



GERALD AYLMER

*PUBLIC DUTY AND  
PRIVATE CONSCIENCE IN  
SEVENTEENTH-CENTURY  
ENGLAND*

Essays Presented to  
G. E. Aylmer

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## CONTENTS

<i>Abbreviations</i>	ix
1. Gerald Aylmer at Balliol CHRISTOPHER HILL, <i>formerly Master of Balliol College, Oxford</i>	1
2. Gerald Aylmer in Manchester and York GORDON LEFF, <i>Professor Emeritus of History, University of York</i>	9
3. Gerald Aylmer as a Scholar AUSTIN WOOLRYCH, <i>Professor Emeritus of History, University of Lancaster</i>	19
4. Cases of Conscience in Seventeenth-Century England KEITH THOMAS, <i>President of Corpus Christi College, Oxford</i>	29
5. Public Duty, Conscience, and Women in Early Modern England PATRICIA CRAWFORD, <i>Associate Professor of History, University of Western Australia</i>	57
6. Private Conscience and Public Duty in the Writings of James VI and I KEVIN SHARPE, <i>Reader in History, University of Southampton</i>	77
7. Divine Rights in the Early Seventeenth Century CONRAD RUSSELL, <i>Professor of History, King's College London</i>	101
8. The Conflicting Loyalties of a 'vulger counselor': The Third Earl of Southampton, 1597-1624 NEIL CUDDY, <i>Assistant Professor of History, University of Toronto</i>	121
9. The Public Conscience of Henry Sherfield PAUL SLACK, <i>Reader in Modern History, University of Oxford and Fellow of Exeter College</i>	151
10. William Dowsing, the Bureaucratic Puritan JOHN MORRILL, <i>Reader in Early Modern History, University of Cambridge, and Fellow of Selwyn College</i>	173
11. A Man of Conscience in Seventeenth-Century Urban Politics: Alderman Hoyle of York CLAIRE CROSS, <i>Professor of History, University of York</i>	205

12. The King's Servants: Conscience, Principle, and Sacrifice in Armed Royalism	225
P. R. NEWMAN, <i>Curatorial Adviser to the Dean and Chapter of York</i>	
13. Conscience, Constancy, and Ambition in the Career and Writings of James Howell	243
DANIEL WOOLF, <i>Associate Professor of History, Dalhousie University</i>	
14. Official Members in the Commons, 1660-1690: A Study in Multiple Loyalties	279
JOHN FERRIS, <i>Editor, History of Parliament Trust</i>	
15. William Penn's Odyssey: From Child of Light to Absentee Landlord	305
RICHARD S. DUNN, <i>Roy F. and Jeannette P. Nichols Professor of American History, University of Pennsylvania</i>	
16. A Select Bibliography of the Writings of G. E. Aylmer, 1957-1990	325
WILLIAM SHEILS, <i>Provost of Goodricke College, University of York</i>	
<i>Index</i>	335

## ABBREVIATIONS

<i>BHIR</i>	<i>Bulletin of the Institute of Historical Research</i>
BL	British Library
Bodl.	Bodleian Library
<i>Cal. SP Dom.</i>	<i>Calendar of State Papers, Domestic Series</i>
<i>CJ</i>	<i>Journals of the House of Commons</i>
<i>DNB</i>	<i>Dictionary of National Biography</i>
<i>Ec. Hist. Rev.</i>	<i>Economic History Review</i>
<i>EHR</i>	<i>English Historical Review</i>
HLRO	House of Lords Record Office
HMC	Historical Manuscripts Commission, Reports
<i>P&amp;P</i>	<i>Past and Present</i>
PRO	Public Record Office
RO	Record Office
<i>TL</i>	<i>Times Literary Supplement</i>
<i>TRHS</i>	<i>Transactions of the Royal Historical Society</i>

Unless otherwise stated, all works cited were published in London. In dates the old style has been retained, except that the year is taken to begin on 1 January.

his essay (already referred to) on 'Crisis and Regrouping in the Political Elites' (1980), which also addresses questions of allegiance, though within a narrower social band and over a slightly longer period.

Gerald's *œuvre* has been so large and varied that it has been impossible in the space allowed to mention all of it—and it is, of course, still in progress. Besides extending his study of administration and administrators into the post-Restoration period, one hears that he means to turn his hand to naval history, prompted by a strong naval tradition in his family and by his own experience of the service as a young man. He is still at the height of his powers, and one can be confident that retirement—another term which historians understand differently from most other mortals—will free him to concentrate on the work that he really wants to do. Meanwhile I ask his pardon for having left it so late to acknowledge his long and much valued service on the Historical Manuscripts Commission and as chairman of the editorial board of the History of Parliament Trust, and for not having mentioned so far his more recent participation in the European Science Foundation's project on the modern state, which presumably prompted his essay on 'The Peculiarities of the English State' (1990). I have also failed to find a slot for his searching article on 'The Meaning and Definition of "Property" in Seventeenth-Century England' (1980). Limitation of space has precluded consideration of his many scholarly reviews, which are always marked by the same scrupulous thoroughness and fairness that characterize his own work. What are the other Aylmer hallmarks? I would say a profound but never desiccated erudition; a special flair for cracking historical problems by means of exact categorization and the establishing of vital distinctions; exceptional impartiality and balance of judgement, stemming not from Olympian detachment but from the independence of a mind impervious to fashion and (still more) from a breadth of sympathy that gives him the entry into the minds of all parties to a conflict or controversy; an affectionate delight in the varieties and vagaries of human character; an enviable grace, precision, and clarity of style; and (not least) an unflinching courtesy towards both the living and the dead. Firm though his principles are, I always feel that Gerald would rather think well than ill of both.

## 4

Cases of Conscience in  
Seventeenth-Century England

KEITH THOMAS

Of all Divinity that part is most useful, which determines Cases of Conscience; and of all cases of Conscience the Practical are most necessary; as action is of more concernment than speculation; and of all Practical Cases those which are of most common use are of so much greater necessity and benefit to be resolved.

Joseph Hall, *Resolutions and Decisions of Divers Practicall Cases of Conscience in Continuall Use amongst Men* (2nd edn., 1650), sig. A3

Beloved, you live in a world wherein conscience is like to cost you dear; if you will own any such thing as conscience, or conscientious walking, you are like to smart for it.

R[ichard] A[lleine], *Vindiciae pietatis* (1663), 34

THE seventeenth century can justly be called the Age of Conscience. Certainly there has been no period in English history when men and women were subjected to so many religious and political conflicts of duty and allegiance or responded to them in so intensely scrupulous a fashion. For much of the century it was generally believed that conscience, not force of habit or self-interest, was what held together the social and political order. Every change in that order accordingly precipitated a moral crisis for its members. Every new oath of allegiance posed a dilemma for those who had sworn loyalty to the previous regime. Every attempt by the State

The casuistry of the early modern period has attracted a good deal of attention in recent years. Historians have studied its use by persecuted religious groups. Literary scholars have shown its influence upon poetry, drama, and the novel. Intellectual historians have examined its links with political thought. Philosophers have urged its revival as a philosophical technique. 'New historicists' have seen an affinity between its 'destabilizing' effect and the deconstructionist theory of language. I have profited from (almost all) these writings while drawing on my own reading in this brief attempt to evoke the general historical interest of the subject. As an offering to one who is unsurpassed for the scrupulousness with which he confronts dilemmas of conscience, whether in the seventeenth century or the twentieth, it is necessarily inadequate.

to prescribe the forms of religious doctrine and worship tested the consciences of those who believed it was their duty to obey the laws of the land but were also persuaded of the truth of a rival creed.

Outside the public arena, changing social and economic circumstances made many inherited rules of morality increasingly difficult to observe. The application of the Ten Commandments to daily life had never been a straightforward business; it did not grow easier with the passage of time and the emergence of conditions very different from those of ancient Israel. Traditional maxims about buying and selling or lending or borrowing appeared archaic as the economy diversified and credit became universal. The duties of parents and children, husbands and wives, and masters and servants needed constant redefinition in an age when people were encouraged to think for themselves and religious unity had disappeared. The complexities of human relationships had always been such that even the simplest prohibition, whether on killing people or on telling lies, could prove anything but simple to interpret in practice. In every sphere of life moral obligations could conflict and circumstances alter cases.

The generally accepted view was that any person unlucky enough to be caught in a dilemma which made it difficult to know how to act should follow the dictates of his or her conscience. This did not mean that individuals could do what they wished, provided their intentions were upright. For conscience was not a subjective matter, but an act of deliberate judgement, which could be mistaken. Following the example of Aquinas, most divines taught that conscience was the application to a particular case of a person's knowledge of right or wrong.<sup>1</sup> That knowledge was made up of two ingredients: the natural law of reason, or law of nature, which was universal to all human beings, and knowledge of the word of God, which required appropriate religious education. Many Calvinists, convinced of the depravity of man, tended to be sceptical about the value of the universal law of nature; they placed their emphasis not on this 'natural conscience', but on the 'renewed conscience', divinely enlightened in those born again. For them God's word, rationally interpreted, was the principal source of

<sup>1</sup> T. Wood, *English Casuistical Divinity during the Seventeenth Century* (1952), 67–72.

guidance.<sup>2</sup> But most commentators thought that both the law of nature and the law of God had a role to play in shaping conscience.

Conscience, therefore, was presumed to have an objective basis. Good intentions were not enough; indeed it was a sin to act in accordance with an erroneous conscience. Unfortunately, it was also a sin to act against it, since that would involve disregarding what the individual took to be the law of God: 'This is a constant rule: we always sin when we disobey conscience.'<sup>3</sup> It is not surprising that the conscientious individual, confronted by these stern doctrines, should have felt the need for guidance.

In the Roman Catholic Church the provision of such guidance had long been a specialized function of the clergy. In the later Middle Ages, priests hearing confessions had needed to assess a penitent's degree of sinfulness in order to impose an appropriate penance. That need had stimulated the production of numerous confessors' manuals which classified human actions in a variety of circumstances and assessed the degree of sin involved. After the Reformation the composition of large works of casuistry became a Europe-wide phenomenon; and these volumes were as much concerned with prescriptions for future action in difficult circumstances as with the assessment of actions already committed.<sup>4</sup> Casuistry was the science of applying general rules of conduct to particular cases, particularly in instances where the rules appeared to conflict or where their application caused doubt or perplexity. The casuist might proceed by formulating general rules—for example, by teaching that when two opposed courses of action seemed open it was better to follow the safer one, that is, the one less likely to involve the individual in a sin. But the casuist also multiplied examples of so-called 'cases of conscience', real or hypothetical, and explored their nuances and intricacies with a view to arriving at a firm resolution. In the process he laid bare the

<sup>2</sup> e.g. I. Bourne, *The Anatomie of Conscience* (1623), 9; E. Huit, *The Anatomy of Conscience* (1626), 229–39; R. Bernard, *Christian see to thy Conscience* (1631), 241–88. Cf. N. Fiering, *Moral Philosophy at Seventeenth-Century Harvard* (Chapel Hill, NC, 1981), 61–2; J. S. Wilks, *The Idea of Conscience in Renaissance Tragedy* (1990), 5–6.

<sup>3</sup> W. Fenner, *The Souls Looking-Glasse* (Cambridge, 1643 edn.), 53. On this 'double bind', see L. Gallagher, *Medusa's Gaze* (Stanford, Calif., 1991), 111–12.

<sup>4</sup> There is a lively general account in A. R. Jonsen and S. Toulmin, *The Abuse of Casuistry* (1988). Much information can be found in *Dictionnaire de théologie catholique*, ed. A. Vacant et al. (3rd edn., Paris, 1930–72), s.v. 'casuistique', 'laxisme', and 'probabilisme'. R. Briggs, *Communities of Belief* (Oxford, 1989), ch. 7, offers an illuminating discussion of French seventeenth-century practice.

circumstances in which it might be pardonable to evade the strict letter of the moral law.

In England, with the abolition of the confessional at the Reformation, this type of casuistry was at first associated exclusively with the Roman Catholics. The persecution of the Elizabethan recusants created many acute dilemmas for Catholics who were basically loyal to the regime, but had no desire to forgo their religion, or who disliked telling lies, yet had no wish to betray themselves or the missionary priests. At seminaries on the Continent, pupil-priests were instructed in the ways and means by which they could, with a good conscience, equivocate or dissimulate in order to escape arrest when they came to England. Roman casuists taught the laity how to comport themselves when required to attend Protestant services or to take loyalty oaths or to answer questions about the whereabouts of the seminary priests. They also gave advice on cases of conscience relating to marriage, property, usury, and other problems arising in daily life.<sup>5</sup>

A spectacular example of the use which the Catholic laity could make of such clerical advice was provided in 1605, when it was discovered that the Gunpowder Plotter Robert Catesby had sounded out the Jesuit Henry Garnet on the morality of killing innocent persons, including unbaptized children, in pursuit of a just cause. He had done this by putting the case, not of the intended Plot, but of a hypothetical attack upon a fort during the war in the Low Countries. Garnet had conceded that the destruction of the innocent would be permissible if it was an unintended consequence of the attack, 'done as *per accidens*, and not as a thing intended by or for itself'. This was enough for Catesby; he related Garnet's opinion to his fellow conspirators, who dispelled their scruples by applying it to their own situation.<sup>6</sup>

Yet the Protestant layman was no less likely to be subject to

<sup>5</sup> E. Rose, *Cases of Conscience: Alternatives Open to Recusants and Puritans under Elizabeth I and James I* (Cambridge, 1975); P. J. Holmes (ed.), *Elizabethan Casuistry* (Catholic Rec. Soc., 67; 1981); Holmes, *Resistance and Compromise: The Political Thought of the Elizabethan Catholics* (Cambridge, 1982), chs. 8-10; J. P. Sommerville, 'The "New Art of Lying": Equivocation, Mental Reservation and Casuistry', in E. Leites (ed.), *Conscience and Casuistry in Early Modern Europe* (Cambridge, 1988), 159-84; P. Zagorin, *Ways of Lying: Dissimulation, Persecution, and Conformity in Early Modern Europe* (London and Cambridge, Mass., 1990), chs. 7-9.

<sup>6</sup> J. Morris (ed.), *The Condition of Catholics under James I* (1871), 65-8; S. R. Gardiner, *History of England from the Accession of James I to the Outbreak of the Civil War 1603-1642* (10 vols.; 1883-4), i, 273-4.

intense moral dilemmas and he too might seek expert advice. When Charles I shrank in 1641 from agreeing to the attainder of the Earl of Strafford, he turned to the bishops. Juxon told him that he should not consent to the Bill if he were unsatisfied in his conscience, but Archbishop Williams maintained that there was a distinction between the king's public and private consciences: Charles's public duty was to assent, in order to save the peace of the kingdom, even though his private conscience was against it. This was the advice the King followed, though he subsequently bitterly lamented doing so, it being 'a bad exchange to wound a man's own conscience, thereby to salve State sores'.<sup>7</sup> It was, however, neither the first nor the last time when the King turned to clerical casuists for the resolution of his own problems. Archbishop Laud records mysteriously in his diary for 20 March 1631 that 'His Majesty put his great case of conscience to me, about, &c; which I after answered. God bless him in it'.<sup>8</sup> It was Laud who recommended Robert Sanderson to the King because of his casuistical learning. Charles put many cases of conscience to Sanderson and took him on as his permanent adviser; during his subsequent imprisonment in the Isle of Wight, he is even said to have translated Sanderson's Latin lectures on the obligation of oaths. The King seems to have gone from one crisis of conscience to another.<sup>9</sup> Pressed in 1646 to agree to abandon episcopacy, he fell back on the doctrine of mental reservation; in a letter to Juxon he asked whether he would condone 'some kind of compliance with the iniquity of the times . . . which at another time were unlawful', demanding specifically 'whether I may with a safe conscience give way to this proposed temporary compliance, with a resolution to recover and maintain that doctrine and discipline where I have been bred'. Juxon and his fellow bishop Brian Duppa agreed that he could.<sup>10</sup>

<sup>7</sup> Gardiner, *History of England*, ix, 365; *Eikon Basilike, or the King's Book*, ed. E. Almack (1904), 7-9; *The Works of Robert Sanderson*, ed. W. Jacobson (6 vols.; Oxford, 1854), vi, 304.

<sup>8</sup> *The Works . . . of William Laud*, ed. W. Scott and J. Bliss (7 vols.; Oxford, 1847-60), iii, 213.

<sup>9</sup> *Works of Sanderson*, vi, 296; i, pp. x-xii.

<sup>10</sup> *State Papers Collected by the Earl of Clarendon* (3 vols.; Oxford, 1767-86), ii, 265-8. The King subsequently put the same issue to Sanderson (*Works of Sanderson*, v, 139-41; vi, 304). An unsolicited answer had already been supplied by the Puritan John Gere in his *A Case of Conscience Resolved: Wherein it is Declared that the King may without Impeachment to his Oath . . . consent to the Abrogation of Episcopacy* (1646). To this, Edward Boughen replied with *Mr. Gere's Case of Conscience Sifted* (1648).

Cases of conscience were not peculiar to monarchs or plotters, but were liable to confront anyone. For that reason they figured largely in the theological literature of the period. A representative definition was that of William Ames: a case of conscience was 'a practical question concerning which the conscience may make a doubt'.<sup>11</sup> It was a 'case' because it fell or happened in the course of a person's life; and it was a 'case of conscience' because the nature of the decision taken would affect the actor's soul. Many worldly dilemmas were, therefore, not cases of conscience at all. Conversely, many cases of conscience related not to action in the world but to the individual's state before God. Much Protestant casuistry concerned problems of grace and assurance of salvation. In particular, Puritan casuists sought to drive away despair, and to indicate ways by which the soul could be saved. For William Perkins, the greatest case of conscience 'that ever was' was *How a man may know whether he be the child of God or no?*<sup>12</sup> The casuist was thought of as a physician or healer, who brought 'peace and a quiet mind', relieved troubled consciences, and allayed needless doubts.<sup>13</sup> His primary objective was less the resolution of some immediate difficulty than the long-term health of the patient's soul; and for this the individual's relationship to God was more important than any practical problem in the world. 'Duties towards God are the great object of conscience, but duties towards man are the secondary.'<sup>14</sup> Of Richard Greenham it was related that 'unto one that asked his advice in outward things, who as yet stood in greater need to be instructed in inward, he said, "If you first will confer with me and establish yourself in things concerning faith and repentance, then ask me and I will advise you freely for the outward state."<sup>15</sup> The good casuist was like a doctor who refuses to treat some particular malady until the patient has first agreed to reform his whole way of life.

Yet the casuist's main task was to give advice, 'sound direction'

<sup>11</sup> W. Ames, *Conscience with the Power and Cases thereof* (n.p., 1639), ii. 1. Cf. E. Dublanchy, 'Cas de conscience', *Dictionnaire de théologie catholique*, ii (2), cols. 1815-20.

<sup>12</sup> *The Workes of . . . William Perkins*, (Cambridge, 1608), i, sig. 004.

<sup>13</sup> *The Whole Works of . . . Jeremy Taylor*, ed. R. Heber and C. P. Eden (10 vols.; 1847-54), ix, p. xvi; M. Sampson, 'Laxity and Liberty in Seventeenth-Century English Political Thought', in Leites (ed.), *Conscience and Casuistry*, 99.

<sup>14</sup> *The Morning-Exercise at Cripplegate: Or, Several Cases of Conscience Practically Resolved* (4th edn., 1677), 4.

<sup>15</sup> Rose, *Cases of Conscience*, 203.

as to what was to be done, whether towards God or man.<sup>16</sup> The scope of such advice was immense, for there was 'not any one article of faith or duty prescribed as a part of piety or righteousness about which questions may not be moved and cases propounded wherein the conscience may seek satisfaction'.<sup>17</sup> To be effective, the casuist was expected to be learned in Latin, Greek, and Hebrew, educated in the arts and sciences, knowledgeable in law, skilled in reasoning, and well versed in the literature of his subject. For the application of God's laws to the world was a complex matter. As Francis Bacon put it,

It is an easy and compendious thing to call for the observation of the Sabbath-day, or to speak against unlawful gain; but what actions and works may be done upon the Sabbath, and in what cases; and what courses of gain are lawful, and what not; to set this down, and to clear the whole matter with good distinctions and decisions, is a matter of great knowledge and labour, and asketh much meditation and conversation in the Scriptures, and other helps which God hath provided and preserved for instruction.<sup>18</sup>

Age and experience were also important. No young man was fit to write cases of conscience, thought Charles I; at the age of 77, Bishop Barlow modestly claimed that 'I am, or ought to be, in some measure a competent judge of such cases.'<sup>19</sup>

Of course, in a Protestant country the casuist's role could be only advisory. His conclusions were based not on his own authority or that of the popes and the Roman councils, but on Scripture and reason. The client was expected to know the principles on which the judgement rested: 'It is a pastor's duty, not to captivate to his own authority the mind and conscience of his flock, not magisterially to determine, but with humility and modesty to declare what he judges most agreeable to the will of God; above all, he ought to see that his judgment be as well-grounded as possible.'<sup>20</sup> Nevertheless, it was a widespread assumption that the solving of

<sup>16</sup> T. Pickering, 'Epistle Dedicatorie', to W. Perkins, *The Whole Treatise of the Cases of Conscience*, in *Workes of Perkins*, ii (Cambridge, 1617).

<sup>17</sup> D. Dickson, *Therapeutica sacra* (Edinburgh, 1664), 10.

<sup>18</sup> *The Letters and the Life of Francis Bacon*, ed. J. Spedding (7 vols.; 1861-74), i. 92. Cf. *Workes of Sanderson*, vi. 358; *The Genuine Remains of . . . Dr. Thomas Barlow* (1693), 2; J. La Placete, *The Christian Casuist*, trans. B. Kennett (1705), 372-3.

<sup>19</sup> *Workes of Sanderson*, vi. 304; T. Barlow, *Several Miscellaneous and Weighty Cases of Conscience* (1692), ii. 14.

<sup>20</sup> La Placete, *The Christian Casuist*, 254.

cases of conscience was a matter of expertise, not impossible for an uneducated layman, but very difficult. 'Ignorant persons', thought the Elizabethan Thomas Cartwright, should 'hunt and seek out some discreet and learned minister of God's word . . . and require at his mouth the knowledge of the Law of the Lord.'<sup>21</sup> Others agreed that few men were wise or good enough to be their own casuists. 'If their case be . . . involved', ruled Jeremy Taylor, they needed 'a spiritual guide to untie the intrigue and state the question, and apply the respective rules to the several parts of it'. The perplexed should defer to the 'authority of learned men' and the 'example and judgement of the sagest and soberest persons'. 'Learned counsel' was as necessary for advice on moral dilemmas as for legal ones.<sup>22</sup>

The generally accepted ideal in post-Reformation England, accordingly, was of 'able ministers over the land, applying themselves in every case of conscience, as godly casuists unto all the distressed in mind'.<sup>23</sup> The Prayer Book encouraged communicants to repair to the curate for 'ghostly counsel, advice and comfort'; and the Anglican Church preserved the possibility of voluntary private confession to a minister.<sup>24</sup> Many of the Puritan clergy in Elizabethan times gave extensive advice to their flock in personal consultations and 'comfortable letters'.<sup>25</sup> Throughout the seventeenth century, the Church's leaders maintained that the handling of cases of conscience was one of the clergy's most essential functions. 'If we would do our duty as we ought,' ruled Bishop Stillingfleet, 'we must inquire into, and be able to resolve cases of conscience.' Bishop Sprat agreed: it was 'a most excellent qualification' to be 'a sound and well-experienced casuist', and highly desirable 'to have some good, sound body of casuistical divinity . . . always at hand'.<sup>26</sup> Even the Erastian John Selden accepted that the study of casuistry was one of the things a minister should 'be at'.<sup>27</sup>

<sup>21</sup> *Cartwrightiana*, ed. A. Peel and L. H. Carlson (1951), 92-4.

<sup>22</sup> R. B. Schlatter, *The Social Ideas of Religious Leaders, 1660-1688* (1940), 207; *Whole Works of Jeremy Taylor*, ix, p. xx (and ix. 102); *Works of Sanderson*, iii. 125; *Workes of Perkins*, ii. 139.

<sup>23</sup> W. Loe, *Vox clamantis* (1621), 30.

<sup>24</sup> K. Thomas, *Religion and the Decline of Magic* (Harmondsworth, 1978 edn.), 186-8.

<sup>25</sup> P. Collinson, *The Elizabethan Puritan Movement* (1967), 435-7; B. Brook, *The Lives of the Puritans* (3 vols.; 1813), ii. 193.

<sup>26</sup> Edward [Stillingfleet], *Ecclesiastical Cases Relating to the Duties and Rights of the Parochial Clergy* (1698), 58; Wood, *English Casuistical Divinity*, 31-3.

<sup>27</sup> J. Selden, *Table Talk*, ed. Sir F. Pollock (1927), 80.

But where was this casuistry to be found? In 1589 Francis Bacon had lamented that the teachings of the Puritans were cast in too general terms:

The word (the *bread of life*) they toss up and down, they break it not. They draw not their directions down *ad casus conscientiae*; that a man may be warranted in his particular actions whether they be lawful or not. Neither indeed are many of them able to do it, what through want of grounded knowledge, what through want of study and time.<sup>28</sup>

Throughout the following century it was a recurring complaint that English casuistic effort had gone into sermons, private conferences, and advice to pious persons, but not into print; there was little published casuistical divinity and what there was seemed intellectually inadequate. Relatively few authors completed a systematic treatment of the whole subject comparable to the work of their Jesuit or Lutheran contemporaries. On the Puritanical wing there were the great works of William Perkins, William Ames, and Richard Baxter. On the Anglican side there were the writings of Robert Sanderson and Jeremy Taylor.<sup>29</sup> Some other, equally ambitious, projects came to grief. Richard Greenham did not live long enough to produce the casuistical compendium which others had hoped for. Ralph Cudworth, father of the Platonist, informed James Ussher in 1617 that he had 'begun a long work, The Cases of Conscience, in the three societies, of family, church and commonwealth', beginning with the first, 'where the perplexed questions concerning marriage, contracts, divorce, &c, are to be discussed'. He later told Joseph Hall that he had completed it, but it never saw the light of day.<sup>30</sup> Samuel Clarke began a similar treatise, handling all cases of conscience alphabetically, but the published version never got beyond the letter 'C'.<sup>31</sup> In the 1630s John Dury, Samuel Hartlib, and a group of London ministers had asked Archbishop Ussher to supervise a scheme to produce 'a Complete Body of Practical Divinity', to be translated for the

<sup>28</sup> *Letters and Life of Bacon*, i. 92; also *The Works of Francis Bacon*, ed. J. Spedding, R. L. Ellis, and D. D. Heath (14 vols.; 1857-9), iii. 489.

<sup>29</sup> Wood, *English Casuistical Divinity*, 143-4, lists the main works. An earlier casuistical publication from a Reformed viewpoint was P. Martyr, *Common Places*, Eng. trans. A. Marten (1583).

<sup>30</sup> S. Clarke, *The Lives of Two and Twenty English Divines* (1660), 16-17; *The Whole Works of the Most Rev. James Ussher*, ed. C. R. Elrington and J. M. Todd (17 vols.; Dublin, 1847-64), xvi. 347; J. Hall, *Resolutions and Decisions* (2nd edn., 1650), sig. T10<sup>v</sup>.

<sup>31</sup> S. Clarke, *Medulla theologiae* (1659).



benefit of German Protestants. Dury urged in 1642 that the project be advanced by establishing professors in the subject at the universities and in London; and the scheme was again resurrected during the Protectorate, but without success. Baxter's *Christian Directory* (1673) was a belated answer to this call.<sup>32</sup> In 1649 Bishop Hall published a selection of highly practical cases which was commended by the licenser as 'profitable, necessary and daily useful' and went into five editions in ten years. Hall later confessed that he had been pressed to make up 'a complete body of case-divinity', so as to fill that 'great defect in our language', but he was approaching 80 and felt unequal to the task.<sup>33</sup>

At the end of the century, another bishop, Thomas Barlow, who had himself resolved numerous cases, concluded that 'for Protestants, there is no part of divinity which has been (I know not why) more neglected; very few have writ a just and comprehensive tract of Cases of Conscience'. By contrast, European Catholics since the Council of Trent had put out over six hundred volumes of casuistry, containing tens of thousands of cases.<sup>34</sup> It is not surprising that some English divines consulted the Roman handbooks *faute de mieux*, being forced, in a much-quoted analogy, to sharpen their ploughshares in the forges of the Philistines.

Yet the relative shortage of full-scale works of casuistical divinity should not be allowed to conceal the ubiquity of casuistical thinking in seventeenth-century England. Only a few brave spirits attempted to give rules for resolving all the cases of conscience which might conceivably arise in the course of a person's life, but there were innumerable published works of guidance on specific dilemmas. It was usual to present some current controversy as a 'case of conscience' crying out for resolution. Discussions of individual cases or batches of them were regularly put out by divines, on every subject from witchcraft to swearing.<sup>35</sup> In addition, there were

<sup>32</sup> G. Westin, *Negotiations about Church Unity, 1628-34* (Uppsala, 1932), 18, 158-9 n., 240-1; N. Bernard, *The Life and Death of . . . James Usher* (1656), 83; J. Minton Batten, *John Dury, Advocate of Christian Reunion* (Chicago, 1944), 52-3, 92, 131; *Reliquiae Baxterianae*, ed. M. Sylvester (1696), i. 122; *The Practical Works of Richard Baxter* (1707), i, p. xx; ii. 481. Dury's conception of 'practical divinity' is set out in his *An Earnest Plea for Gospel-Communion* (1654).

<sup>33</sup> Hall, *Resolutions and Decisions*, sigs. T9-10.

<sup>34</sup> *Remains of Thomas Barlow*, 46; H. Hurter, *Nomenclator literarius theologiae Catholicae* (5 vols.; 3rd edn., Innsbruck, 1903), iii and iv *passim*.

<sup>35</sup> An idea of their frequency can be gained from a perusal of the short-title catalogues of Pollard and Redgrave and of Wing, as well as the British Museum catalogue of the Thomason Tracts. Other collections survive in manuscript.

expositions of the Catechism, commentaries on the Decalogue, discourses on 'relative duties', biblical commentaries, sermons and casuistical 'exercises', letters of advice and exemplary biographies, all offering reflections on moral duties and guidance on the resolution of specific moral dilemmas. As Bishop Fleetwood observed of his *Relative Duties* (1715), 'to make these discourses more useful, there is something casuistical in most of them'. Protestant casuistry was not confined to works written specifically about the conscience; it could be found almost anywhere, in drama and poetry as well as in religious writing.<sup>36</sup>

In the universities casuistical themes were regularly handled in formal disputations. Could one emigrate to avoid persecution? Was equivocation ever allowable? Could children marry without the consent of their parents? Was it permissible to fight a duel? These and similar issues were all debated at Oxford at the beginning of the seventeenth century.<sup>37</sup> It was a form of education which did much to disseminate the habit of casuistical thinking.

Many of the clergy seem to have put this education into vigorous practice, settling cases of conscience for their parishioners and providing advice, both oral and written, to all comers. There were celebrated Puritan 'oracles', like Richard Greenham at Dry Drayton or William Whately at Banbury or James Horrocks of Dean in Lancashire.<sup>38</sup> Many kept regular surgeries, meeting weekly to confer about 'wholesome cases of conscience'. Robert Bolton and James Ussher were sent enquiries from abroad.<sup>39</sup> During the Commonwealth, John Norman, the Presbyterian minister of Bridgwater,

<sup>36</sup> W. Fleetwood, *The Relative Duties of Parents and Children, Husbands and Wives, Masters and Servants* (1705), sig. A3. Cf. R. L. Greaves, *Society and Religion in Elizabethan England* (Minneapolis, Minn., 1981); C. H. and K. George, *The Protestant Mind of the English Reformation* (Princeton, NJ, 1961); Schlatter, *Social Ideas of Religious Leaders*; W. E. Houghton, jun., *The Formation of Thomas Fuller's Holy and Profane States* (Cambridge, Mass., 1938), ch. iv; G. A. Starr, *Defoe and Casuistry* (Princeton, NJ, 1971); C. W. Slights, *The Casuistical Tradition in Shakespeare, Donne, Herbert, and Milton* (Princeton, NJ, 1981); Gallagher, *Medusa's Gaze*.

<sup>37</sup> *Register of the University of Oxford, ii. 1571-1622*, ed. A. Clark (Oxford Hist. Soc.; 1887-8), pt. 1, 194-217.

<sup>38</sup> Rose, *Cases of Conscience*, 201-5; S. Clarke, *The Marrow of Ecclesiastical History* (2nd edn., 1654), 931; *The Rev. Oliver Heywood . . . his Autobiography, Diaries, Anecdote and Event Books*, ed. J. Horsfall Turner (4 vols.; Brighouse and Bingley, 1882-5), i. 43. For others, see Brook, *Lives of the Puritans*, iii. 167; S. Clarke, *The Lives of Sundry Eminent Persons* (1683), 144, 189; *The Life and Times of Anthony Wood*, ed. A. Clark (Oxford Hist. Soc.; 5 vols.; 1891-1900), i. 460; K. L. Sprunger, *The Learned Doctor William Ames* (1972), 155-66.

<sup>39</sup> S. Torshell, *The Hypocrite Discovered and Cured* (1644), 50; *Reliquiae Baxterianae*, i. 83; Clarke, *Marrow of Ecclesiastical History*, 926; Bernard, *Life of James Usher*, 83.

displayed 'a scholastical dexterity, able to tie and untie Gordian knots, and no mean casuistical faculty'; while in Oxford a regular session for the satisfaction of doubtful consciences held in 1646 by a group of Presbyterian divines was known irreverently as 'the scruple-house'.<sup>40</sup> Yet it was not only Puritans who applied themselves to practical cases of conscience. Lancelot Andrewes was 'a man deeply seen in all cases of conscience and in that respect . . . much sought unto by many, who ever received great satisfaction from him in clearing those doubts which did much perplex them'. John Donne kept written copies of the cases of conscience that had concerned his friends, 'with his observations and solutions of them'. Archbishop Williams was often asked to resolve cases of conscience; and 'when he thought the doubting person would not be contented with discourse, he gave them his resolutions, very long and laborious, in writing, which, gathered together . . . would have made an handsome tractate'.<sup>41</sup> Sanderson resolved the perplexities of many private individuals during the 1650s, while Barlow, Burnet, and other later seventeenth-century bishops gave extensive written advice to prominent laymen, including Robert Boyle, whose repeated consultations have recently been admirably documented.<sup>42</sup>

It is likely that the overwhelming proportion of these consultations were with individuals like Boyle whose religious scruples were highly developed; and it is impossible to determine how extensive was the recourse to clerical casuists by the population at large. Published works of casuistry were probably read more by the clergy than by the laity; and when laymen were addressed it was usually assumed that they were employers rather than servants: the readers of Baxter's *Christian Directory* were intended to include 'the more judicious masters of families'.<sup>43</sup> The clergy were not the

<sup>40</sup> J. Norman, *Cases of Conscience Practically Resolved* (1673), sig. A3<sup>v</sup>; *A True Relation of the Late Conference held at Oxford* (n.p., 1646).

<sup>41</sup> L. Andrewes, *Two Answers to Cardinal Perron and other Miscellaneous Works* (Library of Anglo-Catholic Theology, Oxford, 1854), vii; A. E. Malloch, 'John Donne and the Casuists', *Studies in English Literature, 1500-1900*, 2 (1962); John Hackett, *Scrinia reserata* (1693), ii. 61-2.

<sup>42</sup> *Works of Sanderson*, vi. 320; Barlow, *Several Cases of Conscience, passim*; T. E. S. Clarke and H. C. Foxcroft, *A Life of Gilbert Burnet* (Cambridge, 1907), 173-6; M. Hunter, 'Casuistry in Action: Robert Boyle's Confessional Interviews with Gilbert Burnet and Edward Stillingfleet, 1691', *Journal of Ecclesiastical History*, 43 (1992); Hunter, 'The Conscience of Robert Boyle' (unpublished paper). I am grateful to Dr Hunter for letting me read his two excellent articles in typescript.

<sup>43</sup> *Practical Works of Baxter*, i, p. xx; *Reliquiae Baxterianae*, i. 122.

only advice agency; for every person who, like Ben Jonson's Morose, may have 'run out o'door in's nightcaps, to talk with a casuist about his divorce', there was another who consulted a friend or an astrologer.<sup>44</sup> Richard Baxter admits that his own wife, Margaret, was 'better at resolving a case of conscience than most divines that ever I knew in all my life . . . she would lay all the circumstances presently together, compare them, and give me a more exact resolution than I could do'.<sup>45</sup> Other women could be equally independent of clerical expertise. The obstetrician Percival Willughby recalled how some divines were consulted during a particularly difficult labour when it became necessary to decide whether to save the mother or the child. 'Several women frowned upon some of these divines, and, upon the women's dislikes, they turned their coats, and changed their opinions'.<sup>46</sup>

For many people the very idea of a case of conscience was ill developed. John Downname thought that dilemmas seldom occurred to 'ignorant and simple people, whose consciences, through defect in knowledge and want of understanding . . . do seldom check them for anything they do, unless it be so grossly wicked that even the light of nature doth discover and condemn it'.<sup>47</sup> There were numerous profane persons with 'a dead and cauterized conscience', whose normal retort was that 'conscience is hanged a great while ago'.<sup>48</sup> There were those who made easy excuses, like tradesmen, who, according to Perkins, used 'many practices of fraud and injustice, and that upon a persuasion that they have a charge and family which must be maintained'.<sup>49</sup> There were libertines, who made it 'their chief happiness and perfection to have the sense of sin extinguished', and there were religious hypocrites, who, according to Samuel Torshell, invoked conscience as 'a cover' for baser motives, for example, by 'finding good reasons why they should not give money to beggars'.<sup>50</sup> The political history of the seventeenth century suggests that a large proportion of the

<sup>44</sup> B. Jonson, *Epicoene, or the Silent Woman*, Act IV, sc. v. Cf. Thomas, *Religion and the Decline of Magic*, ch. 10, sect. 4.

<sup>45</sup> J. T. Wilkinson, *Richard Baxter and Margaret Charlton* (1928), 127.

<sup>46</sup> P. Willughby, *Observations in Midwifery*, ed. H. Blenkinsop (1863; East Ardsley, 1972), 125.

<sup>47</sup> J. Downname, *The Christian Warfare* (4th edn., 1634), 1109.

<sup>48</sup> Bourne, *Anatomie of Conscience*, 17; Fenner, *Souls Looking-Glasse*, 25.

<sup>49</sup> *Workes of Perkins*, ii. 315.

<sup>50</sup> Ames, *Conscience*, i. 41; Torshell, *Hypocrite Discovered*, 20.

population was, by repeated compliance and accommodation, able to circumvent with apparent ease what other, more scrupulous, persons saw as intolerable dilemmas of conscience.

Nevertheless, the huge mass of surviving cases of conscience and their written resolutions gives some idea of the extent of this kind of thinking in seventeenth-century England. They also indicate the areas of life in which moral perplexity was most likely to arise; and this is what makes them of such interest to the social historian. Of course, they are not a wholly reliable guide to contemporary preoccupations, since works of casuistry were shaped by literary models as ancient as Cicero's *Offices* and the Roman law. Jeremy Taylor kept his distance from topical issues, and his baroque construction, *Ductor dubitantium*, was more a product of the study than of experience. Perkins and Ames conspicuously failed to address some of the most immediate practical issues confronting the godly ministers of their day.<sup>11</sup> Yet, on the whole, the casuists learnt through experience to identify 'those questions ... in which the conscience useth most to doubt'.<sup>12</sup>

If we set aside the (very numerous) problems relating to faith, assurance, and other spiritual matters, and concentrate upon those which concerned life within the world, it is not difficult to identify the contexts in which cases of conscience most frequently arose.

The first concerned political and religious allegiance. Here the essential issue was whether human laws were binding on the conscience. That, said Jeremy Taylor, was 'the greatest case of conscience in this whole matter': was it a matter of conscience as well as of prudence to conform to the law of the land?<sup>13</sup> In his view, and that of many of his fellow casuists, it unquestionably was. The commands of a lawful authority in indifferent matters were to be obeyed. Only if those commands were directly against the law of God could they be ignored; and even then active resistance was unlawful.<sup>14</sup> But what was a lawful authority and what were matters indifferent? And did not the very law of nature concede an ultimate right of self-defence? It was by asking such questions that one could deny the duty of Puritans or Dissenters

<sup>11</sup> Rose, *Cases of Conscience*, 200.

<sup>12</sup> Ames, *Conscience*, sig. A4.

<sup>13</sup> *Whole Works of Jeremy Taylor*, x. 4.

<sup>14</sup> Taylor ruled that 'no man who can think it lawful to fight against the supreme power of his nation can be fit to read cases of conscience' (*ibid.* x. 186).

to conform to the worship of the Anglican Church, justify Parliamentary resistance to Charles I, and require citizens to pledge their support to the Commonwealth government. As has been justly written of the controversialists of the 1640s,

the Civil War presented itself to them as the most colossal case of conscience with which they had ever to contend, and their assumption was that the solution could be found if men kept their tempers and honed their arguments to ever finer distinctions... casuistry provided the main support for the remonstrances, declarations, ordinances, and answers in which the parties' practical measures were put forward.<sup>15</sup>

The titles of the political pamphlets which proliferated in the 1640s and 1650s transparently reveal their casuistical origin: *Conscience Puzzel'd*; *Conscience Caution'd*; *Conscience Satisfied*; *A Case of Conscience Concerning Flying in Times of Trouble*; *A Resolution of a Seasonable Case of Conscience*; *Certain Considerable and Most Materiall Cases of Conscience*; *Seven Cases of Conscience*; *Nineteen Cases of Conscience*; *The Grand Case of Conscience Stated*.<sup>16</sup> The list could be greatly extended, for there were innumerable 'Cases' and 'Resolutions', 'Queries' and 'Questions', 'Problems Propounded' and 'Scruples' or 'Doubts'. No wonder that at the very beginning of the war an anonymous Welsh Royalist called for a national synod to decide the pressing cases of consciences which, in his view, threatened people's souls even more than violence threatened their bodies.<sup>17</sup>

Casuistical debate was intensified by the ever-increasing recourse to loyalty oaths. The successive imposition of the Protestation (1641), the Solemn League and Covenant (1643), and the Engagement to the Commonwealth (1650) created acute dilemmas about the compatibility of each with its predecessor and of all with the Oaths of Allegiance and Supremacy to the Crown. In the process all the old 'Jesuitical' doctrines about equivocation, mental reservation, and dissimulation, supposedly unique to papists, were resurrected and strenuously employed against those who took a more rigorist view of such obligations; and much was made of the linguistic indeterminacy of all verbal agreements. The efforts of

<sup>15</sup> J. M. Wallace, *Destiny his Choice* (Cambridge, 1968), 10.

<sup>16</sup> The sixth item was published at Oxford in 1645. The others can be found in BL Thomason Tracts (E. 585 (7); E. 341 (7); E. 97 (7); E. 250 (3); E. 1812 (2); E. 989 (21); E. 986 (16); E. 530 (45)).

<sup>17</sup> *Pro-Quiritatio Παραιτετικη or, a Petition to the People* (1642), sig. A2 (anonymous, but its references to the 'Welsh nation' and, possibly, its verbosity suggest its author's provenance).

some Puritan clergy to reconcile their consciences with the King's command to read the Book of Sports had generated a good deal of accommodating casuistry in the pre-Civil War period, but it was as nothing to what now occurred. Casuistry became a supple means of enabling contemporaries to adjust to new political realities without incurring an undue burden of guilt. A Royalist in 1650 denounced 'new state chaplains', like the indefatigable John Dury, who had become 'tutors . . . in . . . the black art of breaking all sacred bonds and obligations whatsoever, and that under the notion of satisfying the consciences and resolving the scruples of such who cannot swallow down this camel of perjury as easily as themselves'.<sup>58</sup> Dury indeed saw most of the Interregnum's problems as casuistical, and busily compiled resolutions to cases of conscience on every subject from the Engagement and the political role of clerics to Protestant reunion and the readmission of the Jews.<sup>59</sup>

The Restoration gradually reduced the spate of casuistical pamphleteering, but in the 1680s the process started all over again. The Anglican Church unsuccessfully attempted to win over the Dissenters by staging a series of lectures, subsequently published as a collection of cases of conscience, designed to show that conformity in matters indifferent was a binding duty.<sup>60</sup> The 1688 Revolution brought up once again all the old questions about allegiance, resistance, and the sacred inviolability of oaths; and in the ensuing torrent of publication they received the same casuistical treatment.<sup>61</sup>

Recent scholarship has made it abundantly clear that it was casuistry which provided the context for some of the most crucial developments in seventeenth-century political thought. Grotius,

<sup>58</sup> *A Pack of Old Puritans* (1650), sig. A3; Bodl. MS Tanner 71, fos. 186-7 (for ingenious reasoning on the Book of Sports). Cf. W. Prynne, *Concordia discors* (1659); C. Hill, *Society and Puritanism in Pre-Revolutionary England* (1964), 395, 410; Wallace, *Destiny his Choice*, 49-53; Sampson, 'Laxity and Liberty', 111-12; A. Snider, 'By Equivocation Swear, *Hudibras* and the Politics of Interpretation', *The Seventeenth Century*, 5 (1990); Zagorin, *Ways of Lying*, ch. 10.

<sup>59</sup> Batten, *John Dury*, 119-24, 142-3, 147. Cromwell's conference of 1655 on Jewish readmission was intended to arrive at 'some clearing [of] the case, as to conscience'; unfortunately, the ministers present disagreed, leaving the Protector doubtful; [H. Jessey], *A Narrative of the Late Proceedings at Whitehall Concerning the Jews* (1656), 9. Cf. Barlow, *Several Cases of Conscience*, pt. v.

<sup>60</sup> *A Collection of Cases and Other Discourses Lately Written to Recover Dissenters to the Communion of the Church of England by some Divines of the City of London* (1685).

<sup>61</sup> M. Goldie, 'The Revolution of 1689 and the Structure of Political Argument: An Essay and an Annotated Bibliography of Pamphlets in the Allegiance Controversy', *Bulletin of Research in the Humanities*, 83 (1980).

Ascham, Filmer, and Locke can all be better understood when fitted into the casuistical tradition.<sup>62</sup> So, even, can Thomas Hobbes. The immediate object of *Leviathan* was to resolve the acute dilemma which confronted ex-Royalists in 1651: 'I find by divers English books lately printed that the Civil Wars have not yet sufficiently taught men in what point of time it is that a subject becomes obliged to the conqueror.'<sup>63</sup> But Hobbes's casuistical preoccupations went further than that. When he tells us that the laws of nature 'oblige *in foro interno* . . . but *in foro externo* . . . not always', he is invoking the age-old distinction between matters appropriate for the confessional and matters which concern the Church courts. When he claims that his science of the laws of nature is 'the true and only moral philosophy', he signals his intention to supersede those 'innumerable and huge volumes of ethics' with which lax casuists had confirmed 'wicked men in their purposes'.<sup>64</sup> *Leviathan* abounds in solutions to traditional casuistical dilemmas: do covenants made under force oblige? must one keep faith with heretics? are poor men justified in stealing in order to keep alive? is revenge lawful? what excuses for crimes are allowable? may a soldier flee from the field of battle? what can Christians do to escape persecution?<sup>65</sup>

Of course, Hobbes's solutions to such problems were often unconventional: he brushed aside the vast literature on the binding force of oaths by remarking tartly that an oath adds nothing to an obligation, though it may make subsequent non-performance more dangerous.<sup>66</sup> Even more brutally, he rejected the notion that every individual is the judge of good and evil and entitled to follow his own conscience. This, he thought, could only lead to anarchy; in the commonwealth, the sovereign's law was the public conscience of everyone.<sup>67</sup> Yet Hobbes was far from jettisoning all earlier teachings about conscience and its importance. On the contrary,

<sup>62</sup> Wallace, *Destiny his Choice*; Sampson, 'Laxity and Liberty'.

<sup>63</sup> Thomas Hobbes, *Leviathan*, ed. R. Tuck (Cambridge, 1991), 484 (Review and Conclusion); Q. Skinner, 'Conquest and Consent: Thomas Hobbes and the Engagement Controversy', in G. E. Aylmer (ed.), *The Interregnum: The Quest for Settlement 1646-1660* (1972), 94-7.

<sup>64</sup> *Leviathan*, 110 (ch. 15).

<sup>65</sup> *Ibid.* 97-8 (ch. 14); 103 (ch. 15); 208 (ch. 27); 106-7 (ch. 15); ch. 27; 151-2 (ch. 21); 343-5 (ch. 42).

<sup>66</sup> *Ibid.* 100 (ch. 14); *The Elements of Law*, ed. F. Tönnies (1889), 81.

<sup>67</sup> *Leviathan*, 223 (ch. 29); 236 (ch. 30). Ralph Cudworth thought the notion of a public conscience 'nonsense and ridiculous' (*The True Intellectual System of the Universe* (3 vols.; 1845 edn.), iii. 514).

he agreed that what was done against conscience was always a sin. In the state of nature, conscience was the individual's only guide; and, in the civil state, it still governed the sovereign.<sup>68</sup> Hobbes shared the belief of earlier casuists that the common people and those without leisure needed moral guidance from their superiors.<sup>69</sup>

Next to politics and religion, the most persistent source of cases of conscience was to be found in the domestic sphere. Most of the cases brought to John Williams related to 'matrimonial scruples'. Over a third of those published by Sanderson concerned marriage; and the subject filled a quarter of Joseph Hall's collection. Jeremy Taylor thought 'matrimonial questions' so large a subject as to require a separate treatise, though he never wrote it: such questions were 'very material and very numerous', he thought, 'and of all things have been most injured by evil and imperfect principles and worse conduct'.<sup>70</sup> So long as the law of marriage allowed an informal contract without banns or a priest to create a binding union, it was inevitable that moral ambiguities about the status of the affianced parties should subsequently arise; and the situation was further complicated by the temporary suspension of the Church courts during the Interregnum and the short-lived introduction of civil marriage.<sup>71</sup> As bishop of Exeter, Joseph Hall was frequently approached by well-to-do parents seeking the annulment of irregular marriages made by their children without their consent. John Angier told a young minister in 1654 that he could not marry without his prospective mother-in-law's agreement, despite her notorious ungodliness: to proceed without the parent's consent was 'at best . . . not a clear case, but dark and doubtful'.<sup>72</sup> Hall encountered many cases of unintended incest, for the precise extent of the prohibited degrees was much debated and far from clear to all the laity.<sup>73</sup> Jeremy Taylor remarked that the problem of how wives should comport themselves towards their adulterous hus-

<sup>68</sup> *Leviathan*, 223 (ch. 30); 202 (ch. 27); 244 (ch. 30).

<sup>69</sup> *Ibid.* 233-5 (ch. 30); *Behemoth*, ed. F. Tönnies (1889), 144.

<sup>70</sup> Hackett, *Scrinia reserata*, ii. 61-2; *Works of Sanderson*, v (cases iv, v, viii, and x); Hall, *Resolutions and Decisions*, 285-423; *Whole Works of Jeremy Taylor*, x. 500.

<sup>71</sup> M. Ingram, *Church Courts, Sex and Marriage in England, 1570-1640* (Cambridge, 1987), 133, 154; L. Stone, *Road to Divorce: England 1530-1987* (Oxford, 1990), 67-80.

<sup>72</sup> Hall, *Resolutions and Decisions*, 286; O. Heywood, *Life of John Angier of Denton*, ed. E. Axon (Chetham Soc., 1937), 104-7.

<sup>73</sup> Hall, *Resolutions and Decisions*, 383; Ingram, *Church Courts, Sex and Marriage*, 246.

bands was 'a case which now-a-days happens too frequently'.<sup>74</sup> Another painful issue was that of whether a barren union could be dissolved to enable the husband to remarry and secure an heir. The law was unyielding on this point, but one of Bishop Burnet's youthful indiscretions was to produce for the Earl of Lauderdale a *Resolution of Two Important Cases of Conscience*, in which he affirmed, with Charles II and Catherine of Braganza in mind, that a wife's barrenness was just grounds for divorce and that, in any case, polygamy was lawful under the gospel.<sup>75</sup> In 1648 Philip Nye cited the case of the gentleman cast into Newgate to be executed for having two wives and who pleaded it was 'a case of conscience'. An Irish cleric George Pressicke bombarded his bishop in 1661 with arguments as to why he should be allowed to remarry because his wife had deserted him. Throughout the century, marriage, divorce, and sexual morality remained areas of debate, uncertainty, and conflicting opinion.<sup>76</sup>

So did business ethics. Long ago, in one of this century's greatest historical works, R. H. Tawney gave an unforgettable account of the process by which economic life was emancipated in mid-seventeenth-century England from the constraints of conscience and left with no moral rule save the letter of the law. But it is clear that Tawney exaggerated the speed of this process, for, until the end of the seventeenth century, churchmen continued to regard usury, business contracts, buying and selling, and the relationship between master and servant as a domain in which there were ethical standards to be observed beyond those prescribed by the law.<sup>77</sup> As Sanderson put it in 1660:

human laws cannot be the adequate measure of moral duty in the judgment of any reasonable man . . . the laws being finite and fixed, but the circumstances of men's actions, on which their lawfulness and unlawfulness chiefly dependeth, various and infinite. The laws allow . . . many things to be done, which an honest man would be loath to do; and afford sundry advantages, which one that feareth God, and maketh conscience of his ways, ought not to take.<sup>78</sup>

<sup>74</sup> *Whole Works of Jeremy Taylor*, ix. 240.

<sup>75</sup> Clarke and Foxcroft, *Life of Gilbert Burnet*, 103-4.

<sup>76</sup> A. S. P. Woodhouse, *Puritanism and Liberty* (1938), 146; G. Pressicke, *A Case of Conscience Propounded* (n.p., 1661).

<sup>77</sup> Schlatter, *Social Ideas of Religious Leaders*, 226-7. Cf. R. H. Tawney, *Religion and the Rise of Capitalism* (West Drayton, 1938), 23-4.

<sup>78</sup> *Works of Sanderson*, v. 208.

Casuits therefore continued to discuss the extent to which tradesmen could sell for the highest price or take advantage of their customers' ignorance, even if the tradesmen themselves may have been less ready to proffer their scruples to the casuist. As Daniel Defoe later remarked, 'If our yea must be yea, and our nay nay, why, then, it is impossible for tradesmen to be Christians.'<sup>79</sup>

Another area in which cases of conscience regularly appeared was that of actions which involved the taking of life. Casuists incessantly debated such subjects as war, killing in self-defence, duelling, suicide, and the destruction of infants in childbirth in order to save their mothers. Hall found that 'too many of the weaker sex' were 'grossly culpable in matters of willing abortion', terminating pregnancies by 'over-vehement motion or unwholesome medicine'.<sup>80</sup> Equally controversial was the status of obligations which individuals had unwisely undertaken, only to regret subsequently. Rash vows, fraudulent contracts, and promises extracted by force were much debated; and the differences between a promise, a vow, and an oath carefully defined.<sup>81</sup>

Litigation was another perplexing area, for many moralists clung to the notion that going to law was something to be avoided if possible and were suspicious of the conventions of advocacy. Ames regarded the art of pleading as 'nothing but sophistical and pernicious, and made up of guile, deceit, sleights, cavils, snares, captiousness, entrappings, tricks, windings, and circumventions'.<sup>82</sup> Dress, recreations, and conventional social usages also created moral problems: mixed dancing, gambling, lotteries, alms-giving, health-drinking, and polite courtesies could all generate cases of conscience. Could boys dress as women on the stage in defiance of the biblical prohibition on cross-dressing? Could one eat black puddings? Was it wrong to offer dinner guests a second helping? What if one's physician advised that it was 'wholesome to be drunk sometimes'?<sup>83</sup>

<sup>79</sup> Daniel Defoe, *The Complete English Tradesman* (2 vols.; Oxford, 1841), i. 184. Similar sentiments are expressed in J. Downname, *A Treatise against Lying* (1636), 7-11, 164-5.

<sup>80</sup> Hall, *Resolutions and Decisions*, 89.

<sup>81</sup> e.g. *Works of Sanderson*, v. 88-90. In 1691 William Sherlock resolved a case of conscience for a correspondent who had rashly vowed to forsake his trade; item 116 in catalogue 39 (Apr. 1976) of Hofmann and Freeman, booksellers.

<sup>82</sup> Ames, *Conscience*, iii. 288. Cf. Downname, *Treatise against Lying*, 5-6; *Whole Works of Jeremy Taylor*, x. 144.

<sup>83</sup> [John Dod and Robert Cleaver], *A Plaine and Familiar Exposition of the Ten Commandments* (18th edn., 1632), 269; *Practical Works of Richard Baxter*, i. 294, 307; [Thomas Barlow(?)], *The Trial of a Black-Pudding* (1652).

There was, in short, no sector of seventeenth-century life where moral problems might not arise. Broadly speaking, cases of conscience were most likely to be generated when the application of human or divine law to a particular case was not straightforward, either because the circumstances were unusual or because the human law seemed incompatible with the Ten Commandments (as in the case of the Book of Sports) or with the teachings of the New Testament (as in the case of warfare, litigation, and private property). The dilemmas multiplied when the laws were obscure (as with marriage and divorce) or conflicted sharply with the values of a particular social group (as in the case of duelling) or with their religious principles (as with nonconformity). Baxter thought that 'one of the commonest difficulties among cases of conscience' was 'to know which duty is the greater and to be preferred'.<sup>84</sup> Changing social conditions, such as the growth of business and industry, the development of a national poor law, and the emergence of new habits of personal consumption, made the application of traditional principles seem inappropriate; and an over-scrupulous conscience could be relied upon to find difficulties where none had previously existed.<sup>85</sup>

The amount of compromise, accommodation, and complaisance required to make any human society run smoothly has always placed a heavy strain on those who believe it is necessary to follow an upright course. Even if the period had not been one of rapid social change and turbulence, the application of moral rules to particular instances could never have been an easy business. Why then did casuistry, the science of this application, disappear so rapidly from public view in England after the seventeenth century, vanishing off the theological map with what one authority calls 'almost incredible speed'? By the mid-eighteenth century the subject seemed as archaic as baroque art, which, in its detailed complexity and tortuous striving to reconcile incompatibles, it greatly resembled.<sup>86</sup> For Hanoverian philosophers, casuistry, with all its 'endless subtleties and intricacies',<sup>87</sup> had no intellectual interest.

<sup>84</sup> *Practical Works of Richard Baxter*, i. 32.

<sup>85</sup> As John Locke remarked (*Two Tracts on Government*, ed. P. Abrams (Cambridge, 1967), 139-40).

<sup>86</sup> H. R. McAdoe, *The Structure of Caroline Moral Theology* (1949), 66; Jonsen and Toulmin, *Abuse of Casuistry*, 145-6.

<sup>87</sup> D. Hartley, *Observations on Man* (2 vols.; 1749), ii. 293; Gallagher, *Medusa's Gaze*, 1-3.

Some religious writers, particularly nonconformists, maintained the tradition in their works of moral guidance, but among the general public 'cases of conscience' were becoming objects of satire.<sup>88</sup> It used to be thought that the main reason for the change was that Pascal's *Lettres provinciales* (1656–7; English translation 1657), with their damning exposure of Jesuit laxity, discredited the whole casuistical tradition. By the end of the seventeenth century Pascal's polemic was said to be as well known in English taverns and coffee houses as Foxe's *Martyrs* and to enjoy equal authority.<sup>89</sup> There is no doubt that Pascal did much to popularize the view of casuistry as a perverse and over-ingenious device for evading all unwelcome moral obligations. Horace Walpole would remark that casuistry was never needed for the observance of an oath, only for the breach of it; while Sir Henry Maine later declared that casuistry had so distorted human moral instincts, 'that at length the conscience of mankind rose suddenly in revolt against it'.<sup>90</sup> Yet Catholic casuistry had been associated with equivocation, mental reservation and other departures from conventional morality since late Elizabethan times. So, for that matter, had much of its Protestant counterpart.<sup>91</sup> These defects persuaded many of the need for a more rigorous casuistry which would be less accommodating to human weakness, but they did not constitute an argument against casuistry as such. Jeremy Taylor, Samuel Clarke, and Richard Baxter continued to labour on their own case-divinity in full knowledge of what Pascal had written.

Nevertheless, Pascal's influence can be seen in the increasing tendency of Anglican divines to maintain that moral problems were

<sup>88</sup> S. Pike and S. Hayward, *Some Important Cases of Conscience Answered* (1755 and frequently reissued), the writings of Isaac Watts and Philip Doddridge, and the numerous reissues of *The Whole Duty of Man* contrast with such squibs as *Oxford Honesty: Or, a Case of Conscience... whether one may take the oaths to King George; and yet, consistently with honour, and conscience, and the fear of God, may do all one can in favour of the Pretender?* (2nd edn., 1750).

<sup>89</sup> [Gabriel Daniel], *Les Provinciales: Or, the Myserie of Jesuitisme* (1657); *Discourses of Cleander and Eudoxe* (1704), sig. a5; and see Sampson, 'Liberty and Laxity', 73–85. D. Clarkson, *The Practical Casuistry of the Papists discovered to be destructive of Christianity* (1676), extended the attack to non-Jesuit casuistry.

<sup>90</sup> [Horace Walpole], *A Catalogue of the Royal and Noble Authors of England* (2 vols.; Strawberry Hill, 1758), i. 37; Sir Henry Sumner Maine, *Ancient Law* (1920 edn.), 361–2. According to Viscount St Cyres, in a spirited article on 'casuistry' in *Encyclopaedia Britannica* (11th edn., 1913), casuistry was 'swept away by the rising tide of common-sense'.

<sup>91</sup> G. L. Mosse, *The Holy Pretence* (Oxford, 1957); Zagorin, *Ways of Lying*, ch. 10; and Burnet's comments on Oliver Cromwell in his *History of My Own Time* (6 vols.; Oxford, 1823), i. 78, 135–6.

essentially simple and that it was only the desire to gratify appetites without formally breaking God's law which had generated so much learned effort. Religion is a plain thing, said the Marquess of Halifax, but interest is a subtle casuist.<sup>92</sup> Impatience with casuistry had long been shown by those who believed that an honest desire to serve God would take care of most difficulties; as early as 1626 Ephraim Huit lamented the practice of loading the conscience 'full of cases to be resolved, about the disquisition whereof much time is spent that might have been better employed'.<sup>93</sup> In the eyes of Restoration satirists, Puritan casuistry had proved a disreputable tool of adjustment and accommodation.<sup>94</sup> By the 1690s Archbishop Tillotson, Archbishop Sharp, and others were suggesting that, in doubtful cases, an individual should simply follow his own best instincts, rather than search for the most 'correct' rule and method by exploring a body of accumulated opinions. 'When all is done, much must be left to the Equity and Chancery of our own breasts.' Prolonged doubt was a likely sign of weakness, and elaborate casuistry a way of eroding moral responsibility: a person's first impulses were usually correct.<sup>95</sup>

What was involved here was a shift from a conception of morality as the application of divine laws to human affairs to the idea of it as the simple love of God and pursuit of goodness. Instead of thinking of life as made up of a series of discrete problems, each to be solved separately in accordance with the rule-book, theologians were increasingly inclined to place their emphasis upon the formation of an individual's general moral character. As John Preston had stressed long before, no one should be judged on the basis of one or two particular actions: 'the only measure to esteem ourselves or others is the continued tenor of the course and actions. This proceeds from inward principles and from the frame of the heart.'<sup>96</sup> Moreover, churchmen no longer saw it as

<sup>92</sup> *The Works of George Savile Marquis of Halifax*, ed. M. N. Brown (3 vols.; Oxford, 1989), iii. 325. Cf. Schlatter, *Social Ideas of Religious Leaders*, 208; J. Sharp, *The Theological Works* (5 vols.; Oxford, 1829), i. 187–8.

<sup>93</sup> Huit, *Anatomy of Conscience*, 259.

<sup>94</sup> e.g. *The Godly Man's Legacy... Exhibited in the Life of... Mr. Stephen Marshall* (1680), 4, 25–6. Cf. Snider, 'By Equivocation Swear'.

<sup>95</sup> *The Morning-Exercise at Cripplegate*, 198; Sharp, *Theological Works*, i. 188–9; ii. 92; *Whole Works of Jeremy Taylor*, i, p. ccxxiv.

<sup>96</sup> *An Abridgment of Dr. Preston's Works*, ed. W. Jemmat (1648), 243. See E. Leites, 'Casuistry and Character', in Leites (ed.), *Conscience and Casuistry*, 119–33.

their task to create by preaching and cure by casuistry the tormented, afflicted consciences to whom the Puritan clergy had ministered. Bishop Burnet declared robustly that 'the greater part of those that are troubled in mind' were 'melancholy hypochondriacal people'; they needed medicine, not spiritual advice.<sup>97</sup>

The process by which Protestant theologians shifted from maintaining that it was sinful to follow an erroneous conscience to upholding the view that all that mattered was sincerity of intention has yet to be fully documented. Yet this transition, it has been rightly said, was the origin of the modern, more secular, belief that, whatever we do, we retain our moral integrity so long as we obey our consciences.<sup>98</sup> Nowadays a wartime tribunal for conscientious objection decides not whether the objection is well founded, but whether it is conscientiously held. This notion, so alien to the thinking of most Jacobean divines, was foreshadowed in the attitude of those Protestant sectaries who claimed that the spirit, or the conscience, was superior even to Scripture.<sup>99</sup> It was also expressed by Hobbes, who maintained that in the state of nature, and also in the civil State, so far as concerned those matters left undetermined by the sovereign, 'every man (is) his own judge, and accused only by his own conscience, and cleared by the uprightness of his own intention. When therefore his intention is right, his fact is no sin.'<sup>100</sup>

The eighteenth century would see the triumph of the proto-Romantic belief in the authenticity of individual sentiment. Once sincerity became more important than correctness, there was no room for casuistry. As Adam Smith put it, 'nice and delicate situations' could not be resolved by a formula; they should be left to 'the man within the breast'. The mistake of the casuists had been to try 'to direct by precise rules what it belongs to feelings and sentiment only to judge of'. Books of casuistry were therefore 'generally as useless as they are commonly tiresome'.<sup>101</sup>

<sup>97</sup> Gilbert [Burnet], *A Discourse of the Pastoral Care* (1692), 199. Cf. Hunter, 'Casuistry in Action'.

<sup>98</sup> E. Leites, 'Conscience and Moral Ignorance', *Journal of Chinese Philosophy*, 2 (1974-5), 71. Cf. Fiering, *Moral Philosophy*, 94, 191-2; J. Tully, 'Governing Conduct', in Leites (ed.), *Conscience and Casuistry*, 64-5.

<sup>99</sup> G. F. Nuttall, *The Holy Spirit in Puritan Faith and Experience* (Oxford, 1946), 37; C. Hill, *The World Turned Upside Down* (1972), 66-7, 76, 297-8.

<sup>100</sup> Hobbes, *Leviathan*, ed. Tuck, 202 (ch. 27).

<sup>101</sup> A. Smith, *The Theory of Moral Sentiments*, ed. D. D. Raphael and A. L. Macfie (Oxford, 1976), 339.

So long as the idea prevailed that a single right answer existed for every moral dilemma, then the notion of moral expertise had made sense. It was in that spirit that Charles I's parting advice to Robert Sanderson had been that he should 'betake himself to writing cases of conscience for the good of posterity'.<sup>102</sup> But when a sincere intention was what mattered most, the need for experts dwindled. By the end of the seventeenth century the role of the clerical adviser was on the wane. One could still take legal problems to lawyers and medical problems to doctors, but the demand for professional experts in morality was shrinking, as it became increasingly common to maintain that individuals, being responsible for their own spiritual state, could and should take their own moral decisions for themselves.<sup>103</sup> This was only pushing to its logical conclusion the priesthood of all believers which had been implicit in the Protestantism from the start. The century after the Reformation, when clergymen sought to resolve individual cases of conscience, appears in retrospect as an essentially transitional period, during which, as Christopher Hill puts it, ministers 'tried to help men to take moral decisions for themselves, and yet at the same time tried to preserve some sort of control over the workings of the consciences of individuals, to prescribe courses of action for every possible occasion'.<sup>104</sup> The clergy did not subsequently lose their advisory role, of course, but it became increasingly confined to purely spiritual matters.

For the effect of the mid-seventeenth-century upheaval had been that the moral dilemmas of politics and economics had been largely taken over by laymen. As moral theology was overtaken by moral philosophy and political casuistry by political theory, the clergy found themselves moved to the sidelines of the debate.<sup>105</sup> Moreover, the way in which these matters were discussed became increasingly secular. Economics in the hands of the political arithmeticians was

<sup>102</sup> *Works of Sanderson*, vi. 304.

<sup>103</sup> E. Leites, 'Conscience, Casuistry and Moral Decision: Some Historical Perspectives', *Journal of Chinese Philosophy*, 2 (1974-5), is an excellent discussion. See also Leites, 'Casuistry and Character'.

<sup>104</sup> Hill, *Society and Puritanism*, 398. For reluctance to be ruled by the clergy in matters of conscience, see *Practical Works of Richard Baxter*, ii. 399.

<sup>105</sup> This is the theme of Margaret Sampson's outstanding article, 'Laxity and Liberty'. For a defence of clerical claims, see H. Ferne, *The Resolving of Conscience* (2nd edn., Oxford, 1643), sig. A2'.



not a subject which generated many moral problems.<sup>106</sup> Law was the business of lawyers, who were increasingly hostile to the view that any casuistry other than their own was necessary to resolve legal dilemmas. John Selden scornfully observed that some had tried to make it a case of conscience as to whether one could keep a pigeon-house, since the birds would pillage the crops of neighbours; that was a legal question, he snorted, and there was an end to the matter. 'If once we come to ... pretend conscience against law, who knows what inconvenience may follow?'<sup>107</sup>

Moral philosophy, as treated by the natural lawyers of the later seventeenth century and the 'moral-sense' philosophers of the early eighteenth, no longer looked first to Scripture for guidance on moral duties; instead the source of obligation was to be discovered by human reason and the study of human nature. God's law, which had traditionally been the first criterion for making a conscientious judgement, now took second place.<sup>108</sup> Political obedience similarly became for Hobbes, Locke, and their contemporaries a matter less of conscience and more of convenience, interest, and self-preservation. In the eighteenth century it would be recognized that most subjects obeyed the government, not out of conscience or even fear, but from what Burke called 'imperceptible habits and old custom'.<sup>109</sup> The loyalty oaths which had kept the casuists so busy during each political upheaval of the seventeenth century fell into increasing disrepute because of the equivocation and downright perjury which they had evoked. Conscience did not become irrelevant to political conduct, but, in the age of Walpole, its role was less central than it had been a hundred years earlier.<sup>110</sup>

Meanwhile many of the problems which had caused painful moral dilemmas in the seventeenth century had evaporated after

<sup>106</sup> Tawney, *Religion and the Rise of Capitalism*, 24, 194.

<sup>107</sup> Selden, *Table Talk*, 35.

<sup>108</sup> As was noted by W. Paley, *The Principles of Moral and Political Philosophy* (2 vols.; 13th edn., 1801), i, pp. xv-xvi. Cf. I. Rivers, *Reason, Grace and Sentiment*, i (Cambridge, 1991), 207, 224; Fiering, *Moral Philosophy*, 6, 49-50.

<sup>109</sup> *The Works of the Right Honourable Edmund Burke* (6 vols.; Bohn edn., 1854-70), ii, 33; Tully, 'Governing Conduct'; G. M. Straka, *Anglican Reaction to the Revolution of 1688* (Madison, Wis., 1962), 124.

<sup>110</sup> Hill, *Society and Puritanism*, 413-18; S. Staves, *Players' Scepters* (Lincoln, Neb., 1979), ch. 4; Snider, 'By Equivocation Swear'.

the 1688 Revolution and the coming of religious toleration. The Non-Jurors and Jacobites were the last groups to have crises of conscience about allegiance, while Protestant and Catholic Dissenters were freed from many of the conflicting pressures of earlier times. As the Church courts fell into abeyance, public control over private morality diminished. Dress, recreation, and the consumption of goods were largely left to the market; and only some dissenting congregations continued to regulate their members' conduct in this area. Finally, with Hardwicke's Act of 1753, some of the most blatant deficiencies in the law of marriage were remedied and the scope for matrimonial dilemmas markedly reduced.

Because of all these circumstances, the discussion of 'cases of conscience', so characteristic of seventeenth-century England, ceased to be so conspicuous a feature of the cultural landscape. Of course, moral dilemmas continued. Many were taken by worried individuals to the columns of the newspapers, like the *Athenian Mercury*, whose founder John Dunton hit on the brilliant idea of encouraging individuals to put their queries anonymously.<sup>111</sup> Questions about oaths, restitution, and marriage vows poured in. Others were ventilated in the pages of that new literary genre, the novel.<sup>112</sup> From time to time people complained that the old-style casuistry was still needed, for example to deal with the pressures men of honour found themselves under to observe the duelling code, or to resolve that eternal problem of the eighteenth-century employer, whether or not to give a truthful testimonial for an unreliable servant seeking new employment.<sup>113</sup> Heterodox clergy used laxist casuistry to justify their continuing subscription to the Thirty-nine Articles.<sup>114</sup> But philosophers tended to turn their back on the resolution of particular cases. In the famous words of F. H. Bradley, they held that it was not the business of moral philosophy to tell us what in particular we are to do.<sup>115</sup> Only in very recent years have philosophers returned to the analysis of the

<sup>111</sup> Starr, *Defoe and Casuistry*, 9-33, and, more recently, J. P. Hunter, *Before Novels* (New York, 1990), 289.

<sup>112</sup> Starr, *Defoe and Casuistry*, *passim*.

<sup>113</sup> *The Collected Writings of Thomas de Quincey*, ed. D. Masson (14 vols.; Edinburgh, 1889-90), viii, 338-40, 357-9; *Uncollected Writings of Thomas de Quincey*, ed. J. Hogg (2 vols.; 1892), ii, 64-112; Paley, *Principles of Moral and Political Philosophy*, i, 170.

<sup>114</sup> [Francis Blackburne], *The Confessional* (1766).

<sup>115</sup> F. H. Bradley, *Ethical Studies* (rev. 2nd edn., Oxford, 1988), 139. A strong case for the continuing utility of casuistry is made by Jonsen and Toulmin, *Abuse of Casuistry*.

practical dilemmas which individuals may face, whether in cases of abortion, genetic engineering, or the treatment of animals. But the terms in which such issues are nowadays discussed and the criteria invoked are very different from those to be found in the Protestant casuistry of seventeenth-century England.

## 5

## Public Duty, Conscience, and Women in Early Modern England

PATRICIA CRAWFORD

HISTORIANS have recently become interested in the areas of the public and private, and some attention has focused on the concepts of public duty and conscience in early modern times. The gender dimension of these concepts has been less examined. Historians have usually associated public duty with citizenship and men, although they recognize that contemporaries thought that the voice of conscience was to be heeded by all.

Questions of gender were central to discussions of public duty and the exercise of conscience in early modern England. Everyone knew that difference of sex affected the social experiences of men and women. Thus this chapter argues three main points: first, that the public and private in early modern England were permeable concepts in thought, and slippery concepts in practice—both the public and the private were constantly under negotiation and debate; secondly, that the public sphere was not an entirely male space, and that some females shared responsibility for the discharge of public duties; and, thirdly, that women used religious beliefs and arguments about conscience to justify action in the public sphere. Axiomatic to this discussion is the view that gender—the social construction of difference of sex—affected the ways in which people thought and acted. Conscience and duty were not the same things for men and for women, and part of the purpose of this chapter is to show how gender complicated contemporary behaviour and thought.

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