THE MISSING 'ALLEN–PERSONS' CASES OF CONSCIENCE

by PETER HOLMES

Cardinal William Allen, Robert Persons, S. J. and the Rev. Gregory Martin supervised the production in about 1581 of a discussion of cases of consciences, which were intended for the use by students trained for the English mission at the Venerable English College, Rome. The principal manuscript copy of these cases previously known is missing a final section. This has now turned up in the Library of the Society of Antiquaries of London. This article consists of an introduction to the manuscript sources, the cases and their doctrine; a transcript of the Latin text; and a translation of it into English.

Introduction

Over thirty years ago, the Catholic Record Society published a translation of a number of Elizabethan cases of conscience, edited from two collections.[1] One of these, the 'Douai–Rheims cases', consists of 91 rather brief cases which were debated in the English College, then at Rheims, in 1578 and 1579. The other collection, with which we are concerned here, the 'Allen–Persons cases', contained sixty cases divided into four sections. The chief manuscript source for these cases is in the Library of Lambeth Palace, and ten of them are also found in abbreviated form in a document belonging to the Bodleian Library, Oxford.[2] They date from about 1580–2 and were probably mainly the work of Gregory Martin, with a final 'solution' of the moral problem which is clearly attributed in the text itself to William Allen and Robert Persons. They were used by students at the English College, Rome, as part of their training for work on the mission in England. Unfortunately the final section of these cases is incomplete and the manuscript in Lambeth Palace breaks off abruptly in the middle of case 3, in Chapter 3 of the booklet. The missing material is not to be found in the Bodleian manuscript, and although a copy of this collection was said to have been kept in the library of the English College, Rome, enquiries made at the time of the publication of the C. R. S. volume led to the information being given that it was not there then. However, in 2000 a very full description of the archives of the Society of Antiquaries of London was published, announcing the existence, in that rather miscellaneous collection, of a copy of the 'Allen–Persons cases', which contains the missing material.[3] What follows after this brief introduction is a transcription and then a translation from Latin of the new text.[4]

https://doi.org/10.1017/S0034193200014187 Published online by Cambridge University Press

The manuscript 21 in the collection of the Society of Antiquaries of London was certainly in their library by 1816, when their first catalogue was published.[5] Its provenance is uncertain; the library as it was constituted in 1816 had been built up in various stages after 1719.[6] It is a small manuscript booklet, written in a sixteenth-century secretary hand, and bound in leather. It is rather like the Lambeth manuscript in appearance, and the two documents are very close textually: for example, part of Chapter II, Part i, Case 21 is misplaced in both manuscripts in Chapter II, Part ii, Case 18.[7] There are, however, some differences. For example, the 'solution' of Allen and Persons to Chapter II, Part ii, Case 14 is abbreviated in the Society of Antiquaries manuscript, and omits the interesting reference to the Council of Trent.[8] In return, the Society of Antiquaries manuscript adds a sentence to the brief 'solution' of Allen and Persons to Chapter I, Case 3: 'He may do all these things without sin because since they are matters of positive law they do not oblige with danger to life' ('Potest ista omnia facere sine peccato quia cum sint positivi iuris non obligant cum vitae periculo').[9] Most important, the Society of Antiquaries manuscripts adds about 1800 words to the text as found in the Lambeth Palace document, roughly 6% of the total. This additional element is at the end of the booklet, in Chapter 3, where Case 3 is completed, and there are two further cases. Does this complete the text? Pamela Willetts, the compiler of the excellent catalogue of the Society's manuscripts thought so, and it is fairly certain that it does. The reason for entertaining any doubt is because at the end of the manuscript booklet there is clear visible evidence that a page has been torn out, or become detached. This must have been done or have happened some time ago since the final leaf of the manuscript, before the end paper pasted on the leather binding, is discoloured, as if this had been at some point the back page of the booklet, before the leather binding was added, which itself has an antique appearance. This final page also has the distinctive Society of Antiquaries library stamp (obscuring slightly the last words of the manuscript), which the rules of the library, made in 1739, ordained should be stamped on the last page of a book.[10] This might not be enough to make one suspect that the manuscript even now was incomplete if it were not for the fact that the final case in the booklet has no final 'solution' of Allen and Persons to bring it to a conclusion. However, three previous cases, out of 62 in the text, are also lacking this final element, including the case which immediately precedes this last one.[11] In addition, this final case of the manuscript (Chapter III, Case 5) is a rather curious piece of work which is somewhat different in format from the other cases, and this might explain why it also lacks the 'solution'. But there is crucial external evidence that the fifth case in the third chapter was the final case in this collection. These cases were known soon after their composition to an English Protestant audience and were used by anti-Catholic controversialists. One of these, Matthew Sutcliffe, Dean of Exeter, made quite extensive use of the cases

https://doi.org/10.1017/S0034193200014187 Published online by Cambridge University Press

in a book he published in 1600; he also used precise references and extensive quotation. His interest was in the following cases: Chapter I, Case 1; Chapter III, Case 3; and Chapter III, Case 5. The latter case is the final one in Society of Antiquaries manuscript, and Sutcliffe helpfully references this as Case 5, but also as 'Cap. 3. Cas. vlt.' (Chapter 3. Final Case). This does not entirely remove the doubt that the manuscript may have missed out a final part of Case 5, although Sutcliffe does not quote anything not to be found in it as it stands at present. It may also be, of course, that the copy Sutcliffe worked from was also defective, although he was himself much nearer the date of its composition than we are, which may make it less likely.

The three cases edited below form part of the third chapter of the 'Allen–Persons cases', which deals with 'cases which arise after capture'. The first case in this chapter discussed whether it was lawful for Catholics to bribe guards, escorts or magistrates into letting them escape. Consistent with the general approach of the whole booklet, and indeed with the contemporary Douai–Rheims cases, which discuss a similar question, the resolution says that this is lawful, even if the guards etc. have taken an oath not to let them escape. The solution of Allen and Persons is perhaps a little more guarded and says that the Catholics may do this, just as they may lawfully escape, unless they have promised or sworn not to do so. The second case, also discussed in the Douai–Rheims cases, asks whether it is lawful for a Catholic to eat prohibited foods in prison, when no alternatives can be had from the guards. The answer is that they may, but that they should not do so casually and easily. Allen and Persons agree, but say that such a case hardly ever happens in England. We now reach the third case, in the middle of which the Lambeth manuscript comes to an end. This case asks whether a Catholic is bound to keep his word when he promises his guards that he will not escape from their custody. In answer there follows a fairly lengthy discussion of the legality of equivocation, which had been discussed in earlier cases in the collection and also in the 'Douai–Rheims cases'.[12]

The casuist in the third case (probably, as has been said, Gregory Martin) says that if someone promised in a straightforward way not to escape, he would be bound to keep his word. Although the distinguished theologian Thomas de Vio Cajetan, an authority much used in the seminaries at the time, says that to break a promise is merely a matter of lying and hence only a venial sin, the casuist in these cases disagrees and prefers Cicero, who in the 'Offices' describes keeping a promise as fundamental to all questions of justice, and hence our casuist concludes that it is a mortal sin not to do so. However, if circumstances change after the promise has been made, if the promise commits one to doing evil, or in order to prevent a greater evil, then it may be broken. On the other hand the promise may have been made originally with the intention of deceiving the person to whom it was made; and, on the face of

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it, this looks like a lie. But such a deceitful promise might have been made by using 'mental reservation'. This meant that the person making the promise added internally to his promise some additional clause which invalidated it. He might have said openly, 'I will not run away', and then added mentally, 'If I cannot'. In addition, the promise might have been confirmed with an oath, and the casuist quoted Martin ab Azpilcueta ('Navarre'), a highly respected Spanish casuist, who in his *Enchiridion* said it was mortal sin to swear falsely. The casuist in our case is, however, undaunted by the seeming opposition of Azpilcueta and Cicero to deceitful promising and swearing, which he undermines by saying that there may be good reasons for using deceitful promises. First, the person who asks for a promise to be given may not have the judicial authority to do so, and may be using threats to force the Catholic to make the promise. Hence, a promise made to a bandit, or a 'tyrant', to pay him a hundred gold pieces would not oblige. We are clearly intended to draw an analogy between the bandit or tyrant and an Elizabethan official of some sort. If we can give a false promise in such circumstances, we can also confirm it with an oath; and here Navarre himself is cited to the effect that a promise made under oath to a bandit would not bind. Our casuist repeats however that to use equivocation without just cause is mortal sin, and that Canon Law condemns it. Nevertheless, while the Canon Law may oblige in the law courts; in the court of conscience, if there is reasonable cause for using equivocation, there is no obligation to keep the promise.

There then follow some practical conclusions for English Catholics. They should take care to use equivocation when forced to promise not to escape. They may seek a dispensation if they break a promise which is made without equivocation. An oath or promise extorted under fear does not bind. It is lawful to escape if a Catholic has promised or sworn deceitfully. Finally, the casuist returns to the point made earlier, that a genuine, straightforward promise to escape may be invalidated by later developments. He suggests that a Catholic may be profoundly affected by imprisonment and as a result of witnessing the horrors of torture, and observing how the apostasy of Catholics can follow such treatment; in such circumstances, doubting his own constancy to withstand torture, he may lawfully escape, despite his earlier promise. The case concludes with a rather more sober solution by Allen and Persons, which consists simply of a direct quotation from the 'Douai–Rheims cases', and confirms that these 'Allen–Persons cases' were drawn up with these earlier cases very much at hand. Allen and Persons say that circumstances will alter the judgement to be made in each case; that scandal should be avoided; and that it is important, in normal circumstances, to keep one's word. The manuscript at the Society of Antiquaries provides a very useful addition to what we could glean from the truncated version in Lambeth; and all in all the case is an interesting illustration of how Catholic moral theologians

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responded to the realities of Catholic life under persecution. The discussion mirrors a briefer case in the 'Douai–Rheims cases', but takes the discussion a good deal further.[13] Matthew Sutcliffe, the Anglican critic of this casuistry, directed some of his theological odium at this case: 'It was not the fashion of the martyrs of Christ his Church to use equivocations, and to forswear themselves both in judgement and elsewhere: but the schoolmasters of our popish priests and pretended martyrs teach them to do both'. He quoted part of Case 3, giving the correct reference in the margin, and then added: 'They teach also that a priest is no more to regard an oath to the Queen's officers, than if he should swear to pirates or robbers for safeguard of his life.'[14]

The next case (Chapter III, Case 4) in the Society of Antiquaries manuscript discusses whether a priest should recognise the authority of a court when questioned before it, and whether he should take the witness's oath to tell the truth. There are some links between this case and an earlier one in the same collection, and also between it and some of the discussion in the 'Douai–Rheims cases';[15] but it adds some significant elements, particularly by explicitly discussing the witness's oath. The Resolution to Case 4 says that it is better to show reverence to magistrates, both lay and clerical, and cites in support of this the 'most civilized speech' of St Paul, who said to Porcius Festus, the Roman procurator of Judea (Acts 25, 26): 'I am not mad, most noble Festus.' The casuist also adds that many martyrs also behaved in a similarly polite way towards tyrants, in order to appease them or to avoid being accused of 'lèse majesté'. The use of the description 'tyrant' as an analogy for English Protestant magistrates rather undermines the message of the casuist here. The word is repeated when he says that priests may refuse to answer the interrogation of Protestant judges and may give equivocal answers. The 'tyrants' do not constitute a legitimate judicial assembly because they wish to punish the good works of priests. When taking the witness's oath to tell the truth, the whole truth and nothing but the truth, priests, for the same reason, may use equivocation (with the mental reservation 'in so far as I am bound to confess to a judge'). The casuist argues that even without the use of equivocation Catholics are not bound to answer, except in so far as it is a genuine judicial interrogation; which does seem to allow the Catholic to break the oath. The Protestant officials are not thought to be true judges, and so a promise to treat them as such does not oblige. It was, of course, a refusal to recognise the authority of her judges which led in 1586 to the terrible death of Margaret Clitherow. The Protestant controversialist, Thomas Morton, writing in 1605 with a copy of these cases in front of him, picked on this case (among others) to attack. Catholics are taught, he said, that 'when a priest is convented before a judge, after the oath taken, concerning such questions, he may answer by the foresaid equivocation, because those that ask this oath are not to be accounted judges but tyrants'. Morton felt that was 'as if he would drive

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out Satan by Satan', and claimed that this doctrine 'teacheth by lying how a man may avoid a lie.'[16]

The Fifth Case in this collection, which is the last one, is problematic, partly because it seems to have been copied rather poorly, or composed rather quickly, and at times appears to be a series of rough notes. It consists first of six questions, which are explained in some detail; this is followed by a resolution which is somewhat shorter than the questions, and answers (confusingly) seven of them; finally, there is no 'solution' at the end. The questions posed in this Fifth Case are those which a captured priest may be asked to answer, sometimes under torture. They are similar to two cases in the 'Douai–Rheims' collection, and also to some earlier cases already discussed in the 'Allen–Persons cases'.[17] It is probably fair to say that the resolution given in the 'Douai–Rheims' discussions is in general rather stricter, and initially suggests that the best course of action for a priest to take under questioning is to profess his faith openly and invite martyrdom. This is perhaps because the 'Douai–Rheims cases' pre-date by a few years the 'Allen–Persons cases', which were probably written when the Elizabethan persecution had become more severe. The first four questions discussed in Case 5 are those which were designed to gain information which would lead to the conviction of the priest or other Catholics under the penal laws. The Resolution, in general terms says the priest does not have to incriminate himself or others by answering, and may use equivocation to mislead his inquisitors. First, the priest may be asked his name, where he was born, who his parents are, and when and where he trained to be a priest. The casuist suggests some elaborate amphibology around which to frame equivocal answers. The priest may have changed his name, and can confuse questioners by using his alias; he may twist the name of his birth-place in some way, or answer that he comes from 'the celestial homeland', or 'the vision of peace'. Such riddling might not in practical terms have been the best way to avoid detection, but might have thrown interrogators off the scent if they were searching for the associates of the arrested priest, and it did of course avoid him having to tell an outright lie. There is a fuller, and rather clearer discussion of these sorts of questions earlier in the 'Allen–Persons' text, in the chapter which deals with the cases arising when Catholics travel into England.[18] The next three questions concern the normal religious activities of a priest: how he should reply when asked where and with whom he has said mass; whom he has reconciled to the Church; whether he has imported any religious objects blessed by the Pope. It is suggested that it may be very important to protect this information when threatened with death or torture. The reply is simply the general one that silence or equivocation are permissible. The last two questions and their answers are among the most contentious in the collection. The fifth question asks what a priest should reply when he is asked whether Elizabeth is just as much Queen after her excommunication by Pius V in 1570, as before.

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The reply the priest is encouraged to use is that he believes she is his Queen because the Bull of Excommunication, *Regnans in Excelsis*, was not legitimately published, following the correct formal processes. This was the line taken in 1579 in a series of cases of conscience submitted by a number of English Catholics to the Cardinal Protector, Morone, for his resolution. Here they alleged that the Bull had not been properly published in the *Campus Floriae*, and had not been sent in an official way to England by the Pope, but brought there by a private individual. Unlike the author of our document, Morone had not been convinced that this argument invalidated the Bull, but did accept that the Bull was not in force because it had not achieved its purpose, which was to further the religious cause in England, and in fact by 1579 it was doing the precise opposite.[19] After his brief discussion of how to answer questions about the Bull, our casuist then adds a rather strange clause: 'sed hoc melius sciunt Angli' ('but the English know this better'). This is probably an aside by the casuist, suggesting that his judgement may be less sound than that of other Catholics who are actually in England. This interpretation is probably correct when we consider what is said by the casuist in an earlier case when the Bull of Excommunication had also been mentioned: 'The resolution of this case depends rather on the judgement of Catholics in England who know all the facts of the matter well.'[20] The sixth question continues in the same vein, and asks what a priest should reply when asked whether the Queen is a heretic or a schismatic; and the question suggests that a priest might be tricked into answering this by first being asked what he thinks about the Book of Common Prayer, which of course the Queen and Parliament had authorised, but which the priest would say is heretical and schismatic. The priest can reply that the question is not pertinent to him and he is not qualified to answer it; he can also say that the Queen is still Queen after the publication of the Bull, using a sort of 'ontological argument' and claiming that the Bull is worthless if it is supposed to be worthless. There is overlap here with the last answers since the Bull of 1570 (question 5) declared the Queen a heretic (question 6). This may account for the disparity in numbering between the questions and their resolutions which becomes apparent at this point, when a seventh answer is given, although there was no seventh question. This seventh answer seems in fact to answer the sixth question. The priest is advised to answer evasively to a question about the Queen (perhaps, whether she is a heretic) and say that it is not his business to give an answer, or he may practice 'some other form of subterfuge'. But the casuist is very clear at the end that the priest should on no account affirm that the Queen is a Catholic.

Matthew Sutcliffe was incensed by the doctrine of this final case: 'Neither can it be well denied that most of these that have been executed for the Pope's cause, have contrary to Her Majesty's express commandment fled to her enemies, and refused to return, when they were called

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back; and finally they have exchanged the love of their country into love of the country's enemies. Nay, being interrogated of their country, they are taught to deny their own country and by a pretty equivocation to account that to be their country where they have lived; or else to say they are *de patria coelesti*, that is, *of the heavenly country*.....How then can this country suffer such to be protected which deny their country, or at least prefer enemies before their liege sovereign?'[21] It seems probable that Sutcliffe was misconstruing the case, and that when they were taught that it was lawful to deny their 'patria', Catholic priests were concealing their birth-place (using 'country' in the old English sense of county, or locality), in order to protect their own families. The Jesuit, Richard Walpole published a reply to Sutcliffe's book, himself quoting from the passage in Case 5 that Sutcliffe had cited. Walpole argued that it was by returning to England as Catholic priests that those who were trained to equivocate over their origins were showing their true love of country. He cited the case of his own brother, Henry, executed at York in 1595: 'And to know truly the inward disposition and consciences of all the rest, trial may be made of one, from whom with fourteen most cruel tortures and rackings could be drawn no other disaffection unto his country than that he loved it above all other whatsoever, only preferring thereunto the love of God almighty.'[22] These last three cases in the collection were indeed difficult ones, and ones which would inevitably arouse controversy; it may be for that reason that the last few pages in the Lambeth copy were missing.

What follows is a transcription from the manuscript in the Library of the Society of Antiquaries of the last three cases in Chapter 3. This transcription attempts to follow the original punctuation and use of capitals. The copyist seems to have been rather careless with his spelling, and in places the editor has attempted some corrections, which are given in footnotes.

MS 21, Society of Antiquaries.

[61^{v}] Casus 3^{us}.

An Catholicus teneatur semper observare fidem et promisionem[23] quam dedit haereticis de non aufugiendo vel an possit aliquo in casu aufugere.

Resolutio.

In hoc casu distinguendum est de fide data seu de promissione facta de non fugendo[24] vel enim promisit intendens se obligare iuxta mentem illius cui promisit ad nunquam prorsus vllo modo fugendum[25], vel promisit simulatorie iuxta mentem suam et aliquem sensum quem habebit[26] in mente, v. g. nunquam fugiam te presente, vel non fugiam[27] si non potero vel quid simile. si 1^{o} modo promisit sine dubio tenentur[28] stare fidei quia etiam hostibus servanda fides est ex communi sententia.

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Licet enim Caiet. 2ª 2ae 88ª et 113ª patet[29] simplicem promissionem ad moralem veritatem pertinere eiusque transgressionem non esse aliud peccatum quam mendacium[30] consequenter ex suo genere esse peccatum veniale nisi aliunde vitetur tamen verior et communior opinio est pertinere ad iustitiam commutativam quia non quomodocunque verum asserit sed asserit obstringendo alteri fidem verum Cicero 1⁰ officiorum ait hanc fidem non solum ad iustitiam pertinere sed esse ipsius iustitiae fundamentum cui pacta omnia [62] conventaque innituntur. Ex his patet promissionem factam cum intentione se obligandi ex natura sua obligare sub peccato mortali et consequenter non posse violari nisi in aliquo casu vt cum res sunt mutatae ita vt non possit servari sine peccato vel cum alquid contigit[31] quod non fuerat praevisum quod si praevidisset non promisisset, vel cum promissio est de re mala vel impeditiva maioris boni sed haec sunt alterius loci, si autem promissio fiat simulatorie id est animo decipiendi et non se obligandi hoc potest fieri duobus modis vno modo promittendo sine animo se obligandi ad aliquid et sine intentione illud faciendi et hoc[32] videtur esse mendacium quia aliud dicit aliud intendit altero modo promittendo animo se obligandi ad aliquid quod ipse habebat in mente diversum tamen ab intentione eius cui promittitur, si id quod promisit iurat peccat mortaliter vt tenet Navar in summa capite 12º, nº 12º quia iurando tenetur habere animum ad implendi cum iurare falsum sit peccatum mortale qui autem promittit 2º modo aut vtitur tali modo promittendi doloso et sophistico ex causa rationabili aut sine causa vlla et ratione v. g. qui interrogatur a iudice non competente vel non servato iuris ordine et ad eius minas promittit dicere veritatem habet causam rationabilem sophistice promittendi id quod secundum sua[33] mentem est verum non autem secundum mentem eius qui [62v] extorquet promissionem. Item si homo privatus per metum aut importunitatem promissionem extorquet causa sufficiens est promittendi cum aequivocatione vt si quis coactus a latrone promitteret ei centum aureos, rationabiliter potest aequivocare intelligendo si tibi illos debeo. Item si quis promitteret redire in carcerem latronis vel tiranni vbi per iniustitiam detinetur rationabiliter potest aequivocare intelligendo apud se si tenor[34] et cetera causam vero rationabilem aequivocandi non habet ille qui legittime[35] et servato iuris ordine interrogatus promittit dicere veritatem verum tenetur respondere ad mentem iudicis sine aequivocatione ita qui promittit in carcerem redire in quo iuste detinetur a magistratu non potest aequivocare ita qui se sponte offert ad iurandum et si ergo et aequivocat in sua promissione cum causa iusta et rationabili non mentitur quia non tenetur respondere ad eius mentem ergo non respondendo ad eius mentem non mentitur ergo nec peccat, inde fit vt quamvis suam responsionem vel promissionem aequivocam iuramento confirmet nec peccat dummodo iuramentum verificatur secundum illam intentionem vel ipse intendit sic verificare. Ita Nav.ca. 12º. 11º 24º[36] ait enim qui iurat latroni dare centum in sua mente intelligens si ille debet non peccare [63] nec teneri

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illa soluere nisi aliquo modo inveniretur illi debere propter conditionem illam si tibi debeo si aequivocat in promissione sine causa iusta et peccat decipiendo partem, et si materia est gravis peccat mortaliter et tenetur promissum implere secundum communem statum verborum quem significatum intendebat ille cui promittitur verum consequenter sequitur eum qui cum eo aequivocat etiam si iuret id quod promittit non peccare quia non mentitur, cum vero qui sine causa aequivocat non habens animum implendi iuxta communem intellectum peccare mortaliter quia decipit iniuste partem cui iurat et in foro exteriori cogendus est ad implere iuramentum secundum sanum et communem intellectum eius cui iuravit ex canone quacunque[37] arte 22ª qª 1ª et omnes doctores ibidem intellige in foro exteriori vbi praesumiter habuisse intentionem obligandi se ad illud quia illa promissio secundum communem sensum stat, at in foro interiori absque vllo dubio, non tenetur, quia non intendebat se obligare, obligatio autem vera non potest esse si non intendo me obligare. Ex dictis colligo quaedam ad rem necessaria pro catholicis in Anglia debere esse cautos vt cum illicite vexentur sciant se vti posse aequivocationibus et iurare etiam sine peccato 1º quod non facile promittant non fugere sine aliqua aequivocatione. 2º si quis iuraverit omnino non fugere simpliciter hoc intelligendo posse pettere[38] dispensationem, super hoc iuramento ab episcopo quia iniuste est extortum. 3º quamvis [63ᵛ] catholicus existens in carceribus propter fidem offerat promissionem vel iuramentum non fugiendi sponte id est non petitus offerat iuramentum non fugiendi, adhuc istud iuramentum est extortum quia ad hoc non tenetur ex iniusta vexatione vero etiam tunc posse aequivocare. 4º omnis catholicus qui promisit aut iuravit aliqua aequivocatione per quem vere non intendebat obligare se ad non fugiendum[39] licite potest fugere oblata vel quaesita occasione. 5º mihi non videtur improbabile quod etiam ille qui sine vlla aequivocatione iuravit intendens se obligare ad non fugiendum [40]vllo modo etiam cum periculo vitae posse licite fugere in vno casu quum videret aliquem alium catholicum causa religionis grauissime tortum vel diutius cruciatum vel defecisse a fide vi tormentorum vel fuisse quidem constantem et[41] mortem obiisse ex hoc tamen iste con[42]cipit magnum metum et defidet se posse tollerare tam magna tormenta vel timet valde ne in tormentis deficiat puto in hoc casu fugere posse quia mutatus est rerum status et aliquid accidit quod si praevidisset non iurasset et probatur si quid iurauisse quum non erat certo periculum vitae et [64] postea non possum exequi sine periculo vitae non teneor implere, ergo multo minus teneor suborto periculo salutis animae, dices iam praeviderat mortem respondeo praeviderat quidem sed mortem ordinariam quam facile subiisset et non subiret sed non praeviderat hoc genus mortis acerbissimum et invsitatum.

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Solutio A et P.

Videtur aliquid esse peccatum vt plurimum fidem aut promissionem sic datam fallere levius aut grauius pro variis circumstantiis et etiam pro ratione scandali quod accidere potest verum communiter servanda esset fides nisi alia graviora contrarium suaderent.

Casus 4^{us}.

Cum sacerdos sistitur ad tribunal vbi adsunt magistratus civiles regni et forsan aliqui ex pseudoepiscopis, vel concionatoribus, an debeat illis reverentiam vllam externam adhibere illos recognoscens vt iudices et per consequens teneatur respondere illis ad interrogata et an propositum ab illis iuramentum de vere respondendo ad interrogata possit recipere.

Resolutio.

Triplex est dubium. 1^{m} de reverentia. alterum de respondendo ad interrogata. 3 de recognitione [64^{v}] et praestatione iuramenti. Ad 1^{m} respondeo non simpliciter licere sed saepe ac melius esse istis omnem reuerentiam debitam adhibere vt patet ex illa humanissima oratione Pauli ad ffestum et multorum martyrum saepe ad tirannos saepe enim humanitate ista mitigantur vel saltem minus possunt nos accusare insolentiae superbiae laesae maiestatis et cetera. Ad 2^{um} respondeo, non teneri respondere ad interrogata iuxta illorum mentem[43] sed posse nos vti aequivocationibus vt superius dixi quia non iuridice interrogant cum sint tyranni et velint punire bona opera. Ad 3^{m}. respondeo illos posse praestare iuramentum aequivocando intra se intelligendo quod iurent respondere veritatem quam tenentur tanquam iudici confiteri et non aliam. Et aduerte quod etiam, si non facerent istam aequivocationem sed si simpliciter iurarent adhuc non tenentur respondere, nisi de iis in quibus iudicia[44] esset interrogatio hoc enim iuramentum a iudice petitum ex natura sua intelligitur obligare solum quatenus iuridice interrogat quia petens in iudicio iuramentum illud petit vt iudex.

Casus 5^{us}.

Supposito quod sit melius omnino tale iuramentum recusare ponemus nunc quaedam interrogata ad quae nostri sacerdotes coguntur aliquando etiam tormentis respondere imprimis igitur scire quod possit et debet in his respondere

Primum quaesitum est quod nomen, quae patria qui parentes quod tempus qui locus studii.

[65] Secundum quaesitum est quo in loco, et quibuscum audiuit vel dixit missam, et hic magna cautela respondendum est quia facile multi

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trahuntur in periculum exponatur ergo quid et quantum quis tenetur occultare de aliis, deinde quid et quantum melius esset occultare, etiam si ad mortem atque tormenta exponerentur.

Tertium quaesitum est an reconciliavit aliquem ecclesiae romanae, vel scit aliquos reconciliatos.

Quartum quaesitum est an induxit, in Angliam agnos dei grana aut metalla benedicta a papa et an sicut[45] aliquos illa induxisse aut inductis ab aliis vti.

Quintum quaesitum est an putant Reginam Elizabetham esse Reginam vere et proprie post excommunicationem latam contra illam a pio 5^{o}. sicut antea.

Sextum quaesitum est an putant Reginam esse haereticam aut schismaticam et vt hoc eliciant vtuntur hac inductione. Petunt num liber divinorum officiorum quo illi publice vtuntur contineat aliquid falsum et haereticum et si sic ergo illi sunt haeretici qui illum confecerunt et approbaverunt, sed totum Parlamentum approbavit et ipsa Regina similiter, ergo et cetera Sic inducant homines paulatim ad id quod volunt vt lege contra illos agere possint nam poena capitis est vocare reginam hereticam vel schismaticam sed non illos.

Resolutiones horum quaesitorum.

Respondeo ergo ad 1^{m} 2^{m} 3^{m} et 4^{m} nihil eorum [65^{v}] quae sit quosque tenetur respondere sed potest vel vti aequivocationibus vel simpliciter negare quicquid petunt de nomine si ipse nomen mutavit potest dicere nomen quod denuo accipit de patria et parentibus possit respondere secundum etimologiam nominum vel accipere nomen patriae quo sciret se esse ex patria coelesti vel visione pacis vel aliquid simile quod ex nominibus locorum Angliae facile possit colligi.

Ad 5 potest respondere illam esse Reginam seque eam pro Regina habere quia auditu communiter teneri quod illa excommunicatio Pii 5. non fuit legittime[46] promulgata, et servatis servandis sed hoc melius sciunt Angli.

Ad 6 respondere potest hanc quaestionem ad se non pertinere maxime si non sit idoneus vel affirmative posse ex causa rationabili deponere bullam autem pii 5^{i} nihil valere supposito quod nihil valeat.

Ad 7^{m} potest non respondere, vel hoc iudicium ad se non pertinere non esse suum examinare mores et vitam et fidem Reginae et cetera vel alia honesta via subterfugere responsionem tandem nullo modo affirmat eam[47] esse catholicam.

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TRANSLATION

Case 3

Is a Catholic always bound to keep his word to heretics when he has promised that he will not escape; or can he in some cases escape?

Resolution

In this case we must distinguish whether (1) the man who gave his word or promised not to escape intended to oblige himself in a straightforward way never to do so, according to what the person to whom he promised thought he meant by his promise; or whether (2) his promise was deceitful and made with 'mental reservation'. For example, he might have promised, 'I will never escape', adding mentally, '... in your presence'; or, 'I will not escape', adding, '... if I cannot', or something of the sort. If he promised in the first way (1), then he is doubtless bound to keep his word because it is generally agreed that a man must keep his word even with his enemies. It is true that Cajetan (2^a 2^{ae} q. 88 & 113)[48] thinks that a straightforward promise is a matter of moral truth and that to break a promise is merely to sin by lying and, therefore by its very nature, to commit a venial sin, unless there are circumstances which make it a worse sin. But a truer and more generally held opinion is that it is a matter of commutative justice, because the essence of a promise is not that a man says something is true, but that he gives his word to another that it is true; and Cicero (*Offices*, 1)[49] says that to keep your word is not only a matter of justice, but is the foundation of justice itself, on which all [62] contracts and agreements are based. From this it is clear that if a man makes a promise with the intention of obliging himself to keep the promise, he is obliged by the very nature of the promise to do so on pain of mortal sin and consequently he may not break such a promise, except in certain cases. For example, when circumstances alter so that the promise cannot be kept without sin; or when something happens which had not been foreseen and if it had been foreseen would have meant that the promise would not have been made; or when the promise is about an evil thing; or when it prevents a greater good occurring; but these exceptions are discussed in another place.[50] If, however, (2) the man promised with dissimulation, that is with the intention of deceiving and not of obliging himself, he may have done this in two ways. (2 i) First, he may have promised with no intention of obliging himself to anything or of keeping his promise; and this[51] seems to be a lie because he says one thing and intends another. (2 ii) Second, he may have promised with the intention of obliging himself to do something which he had in his mind, but which was different from what the person to whom he promised had in his mind. If he promised with dissimulation, using an oath, he would sin mortally as Navarre holds (*Summa*, chapter 12, n. 12)[52], because by swearing he is bound to have the intention of

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keeping the promise, since to swear falsely is to sin mortally. However, a person who swears using such a special deceitful or sophistical method of promising may do so on two ways; either for a reasonable cause, or without any cause or reason. For example, if someone is interrogated by a judge who has no authority or who does not follow due process and if he promises in the face of the judge's threats to tell the truth, he has reasonable cause to promise sophistically; that is, to promise what is true according to his own mind, but not true according to the mind of the person who [62^{v}] extorts the promise. In addition, if a private man extorts a promise by inspiring fear, or through constant pleading, this is a sufficient reason for using equivocation in that promise; for example, if a man is forced by a bandit to promise to give him a hundred gold coins, that man can reasonably equivocate, by holding the meaning 'if I owe it to you' in his mind. In addition, if someone should promise to return to the prison of a bandit or a tyrant where he had been unjustly held, he could reasonably equivocate, understanding in his own mind, 'if I am bound to do so, etc'. But a person who is interrogated lawfully and according to due process of law really has no reasonable cause of equivocating when he promises to tell the truth, but is bound to reply according to the understanding of the judge, without equivocation. Thus, someone who promises to return to a prison in which he is justly held by a magistrate may not equivocate. However, if someone voluntarily offers to swear an oath to a bandit or tyrant, and equivocates in his promise for a just and reasonable cause, he does not lie, because he is not bound to reply according to what the bandit or tyrant has in his mind; therefore by not replying according to what the bandit or tyrant has in his mind, he does not lie, and therefore he does not sin. So it follows that even if a man confirms his equivocal response or promise with an oath, he does not sin as long as the oath is kept according to his own intention, that is, according to how he intended the oath to be kept when he swore it. Thus Navarre (chapter 12, no. 24)[53], for he says that someone who swears to a bandit that he will give him a hundred gold pieces, understanding in his mind, 'if I owe it to you', does not sin [63] and is not bound to pay it unless it is found that in some way he actually does owe it to him, on account of that condition, 'if I owe it to you'. If a man equivocates in his promise without just cause he sins by deceiving the other party, and if the matter is grave he sins mortally, and he is bound to keep the promise according to the commonly agreed meaning of the words, as the person to whom he promised intended them to mean. It follows, in truth, that a man who equivocates, even if he swears to what he promises, does not sin because he does not lie. But a man who equivocates without cause, not having the intention of keeping his promise according to the common understanding of what he says, sins mortally because he unjustly deceives the party to whom he swears, and in the law courts, he should be forced to keep his oath according to the correct and common understanding of

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the person to whom he has sworn, according to the canon (quacunque art 22, q 1)[54] and all doctors commenting on the same place. This is understood to refer to the law courts, where a man is presumed to have had the intention of obliging himself to what he promised, because his promise stands according to its common meaning. But in the court of conscience without any doubt he is not obliged because he did not intend to oblige himself, and a true obligation cannot exist if I do not intend to oblige myself. From what has been said I take the view that there are certain things which are necessary for Catholics in England to understand on this subject. They should be aware that since they are vexed unlawfully they may use equivocation, even under oath, without sin. (1) They should not lightly promise not to escape without using some equivocation. (2) If someone has sworn according to the straightforward meaning of his words that he will never escape, he may seek a dispensation from a bishop because this oath was unjustly extorted. (3) Even if [63^{v}] a Catholic held in prison for his faith voluntarily offers a promise or oath not to escape, that is he offers this oath without being asked to do so, this oath is extorted from him, and because of his unjust persecution he is not bound by it, and hence indeed he may also equivocate. (4) Any Catholic who has promised or sworn using equivocation, and does not intend to oblige himself not to escape, may lawfully escape when the occasion arises or is found. (5) It does not seem improbable to me that even a man who swore without using any equivocation, intending to oblige himself never to escape even if his life were in danger, may lawfully escape in one case. This is when he has seen another Catholic most gravely tormented or slowly tortured for the sake of religion, or forced to abandon the faith because of these torments, or indeed if he saw him suffer death with constancy. If the Catholic as a result conceived a great fear, and if he doubted whether he would be able to endure such great torment, or indeed if he feared that he would abandon his faith under torture, I think in this case he might escape, because the state of affairs had changed and something had happened which if he had foreseen, he would not have sworn the oath. And this is proved because if I had sworn to do something when there had been no danger to my life and afterwards I could not keep the oath without danger to my life, I would not be bound to keep it. Therefore, much less am I bound when danger to the salvation of my soul arises. You will say that a man would have foreseen death from the beginning. I reply he indeed might have foreseen death, but an ordinary death which he might easily have undergone without endangering his faith, but he would not have not foreseen this sort of horrible and unusual death.

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Solution of Allen and Persons

It seems, as is often the case in such matters, that to deceive when a man has given his word, or a promise has been made, is a light or serious sin according to the circumstances of each case, and also on the grounds of the scandal which might result in a particular case. Indeed, commonly, it is important to keep your word, unless other more serious matters persuade to the contrary.

Case 4

When a priest is brought before a tribunal where the civil magistrates of the Crown are present and perhaps some of the pseudo-bishops, or preachers, should he show them any external reverence, recognising them as judges, and as a consequence is he bound to reply when interrogated by them, and may he take the witness's oath concerning the truthful answering of questions if it is proposed to him?

Resolution

The doubt here is three-fold. First, concerning the reverence to be shown to magistrates; next, concerning answers to be given when interrogated by them; third, about recognising judges and taking the witness's oath. To the first, I reply that it is not simply lawful, but often it is better to show them all the reverence expected, as is clear from that most civilized speech of Paul to Festus, and from the frequent behaviour of many martyrs towards tyrants. For they are often appeased by our civilised behaviour, or at least they can less easily accuse us of insolence, arrogance, lèse majesté etc. To the second, I reply that we are not bound to reply under interrogation according to the understanding of those who are questioning us, but we may use equivocation as I have said above, because they do not interrogate us legitimately, since they are tyrants and wish to punish good works. To the third, I reply that priests may take the witness's oath using equivocation, understanding internally that they swear to answer truthfully 'in so far as they are bound to confess to a judge and not otherwise'. But notice that even if they do not use this equivocation, and they swear straightforwardly, they are still not bound to reply, except concerning those things in which this is a judicial interrogation. For this oath demanded by the judge by its nature is understood to oblige only in so far as he interrogates legitimately, on the grounds that the person who administers the oath, does so as a judge.

Case 5.

Having granted that it is better to refuse such an oath entirely, we now propose certain questions to which our priests are compelled to respond,

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sometimes even under torture. It is therefore of primary importance to know what they may and should respond to these questions.

The first questions are: what is his name; what is his native country; who are his parents; when and where was he trained.

The second question is where and with whom has he heard or said mass. This needs to be answered with great caution because by such questions many are easily drawn into danger. Therefore it is important to make clear, what and how much a priest is bound to conceal about other people; and what and how much it is better to conceal, even if they[55] are threatened with death and torture.

The third question is whether he has reconciled anyone to the Roman Church, or whether he knows any who have been reconciled.

The fourth question is whether he has brought into England 'agnus deis', grains or medals blessed by the Pope, and whether he knows people who have brought them into England, or people who have used those which have been brought in by others.

The fifth question is whether they[56] think Queen Elizabeth is truly and properly speaking Queen after the excommunication published against her by Pius V, in the same way as she was before.

The sixth question is whether they think the Queen is a heretic or schismatic. In order to elicit an answer the questioners use this enticement: they ask whether the Prayer Book which they publicly use contains anything false or heretical, and if it does, whether those who use and approve it are, as a result, heretics. However, Parliament as a whole approved it and the Queen herself likewise, therefore etc. Thus they induce men little by little to say what they want so that they may proceed by law against them, for it is a capital crime to call the Queen a heretic or schismatic, but not a capital crime to call members of parliament heretics or schismatics.[57]

The resolution of these questions

I reply therefore to the first, second, third and fourth questions that there are none of them to which a priest is bound to reply, but he may either use equivocation or simply refuse to answer whatever they ask. Concerning his name, if he has changed it he may say the name which he has newly taken. Concerning his home and parents he may reply according to the etymology of their names, or accept as his home the name of the place in which he knows himself to be, or say he comes from 'the celestial homeland', or 'the vision of peace', or say something similar, which may be derived easily from the place names of England.[58]

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To the fifth he may reply that she is the Queen and that he holds her as his Queen because it is commonly said that the excommunication of Pius V was not legitimately published, following the correct legal procedure; but the English know how to answer this question better.

To the sixth he may reply that this question is not a matter for him, especially if he is not suitable; or he may for a reasonable cause reply in the affirmative, saying that the bull of Pius V moreover is worthless if it is supposed that it is worthless.

To the seventh he may refuse to respond, or respond that this judgement does not pertain to him, and that it is not his business to examine the morals, life and faith of the Queen etc. Or he may in some other honest way avoid making a reply. But, he should in no way affirm that she is a Catholic.

NOTES

[1] *Elizabethan Casuistry*, ed. P. J. Holmes, Catholic Record Society, 1981, Introduction.
[2] 'Resolutiones quorundam casuum nationis Anglicanae', Lambeth Palace Library, MS 565, ff. 16–55^{v}.
[3] Pamela J. Willetts, *Catalogue of the Manuscripts of the Society of Antiquaries of London* (London, 2000), p. 12.
[4] My thanks are due to the Society of Antiquaries of London for permission to publish the extract below, and to Mr Adrian James, Assistant Librarian, for his assistance when I visited their library.
[5] Sir Henry Ellis, *Catalogue of the manuscripts in the library of the Society of Antiquaries* (London, 1816), p. 4.
[6] Joan Evans, *History of the Society of Antiquaries* (Oxford, 1956), 161–2, 177–8, 189–90, 216–18.
[7] *Elizabethan Casuistry*, pp. 96–8; Society of Antiquaries of London, MS 21, fos. 35^{v}–36.
[8] *Elizabethan Casuistry*, p. 114; SAL, MS 21, fo. 8.
[9] *Elizabethan Casuistry*, p. 69; SAL, MS 21, fo. 9.
[10] Evans, *History*, p. 70.
[11] *Elizabethan Casuistry*, p. 101 (Case II, ii, 3); p. 120 (Case II, ii, 120); SAL, MS 21, fos. 64^{v}–5 (Case III, 5, edited below).
[12] *Elizabethan Casuistry*, pp. 52–3, 54–5 (Douai–Rheims, J2, J5), 63–6, 77, 122 (Allen–Persons, I, 1; II, i, 7; II, ii, 28). Cf. also P J Holmes, *Resistance and Compromise: the Political Thought of the Elizabethan Catholics* (recently republished as a paperback, Cambridge, 2009), 81–125; G. Crosignani, T. M. McCoog, M. Questier (assisted by P. Holmes), *Recusancy and Conformity in Early Modern England* (Pontifical Institute of Medieval Studies, 2010), esp. pp. 100–110. By far the best introduction to Elizabethan and Jacobean casuistry, both Catholic and Protestant, is still Elliot Rose, *Cases of Conscience* (Cambridge, 1975), see especially pp. 71–113, 242–50. Cf. P. Holmes (ed.), *Caroline Casuistry: the Cases of Conscience of Fr Thomas Southwell SJ* (C.R.S., 2012), esp. introduction, pp. xxiv–xxxi, and pp. 67–8, where a case similar to the one under review here is discussed by a casuist in the 1630s.
[13] *Elizabethan Casuistry*, p. 55.
[14] Matthew Sutcliffe, *A new challenge* (London, 1600), 94 [*vere* 122].
[15] *Elizabethan Casuistry*, pp. 52–3 (Douai–Rheims, J2); 63–6 (Allen–Persons, I, 1).
[16] Thomas Morton, *An exact discovery of Romish Doctrine* (London, 1605), pp. 42–4.
[17] *Elizabethan Casuistry*, pp. 55–55 (Douai–Rheims, J2, J5, J6; 63–6, 121 (Allen–Persons, I, 1; II, ii, 27). Some of the issues raised by these cases are also discussed in the 1630s by Thomas Southwell: see P. Holmes, *Caroline Casuistry* (C.R.S., 2012), pp. 46–7.
[18] *Elizabethan Casuistry*, pp. 63–6 (Allen–Persons, I, 1).
[19] M. Petriburg (Mandell Creighton), 'The excommunication of Queen Elizabeth,' *English Historical Review* VII (1892), pp. 84–87.

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[20] *Elizabethan Casuistry*, p. 121 (Allen–Persons, II, ii, 27.)
[21] M. Sutcliffe, *A new Challenge* (London, 1600), p. 112; cf. 115–116, 121–2.
[22] Richard Walpole, *A brief and clear confutation* (1603), 209^{v}–211.
[23] *Sic*, for 'promissionem'.
[24] *Sic*, for 'fugiendo'.
[25] *Sic*, for 'fugiendum'.
[26] *Sic*, for 'habebat'.
[27] This 3-word phrase is first written twice and then one version is crossed out.
[28] *Sic*, for 'tenetur'.
[29] *Sic*, for 'putet'.
[30] Underlined in original.
[31] *Sic*, for 'contingit'.
[32] At this point the Lambeth MS ends.
[33] *Sic*, for 'suam'.
[34] *Sic*, for 'teneor'.
[35] *Sic*, for 'legitime'.
[36] *Sic*, probably a miscopy of '12^{o} n^{o} 24^{o}', see previous reference to Navarre in text.
[37] At this point there is a faint 'n' (?) in the margin closest to the reference which follows, possibly for 'nota'.
[38] *Sic*, for 'petere'.
[39] At this point, the copyist inserted by mistake the passage between footnotes 40 and 42 (from 'vllo' to 'con'), which was later crossed out.
[40] See note 39.
[41] *Sic*, for 'in' (reading supplied by the crossed-out section, see note 39.)
[42] See note 39.
[43] Underlined in the original.
[44] Underlined in the original.
[45] *Sic*, for 'scit'.
[46] *Sic*, for 'legitime'.
[47] Largely obscured by the library stamp.
[48] Thomas de Vio Cajetan, *Secunda Secundae partis Summae Sacrae Theologiae S. Thomae Aquinatis, doctoris Angelici cum commentariis R. D. D. Thomae de Vio Caietani* (Louvain, 1581), pp. 294 ff., 389ff.
[49] Cicero, *De Officiis*, Book 1, § 7. (Andrew P. Peabody (ed.), *Cicero de Officiis* (Boston, 1887), p. 14.)
[50] See subsection 5 at the very end of the case.
[51] This is the point at which the Lambeth Palace manuscript ends.
[52] Martin ab Azpilcueta, *Enchiridion sive manuale confessariorum et poenitentium* (Antwerp, 1575), p. 159.
[53] Martin an Azpilcueta, *Enchiridion*, p. 163.
[54] *Decretum Gratiani* (Rome, 1582), pp. 1691–2 (actually at q. 5).
[55] 'He' changes again to 'they' at this point in the manuscript.
[56] 'He' changes to 'they' at this point in the manuscript.
[57] This seems to mean that a priest might be persuaded, by subtle questioning, to agree that the Parliament which agreed to the Prayer Book was thereby shown to be heretical and schismatical. In doing so the priest would also have agreed that the Queen was heretical and schismatical, since she also agreed to the Prayer Book, or perhaps constitutionally since she is a part of Parliament. The translation given above goes beyond the literal meaning of the Latin.
[58] The 'visio pacis' is the heavenly city, holy city or Jerusalem, and used in an ancient hymn which is in the Breviary. 'Coelestis patria' is a phrase used to signify heaven, for example by Saint Thomas Aquinas in the sermon *Beata Gens*. Quite what riddles on English place-names the casuist had in mind is unclear.

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