

Justin A.I. Champion

I

In 1662 John Audland and John Wilkinson were imprisoned at Bristol, having been arrested at a Quaker Meeting house and committed to gaol for refusing to subscribe to the oath of allegiance<sup>1</sup>. In this, by no means singular, example the conflict between law and private conscience in the early modern period is starkly manifest. Audland and Wilkinson were examined by the civic authorities in the persons of the Major and two Aldermen and an attendant audience: conscience and legal authority confronted each other head on. While the Magistrates invoked the language of obligation, the two men petitioned both the court and the attendant audience with an alternative discourse of tender conscience and passive sufferance. For the magistrate the court was not a place of debate and discussion but one of enforcement: 'we have a law'. Disobedience, refusal, evasion and defiance of this law could only be characterised, from the magisterial perspective, as an act of sedition; consequently the accused were 'dangerous persons', attempting to seduce the people from their true obligation to the King. On the contrary, to Wilkinson and Audland the court procedure was a testing ground for their conscience, an opportunity to proclaim their suffering and witness their convictions. That the demeanour of Wilkinson and Audland was less than passive is clear from their combination of evasion and challenge in response to the magistrate's enquiries. Recalling that, as the transcript said, there were 'many people present' the threat that their behaviour presented to the public dignity of the court is perhaps best exemplified by the actions of the clerk who hurriedly snatched the Bible away from the defendants before they could turn the injunctions of scripture against the authority of the procedure. Rather than submitting to the indictment the defendants proclaimed their righteousness in suffering under the unjust and ungodly persecutions of latter day Pharisees. Ultimately the two men were punished for the 'Testimony of a good conscience' with imprisonment.

Importantly and unhappily, the fate of Wilkinson and Audland was not unique. Historians of Quakerism, using the martyrological accounts have written with great detail about the savage and brutal persecution experienced from the mid-1650s. Especially after the restoration of political and religious authority in 1660 radical sectarians like the Quakers, the Fifth Monarchists, and Baptists experienced a systematic and intense oppression which has very often been marginalised by historians of the period. The persistence of radical conspiracy and political plotting in the early years of the Restoration riveted the connection between religious and political dissidence: the disastrous rising of Fifth Monarchists in London, in early 1661, encouraged this culture of intolerance and legal proscription. Carefully contrived and ensnaring systems of statutes were established with the ambition of eradicating the more radical forms of dissent. Indeed, as many historians have argued, it was only the gap between enactment and enforcement that meant that religious minorities like the Quakers survived. It only requires the most superficial examination of the state papers, quarter sessions records, and cases of sufferings to gain a flavour of the extent and savagery of this persecution. Justified by the argument from authority, as the Mayor of Bristol put it in 1661 'that the laws of England [are] the Supreme Conscience of England', men and women, young and old were arrested, molested, abused, harassed and murdered for a series of activities such as failure to attend the parish Church, refusing payment of tithes, and non-swearing of oaths. Men and women died in their hundreds imprisoned in close, unhealthy and filthy prisons, at the mercy of ignorant and malicious guards.<sup>2</sup> Those who suffered did so, as a group of men in West Chester stated in 1660, 'out of pure Conscience, not obstinacy or Disaffection to the Government'.<sup>3</sup>

In the early summer of 1689, after much parliamentary wrangling and debate, the statute of 1 William and Mary Caput 18 took away much of the legal restraints against religious conscience.<sup>4</sup> Commonly called the 'Toleration Act', the statutory repeal of penalties against Protestant dissidents has very often been linked with the intellectual defence of the liberty of conscience articulated famously by John Locke. There was a distinction between a defence of the rights of conscience, and the mere taking away of certain penalties against religious worship. The 1689 Act did not break the link between civic liberties and religious identity. So for example, while

Quakers were no longer in danger of eradication by persecution (as long as they registered as non-conformists), they were still exempt from holding local, civic or national offices which were still protected by statutory tests of conscience<sup>5</sup>. The 'Toleration' Act gave no liberties to non-Protestant confessions.<sup>6</sup> Although the act of 1689 established some measure of relief to private conscience, battles over the legitimacy of the impositions of religious tests and oaths raged throughout the eighteenth century.

The current historiographical impression is however still that, in some sense, 1689 marks a watershed in the history of the confrontation between law and the conscience. Traditionally the history of the relationship between conscience and authority has been written from the perspective of the denominational minorities. The achievement of liberty of conscience was forged by the theoretical defences articulated by those religious cleavages who suffered at the hands of persecuting authority: thus in some sense the arguments advanced by John Locke in defence of sincere Christian liberty of thought and worship had their origins in sectarian justifications of dissidence from the established order. Thus the classical histories of toleration trace the origins of such ideologies back to the puritan writings of the sixteenth and early seventeenth century.<sup>7</sup> To characterise the meta-arguments of this historiography rights of conscience were born in the struggle of Godly minorities against the tyrannical and unjust imposition of the state. The progressive victory liberty of conscience over a persecuting political authority was teleologically linked to the rise of rationalism, modernity and democracy. More recently these Whiggish narratives have been challenged and exposed: the connections between liberty and conscience were determined more by confessional imperatives than any teleological commitment to pluralistic modernity. When 'puritan' pamphleteers and polemicists wrote in defence of tender consciences they, in the very act of defending their liberty, proscribed the same 'rights' to other confessions.<sup>8</sup>

One of the topoi of studies of the history of toleration is the construction of a simple opposition between arguments for authority and arguments in defence of conscience. The history is

ordinarily written from the perspective of conscience as if theoreticians of authority had no other intellectual ambition than unjust imposition. Those who imposed tests, penalties and shackles upon private conscience did so, not just in the name of political order but, in the name of God: they had sincere and conscientious motives for persecution. Conscience then was not a concept simply monopolised by the dissidents but lay at the very heart of the operations and understandings of state power. Conscience was an instrument of order and government. Roger L'Estrange writing in response to non-conformist pleas for liberty in the 1660s declared that 'to ask that ye may govern yourselves by you own consciences is the same things with asking to be no longer governed by the King's Laws'. Dissent was 'no longer a plea of conscience but a direct conspiracy against the government'. Samuel Parker, echoed L'Estrange's position, 'if tenderness of conscience be a sufficient excuse for disobedience, it is a destruction of the force of laws, giving every man liberty to exempt himself'. 'Public conscience' had 'command and determination' over individual liberty.<sup>9</sup> By default, debates about the rights and limits of conscience were debates about the authority and power of the state. Discussions were not simply about the rights of conscience against the state, but ultimately about how the state functioned: in order to think clearly about the place of conscience in the period it is important then to explore not only how conscience came into conflict with authority, but also how conscience constituted authority.

The social power of the English state was built upon an infrastructure of confessional identity and allegiance: it was a Protestant State both in 'idea' and 'system'.<sup>10</sup> In both of these senses the core identity of the functional power of the state was constituted by the construction of a particular confessionalism. Key discourses of order, authority, and religion, were structured around consensual understandings of the truth of the Protestant faith. These languages of government were not simply ideological fictions but were reified into institutions, disciplines and practices. The origins of the Protestant 'Church-state' were in the breach with Rome in the 1520s and 1530s: central to the ideological justification of the jurisdictional separation from Papal authority was the notion of the Imperial monarchy and the National Church. Onto this jurisdictional construction was grafted a theological indictment of Roman Catholic theology and

faith: the monarchy and the church became not only National but Protestant too. The understanding of the Royal Supremacy was built upon the foundations of conscience. Apologists for the Henrician and Edwardian 'Church-State' developed arguments that promoted a Protestant order embodied in the person of the monarch as a 'nursing father' to the realm.<sup>11</sup> The keystone of state power was thus represented as a figure of order, but also a figure of conscience: in effect a Protestant political theology had been established as the device of true government. The structure of power authorised in this theory was hierarchical with the monarchy enshrined in jurisdictional omniscience at the apex: it was also inherently unstable given its symbiotic relationship with the Protestant confession.

As Quentin Skinner has elegantly shown radical Protestant theorists, when confronted with Roman Catholic state authority, asserted that Godly conscience had a duty to resist spiritually corrupt sovereignty: God rather than man must be obeyed. The resistance theories of the Marian exiles set the tone for the hostile reception of claims of conscience in later contexts.<sup>12</sup> However while the claims of authority and conscience were united in the person of a Protestant sovereign the martyrology of suffering was successfully reoriented and re-integrated to support the authoritative claims of the Protestant 'Church-state' against the incipient threat of Roman Catholic subversion. Marian resistance theories were constructed to legitimate the withdrawal of conscience from the Roman antichrist: as they enfranchised this disobedience they also reinforced the duties of the Godly conscience towards justly constituted authority. The point was however that it was part of the Protestant ideological infrastructure that conscience had a role authorisation of legitimate power, and that also in certain extreme situations it might disengage that allegiance. Determining when, and to what degree, and by whom that disengagement might occur was the crux of the history of conscience and authority from the 1560s to the 1700s.

Conscience also functioned as a key instrument in the practice of government. Much has been written about the material history of the early modern state. The lineages of the absolutist state combined a centralisation and bureaucratisation of processes of coercion, administration and law, with the ideological defence of power.<sup>13</sup> The theme of much of this work is of the

development of structures and process of power that were central, national and increasingly penetrated into civil society. Combining these insights of historical sociology with an intimate understanding of social history Braddick has developed a more decentered, negotiated, pragmatic understanding of how government worked in early modern England: 'the early modern state depended upon participation'.<sup>14</sup> The early modern state did not function by the centralised imposition of law and values: these concepts were mediated into local society by the participation of individuals and officeholders: 'self government by the King's command' as G.A. Aylmer put it most succinctly.<sup>15</sup> Government was a process undertaken by a complex hierarchy of officeholders ranging from the great offices of state, the county magistrates, down to sheriffs, justices of the peace, petty constables, headboroughs, bailiffs, churchwardens, pinders, swineherds, haywards, and neatherds. Each of these officeholders both acted as agents of the state but also had a role in the local communities: as enactment became enforcement it was mediated by the rival social and religious injunctions of neighbourliness and conscience.<sup>16</sup>

The English state was elastic and diffuse: conscience was one means of giving it some rigidity. This functioned in two broad ways. First, most of the web of offices mentioned above could only be held by men (very rarely women) who acknowledged allegiance to the established 'Church-State'. Conditional on service, duty and conscience was sworn to uphold the law and religion of the land: conscience reinforced the authority of the state in the locality. It is clear how doubts about the godliness of government or particular statutes might compromise the effectiveness of state power; it is also clear how conscience might exclude the Godly from accepting any of these offices. So in some respects conscience acted as a means of ensuring a disciplined and dutiful magistracy. The role of conscience was not however just restricted to those who held state, civic, or ecclesiastical office. Conscience was frequently and consistently used as a badge of political obedience throughout the early modern period. Keith Thomas has gone so far as to term the early modern period as 'an age of conscience'. Political casuistry was one of the main ways central government was authorised: oaths of allegiance, oaths *ex officio*, and oaths of association, were tendered to the adult male population at moments of crisis and as commonplace re-affirmations of obligation. Oaths were not only employed in judicial procedure, but crucially to structure

loyalty and obligation. Daniel Featly, summarised their importance in 1646, 'Oaths are necessary for the execution of the magistrate's office and the preservation of human society. For without such oaths the commonwealth hath no surety upon public officers and ministers: nor Kings upon their subjects'.<sup>17</sup> The act of subscription and confirmation of these state oaths invoked careful consideration: a conscience compromised and perjured implied eternal damnation. As periodic subversion threatened the stability of the state oaths were tendered to the nation: the Oath of Allegiance controversy in the early years of James I reign was calculated to neutralise the danger of Roman Catholic conspiracy.<sup>18</sup> In 1640s and 1650s there were successive attempts to construct covenants, and engagements, to draw the population to conscientious obligation. The 1660s, 1680s and 1690s again saw successive regimes reinforce their authority by these means. Continental Roman Catholic casuistry was notoriously flexible in recommending strategies for accommodation to imposed oaths.<sup>19</sup> Protestant casuistry denied the morality of such devices as equivocation and mental reservation: popular Protestant authors of all theological hues argued that falsehood could never be accommodated with conscience.<sup>20</sup> These works of moral guidance were supplemented by oral advice: curates held weekly surgeries and meetings where matters of conscience might be talked through.<sup>21</sup> Ultimately casuistry would be supplanted by political theory.<sup>22</sup> Conscience was then not just the vocation of dissident minorities but constitutive of the consensus of political culture.

The authority of the confessional state suffered a virtually unremediable rupture during the English Revolution. In the twenty years between the outbreak of the first Civil War in 1642 and the reconstruction of the monarchical polity in 1660 conscience was unhinged from authority. As John Morrill has shown the social power of the Church of England was taken away in the Parliamentary legislation of the 1640s. England moved from profoundly stable, ordered and hierarchical society to a situation where the religious infrastructure of Bishops, Churches and ecclesiastical courts had been dissolved, dismantled and destroyed and the King had been defeated, imprisoned and finally executed. Although it is tempting to over-estimate the radicalism and social revolution of the period, there is some general consensus that in practical

terms a liberty of worship was de facto established. It is clear that there was a proliferation of confessions. The National Church was disestablished and conscience was given a practical liberty.<sup>23</sup>

The battle over the preservation or destruction of this practical freedom for tender consciences provided the dynamic for what has been called the politics of religion from the restoration of the monarchy in 1660 to the 'Toleration' Act of 1689. Between 1660 and 1665 the legal infrastructure of persecution discussed at the start of this chapter was enacted. The Clarendon Code established a uniformity of doctrine and discipline; it established compulsory attendance at parish Churches under the rubric of the Book of Common Prayer; it outlawed private conventicles and meetings; it ejected non-conformists from civil and ecclesiastical office. Parading the blasphemy and subversion of the interregnum the Anglican Church reimposed discipline on licentious conscience. From the early 1660s the dissidents conducted a diverse polemical campaign in defence of Christian conscience. Many non-conformists acknowledged duties to the supreme magistrate but called for a relaxation of the severe penalties against private worship. Others argued for a broadening of the ecclesiastical settlement that might accommodate or comprehend their scruples. One group appealed to the sovereign to establish upon his ecclesiastical supremacy an indulgence for Protestant dissidents. Arguments were proposed that claimed it was in the economic interests of the nation (since the Dissenters were so industrious) to encourage liberty. A more radical cleavage asserted that liberty of conscience was part of the freeborn Englishman's birthright.<sup>24</sup> In essence there were two types of argument: the first, an argument to authority, appealed to the Crown to establish liberty; the second, an argument from conscience, suggested that imposition was unjust and ungodly. Ultimately neither of these strategies were to be the determinant of the final achievement of the reduced measure of liberty established in 1689. By exploring the career and arguments of one of the more radical Restoration dissidents it will be possible to illuminate the parameters, limitations, possibilities, and indeed contradictions of the demands and arguments for the liberty of conscience.



The conundrum in the career of Henry Care (1646-1688) is that he earned his radical reputation by the pungency of his pamphleteering campaign against the succession of the Roman Catholic, James Duke of York between 1679 and 1683. When James came to the throne in 1685, Care was to be at the forefront of the campaign to defend the King's policy of establishing a *de facto* liberty of conscience between 1686 and 1688. It has been commonplace to dismiss Care as a turncoat: a man who wrote for money rather than principle. Care's radical credentials were excellent: a member of the semi-republican Green Ribbon Club, his weekly *Pacquet of Advice* was prohibited temporarily by the state for its virulence against 'popery' and for 'writing too sharply against the government' in 1680.<sup>25</sup> The Green Ribbon Club raised a subscription to pay for his defence when he was put on trial.<sup>26</sup> By 1687 Care was writing with equal vigour in defence of James II's policy of indulgence: again a weekly newsletter *Public Occurrences Truly Stated*, advertised the benign qualities of the Jacobean regime, and asserting axioms such as 'no man (keeping within the bounds of the law morall) ought to suffer in his civil rights for his opinions in matters of religion'.<sup>27</sup> This weekly contribution was supplemented by a number of pamphlets addressing themselves to the legality of James II's policy of dispensing with the penal laws against all dissidents (Roman Catholic as well as Protestant). The theme that links these two apparently incompatible positions was Care's commitment to tolerationist arguments. The mistaken accusation of time-serving hypocrisy originates in a misunderstanding of the relationship between authority and conscience in his polemic. Care's primary conviction was in the liberty of religious expression: his opposition to the succession of James, Duke of York was motivated by the (understandable given Protestant understandings of the Marian precedent) belief that the new king would establish a persecuting regime. Care's indictment of 'popish' authority was not because it was theologically insupportable (although he undoubtedly thought Roman Catholic theology was corrupt and mistaken), but because it imposed upon tender conscience. Indeed from a close reading of Care's publications between 1679-1683 it is possible to argue that his hostility towards 'popery' was directed, not just at the Roman Catholic Church, but also at the intolerance of the Church of England. As discussed above the restored order in

1660 re-invigorated and reinforced the authority of a uniform Anglican establishment: a panoply of statutes and penal laws were directed against both Catholic and Protestant dissent. After the defeat of Charles II's court led attempt to suspend these laws in the early 1670s, the government had turned the harsh edge of the laws against Protestant dissent, very often using statutes designed to trap Catholic recusants against Protestants. It was against precisely these abuses of the law that Care complained: the prelacy and persecution conducted by the Church of England was as 'popish' as Roman Catholicism. Any who claimed the legitimacy of establishing 'an unlawful hierarchy over the consciences of their brethren' were corrupt.<sup>28</sup> In works like *Utrum Horum* (1682) Care argued that the difference between the Church of England and the Protestant dissenters was not one of theological substance, but that the former imposed their understandings in matters indifferent and ceremonial on the latter: it was a question of ecclesiastical ambition.

The keystone of Care's belief in the legitimacy of liberty of conscience was a profound epistemological scepticism. As he wrote 'all mortals are full of mistakes, especially in the business of religion, and since there is no such thing as infallibility on earth, why all this bitterness and persecution?'.<sup>29</sup> Since no authority could be confident that it understood the form of true religion, thus each conscience must have an equal ability to find its own beliefs. To punish conscience for sincere belief was unjust, irrational and ungodly. This ethical defence of liberty of conscience was advanced consistently from the period of radical opposition between 1678-83 and the period of collaboration in 1686-88: rather than cut his cloth according to the times, Care persisted in his support of the principle of liberty regardless of the political context. Care's contribution was not merely one that proposed a theoretical defence of the rights of conscience: importantly he also represents a more practical response to the problem of persecution by law. It was ultimately this pragmatic advice that was to be more effectual. Drawing from his ethical condemnation of intolerance Care had argued from the early 1680s that the penal statutes were unjust, when James II issued his Declarations of Indulgence in 1687 and again in 1688 suspending the penalties and establishing a *de facto* toleration Care defended the morality and indeed legality of the sovereign's actions. Put simply, he argued that the rights of sovereignty in ecclesiastical affairs legitimated the suspensions. In effect he turned the Royal

Supremacy against the advocates of persecution. Once again authority was used to reinforce rather than destroy rights of conscience. Similarly Care defended the exercise of regal jurisdiction in the creation of legal commissions to investigate the actions of the clerical persecutors.<sup>30</sup> Care's attitude to the relationship between the law and conscience also took a far more precise and pragmatic turn: again this was a concern and strategy for defending conscience that was persistently advanced from the early to the late 1680s.

This chapter started with a discussion of how two dissidents behaved and confronted their persecutors. It was this nexus that interested Care. Attention has been paid in historical writings to the strategies that radical sectarians like the Quakers contrived, but the example of Care's popular writings of the 1680s suggests that such forms of engagements with the processes and procedures of the law were far more mainstream. The three key texts are *English Liberties: or, the Freeborn Subjects Inheritance* (1682), *A Perfect Guide for Protestant Dissenters in case of prosecution upon any of the penal statutes* (1682) and *The Laws of England: or a True Guide for all persons concerned in Ecclesiastical Courts* (nd c1680-82). Little scholarly attention has been paid to any of these texts, although the first, *English Liberties*, was perennially popular and reprinted later in the seventeenth and eighteenth century. Although it would be anachronistic to say it the most accurate description of these works is as handbooks for civil and religious liberties. Written for the 'reader's information', these books were intended to give practical advice on how dissidents might react to the legal charges and judicial procedures that they suffered. *English Liberties* was composed to defend the 'lives, liberties and estates' of the nation. Much of the first half of the book involved reprinting 'magna charta, the petition of right, the habeas corpus act; and divers other most useful statutes': constitutive of the argument was that the law and correct judicial procedure were the preservatives of liberty. Care went into detail about the functioning of important processes such as habeas corpus.<sup>31</sup> In the second part of the text he presented similar legal advice on how to construct legal defences against the many ecclesiastical laws that compromised conscience: to facilitate familiarity with the statutes against dissent he reprinted them, distinguishing carefully between penalties established against sedition, papists and Protestants. Specific counsel was given on the powers and procedures of ecclesiastical

courts: in particular 'a discourse of the nature of excommunication, and how to prevent or take off the writ de excommunicato capiendo'.<sup>32</sup> Care cast doubt on the jurisdictional competence of most ecclesiastical courts, but still thought it important to 'inform our reader of the course of their practice, as it is used at this day, and his best course to defend himself'.<sup>33</sup> Pro forma writs and responses were printed: list of costs for diverse actions and materials were displayed. The advice was that every part of the charge and writ was to be examined; any deviation from established protocol should negate the presentations. Care insisted that the accused should challenge the authority of the courts especially if charged under Canon law.<sup>34</sup> The last thrust of the work was straightforward: 'we may conclude, It is an abuse, and utterly illegal, to prosecute Protestants on such laws as were made solely and wholly against Papists'.<sup>35</sup> In a series of complex and closely argued passages Care argued that many of the Elizabethan anti-recusancy laws that had been turned against Protestant dissenters were 'not now in force'.<sup>36</sup> In the two other works, one of them printed in populist black-letter, Care exposed the 'pretended jurisdictions' of the ecclesiastical courts, and gave again a very detailed handbook upon the procedure of citations and their remedies: 'of the ways, means, and causes to overthrow, frustrate, or avoid'.<sup>37</sup> In the *Laws of England: or a true Guide for all persons concerned in Ecclesiastical Courts* Care extended the range to cover defences against the tendering of oaths and the payment of tithes. He also added brief instructions to Churchwardens and sidesmen of how they might avoid compromising their own consciences by the non-enforcement of penalties. In the pamphlet *A Perfect Guide for Protestant Dissenters* (1682) which reproduced some of the material from the other works, Care reprinted yet more statutes to indict 'Protestant Persecution'. He exposed the illegal activities of informers and suggested legal methods for retaliating. The themes of this work, to be echoed in the later defences of James II, were erastian: Church courts and jurisdiction were popish usurpation, any legal suit that occurred without Royal Commission in the ecclesiastical courts was liable to prosecution by praemunire.<sup>38</sup>

In these works Care developed a strategy for how the conscientious dissident might engage and oppose the threat of legal persecution by knowledge about the function of the law. He was not

alone, especially in targeting the ecclesiastical courts. There is evidence that the ecclesiastical courts had been re-invigorated by the Anglican interests as an effective way of punishing dissidents: certainly the procedure of excommunication followed up by a writ *de excommunicato capiendo* was a feared and debilitating process. Imprisonment under the writ was not subject to the usual counter pleas of habeas corpus: the imprisoned could be incarcerated until they submitted to the ecclesiastical authorities.<sup>39</sup> In the crisis years of 1679-1682 some attempt had been made to alleviate Protestant dissent from some of the penal statutes in Parliament but in the chaos of the debates about the succession this had failed. In the internecine battle fought between Tories and Whigs, Anglicans and Dissenters, especially in the urban parishes of London, Bristol and Norwich, the ecclesiastical courts became one instrument of disabling dissidents. Between 1681-83 when the parliamentary crisis was at its height there was a flurry of handbooks exposing the corruption of the Church courts and especially the practice of excommunication. *The Admonisher Admonished* (1683) rehearsed the case of James Jones who had been excommunicated in the court of Thomas Pinfold, official to the archdeacon of London. Again very much like Care's work the pamphlet in giving a narrative of Jones dealings with Pinfold and a young George Jefferies provided a method for 'keeping of a good conscience'. Jones challenged the authority of the court, issued counter writs and affidavits.<sup>40</sup> An anonymous pamphlet *The Case and Cure of Person Excommunicated* (1682) which has close textual parallels with Care's publications gave detailed advice on how to 'slip or untie' the knot of excommunication, providing the Latin pro formas for 'exceptions' and appeals.<sup>41</sup> An earlier tract, *Excommunication Excommunicated, or legal evidence that the Ecclesiastical Courts have no power to excommunicate any person whatsoever for not coming to his parish church* (1680) complained bitterly that the spiritual courts were being used to disable freeholders from voting in elections. Excommunication could only ever be a 'spiritual weapon' and should not be turned against 'civil rights'. Given the fierce battles being fought out over election to parliament and other civil offices the connection between religious and civil tyranny was underscored. Care re-deployed the same tactic of publishing the statutes and the procedural remedies where he acted as publicist for James II. His *Draconia: or an abstract of all the penal laws touching matters of religion* (1688) justified the monarch's indulgence because it took away the need for the costly and

difficult defences. James II's indulgence freed conscience from the powers of 'an angry priest, or a peevish justice, or a malicious neighbour, or a beggarly informer'. The coercive statutes were both 'useless and ineffectual': they were not good foundations for government and stability.<sup>42</sup>

The failure of James II's attempts at establishing a unique and radical measure of toleration is one of those great historical ironies and is ample testimony to the limits of political and cultural possibility in the period: the language of conscience was a resolutely Protestant idiom. James' sincere commitment to religious pluralism was perceived by Protestant contemporaries as advancing the dual standards of the Papal antichrist and political tyranny: the fact that religious radicals such as Quakers supported the indulgence merely reinforced the dangers to social order.<sup>43</sup> The failure of toleration in 1686-88 underscores the confessional nature of the state. Even the most radical theorists were limited by their Christian identity. John Locke defended the liberty of conscience on ethical and epistemological grounds. Whereas for the Anglican apologists true belief was the product of a shared confessional community, for Locke conviction was only attainable and indeed authenticated by individual effort, consequently the imposition of others' opinions was both illegitimate and pointless. For Locke there were limits to tolerable opinion. Atheism and popery were beyond the pale. Such beliefs were the result of wilful ignorance: because such people could be held to have no conscience they were to be thought of, and treated, as threats to social order. Importantly, Locke specifically thought atheists were a danger to society because they could not be bound by promises or oaths (that were sanctioned by the threat of divine retribution). So even for Locke, still studied as a founder of modern liberalism, the defence of conscience was ultimately rooted in a conception of the duty to pious conviction, rather than the logical rights of free expression: that is what Locke enfranchised was the free expression of a Christian conscience, rather than the rights of free expression.<sup>44</sup>

The relationship between conscience and political order was so firmly riveted in the period that even those writers and polemicists who opposed the Anglican establishment - the Freethinkers, Deists and Republicans like John Toland, the Third Earl of Shaftesbury and Charles Blount - although they upheld extensive rights of religious expression, still insisted on the value of a

national church establishment.<sup>45</sup> Men like John Toland attempted to deconstruct the power and authority not only of the clerical caste but also of Christian revelation: there is little doubt that he did not believe in an orthodox conception of a Judaeo-Christian God. In a number of political pamphlets he still defended the existence of a national church, alongside provisions for the liberty of conscience. Although men of reason might be allowed to pursue the logic of their enquiries, Toland (and writers of his ilk) saw that a civil religion was crucial to the maintenance of a community of moral value and social order. Religious conformity or discipline then, even for those who devalued the sanctity of any particular religious confession, was still considered as a key part of the infrastructure of cultural and social power. The language of conscience, because it was still a central element of political discourse, remained delimited by confessional imperatives.<sup>46</sup> The achievements that did alleviate the suffering of dissidents were not the product of the victory of rationalism, but the result of practical and hard fought civil disobedience. Henry Care's advice books on civil liberties had more effect than Locke's writings on toleration. Religious dissidence by withdrawing their obedience to constituted authority exposed the limitations of state power. Increasingly, as the agency of government became more concerned about the necessity of religious uniformity, the possibilities for enforcing such a conformity in the face of conscientious objection became less easy. Ultimately, as the Toleration Act indicated, the ambition of uniformity was sacrificed in order to preserve the principle of the confessional premises of citizenship.

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<sup>1</sup> *An Abstract of the Sufferings of the People Called Quakers for the testimony of a good conscience, 1660-1666* volume 2 (London, J.Sowle, 1738) pp.335-338.

<sup>2</sup> Craig W. Horle *The Quakers and the English Legal System 1660-1688* (University of Pennsylvania Press, Philadelphia, 1988) p.102.

<sup>3</sup> See *An Abstract of the Sufferings* pp.48,137,85.

<sup>4</sup> See Henry Horowitz *Parliament, Policy and Politics in the reign of William III* (Manchester University Press, Manchester 1977).

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- <sup>5</sup> See David L. Wyckes 'Friends, Parliament and the Toleration Act' *Journal of Ecclesiastical History* 45 (1994) pp.42-63.
- <sup>6</sup> See E.N. Williams (ed) *The Eighteenth Century Constitution 1688-1815* (Cambridge, Cambridge University Press, 1970) pp.42-46.
- <sup>7</sup> See Wilbur .K. Jordan *The Development of Religious Toleration in England* (London, 1932-40) 4 volumes; J. Lecler *Histoire de la Tolérance au siècle de la réforme* (Paris, PUF, 1954) 2 volumes.
- <sup>8</sup> See Blair Worden 'Toleration and the Cromwellian Protectorate' in *Persecution and Toleration* (ed) William Sheils *Studies in Church History* 21 (Basil Blackwell, The Ecclesiastical History Society, 1984) pp.199-233 at p.200.
- <sup>9</sup> Cited in A.A. Seaton *The Theory of Toleration Under the Later Stuarts* (Cambridge, 1911) pp.117-19, pp.163-64.
- <sup>10</sup> P. Abrams 'Notes on the Difficulty of Studying the State' *Journal of Historical Sociology* 1 (1988) pp.59-81.
- <sup>11</sup> See John Guy 'The Henrician Age' in J.G.A. Pocock (ed) *The Varieties of British Political Thought 1500-1800* (Cambridge, Cambridge UP., 1993) pp.13-47.
- <sup>12</sup> Quentin Skinner *The Foundations of Modern Political Thought* (Cambridge, Cambridge UP., 1978) 2 volumes.
- <sup>13</sup> See Perry Anderson *Lineages of the Absolutist State* (London, Verso, 1974); Michael Mann *The Sources of Social Power* (Cambridge, 1986) volume I; John Brewer *The Sinews of Power* (London, Hyman, 1989).
- <sup>14</sup> See Mike Braddick 'The Early Modern English State and the question of differentiation, 1550-1700' (forthcoming).
- <sup>15</sup> See G. A. Aylmer 'The Peculiarities of the English State' *Journal of Historical Sociology* 3 (1990) at p.99.
- <sup>16</sup> See Keith Wrightson 'Two concepts of Order' in John Brewer, John Styles, (ed) *An Ungovernable People?* (London, Hutchinson, 1980).



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<sup>17</sup> Cited in Christopher Hill 'From oaths to interest' in *Society and Puritanism in pre-revolutionary England* (London, Secker and Warburg, 1966) pp.382-419 at p.383; Keith Thomas 'Cases of Conscience in seventeenth century England' in John Morrill, Paul Slack, Daniel Woolf (eds) *Public Duty and Private Conscience in seventeenth century England* (Oxford, Clarendon Press, 1993) pp.29-56.

<sup>18</sup> See Johann P. Sommerville *Politics and Ideology in England 1603-1640* (London, Longman, 1986)

<sup>19</sup> See Peter Holmes *Resistance and Compromise. The Political Thought of the Elizabethan Catholics* (Cambridge, Cambridge University Press, 1982).

<sup>20</sup> See Perez Zagorin *Ways of Lying. Dissimulation, Persecution and Conformity in Early Modern Europe* (Cambridge Mass., Harvard University Press, 1990) pp.221-255.

<sup>21</sup> See Keith Thomas 'Cases of Conscience in England' pp.39-40.

<sup>22</sup> See Edmund Leites (ed) *Conscience and Casuistry in Early Modern Europe* (Cambridge, Cambridge University Press, 1988) p.72-118.

<sup>23</sup> See John Morrill *The Nature of the English Revolution* (London, Longman, 1993) pp.31-175; Christopher Hill *The World Turned Upside Down. Radical Ideas During the English Revolution* (London, Penguin, 1972).

<sup>24</sup> See John Spurr *The Restoration Church of England 1646-1689* (Yale UP, 1991), and Gary de Krey 'Rethinking the Restoration: dissenting cases for conscience, 1667-1672' *The Historical Journal* 3 (1995) pp.53-83.

<sup>25</sup> *State Trials* volume 7 column 1119.

<sup>26</sup> Magdalane College, Cambridge, *Pepys Miscellanies* volume 7 no 595.

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- <sup>27</sup> Henry Care *Public Occurrances Truly Stated* number 8 10th April 88.
- <sup>28</sup> Henry Care *A Perfect Guide to Protestant Dissenters* (1682) Preface
- <sup>29</sup> Henry Care *A Weekly Pacquet of Advice* volume 5 number 8 October 13th, 1682 p.64
- <sup>30</sup> See, Mark Goldie 'James II and the Dissenters' revenge: the Commission of Enquiry of 1688' *Historical Research. The Bulletin of the Institute of Historical Research* 66 (1993) pp.55-88.
- <sup>31</sup> *English Liberties* on habeas corpus pp.117-128.
- <sup>32</sup> *English Liberties*, pp.154 and following.
- <sup>33</sup> *English Liberties*, p.157.
- <sup>34</sup> *English Liberties*, p.161.
- <sup>35</sup> *English Liberties*, p.177.
- <sup>36</sup> *English Liberties*, pp.178-183 at p.180.
- <sup>37</sup> Henry Care *The Laws of England: or a true Guide for all persons concerned in Ecclesiastical Courts* p.65.
- <sup>38</sup> Henry Care *A Perfect Guide* (1682) postscript p.19.
- <sup>39</sup> See Fredrich Makower *The Constitutional History and Constitution of the Church of England* (London, NP, 1895). See also Christopher Hill *Society and Puritanism in Pre-Revolutionary England* (London, Secker and Warburg, 1964) pp.354-82.
- <sup>40</sup> Anon *The Admonisher Admonished* p.18 and passim.
- <sup>41</sup> compare pp.29-33, pp.42-43 with *English Liberties*.
- <sup>42</sup> Henry Care *Draconia* (1688) p.18, pp.26-27, pp.33-34.
- <sup>43</sup> See Mark Goldie 'John Locke's circle and James II' *The Historical Journal* 35 (1992) pp.557-586.
- <sup>44</sup> See John Dunn 'The claim to the freedom of conscience: freedom of speech, freedom of thought, freedom of worship' in Ole Grell, Nicholas Tyacke, Jonathan Israel, (eds) *From Persecution to Toleration*.
- <sup>45</sup> See Justin A.I. Champion *The Pillars of Priestcraft Shaken. The Church of England and its Enemies 1660-1730* (Cambridge, Cambridge UP., 1992) pp.170-196. See also in general Roger Lund (ed) *The*

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<sup>46</sup> See J.G.A. Pocock 'Religious freedom and the desacralisation of politics: from the English civil wars to the Virginia Statute' in Merrill D. Petersen, Robert C. Vaughan (eds) *The Virginia Statute for Religious Freedom*. (Cambridge, Cambridge UP., 1988) pp. 43-73.