican interpretations of the oath, the scandalous opportunism of the religious orders (who were thought by some to have secret dispensations from Rome, which they could exercise in their penitents' favour in this matter), and the constant rumours that Rome was about to alter its official position and abandon its original condemnation of the oath.<sup>28</sup>

Evidently, the Jacobean oath of allegiance divided not just loyalist clergy from outspoken clerical supporters of the papal deposing power, but also clerical loyalists among themselves; it broke up the political unity of all the major clerical groupings; it divided not just cleric from cleric but also clerics from laity. Nothing that the Elizabethan authorities had done caused the chaos and division that the 1606 oath managed so effortlessly, and under a convincing guise of moderation, to introduce among English papists. The subtlety of the pressure that the government exerted through the oath was capable of dividing individuals even within themselves. It seems that Robert Drury, who refused a reprieve (offered to him should he take the oath), might well have sworn it, had it not been pressed on him publicly.<sup>29</sup> Birkhead's opposition to it was more from duty than conviction. In November 1613 he became convinced that the authorities knew where his residence was, and were manipulating his fear of apprehension to blunt his effectiveness in opposing the oath. He was like a piece pinned on a chess board: 'there is no man in my case in all this land', he complained to More, 'and the katt never watched so greedily for the mouse, as the magistrate, who knoweth where I am, watcheth my cariadge and doinges. The least thing in the world, will sett him upon me... and upon my frendes.'<sup>30</sup>

Is it right, therefore, to assume that the regime designed the oath merely to bring loyal papists within the pale of political respectability? The effect of its promulgation, as I have described it, strongly suggests not (unless we assume that the regime had given no thought to the oath's ideological potential). It did

<sup>27</sup> Anstruther, *Seminary priests*, 1, 22–24; P.R.O., E 368/496, mem. 82a; Lambeth Palace Library, MS 2006, fo. 191r; Bodl., Barlow MS 13, fo. 103r; Bodl., Bodley MS 313, fo. 17r; A.A.W., A xi, 345.

<sup>28</sup> A.A.W., A xi, 213.

<sup>29</sup> *A true report of the arraignment... of... Robert Drewrie* (London, 1607), sigs. B4v–C3r.

<sup>30</sup> A.A.W., A xi, 461.

not create two solid groups among the English papist factions, one for and one against the oath, but instead caused total havoc and confusion among them all. Surely this was no accident? Are we to believe that the regime just blundered into the most destructive anti-Romish act of state since the Elizabethan restoration? I think it is worth looking again at what the regime was trying to do when it drafted the oath.

The statutory form of words was no mere loyalty test. In any case, the government could hardly have thought that real political extremists would either reveal or jeopardize themselves by refusing the oath openly (though the polemicists argued long and hard about the sacredness of oaths). There was quite enough casuistical theory around to permit virtually anyone to take any oath in any situation.<sup>31</sup> Matthew Britton's clerical friends would not reprove their penitents who took the oath because they swore it not in the sense condemned by the pope, 'but in an other sence distinct from that which the pope hath forbidden though materialle and in wordes it be the same'.<sup>32</sup>

Irrespective of the casuistic intentions of individual catholics (and it is clear that many English catholics were desperate to avoid taking the oath as it stood<sup>33</sup>), the oath's ideological content and the authorities' enforcement of it suggest that 'official' declarations that it was limited to temporal loyalty were not entirely honest. Or rather, the regime was not just trying to find and eliminate those who thought the papal deposing power was *de fide* and offer practical toleration to those who were prepared to reject it. John Almond thought the deposing power was not a matter of faith; catholics could either accept or reject it. But he still refused to take the oath, and was executed in 1612.<sup>34</sup> James professed to distinguish between moderates and radicals, but among the radicals he listed both catholic clergy and lay apostates from protestantism, as if conversion to Rome automatically entailed an acceptance of the papal deposing power to which James objected.<sup>35</sup> A closer reading of James's speeches to parliament on 9 November 1605 and 21 March 1609/10

<sup>31</sup> When Richard Lloyd took the oath of supremacy in 1590 but later declared himself still a Roman catholic he explained that he did not fully realize that the words he had read were the oath of supremacy and anyway 'he did reade the wordes very fast and mynded them not', and was practising a whole host of mental reservations at the time; B.L., Lansd. MS 64, fo. 10v.

<sup>32</sup> A.A.W., A viii, 39; the text of the oath stipulated that it should be taken according to the plain sense of the words and without any other meaning. To some catholics oath-taking was clearly a matter of supreme indifference, and protestants suspected that even those who were not indifferent could secure papal dispensations to take what oaths they liked; *HMC Salisbury MSS*, viii, 407–8; J. E. Neale, *Elizabeth and her parliaments, 1584–1601* (London, 1957), p. 54; cf. James Howell, ed., *Cottoni posthuma* (London, 1651), p. 154.

<sup>33</sup> Gifford, 'Controversy', pp. 70, 78; Lunn, 'English Benedictines', p. 148; B.L., Lansd. MS 92, fo. 111r; A.A.W., A ix, 117 (part printed in Tierney, iv, clxiii), x, 93, xi, 85; P.R.O., S.P. 14/49/26, fo. 44r; William Harrison, *The difference of hearers* (London, 1614), sig. A7r, implying mass refusal in Lancashire; Sommerville, 'Jacobean political thought', p. 38.

<sup>34</sup> R. Challoner, ed. J. H. Pollen, *Memoirs of missionary priests* (London, 1924), p. 332.

<sup>35</sup> Fincham and Lake, 'Ecclesiastical policy', p. 184; cf. B.L., Lansd. MS 153, fo. 293v, suggesting that James's perception of which catholics were to be targeted was given serious consideration by the privy council. In this, James's thinking follows the general line of the Elizabethan treason legislation: being actively reconciled to Rome sacramentally was defined as



shows that he is distinguishing not between moderate and disloyal catholics but between those who have an active allegiance, religious as much as political, to Rome and those who do not. Those he seems to call moderates are people who merely cling to some popish superstitions.<sup>36</sup> The ‘loyalty’ context is misleading.

So – what was the regime trying to do with an oath that clearly probed further than the oath-taker’s temporal allegiance? Obviously the oath was not a straight rejection of all Rome’s religious authority. If it had been, then it would automatically have alienated all who regarded themselves as catholic and lost most of its potential to influence their opinions. For this reason James personally intervened in its formulation to strike out a clause saying that the pope could not excommunicate the king.<sup>37</sup> But its text clearly went beyond a mere rejection of the papal deposing power, direct or indirect, which, it was well known, some catholic divines and scholars regarded as only a probable matter or one that was indifferent. It was the novel ‘impious and heretical’ clause rejecting the ‘damnable doctrine’ that excommunicated or deprived princes ‘may be deposed or murdered by their subjects’ which caused the problem.<sup>38</sup> As David Lunn points out, for a catholic to swear this was to say that ‘the many theologians and even popes who had defended it speculatively had been cut off from the life of the Church’.<sup>39</sup>

But the oath was a far more subtle attack on the structures of English Romanism than merely an aspersion on the integrity of occupants of the papal chair. The ‘impious and heretical’ clause attacked papal authority, not by a bald statement that all supporters of the deposing power subscribed to an unallowable set of opinions about tyrannicide, but by blurring the boundaries between excommunication, deposing power, deposition and tyrannicide, so that the oath could be interpreted, at least on one level, as a statement that central aspects of Roman doctrine were heretical. Then – and this was the master stroke in the oath’s composition – this unacceptable clause was juxtaposed with a general denial of the deposing power (which under normal circumstances was a matter of legitimate debate among catholics and on which

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treason while papist practices like hearing mass attracted lesser penalties; L. J. Ward, ‘The law of treason in the reign of Elizabeth I, 1558–1588’ (unpublished Ph.D. dissertation, University of Cambridge, 1985), p. 60.

<sup>36</sup> C. H. McIlwain, ed., *The political works of James I* (New York, 1965), pp. 285, 323.

<sup>37</sup> Gifford, ‘Controversy’, p. 43.

<sup>38</sup> Sommerville, however, argues that this clause was just one of a number of aspects of the oath which Romanists found equally objectionable; Sommerville, ‘Jacobean political thought’, p. 109; but cf. Gifford, ‘Controversy’, p. 48; B.L., Lansd. MS 487, fo. 30r; zealous catholics were frequently prepared to swear loyalty to the king irrespective of whether the pope had excommunicated him, but rejected this clause and thus the entire oath, A.A.W., A xi, 77. John Almond singled out this clause as the oath’s principal offence against catholic sensibilities; Challoner, ed. Pollen, *Memoirs*, p. 331.

<sup>39</sup> Lunn, ‘English Benedictines’, p. 147; William Bishop said the reason he would not take the oath was that by it ‘a man must abjure a certaine proposition as hereticall, which to be hereticall hee doth not finde that anie Counsell hath yet declared’; P.R.O., S.P. 14/63/74, fo. 108v; cf. A.A.W., B 24, no. 20.

Roman theorists had never agreed). The result was to turn a denial of the deposing power into what could plausibly be regarded as a rejection of the papal primacy. The subtle genius of the oath was that it was calculated to erode and dissolve the boundaries that gave some form and resilience to English Romanist dissent in the absence of the normal ecclesiastical structures. The oath thus took a common species of contemporary debate about the origins of political authority and gave it an additional polemical spin so as to break up the uneasy consensus among English Romanists about the grounds for their continued religious nonconformity.

As J. V. Gifford has demonstrated, the oath capitalized upon a division in contemporary opinion about the origins of the state and the relationship between grace and nature. This division did not run along sectarian lines but was to be found in both churches.<sup>40</sup> Briefly, Gifford shows with remarkable clarity that catholic opponents of the oath regarded the church as a visible commonwealth; it must therefore have a visible government and head, and weapons with which to protect itself, hence the requirement for the primacy – a unity of spirituals and temporals in a single hierarchy. They rejected the distinction made by supporters of the oath (including many other catholics) between the church as the invisible body of Christ holding spiritual power (in, for example, the sacraments and excommunication) and the church as an institution possessing temporal power. The opponents of the oath saw grace (in which the church was founded) and nature (in which the state was founded) as existing in a single hierarchical structure. They argued that man's end was spiritual and so his material body and possessions 'found their end in serving the soul', and likewise the state 'found its end in subordination to the Church'. The justification for the primacy was found ultimately in the perception that nature was subordinate to grace. If the church were a visible commonwealth then it could be harmed by attacks from the temporal sphere, and since God could not have intended that it should remain defenceless it must necessarily have weapons (and principally the deposing power, defined either as direct or indirect) to defend itself. This went beyond the purely spiritual weapon of excommunication (though, as Sommerville points out, catholic opponents of the oath saw the excommunicating and deposing powers as only different aspects of the same power). By contrast, the supporters of the oath saw the realms of grace and nature existing side by side. Kings were appointed directly by God. In their view 'in so far as the Church was spiritual it was part of the order of grace' but to the extent that it was temporal it was part of the natural order, and therefore subject to temporal rulers in that proportion.<sup>41</sup>

To the extent that defenders of the oath argued that nature and hence the temporal power were not part of a single hierarchy under grace, indirectly they

<sup>40</sup> Sectarian division occurred more clearly over who had power or authority to depose a king; J. P. Sommerville, *Politics and ideology in England, 1603–1640* (London, 1986), p. 190.

<sup>41</sup> Gifford, 'Controversy', chs. 5 and 6. Cf. Sommerville, 'Jacobean political thought', pp. 154, 210, 272–4, 318; Sommerville, *Politics and ideology*, pp. 196–8.

could be thought to deny all the assertions made by catholic polemicists that English catholics had a right and, indeed, a duty to look for an end to the schism between England and Rome. This, then, is presumably what the regime intended should happen when it threw this apple of discord among its papist subjects. Gifford shows that in this respect the oath of allegiance of 1606 might be seen as the ideological equivalent of the oath of supremacy, which asserted the right of the sovereign to govern the church in temporal matters. He demonstrates that while catholic defenders of the oath tried to rebut this interpretation, protestant defenders were generally happy to affirm it. Of course, catholics and protestants disagreed about the authority that the supremacy sought to confer on the king. Catholics saw the supremacy giving the monarch jurisdiction over doctrine. Protestants thought he derived from it authority only over the church's temporal existence. (This conflict, like that about the oath of allegiance, relied on a dispute over how the church was distributed between the realms of grace and nature.) But the ideological foundations of the oath of allegiance were potentially a model for the royal supremacy, which itself relied on the doctrine 'that both spiritual and temporal rulers were supreme in their own areas of authority'.<sup>42</sup> Catholic opponents of the oath were in no doubt that the oath of allegiance was the ideological equivalent of the supremacy oath.<sup>43</sup> Or rather, they saw that the polemical genius of the oath, an oblique affirmation (on one reading) of the supremacy through an ambiguous delineation of allegiance in terms of widely recognized definitions of temporal and spiritual power, could push people, perhaps unwittingly, towards a protestant view of the relationship between church and state, and hence make them concede many of the regime's demands over conformity. In Robert Persons's words,

as for the chief drift and intention of the oath if we consider either the forme and words therof, or the occasion of enacting it, or the meaning of the enacters, it can be no other then by the diversity of words put in another forme to force men by a sleight, to take the oath of the Kinges supremacy: For the words of the oath do conteine nothing els but a freeing of the king and his subjects from all superiour and as they terme it forrain power and autority whatsoever.<sup>44</sup>

The words of the oath thus pointed Roman catholics towards full religious conformity. This was not because it crudely associated loyalty with doctrinal protestantism. The oath could extort more, paradoxically, by asking less; by damaging, in fact, a catholic's allegiance to Rome without going quite beyond

<sup>42</sup> Gifford, 'Controversy', pp. 182–90; Samuel Page, *The allegiance of the cleargie* (London, 1616), pp. 10–12.

<sup>43</sup> Gifford, 'Controversy', pp. 80–1; Robert Persons, *The iudgment of a Catholicke English-Man* (St Omer, 1608), p. 13; John Percy, *A reply made unto Mr. Anthony Wotton and Mr. John White* (St Omer, 1612), p. 82. The act books of the high commission at York record that in February 1607 John Fletcher appeared in York Castle and was offered the oath of the 'Kings *supremacie* [*sic*] maid in the last sess[ion] of Parliament', Borthwick, H.C.A.B. 12, fo. 25r.

<sup>44</sup> Stonyhurst, Collectanea MS P I, fo. 161v.

the bounds of a widely held body of contemporary opinion about the deposing power which was not exclusively protestant. And because of its indirect affirmation of the link between religious and political allegiance, it is arguable that taking the oath was potentially a sign of a more thoroughgoing concession to government propaganda about the supremacy than, for example, the highly ambiguous practice of attending a church (occasional conformity or ‘church papistry’) in order to fend off the penalties for recusancy. Catholics might think they could be loyal to their king and yet retain their system of belief based on the authority of Rome. The tendency of the oath, however, is to confuse catholic attempts to keep apart religious and political loyalties so that they could no longer distinguish between their allegiance to the king and allegiance to the Church of England. Nor was the intention of those who drafted the oath that this should be a limited measure. The statute of 1606 allowed this oath to be enforced on a very wide category of people: any bishop or two J.P.s, one being of the quorum, could administer the oath to any convicted recusant or to anyone who had not received the communion twice in the past year or to any unknown traveller who would not deny upon oath that he was a recusant. Those who refused were gaoled until the next assizes or quarter sessions when, if they refused the oath again, they suffered the penalties of praemunire.<sup>45</sup> The difference between the oath legislation, which forced its way into the conscience of the individual, and the recusancy legislation, which in effect legalized at a much lesser price a species of ecclesiastical eccentricity, is very plain. The recusancy legislation was for the majority a licence to dissent, while the oath could be used to strike at any standing out against conformity at all. Thus the Jacobean regime made a window into men’s souls in a way the Elizabethan regime had only briefly contemplated.<sup>46</sup>

Yet two related questions remain. First, was this how the regime *intended* the oath to work? If it drafted an admittedly draconian oath but had no real intention of using it, then it is arguable that the authorities did not actually want to eradicate English Romanism. Secondly, if this is what the government wanted, was it actually capable of enforcing its will and deriving from the oath the political benefits it desired? These questions depend upon the evidence of how it was employed in practice, and this is the final point which I wish to pursue.

Historians have tended to argue first that the oath was not properly enforced at any stage after 1606, and even where it was tendered to catholics they were generally prepared to take it as if it did not affect their religious opinions. Aveling points out there is evidence for only eighty catholics in the North Riding of Yorkshire ever being faced with it. He argues that in the West Riding the J.P.s grossly failed in their duty to impose the oath, and that the high commission tendered the oath there to only fifteen recusants between 1606 and

<sup>45</sup> Sommerville, ‘Jacobean political thought’, p. 4. As Sommerville points out, the Elizabethan regime had forced priests to speak their minds about the deposing power, but recusants had not been quizzed thus; *ibid.* p. 16.

<sup>46</sup> B.L., Lansd. MS 47, no. 33.

1642.<sup>47</sup> Gifford says that the oath was not administered consistently, and was enforced only as the result of specific, though spasmodic, directives from central government to the judges. Also he suggests that the incentive to enforce its penalties according to the letter of the law was rapidly affected by financial considerations – the ways that the exchequer and greedy courtiers could profit from compositions for the praemunire penalty or money paid to purchase exemption from its tender. This displaced the original political purpose of the oath.<sup>48</sup>

This, however, is probably a gross underestimate of the force and frequency with which it was administered before 1625. This is not to say that it was enforced uniformly, systematically, or consistently, or that its enforcement was not sometimes governed by profiteering. It is doubtful also if it was ever meant to be put to everyone with catholic sympathies or tendencies. But its usage was for a time wider spread than has previously been appreciated.

Almost as soon as it passed into law, enthusiastic anti-papists like George Lloyd, bishop of Chester, started extorting it,<sup>49</sup> but, as Ryan points out, tendering of the oath really began with the proclamation of 1610 and the accompanying act, 7 & 8 James I, c. 6.<sup>50</sup> In mid-1610 Birkhead reported to Richard Smith that, following Henri IV's assassination and the new proclamation, 'the prisons are filled againe' and the oath 'is more exacted than ever'; the statute means that 'everie fortnight the Justices are to offer the oath'.<sup>51</sup> The catholic clerical newsletter writers genuinely regarded the tendering of the oath by J.P.s as a serious attempt to break up the English Romanist organization.<sup>52</sup> The authorities were taking active steps to ensure it was sworn, by deception if necessary: 'yow will not beleve' said Birkhead 'what trickes are used to make them [catholics] thinke that both my selfe and diverse of our sort do suppose yt may be taken'. Letters purporting to be from him and

<sup>47</sup> Aveling, *Northern catholics*, pp. 214–15, 247–8; cf. Sommerville, 'Jacobean political thought', p. 73; Aveling, *Catholic recusants*, pp. 230–1. Sir Robert Cotton remarked that 'the oath of Allegiance is not offered generally to servants and mean people', and its administration was entirely inadequate; Howell, *Cottoni Posthuma*, p. 154.

<sup>48</sup> Gifford, 'Controversy', pp. 69–71. Certainly financial considerations affected official thinking on the oath, P.R.O., S.P. 14/65/89, S.P. 14/67/71, fo. 95v; forfeitures for refusal passed smoothly into the system of court patronage and royal grants; Cliffe, *Yorkshire gentry*, p. 179. In May 1612 Richard Broughton said that compounding was in order 'to fee the Scotts, as report goeth'; Lord Rochester had already begged Lord Vaux's composition from the king, A.A.W., A XI, 209; in February 1614 Lord Sheffield was delighted to obtain £1,000 from William Vavasour, the price of his refusal to take the oath, A.A.W., A XIII, 89.

<sup>49</sup> J. H. E. Bennett and J. C. Dewhurst, *Quarter sessions records...for the county palatine of Chester, 1559–1760* (Record Society of Lancashire and Cheshire, xciv, 1940), pp. 57–8; P.R.O., S.P. 14/49/26, fo. 44r–v; Joseph Creswell, *A proclamation* (St. Omer, 1611), pp. 77–83.

<sup>50</sup> Ryan, 'Jacobean oath', p. 171: the statute directed that the oath should be administered to wide classes of people (courtiers, officials, lawyers, university men, and so on), and made no exceptions in favour of peers as the 1606 statute had done; T. Birch, ed., *The court and times of James the first* (2 vols., London, 1848), I, 116–17; La Rocca, 'James I', pp. 254–5; cf. C. H. Cooper and J. W. Cooper, *Annals of Cambridge* (5 vols., Cambridge, 1842–1908), III, 35–6; A. J. Loomie, *Spain and the Jacobean catholics* (C.R.S. LXIV, LXVIII, London, 1973, 1978), I, 155.

<sup>51</sup> A.A.W., A IX, 115, 149.

<sup>52</sup> A.A.W., A IX, 131.

approving the oath had been shown to the 'weaker sort' causing many of them to take it. He added that although many wanted to take it with some type of limiting clause, this was not being allowed. He implies that previously some J.P.s had deliberately impeded the administration of the oath because the penalty for refusal was so severe, but now they are liable to be called before the privy council if they dare to do this.<sup>53</sup> Policy documents which came before the privy council in 1610 argued that the oath had no practical value unless it was enforced strictly; the regime should not 'waive and forsake the principall end and scope of the Law'. To mitigate its enforcement would be like reducing the recusancy penalties so that all papists could afford to pay in order not to attend church.<sup>54</sup> By August 1611, among the politically prominent, only Lord Montague had held out.

Despite Blackwell's deposition, the papal breves, and the deprivation of catholic clerical supporters of the oath of their priestly faculties, it seemed to Birkhead that the vast majority of catholics were being compelled to concede.<sup>55</sup> On 3 August 1611 he wrote to More that it is 'now most hotely prosecuted, everie one that can be found, is cited by the constable to appeare before the iustices' and everyone who refuses is gaoled. On a single day thirty had been committed to prison by the London J.P.s.<sup>56</sup> 1612 saw a renewal of the government's enthusiasm. Before the assize judges went on circuit they were instructed to administer the oath strictly 'and to certifie how the justices of peace in all countries had dealt in yt according to the statute'.<sup>57</sup> Birkhead thought that, though some stood out, the majority were ready to take it. While northerners like John Sayer and William Vavasour compounded for refusal, several gentry from Norfolk and Suffolk had recently sent in a certificate that they had taken it.<sup>58</sup> Birkhead's assistants in other counties said that the oath was being exacted everywhere.<sup>59</sup> In July 1612 the Oxfordshire J.P.s were busy extorting it from prominent catholics.<sup>60</sup> Richard Broughton said in March 1614 that Sir Edward Montague and other like-minded protestants in

<sup>53</sup> A.A.W., A IX, 163–4, cf. Atkinson, *Quarter sessions records*, I, 203.

<sup>54</sup> P.R.O., S.P. 14/56/60, S.P. 14/68/63. It was proposed in parliament in 1610 that recusants who sought to take leases of their own sequestered property were not to obtain them until they had taken the oath; *C.S.P.D. (Calendar of state papers domestic), Addenda 1580–1625*, p. 524.

<sup>55</sup> A.A.W., A IX, 163, 269, x, 269, 273.

<sup>56</sup> A.A.W., A X, 273, cf. x, 377.

<sup>57</sup> N. McClure, ed., *The letters of John Chamberlain* (2 vols., Philadelphia, 1939), I, 336–7. The bishops, given the discretion by statute to demand the oath, were an important element of the campaign to enforce it. In March 1611 Birkhead said it was rumoured that James had commanded Abbot 'to take strickt order that everie b[ishop] in his diocesse should see the oath precisely ministred to persons of all sortes and sexes as they wold answere the contrarie'; A.A.W., A X, 73. Bishops like Anthony Rudd and George Lloyd were active in pinpointing influential catholics, and cooperating with the judiciary and magistracy in order to compel them to take it; P.R.O., S.P. 14/67/1, fo. 1r; Bennett and Dewhurst, *Quarter sessions*, pp. 57–8. In October 1611 Thomas Dove, bishop of Peterborough, assured the privy council that he had not been lax in administering it in his diocese, P.R.O., S.P. 14/66/68, fo. 132r. William James was enthusiastic that it should be enforced in full, P.R.O., S.P. 14/68/63.

<sup>58</sup> A.A.W., A XI, 194.

<sup>59</sup> A.A.W., A XI, 217.

<sup>60</sup> A. G. Petti, ed., *Recusant documents from the Ellesmere manuscripts* (C.R.S. LX, London, 1968), pp. 208–10; after two refusals even Lady Stonor was compelled to take it; P.R.O., S.P. 14/70/54.

Northamptonshire were exacting the oath as well as the fine for failure to attend divine service.<sup>61</sup> The same period saw many recusants imprisoned in York Castle for refusal.<sup>62</sup> In 1615 the Jesuits said that Coke as lord chief justice had to date summoned 16,000 catholics to take it.<sup>63</sup> In 1619 the Jesuits reported that the privy council was still directing magistrates in the provinces to ‘instigate fresh acts of violence against the faithful, compelling them to take the oath’, and there is some evidence to show these directions were followed.<sup>64</sup> In 1612 leading recusants started offering large compositions in order not to have to take it or to secure pardon for refusal.<sup>65</sup> The case of Sir Henry James in that year demonstrates the devastating potential consequences of refusal of the oath.<sup>66</sup>

What is clear is that the oath was not used merely as an occasional weapon against those who were considered to be politically dangerous. Nor does the fact that relatively few catholics are recorded as having refused the oath mean necessarily that J.P.s administered it only to those people.<sup>67</sup> The scarcity in court records of its use is perhaps an indication that it was not normally administered to dissidents in a judicial forum, though they might take it there if they were certifying conformity in the face of a recusancy indictment or conviction. Certainly, the fact that the northern high commission records for particular years, e.g. 1609–12, seem to be rather scanty should not be taken to imply that it did not bother to enforce the oath at such times.

Not only was the oath enforced with more vigour than historians have realized, but the way in which it was used tells us quite a lot about the intentions of the regime that drafted it. It is quite clear that there was a recognized practical connection between the oath and full religious conformity within the law, even if vast numbers when faced with it did not promptly become godly protestants. As Wallace Notestein observed, the discretion that it gave to bishops as well as J.P.s was a ‘powerful weapon not only to use if necessary but

<sup>61</sup> A.A.W., A XIII, 117.

<sup>62</sup> J. Morris, *The troubles of our catholic forefathers* (3 vols., London, 1872–7), III, 453; A.A.W., A XI, 65, A XIV, 623; Borthwick, H.C.A.B. 12, fo. 145r; M. Murphy, ed., *St Gregory's college, Seville, 1592–1767* (C.R.S. LXXIII, London, 1992), p. 172.

<sup>63</sup> Foley, *Records*, VII, 1096; in 1614 Broughton reported that Coke had summoned in Hilary term forty gentlemen before him to swear the oath; A.A.W., A XIII, 59.

<sup>64</sup> ‘Annual letters of the vice-province of England’ (for 1619), *Letters and Notices*, XI (1876–7), 273–88, at p. 274; R. N. Worth, *The Buller papers* (privately printed, 1895), p. 7 (for which reference I am grateful to Kenneth Fincham).

<sup>65</sup> For the principal Yorkshire compounders, Cliffe, *Yorkshire gentry*, pp. 178–9; A.A.W., A XI, 209; for pardons for refusal, P.R.O., S.O. 3/5, June 1611 (Lord Montague, cf. A.A.W., Anglia MS VIII, no. 32, it was expected that he would have to compound in the sum of £6,000), Nov. 1612 (William Middleton, Richard Townley), July 1613 (John Edwards), Dec. 1613 (Richard Kirkham, Henry Darrell, Thomas Aprice), Feb. 1614 (George Talbot); *C.S.P.D. 1603–1610*, 589; *C.S.P.D. 1611–1618*, 137 (Edward Morgan paid £1,000 for the oath not to be tendered to him again, A.A.W., A XI, 370); J. J. La Rocca, ‘James I and his catholic subjects, 1606–1612: some financial implications’, *Recusant History*, XVIII (1987), 251–62, at p. 252.

<sup>66</sup> H. Bowler, ‘Sir Henry James of Smarden, Kent, and Clerkenwell, recusant (c. 1559–1625)’, in A. E. J. Hollaender and W. Kellaway, eds., *Studies in London history* (London, 1969), pp. 289–313, at pp. 307–8; A.A.W., A XII, 524; P.R.O., SO 3/6, Mar. 1614, Nov. 1615.

<sup>67</sup> Aveling, *Catholic recusancy*, pp. 231–2.

to hold over those who would not conform'.<sup>68</sup> It was to be employed to threaten those who would not go to church, or even those who would not receive the sacrament, rather than those who wanted to kill James I. In 1609 Lord Eure was tendering it with a view to conformity in the West Midlands.<sup>69</sup> In November 1610, Samuel Page preached to the clergy of the Rochester diocese who had assembled to take the oath and told them that their duty was to 'recover so many of our recusant brethren, as are not frozen in their dregges of superstition...to the unities of our Church, and the obedience of our Sovereigne', clearly implying a connection between the oath and the eradication of recusancy.<sup>70</sup> The earl of Northampton reported to Lord Rochester in 1612 that 'some have repaired to the church since this sharpe course of proceedinge [over the oath] that before could not be drawne to it'.<sup>71</sup> Those at the North Riding quarter sessions who were pressurized into taking it, frequently conformed as well.<sup>72</sup> After 1607 virtually all those who recanted officially before a bishop were required to take the oath of allegiance (though not necessarily the oath of supremacy). The 1606 oath thus became a vital part of the full statutory conformity procedure. Sir John Hedworth, a Durham recusant, submitted according to statute in 1619–20. He brought down to London a conformity certificate from Bishop Richard Neile and the assize judges to present to the barons of the exchequer in order to discharge his convictions for recusancy. The certificate affirmed that Hedworth had heard divine service, received communion, and, apparently, taken the oaths of supremacy and allegiance. But the barons judged that 'it did not then appeare to the Courte that he had submitted himselfe according to the lawe or taken the oathe of Allegiance' actually in the presence of the assize judges. According to law, his swearing of the oath should have been performed before the 'Judges of Assize for the... Countye Pallatin of Durham'; he must 'attend' the judges in person and bring to the exchequer a certificate that he has done this.<sup>73</sup>

Some catholic clergy, and particularly the Jesuits, were certain that full conformity was the natural corollary of accepting the oath. It was feared that Blackwell's opinion in favour of the oath would give 'liberty to some to go a little further, and to make no scruple of going to church' since 'the reason which is yielded for the one doth also hold for the other, and so all generally take the oath, and very many fall from the Church'. Holtby wrote to Persons in October 1606 that 'now, not only weak persons here and there upon fear of temporal losses, do relent from their constancy, but whole countries [i.e. counties] and shires run headlong... unto the heretics' churches to service and sermons, as a thing most lawful; being emboldened thereunto by the warrant of their pastors and spiritual guides' [i.e. the ones who approved of the oath].<sup>74</sup>

<sup>68</sup> W. Notestein, *The house of commons, 1604–1610* (London, 1971), p. 147.

<sup>69</sup> P.R.O., SP 14/49/26; Eure was working in conjunction with Robert Bennett, bishop of Hereford, an enthusiastic promoter of conformity among recusants, S.P. 14/48/137, 138.

<sup>70</sup> Page, *Allegiance*, p. 14.

<sup>71</sup> P.R.O., S.P. 14/70/54.

<sup>72</sup> Atkinson, *Quarter sessions records*, I, 50–1; *Miscellanea* (C.R.S., LVI, London, 1964), p. xxxi.

<sup>73</sup> P.R.O., E 368/579, mem. 138a–b.

<sup>74</sup> Foley, *Records*, I, 64–5; Gifford, 'Controversy', p. 61.



Birkhead was expecting even in August 1611 that the future renegades Richard Sheldon and Edward Collier would 'wander astray'. In September 1613 he wrote to More that rebellious English catholic clerics were so enthusiastic in allowing the oath that 'one of these daies' they will 'defend also goinge to church and our superintendentes to be true bishops'.<sup>75</sup>

All the evidence that Birkhead needed to sustain his allegation was soon at hand. Several prominent renegades claimed that consideration of the oath had helped to persuade them to abandon Rome in its popish entirety. Theophilus Higgons, at the end of his Paul's Cross recantation sermon, said that the oath was the initial instigator of his return to protestantism: 'the only thing, wherein I did intend to conforme my selfe unto the desire of my friends, and will of superiours, was to take the oath of Allegiance', on the grounds that it was merely an affirmation of 'civill obedience'.<sup>76</sup> Nevertheless, the issue of civil obedience started his full religious reconversion process: its consideration 'did treat with me... to shew greater equanimity in the review of other points, now controversed, in Religion'.<sup>77</sup> John Salkeld implied that James's literary justification of the oath facilitated his abjuration of Rome.<sup>78</sup> Like Higgons, Richard Sheldon said that his doubts over papal supremacy were initiated by consideration of the oath.<sup>79</sup> Henry Yaxley claimed that the oath was one of his motives to convert. He wrote that if he had not 'found both by their Doctrine and practise that a man could not be a Catholike after the Roman fashion but that he must needes be a traytor, in my Conscience I had not forsaken them'. John Copley, another clerical renegade, desired that all catholic priests should be 'more reverently affected to higher powers... as... some have beene of late, as Master Blackwell, Master Warmington... and others'; the result of embracing their 'good examples' would be that God 'by such beginnings may draw them so from step to step, as perfectly to see and discover the erroneous doctrines of the Church of Rome, as well in other points of doctrine, as in that of the Popes pretended authoritie over Princes in temporalls'.<sup>80</sup> The fact that much of this clerical propaganda was produced under the auspices of the state suggests that the regime wanted the oath to be seen as the renegade clerics described it.

<sup>75</sup> A.A.W., A x, 269, xii, 387; in November 1613 Birkhead told More that Preston's most recent book 'seameth to say that no circumstance necessarie wanteth in there [the protestant bishops'] creation', A.A.W., A xii, 444.

<sup>76</sup> Theophilus Higgons, *A sermon* (London, 1611), p. 50; cf. Foley, *Records*, vii, 1014.

<sup>77</sup> Higgons, *Sermon*, p. 54.

<sup>78</sup> John Salkeld, *A treatise of angels* (London, 1613), sigs. \*3r-4r; P.R.O., S.P. 14/68/81; Foley, *Records*, v, 854; A. à Wood, ed. P. Bliss, *Athenae Oxonienses* (4 vols., London, 1813-20), iii, 488-9, cf. A.A.W., A xi, 351, xii, 159, 167, 375; Salkeld's printed work was limited to essentially non-polemical treatises, perhaps intended to reflect a moderate stance; A.A.W., A xi, 577.

<sup>79</sup> Richard Sheldon, *Certain general reasons* (London, 1611), bound with Higgons's recantation and William Barclay's *Of the authoritie of the pope* (London, 1611); cf. P.R.O., S.P. 14/63/18; Sheldon, *Motives*, sig. A2r-v, Bb2r; Sheldon was also a friend of John Salkeld; Richard Sheldon, *Christ, on his throne* (London, 1622), p. 13.

<sup>80</sup> Henry Yaxley, *Morbus et antidotus* (London, 1630), pp. 8-9, 39-40; John Copley, *Doctrinall and morall observations* (London, 1612), p. 124.

Of course, ultimately, the evidence of the actual physical enforcement of the oath is ambiguous. It cannot tell us for certain what the regime wanted from it. But the clear link between the enforcement of the oath and conformity – the swearing of allegiance and the absolute conceding of all the regime's ecclesiastical aims and premises – points us to rhetorical and polemical effects of the oath which did not rely simply on putting it to large numbers of suspected people. As Kevin Sharpe has argued, writing and texts 'not only reflect social arrangements and structures of authority; they are themselves acts of authority'. In this period 'the power of the crown and state depended largely on its representation of authority'. In the absence of standing armies and large bureaucracies, obedience 'rested more on a culture of order than on physical coercion'. Sharpe says this was particularly the case with 'the royal word', and that royal 'letters, proclamations and speeches... conveyed the king's power to the corners of the realm'.<sup>81</sup> Perhaps we may see the 1606 oath in this light and realize that it is a prime instance in this period, rhetorically and polemically, of the 'monarch... [claiming] authority over other voices and discourses',<sup>82</sup> asserting a specific interpretation of widely discussed and disputed elements of political and religious thought, and here, notably, through the rhetorical devices employed in the oath rather than, incidentally, because it happened to be contained in a statute. We may visualize, then, the oath's rhetoric as a particularly effective act of authority, irrespective of how many people it was forced on. Certainly it caused havoc in the minds of people who we know were never compelled to take it. Its undoubted force to disrupt the Romanist attempts to re-establish an independent ecclesiastical system of thought and practice in England derived from its daring rhetorical and polemical association of elements of political and religious thought that challenged the always uneasy determination of English Romanists to keep their consciences away from the prying eyes of the protestant state.

What, finally, does this tell us about the relationship between the state and English Romanism? First and foremost the oath was not a sign of a more tolerant regime. Of course, the promulgation of the oath did not annihilate papistry. In addition, towards the end of James's reign, the attractions of a dynastic match with Spain beckoned, and pressure on catholics was undoubtedly relaxed. But we should not therefore underestimate the oath as an extraordinarily forceful act of government which, for a time, seemed to threaten the existence of English Romanism in a way that no conventional 'persecution' ever could. The oath was, therefore, another, and just as vicious, stage in the same duel between the state and catholic dissent which James had inherited in 1603. It is certainly true, as Fincham and Lake suggest, that James envisaged an ecclesiastical polity which would include as many people as possible; but the inclusion was not to be on their terms. A catholic who wanted to be part of that polity might retain elements of belief which protestants would

<sup>81</sup> K. Sharpe, 'The King's writ: royal authors and royal authority in early modern England', in K. Sharpe and P. Lake, eds., *Culture and politics in early Stuart England* (London, 1994), pp. 117–38, at p. 117.

<sup>82</sup> Sharpe, 'King's writ', pp. 117–18.

regard as popish superstitions, but he had to surrender the ideological foundation for adhering to opinions (on certain key issues) which were outside the orthodoxy defined by the Church of England. Secondly, we misunderstand the nature of religious division between catholics and protestants in the Jacobean period if we assume that the formulation and enforcement of this particular statutory measure is a sign of the beginning of a divorce between religion and politics in the divided English Church. Joel Hurstfield believed that this was the case, that it was the first ‘hesitant step towards the recognition of schism, the separation of Church from State’.<sup>83</sup> Alexandra Walsham has recently suggested that, via the oath, James ‘was contributing to the sharpening of the boundaries between “religion” and “politics”, to their differentiation as separate spheres of theory and activity’.<sup>84</sup> Undoubtedly the perennially terrified archpriest Birkhead was not much of a political threat to James I, and even the first priority of the admittedly terrifying Jesuits was not the destruction of the established order in England. Nevertheless, the regime decided to retaliate after the Gunpowder Plot by drafting and enforcing an oath that struck at the entire ideological basis for Roman catholicism in England, and principally by an insistence that the religious tenets within it could not be held separately from the political ones. Roman catholicism, the oath said, posed the same threat to aspects of the established order that it had done in Elizabeth’s reign. In the Jacobean period protestants could still be sure, as Edmund Bunny had been in 1585, that ‘no man...can be of that profession [Roman catholicism], unlesse hee bee under that governement too’ and, with him, doubt strongly whether ‘their Church, & court’ could be ‘sundred’, or ‘their religion & regiment be parted’.<sup>85</sup> Though historians will continue to dispute about when and why papists were no longer thought to be a political threat, this is not the period in which they should be searching for the origins of this development. Religious opinions eventually became a matter of private conscience in which the state does not interfere, but the process did not commence with the Jacobean oath of allegiance.

<sup>83</sup> J. Hurstfield, ‘Church and state, 1558–1612: the task of the Cecils’, in J. Hurstfield, ed., *Freedom, corruption and government in Elizabethan England* (London, 1973), p. 102, cited in Sommerville, ‘Jacobean political thought’, p. 17.

<sup>84</sup> A. Walsham, *Church papists* (London, 1993), pp. 84–5.

<sup>85</sup> Edmund Bunny, *A booke of Christian exercise* (London, 1585), sig. Yviir.