

Catholic Political Thought and Calvinist Ecclesiology in Samuel Rutherford's *Lex, Rex* (1644)

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Abstract This article presents a significant reinterpretation of an essential text in Scottish (and British) political thought, Samuel Rutherford's *Lex, Rex*, by analyzing its relationship with Catholic scholasticism. While scholars have observed Rutherford's use of Catholic authors, there has been no sustained analysis of how Rutherford strategically applied this intellectual tradition to the religious and political context of the British civil wars. Ideas about human liberty, the law of nations, and popular sovereignty that were developed by Catholic scholastics in the School of Salamanca allowed Rutherford to defend limited monarchy and fulfill an ecclesiological purpose in seventeenth-century Britain. He, and the majority of his Covenanter contemporaries, believed in *jure divino* presbyterianism: scripture mandated that elders and synods, not bishops, should rule the church. To ensure a presbyterian settlement, Rutherford needed to disprove royalist absolutists who claimed that presbyterianism threatened absolute monarchy (the divinely ordained form of civil government) by limiting royal supremacy over the church. By building on Catholic scholastic political ideas, Rutherford was able to argue that human beings could change the form of civil government and that absolute monarchy was not required by God. Ironically, to make a civil state safe for presbyterianism, Rutherford resorted to Catholic scholastics rather than those of his own confessional tradition. This analysis urges reconsideration of not only the porosity of traditional confessional boundaries in early modern political thought but the respective positions of both Calvinism and Catholicism in shaping the political ideas underlying the British revolutions of the mid-seventeenth century.

Scholars have often debated the extent to which theocratic beliefs underlie the political thought of the Scottish Covenanters, particularly in comparison to their English Puritan contemporaries. Some have deemed the Covenanters religious zealots who “preferred a presbyterian theocracy to defence of kingship.”¹ Others have characterized them as standard Reformed resistance theorists who

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¹ I. B. Cowan, “The Covenanters: A Revision Article,” *Scottish Historical Review* 47, no. 143 (1968): 35–52, at 42. See also Andreas Pecar, *Macht der Schrift: Politischer Biblizismus in Schottland und England zwischen Reformation und Bürgerkrieg (1534–1642)* (Munich, 2011).

legitimized self-defense on behalf of the true religion.² Yet the most thorough exposition of Covenanter political thought, the treatise *Lex, Rex; or, the law and the prince* by Samuel Rutherford (ca. 1600–1661), does not conform fully to either category of analysis. This disparity is apparent in Rutherford’s engagement with the political theory of the Catholic scholastics. Despite the anti-Catholic rhetoric in many seventeenth-century political pamphlets, Catholic scholasticism shaped the language of political legitimacy surrounding the civil wars of the 1640s. This article examines how Rutherford, a Reformed minister and the leading political theorist of the Covenanters, employed Catholic scholastic ideas to address an ecclesiological crisis of the Protestant church in civil-war Britain. Rutherford advanced political ideas about liberty, the *ius gentium* (the law of nations), and popular sovereignty that had been developed by authors within the Catholic scholastic tradition, including Francisco de Vitoria (1483–1546), Fernando Vázquez de Menchaca (1512–1569), Luis de Molina (1535–1600), and Francisco Suárez (1548–1617). Rutherford used these authors to argue that civil government was the product of human positive law—not just divine or natural law—and could therefore be altered by the will of the people. Unlike divine-right royalists who viewed absolute monarchy as biblically determined, Rutherford argued that the form of civil government did not depend on divine command alone. His argument about malleable civil government had additional ecclesiological implications. When he wrote *Lex, Rex* in 1644, Rutherford sought a presbyterian church settlement for both England and Scotland. He, and the majority of his Covenanter contemporaries, believed in *jure divino* presbyterianism: scripture mandated that elders and synods, not bishops, should rule the church with Christ as its political and external head.³ He subsequently needed to defend a form of civil government that would be amenable to presbyterianism (that is, a limited monarchy with greater parliamentary sovereignty) while disproving royalist absolutists who claimed that presbyterianism threatened absolute monarchy by limiting royal supremacy over the church. If civil and ecclesiastical authorities conflicted, as they had following King Charles I’s institution of “popish” reforms into the kirk in the 1620s and 1630s, the civil government could and should be altered to protect God’s requirements for true worship in the church. Catholic scholastic ideas about the voluntary nature of the civil state and changeable forms of government therefore proved essential to Rutherford’s reconciliation of presbyterianism with limited monarchy. Ironically, the political theory of Catholic scholastics (rather than that of Reformed authors) best enabled Rutherford to address contemporary ecclesiological debates and defend a presbyterian settlement for Britain.

To explore this under-researched relationship between Catholic political theory and Rutherford’s Calvinist ecclesiology, I first outline the complexities in Catholic

² John Coffey, *Politics, Religion and the British Revolutions: The Mind of Samuel Rutherford* (Cambridge, 1997), 146–87; John Coffey, “George Buchanan and the Scottish Covenanters,” in *George Buchanan: Political Thought in Early Modern Britain and Europe*, ed. Caroline Erskine and Roger A. Mason (Farnham, 2012), 189–203; John Ford, “*Lex, rex iusto posita*: Samuel Rutherford on the Origins of Government,” in *Scots and Britons: Scottish Political Thought and the Union of 1603*, ed. Roger A. Mason (Cambridge, 1994), 262–90; Ian Michael Smart, “The Political Ideas of the Scottish Covenanters, 1638–88,” *History of Political Thought* 1, no. 2 (1980): 167–93.

³ Samuel Rutherford, *The divine right of church-government and excommunication: or a peaceable dispute for the perfection of the Holy Scripture in point of ceremonies and church government* (London, 1646), 17–18.

scholastic approaches to the voluntary nature of civil government based on liberty, the law of nations, and popular sovereignty. I then discuss how Rutherford merged these political ideas with a standard Reformed approach to resistance as defense of the true religion, highlighting the ways in which Catholic and Reformed strands of political thought intersected in *Lex, Rex*. Lastly, I analyze how Rutherford used these Catholic political ideas for a distinctly Protestant ecclesiological purpose: defending a limited monarchy to create a state that would be safe and accommodating for presbyterianism. In providing a new perspective on Rutherford's intellectual formation from outside a Reformed tradition, I reassess the position of both Calvinism and Catholicism in contributing to the political ideas underlying the British revolutions of the mid-seventeenth century.

This analysis of Rutherford's political thought intervenes in various historiographical debates surrounding the British civil wars, Scottish history, and early modern European political thought. The main methodological approach to the civil wars of the 1640s has been characterized by a "British," or three kingdoms, perspective. J. G. A. Pocock famously asserted that the diverse communities in the British Isles interacted so substantially "as to modify the conditions of one another's existence."⁴ Yet an emphasis on the interconnectedness of national and religious identities has not always done justice to Scottish political thought. Glenn Burgess observed that "there is little to check the potential capacity of 'British' history to distort our picture of Scottish political thought."⁵ Additionally, subsuming Scottish political thought into a strictly British context means that "we are still some way off having as full an understanding of covenanter thought as we have of English parliamentary ideas."⁶ The emphasis on the comparative British context has resulted in a tendency to characterize the Covenanters as radical theocrats (in a loose application of the term) who sought to establish a godly nation ruled by God through reliance on scripture alone. Whereas English parliamentarians used legal and constitutional arguments to defend resistance, the Covenanters legitimized resistance predominantly in covenantal terminology. They stressed their God-given duty to root out idolatry and preserve the true religion in the national church, even via the force of arms. On these grounds, Burgess argued that the Scots drew on the same intellectual resources as English Puritans but pursued a theocratic model of kingship by "refracting them through different political and ecclesiastical traditions."⁷ Margaret Steele similarly suggested that the Scottish National Covenant of 1638 created a "limited monarchy co-existing in a theocratic state."⁸ But this analysis of the Covenanters as

⁴ J. G. A. Pocock, "The Limits and Divisions of British History: In Search of the Unknown Subject," *American Historical Review* 87, no. 2 (1982): 311–36, at 317. See also J. G. A. Pocock, "Empire, State, and Confederation: The War of American Independence as a Crisis in Multiple Monarchy," in *A Union for Empire: Political Thought and the Union of 1707*, ed. John Robertson (Cambridge, 1995), 318–48.

⁵ Glenn Burgess, "Scottish or British? Politics and Political Thought in Scotland, c. 1500–1707," *Historical Journal* 41, no. 2 (1998): 579–90, at 580.

⁶ Burgess, "Scottish or British?," 581.

⁷ Burgess, *British Political Thought, 1500–1660* (Basingstoke, 2009), 183. See also Glenn Burgess, "Was the English Civil War a War of Religion? The Evidence of Political Propaganda," *Huntington Library Quarterly* 61, no. 2 (1998): 173–201, at 193–95.

⁸ Margaret Steele, "The 'Politick Christian': The Theological Background to the National Covenant," in *The Scottish National Covenant in Its British Context, 1638–51*, ed. John Morrill (Edinburgh, 1990), 31–67, at 56.

fundamentally theocratic in comparison to English parliamentarians does not account for the large natural-law category that the Covenanters employed to regulate the civil state, one based on human rationality rather than strict biblical voluntarism.

I first challenge *theocratic* as a label by analyzing how Rutherford's use of Catholic scholastic political thought drew him away from strict biblical voluntarism toward a favorable view of human rationality and natural law that increased human agency over the civil sphere. Characterizing the Covenanters as theocrats relies on a post-Enlightenment interpretation of the term rather than a definition recognizable for seventeenth-century intellectuals. During the seventeenth century in Britain, a theocracy was defined as a form of commonwealth ruled by God directly. God's laws, as divined through scripture, were the only regulations for the temporal kingdom and were often administered by priests or religious authorities who exercised civil power. The majority of British intellectuals—especially after 1660—used the term only to describe the government of the Old Testament Israelites. For example, when justifying Parliament's actions against King Charles in 1648, a group of students in Trinity College, Cambridge, observed that "*Theocracy* was onely of Divine institution, and that this was onely proper to the Jews."⁹ This limited application of the term *theocracy* to the Israelites frequently appeared in a variety of other seventeenth-century printed treatises.¹⁰ As I demonstrate in this article, Rutherford believed in a stricter separation of civil and ecclesiastical authority, attributing a greater role for human reason in mediating God's power to create civil governments. This position corroborates Laura A. M. Stewart's argument that the Scottish Presbyterian Church was not a "theocracy where it was expected that the law should be derived directly from scripture and executive power exercised by a spiritual order of divines."¹¹ Describing the Covenanters as theocrats, particularly in comparison to English Puritans, imposes a post-Enlightenment category of analysis on seventeenth-century Scots for whom the term *theocracy* had a specific meaning in relation to the Israelites that they would not have applied to themselves. It also does not account for the significant role the Covenanters accorded human rationality and agency in organizing and shaping the civil state.

I develop this argument about theocracy alongside a second historiographical intervention: internationalizing Covenanter political thought to understand the reception of Catholic scholastic political theory in *Lex, Rex*. While studying Scottish political thought as part of a British narrative poses some problems, attempting to study it in isolation has also resulted in a narrative that diminishes the international context for the development of Covenanter political ideas. Valuable attempts have been made over the past twenty years to link Scottish political thought to broader intellectual trends across England and continental Europe. But some standard

⁹ John Fidoe, *The Parliament justified in their late proceedings against Charls Stuart, or a brief discourse concerning the nature and rise of government* (London, 1648), 13.

¹⁰ *A briefe resolution, of that grand case of conscience (necessary for these times) considering the allegiance due to a prince ejected by force out of his kingdom* (London, 1650), 4; John Barret, *God's love to man, and man's duty towards God: manifested in several discourses on the covenants of works and grace* (London, 1678), 345; Gilbert Burnet, *A vindication of the authority, constitution, and laws of the church and state of Scotland* (Glasgow, 1673), 31.

¹¹ Laura A. M. Stewart, *Rethinking the Scottish Revolution: Covenanted Scotland, 1637–1651* (Oxford, 2016), 20.

investigations into Covenanter political thought still portray the group of Reformed Scots as part of a national story that dates from the Scottish Reformation of 1560 and includes such canonical sixteenth-century figures as John Knox, George Buchanan, and Andrew Melville.¹² This approach has successfully captured the distinctiveness of Covenanter political thought, such as the emphasis on Scottish legal independence through parliamentary sovereignty or appeals to Scottish customs and medieval theories of kingship. Yet John Coffey has rightly challenged this narrative by qualifying the extent to which Buchanan's ideas about an individual right of resistance informed the political ideas of Covenanter leaders.¹³ Other elements of Covenanter political thought require a similarly nuanced approach, urging us to look beyond a narrowly Scottish tradition, or even a British one, to understand the international intellectual networks that informed the political ideas of the leadership. Stewart undertook this approach by examining the networks created by Scots outside of Britain who acted as "soldiers, diplomats, administrators, and merchant adventurers."¹⁴ Her analysis convincingly revealed the ways in which Scots shaped the early modern world outside the British archipelago. In this article, I similarly internationalize the intellectual history of the Covenanters. Situating their political ideas within European, cross-confessional discourses about political legitimacy and religious warfare reveals the commonalities between Scottish political thought and Reformed communities abroad while capturing the distinctiveness of the Scottish ecclesiological context to which this political thought applied.

I situate Scottish political thought within its transnational and cross-confessional intellectual context by using Rutherford, the main political theorist of the Scottish Revolution, as a case study. Rutherford is often heralded as a towering figure in the history of Reformed theology and in the development of British and American presbyterianism. The majority of scholarship on Rutherford has focused on his theology, on his application of scripture to political life, and on his participation in the Westminster Assembly as one of the Scottish Commissioners.¹⁵ Yet *Lex, Rex* stands as a significant text in the history of Scottish political thought and of Reformed political thought more generally. For example, Henry Guthrie remarked that members of the General Assembly at Edinburgh in January 1645 idolized *Lex, Rex* to such an extent that Buchanan's *De jure regni apud Scotos* "was slighted (as not Anti-Monarchi-

¹² J. H. Burns, *The True Law of Kingship: Concepts of Monarchy in Early-Modern Scotland* (Oxford, 1996); Mason, *Scots and Britons*, chaps. 4–6, 10–11; Smart, "Political Ideas of the Scottish Covenanters," 167–93; David Stevenson, *The Scottish Revolution, 1637–44: The Triumph of the Covenanters*, 2nd ed. (Edinburgh 2003).

¹³ Coffey, "George Buchanan," 189–203.

¹⁴ Laura A. M. Stewart, "Power and Faith in Early Modern Scotland," *Scottish Historical Review* 92, no. 234 (2013): 25–37, at 26.

¹⁵ Simon J. G. Burton, "Samuel Rutherford's *Euthyphro* Dilemma: A Reformed Perspective on the Scholastic Natural Law Tradition," in *Reformed Orthodoxy in Scotland: Essays on Scottish Theology, 1560–1775*, ed. Aaron Clay Denlinger (London, 2014), 123–39; Ryan McAnnally-Linz, "Resistance and Romans 13 in Samuel Rutherford's *Lex, Rex*," *Scottish Journal of Theology* 66, no. 2 (2013): 140–58; Andries Raath and Shaun de Freitas, "Theologically United and Divided: The Political Covenantalism of Samuel Rutherford and John Milton," *Westminster Theological Journal* 67 (2005): 301–21; Matthew Vogan, ed., *The King in His Beauty: The Piety of Samuel Rutherford* (Grand Rapids, 2011).

cal enough).¹⁶ In 2019, *Lex, Rex* also appeared in the Scottish Court of Session's ruling on the prorogation of Parliament, used as evidence that "[t]he power of the sovereign was, by immemorial tradition, restricted by the laws and customs of the people. . . . The kings of Scotland had no prerogative distinct from supremacy above the law."¹⁷ Rutherford's treatise thus had great significance among his contemporaries in Britain and is still used to inform contemporary political debates.

Despite the significance of Rutherford's political thought, he has mostly been placed within a Reformed intellectual tradition. Scholars have mentioned his engagement with Catholic scholastics, but there has been no sustained analysis regarding how or why he drew on their political thought.¹⁸ Coffey observed that Rutherford's use of Thomist authors in *Lex, Rex* was a natural product of his humanist education, concluding that he "said little that had not been said before by the conciliarists, the Spanish Thomists and earlier Calvinist writers."¹⁹ Simon Burton convincingly discussed Rutherford's indebtedness to the ideas about natural rights and the right of dominion advanced by Jean Gerson, Jacques Almain, and John Mair.²⁰ But Burton focused predominantly on the medieval conciliarist tradition rather than on Rutherford's intentional engagement with contemporary Catholic scholastic authors. J. P. Sommerville similarly noted that civil-war political theorists in Britain "were educated as Christians and Aristotelians" who engaged with "late-medieval Christian and Aristotelian teaching on the law of nature" to formulate their political theories.²¹ As a result of their humanist education, early modern British intellectuals would have engaged with Catholic scholastic commentaries on Aquinas or Aristotle. These studies have revealed that a level of intellectual similarity between Catholic and Protestant authors should not be surprising as seventeenth-century Reformed theologians forged their own orthodoxy by employing cross-confessional political ideas. But beyond this basic similarity, Rutherford's use of Catholic scholastic ideas about the civil state was intentional, not accidental. He strategically employed political ideas that had been elaborated upon in a post-Reformation Catholic scholastic intellectual tradition to fulfil his own ecclesiological purpose.

This analysis of Catholic scholasticism and ecclesiology in Rutherford's *Lex, Rex* thus makes a twofold historiographical intervention. It first provides a new

¹⁶ Henry Guthry, *Memoirs of Henry Guthry, late Bishop of Dunkeld, in Scotland: Wherein the conspiracies and rebellion against King Charles I of blessed memory, to the time of the murder of that monarch, are briefly and faithfully related* (London, 1702), 139.

¹⁷ Opinion of Lord Carloway, the Lord President in the Reclaiming Motion by Joanna Cherry QC MP and Others v The Advocate General [2019] CSIH 49, 14 [30], <https://app.justis.com/case/opinion-of-lord-carloway-the-lord-president-in-the-reclaiming/overview/aXidm3udmYKdl>.

¹⁸ Coffey, *Politics, Religion and the British Revolutions*, 146–87; John Coffey, "Samuel Rutherford and the Political Thought of the Scottish Covenanters," in *Celtic Dimensions of the British Civil Wars*, ed. John R. Young (Edinburgh, 1997), 75–95; Edward J. Cowan, "The Making of the National Covenant," in Morrill, *The Scottish National Covenant*, 68–89; Ford, "*Lex, rex, iusto posita*," 262–90.

¹⁹ Coffey, *Politics, Religion and the British Revolutions*, 158.

²⁰ Simon J. G. Burton, "The Scholastic and Conciliar Roots of Samuel Rutherford's Political Philosophy: The Influence of Jean Gerson, Jacques Almain, and John Mair," in *Scottish Philosophy in the Seventeenth Century*, ed. Alexander Broadie (Oxford, 2020), 208–25; Simon J. G. Burton, "New Presbyterian Meets Old Priests: Conciliarism and Conscience in Samuel Rutherford's *Free Disputation*," *Global Intellectual History* 5, no. 2 (2020): 152–70.

²¹ J. P. Sommerville, *Royalists and Patriots: Politics and Ideology in England, 1603–1640*, 2nd ed. (London, 1986), 13.

perspective on Scottish political thought by focusing not on Rutherford's appeal to a Scottish or even British intellectual tradition but on his appeal to the legal categories and political ideas developed by Spanish scholastics in the School of Salamanca. Secondly, it reassesses the characterization of the Scottish Covenanters as radical theocrats by analyzing how Catholic scholastics provided Rutherford with a natural-law category for governing the civil state, one that emphasized the ability of human beings to modify governments based on their rational will rather than on biblical mandates alone. By placing Rutherford within an international, cross-confessional context, I challenge the prevailing narrative of the Covenanters as staunchly Calvinist theocrats while contributing a new perspective to our understanding of political and ecclesiological discourses in the British civil-war period.

POLITICAL IDEAS OF THE CATHOLIC SCHOLASTICS

The intellectual relationship between Catholic scholasticism and early modern Scottish political thought has not received sustained analysis. As a result, some background on the development of Catholic ideas about the natural law, the law of nations, and the origins of government in the late sixteenth and early seventeenth century provides a useful framework for analyzing Rutherford's use of these ideas in 1644. There was broad consensus on some political ideas among Catholic scholastics, but there was also variation in the lines of argument authors used to create their political theories. Rutherford capitalized on and strategically employed these distinctions. It is therefore essential to explore the complexities of Catholic thought about the civil state before assessing the ways in which Rutherford turned these political arguments toward his own ecclesiological purpose. On the most basic level, the theory of the civil state that Rutherford advanced in *Lex, Rex* was grounded in a core tenet of Catholic scholastic political thought: human beings were naturally inclined toward political association and, as a result, society and civil government were natural institutions. Consensus existed across different schools of Catholic political thought that government was a natural institution since human beings desired to live in communities by their very nature, not just by divine command. Thomists in the School of Salamanca were particularly interested in proving the natural origins of government to "refute the Protestant view that the legitimacy of government depended on God's grace," though the extent to which most Protestants (especially Rutherford) adhered to this view is debatable.²² Since human beings were naturally inclined to live in societies (and were not simply ordered to by divine command), the political authority they established was also natural in origin. According to Vitoria, the School of Salamanca's founder, the origin of cities and commonwealths was "a device implanted by Nature in man for his own safety and survival," upon which grounds it followed that "*the final and necessary cause of public powers is the same.*"²³ Similarly, for Robert Bellarmine, an Italian Jesuit, "political authority

²² Stefania Tutino, ed. and trans., introduction to Robert Bellarmine, *On Temporal and Spiritual Authority: On Laymen or Secular People; On the Temporal Power of the Pope; Against William Barclay; On the Primary Duty of the Supreme Pontiff* (Indianapolis, 2012), viii–xxi, at xiv.

²³ Francisco de Vitoria, *De Potestate Civili* ("On Civil Power"), in *Vitoria: Political Writings*, ed. Anthony Pagden and ed. and trans. Jeremy Lawrance (Cambridge, 1991), Art. 1.2, section 5, 9.

[was] so natural and necessary to humankind that it cannot be removed without destroying nature itself.”²⁴ This same interpretation of political society and authority also appeared in contemporary works by Molina and Suárez.²⁵ Most leading Catholic authors thus agreed that political society and government were natural, not exclusively divine, in origin.

Yet there were some dissenting voices within this tradition that informed the way in which Rutherford conceived of the civil state. Vázquez, a Spanish jurist in the School of Salamanca, was one such distinctive voice. Although Vázquez was well known to his contemporaries and accompanied King Phillip II to the Council of Trent in 1561, he rarely features in modern English-language scholarship.²⁶ Instead, his treatises are often the remit of German and Spanish scholars exploring the development of human rights and international law.²⁷ Annabel Brett has attributed Vázquez’s absence in Anglophone historiography to his “having been a humanist jurist and therefore escaping the categories of enquiry into the scholastic political thought of sixteenth-century Spain and of the counter-Reformation in general.”²⁸ Furthermore, Vázquez operated on the fringes of the School of Salamanca as a “notoriously free-thinking” jurist who advanced unorthodox ideas.²⁹ Other methodological problems restrict English-language treatments of Vázquez, since his lengthy treatises remain untranslated from the original Latin, unlike most works by his Catholic contemporaries. Yet the authoritative historian of the School of Salamanca, Juan Belda Plans, described Vázquez as one of the leading jurists in the school who adapted Vitoria’s teachings to reject absolute monarchical power.³⁰ Despite

²⁴ Robert Bellarmine, *On Laymen or Secular People*, in *On Temporal and Spiritual Authority*, 1–120, at 18.

²⁵ Luis de Molina, *De iustitia et iure opera omnia* (Venice, 1611), tract. 2, disp. 22; Francisco Suárez, *A Treatise on Laws and God the Lawgiver*, in *Selections from Three Works: A Treatise on Laws and God the Lawgiver, A Defence of the Catholic and Apostolic Faith, A Work on the Three Theological Virtues, Faith, Hope, and Charity*, ed. Thomas Pink, trans. Gwladys L. Williams, Ammi Brown, and John Waldron (Indianapolis, 2015), 1–752, at bk. 3, chap. 1. (As seen below in note 47: the original-language title is *Tractatus de legibus ac deo legislatore: In decem libros distributes*.)

²⁶ Salvador Rus Rufino, “Fernando Vázquez de Menchaca,” in *Great Christian Jurists in Spanish History*, ed. Rafael Domingo and Javier Martínez-Torrón (Cambridge, 2018), 157–73; Anthony Pagden, *Lords of All the World: Ideologies of Empire in Spain, Britain and France, c. 1500–c.1800* (London, 1995); Martin van Gelderen, “From Domingo de Soto to Hugo Grotius: Theories of Monarchy and Civil Power in Spanish and Dutch Political Thought, 1555–1609,” in *The Origins and Development of the Dutch Revolt*, ed. Graham Darby (London, 2001), 151–70.

²⁷ Francisco Carpintero Benitez, *Del derecho natural medieval al derecho natural moderno: Fernando Vázquez de Menchaca* (Salamanca, 1977); Francisco Carpintero Benitez, “La función del Derecho en Fernando Vázquez de Menchaca,” *Anuario de Filosofía del Derecho*, no. 17 (1973): 9–14; Sebastián Contreras, “Derecho natural, derecho de gentes y libertad de los mares en Fernando Vázquez de Menchaca,” *International Law: Revista Colombiana de Derecho Internacional*, no. 24 (2014): 169–91; Victor M. Ego García, *El pensamiento republicano de Fernando Vázquez de Menchaca* (PhD diss., University of Murcia, 2014); Rafael Garay Moreno, “Fernando Vázquez de Menchaca, estudiante y catedrático de Derecho Romano en la Universidad de Salamanca del siglo XVI,” *Icade: Revista de la Facultad de Derecho y CC. Económicas*, no. 8 (1989): 23–63; Ernst Reibstein, *Die Anfänge des Neueren Natur- und Völkerrechts: Studien zu den Controversiae Illustres des Fernandus Vasquius (1559)* (Bern, 1949).

²⁸ Annabel Brett, *Liberty, Right and Nature: Individual Rights in Later Scholastic Thought* (Cambridge, 1997), 165.

²⁹ Annabel Brett, *Changes of State: Nature and the Limits of the City in Early Modern Natural Law* (Princeton, 2011), 69.

³⁰ Juan Belda Plans, *La escuela de Salamanca y la renovación de la teología en el siglo XVI* (Madrid, 2000), 832.

operating on the school's fringes, Vázquez was a clear participant in contemporary discussions about political power and the civil state.

Compared to his Catholic contemporaries, Vázquez advanced a distinctively voluntarist position of individual subjective rights centered on natural human liberty and the primary and secondary law of nations. He disagreed with other Catholic scholars that political authority was wholly natural, claiming instead that all jurisdiction and political subjection was entirely artificial. Vázquez developed these ideas in a treatise he wrote during his time accompanying Phillip II to the Council of Trent, entitled *Controversiarum illustrium, aliarumque usu frequentium, libri tres* (1564).³¹ He wrote this treatise to defend the right of the Spanish king to speak before the French king at the council on the grounds that the former was more powerful at that moment in time, though he did not defend the king's supremacy over the pope or the legitimacy of a universal monarchy.³² Instead, he advanced a theory of politics that addressed how a prince comes to power by the voluntary choice of citizens. He grounded this theory in a basic distinction between the natural law, the primary law of nations, and the secondary law of nations. Vázquez argued that the natural law was common to both animals and human beings. The primary law of nations was that which applied exclusively to rational human beings: "The law of nations is called natural, or simply the natural law, and is also called primeval, that is, it emerged at the same time as the human race."³³ Vázquez distinguished the secondary law of nations as "that which did not emerge simultaneously with the human race, but as time progressed, originated from very many of those nations that are ruled by customs and laws."³⁴ For this reason, the secondary law of nations "is said to be positive rather than natural and thus not fixed and immovable but changeable."³⁵ The secondary law of nations was therefore a type of positive law that governed all kingdoms, though it was established by customary acceptance rather than by any formal legislative process.

Within this juridical framework, Vázquez advanced a particularly unique position on natural human liberty, one that would prove essential to how Rutherford conceived of the civil state. Vázquez distinguished himself from a standard approach in most Catholic schools of thought, particularly among the Jesuits, regarding natural equality and liberty.³⁶ Jesuit authors agreed that human beings were naturally equal, though this pertained to natural slavery, not political equality. For many

³¹ The earliest edition was printed in Venice in 1564. The Frankfurt edition (1572) is available via the HathiTrust: <https://hdl.handle.net/2027/gri.ark:/13960/t5v70gx07> (accessed 19 July 2021).

³² Laura Manzano Baena, *Conflicting Words: The Peace Treaty of Munster (1648) and the Political Culture of the Dutch Republic and the Spanish Monarchy* (Leuven, 2011), 94; Anthony Pagden, *The Burdens of Empire: 1539 to the Present* (Cambridge, 2015), 11.

³³ Fernando Vázquez de Menchaca, *Controversiarum illustrium, aliarumque usu frequentium libri tres* (Frankfurt, 1572), bk. 2, chap. 89, no. 24 ("Istud ius gentium naturale appellatur, ius naturale simpliciter, et etiam appellatur ius gentium primaevum, hoc est, cum ipso humano genere simul proditum."). (All translations from Vázquez in the text are mine.)

³⁴ Vázquez, *Controversiarum illustrium*, bk. 2, chap. 89, no. 25 ("Ius autem gentium secundarium est, quod non simul cum ipso genere humano proditum fuit, sed labentibus temporibus a plerisque earum gentium, quae moribus et legibus reguntur.").

³⁵ Vázquez, *Controversiarum illustrium*, bk. 2, chap. 89, no. 26 ("ius gentium secundarium non tam naturale, quam positivum dicitur esse, sicque; non fixum, et immobile, sed commutabile esse dicitur.").

³⁶ Harro Höpfl, *Jesuit Political Thought: The Society of Jesus and the State, c. 1540–1630* (Cambridge, 2004), 204–8.

Jesuits, obedience to civil authority was the highest virtue, and political submission was entirely in accordance with nature. Suárez, for example, argued that subjects elect their civil authorities by voluntary choice, but this was not the result of natural equality and freedom from subjection.³⁷ As he stated, “a civil magistrate accompanied by temporal power for human government is just and in complete harmony with human nature.”³⁸ There was no sense of the artificial construction of government in Suárez’s version of the commonwealth. Other Jesuits, such as Molina, similarly denied that civil society results from the will of free and equal individuals who voluntarily cede individual rights to a magistrate.³⁹ For Suárez and Molina, the community as a whole bestowed power on a ruler, yet government was still natural rather than an artificial construction of human free will. Vitoria, Vázquez’s own teacher, also expressly rejected the artificial construction of government, stating that “the primitive origin of human cities and commonwealths was not a human invention or contrivance to be numbered among the artefacts of craft.”⁴⁰ For the majority of Catholic authors, civil power thus emerged simultaneously with political association as a natural extension of the human desire to live in society.

By contrast, Vázquez argued that natural liberty applied both to slavery and to political authority. For Vázquez, human beings could live fully and effectively in civil societies without magistrates. The individual’s natural liberty could consequently never be violated or removed by the institution of political power.⁴¹ Vázquez developed this argument in connection with his theory about the law of nations. According to the primary law of nations, humans were naturally free and equal, both in the sense of slavery and in a political sense. Human equality and liberty also meant freedom from political subjection. Necessity and utility, not just natural inclination, drove human beings to voluntarily submit to political authority. Vázquez drew on a Ciceronian view of the state of nature to demonstrate that human beings naturally seek society but are prone to discord and strife. As he argued, “Man was born as the only animal who takes part in shame and embarrassment and desires the association and society of human beings. There is no doubt that society and community or close friendship tend to produce disagreements . . . Indeed, human nature is inclined toward discord.”⁴²

While human beings associate freely from natural desire, as most other Catholic authors argued, “the origin and creation of kings is written to have proceeded from the law of nations for the sake of avoiding wars, calamities, injustice, pillaging, violent attacks, massacres, sedition, and strife.”⁴³ Necessity, not natural inclination, was the primary factor that drove human beings to submit to authority and avoid

³⁷ Suárez, *A Treatise on Laws and God the Lawgiver*, bk. 3, chap. 1.

³⁸ Suárez, bk. 3, chap. 1.

³⁹ Molina, *De iustitia et iure*, tract. 2, disp. 22.

⁴⁰ Vitoria, *De potestate civili* (“On civil power”), Art. 1.2, section 5, 9.

⁴¹ Brett, *Liberty, Right and Nature*, 173; Rufino, “Fernando Vázquez,” 166.

⁴² Vázquez, *Controversiarum illustrium*, preface, no. 121 (“Hoc solum animal homo natum est pudoris ac verecundiae particeps, appetens coniunctionem hominum ac societatem. Nec dubium est, quin haec societas ac communio seu familiaritas solet parere discordias . . . Est enim ingenium humanum proclive ad dissentiendum.”); Van Gelderen, “From Domingo de Soto to Hugo Grotius,” 151–70.

⁴³ Vázquez, *Controversiarum illustrium*, preface, no. 105 (“Unde regum creandorum originem ex iure gentium processisse bellorum calamitatibus iniuriam, rapinarum, violentiarum impetus, internecionum, seditionum, rixarumque vitandarum causa scripserunt.”).

the negative repercussions of association. As a result, civil magistrates resulted from individuals' free will and voluntary choice to protect themselves rather than from the natural law as Catholic authors such as Vitoria, Bellarmine, and Suárez argued.

Building on this line of reasoning, Vázquez concluded that, since the form of government emerged from human positive law rather than from nature, governments could be changed or altered by the will of the people as the original holders of political power. According to Vázquez, "before there were kings, nations reigned in the first and sole purity of nature."⁴⁴ As a result, "the kingdom is not on account of the king, but the king is on account of the kingdom, and indeed, [on account of] the utility of the kingdom and citizens."⁴⁵ The people could consequently depose their king if he did not properly serve their utility. Since all citizens were naturally free and voluntarily chose to submit to authority for their preservation, they could recall this original power at any time to make and unmake kings. Vázquez thus established a unique space between natural society and the creation of political authority characterized by human liberty. In this space, human beings could do as they pleased without being inherently subject to the commandments of a magistrate. Humans ultimately lived in a naturally free and equal state according to the primary law of nations, but they willfully sacrificed their natural liberty when they chose authority according to the secondary law of nations. Civil power and political submission were therefore not natural for Vázquez as they were for other Catholic scholars. By arguing for the artificiality of political power based on natural liberty and the secondary law of nations, a unique argument in comparison to those advanced by his Catholic contemporaries, Vázquez drew conclusions about the civil state that Rutherford capitalized on in the context of Covenanted Scotland.

CATHOLIC POLITICAL IDEAS IN *LEX, REX*

When Rutherford wrote *Lex, Rex* in 1644, he applied these Catholic legal analyses and ideas about the organization of the civil state to the context of the British civil wars. It is not surprising that Rutherford, a university-educated minister, had an awareness of the political ideas from this confessional tradition. He attended the University of Edinburgh from 1617 until 1621 and taught at universities throughout Scotland until his death in 1661. During his time in the university sphere, he would have encountered and engaged with the theology and political thought of leading continental European Catholic authors. Surviving catalogues and book donation lists from the University of Edinburgh and the University of St. Andrews, both institutions with which Rutherford was affiliated, reveal that the libraries held a range of works by leading Catholic theologians (Bellarmine, Suárez, and Vitoria) in the 1640s or earlier.⁴⁶ For example, the library at St. Andrews held a copy of Suárez's

⁴⁴ Vázquez, *Controversiarum illustrium*, preface, no. 108 ("Et est notandum quod gentes prius quam reges essent, regnabant in puritate prima et sola naturae.")

⁴⁵ Vázquez, *Controversiarum illustrium*, preface, no. 104 ("regnum non est propter regem, sed rex propter regnum, vel propter regni civiumve utilitatem.")

⁴⁶ Author catalogue, seventeenth century, EU IN1/ADS/LIB/1/Da.1.1, University of Edinburgh Library; Press Catalogue, 1641, EU IN1/ADS/LIB/2/Da.1.15, University of Edinburgh Library; Donations lists, 1619–1644, EU IN1/ADS/LIB/2/Da.1.29, University of Edinburgh Library; List of books in library, 1644–1649, UYLY105/1, University of St. Andrews Library.

Tractatus de legibus ac deo legislatore, likely donated as part of a Foundation Gift in 1612.⁴⁷ Although these texts would not have been taught as part of the university curriculum, Scottish students, including Rutherford and other Covenanter leaders, had access to key works by continental European Catholic authors and could strategically choose to adopt different strands of analysis in their own treatises.⁴⁸

Rutherford's humanist education, coupled with the accessibility of Catholic scholastics texts in the Scottish universities, enabled him to strategically and favorably employ distinct elements of their political thought that he could not gain from a Reformed tradition alone. Yet it should be noted that the reception of the Catholic scholastics in Rutherford's text must be assessed beyond the frequency of citations. For example, Rutherford directly cited Vázquez only nine times throughout *Lex, Rex*, a book well over four hundred pages. Rutherford cited other Catholic authors, including Suárez and Bellarmine, with roughly the same frequency. Yet the fairly limited number of citations is misleading, because references provide only partial insight into the extent of intellectual borrowing. Rutherford substantially developed Vázquez's categories of the law of nations and natural human liberty throughout the entirety of *Lex, Rex*. The number of references thus does not directly correspond to limited intellectual indebtedness, particularly in light of the considerable similarities in argument and terminology between Rutherford's argument and those advanced by Catholic scholastic authors. As a result, the political theory of the Catholic scholastics, and especially of Vázquez, are more important to Rutherford's argument than the number of citations might initially suggest. In what follows, I explore the ways in which Rutherford incorporated those ideas advanced by Catholic scholastics (even if he did not directly cite them) into his own political and ecclesiological argument.

First and foremost, Rutherford used Catholic authors to defend the natural origins of political society and government. Rutherford opened the treatise with the same questions about the origins of government that preoccupied the Catholic scholastics: "In what sense Government is from God?" and "Whether or not, Government be warranted by the Law of nature."⁴⁹ To develop his responses to these questions, Rutherford referenced ten authors: Aristotle and nine Catholic scholastics.⁵⁰ The majority of these Catholics were Thomists in the School of Salamanca who looked favorably upon the role of natural law and human rationality in organizing civil states. Rutherford was not interested in proving that government existed by divine command alone. Instead, like Aristotle and the majority of Catholic scholastics, he believed that human beings possessed a natural desire for association. Domestic life made this evident. Human beings were born as social creatures who desired association but who also required protection as a result of their sinfulness and depravity.

⁴⁷ Francisco Suárez, *Tractatus de legibus ac Deo legislatore: In decem libros distributus* (Antuerpiae, 1613), Roy BX890.S8, University of St. Andrews Library.

⁴⁸ Stephen Mark Holmes, "Education in the Century of Reformation," in *The Edinburgh History of Education in Scotland*, ed. Robert Anderson, Mark Freeman, and Lindsay Paterson (Edinburgh, 2015), 57–78; James Kirk, "Melvillian' Reform in the Scottish Universities," in *The Renaissance in Scotland*, ed. A. A. MacDonald et al. (Leiden, 1994), 276–300; Steven J. Reid, *Humanism and Calvinism: Andrew Melville and the Universities of Scotland, 1560–1625* (Farnham, 2011).

⁴⁹ Samuel Rutherford, *Lex, Rex; or, the law and the prince* (London, 1644), 1–5.

⁵⁰ Coffey, *Politics, Religion and the British Revolutions*, 152.

As a result, in domestic family units, children were naturally subjects of their parents' authority. But for Rutherford, this model for domestic life did not correspond to political life. Maintaining the Aristotelian distinction between domestic and political life, Rutherford argued that civil authority was fundamentally different in nature from domestic authority.

In making this distinction, Rutherford departed from the more mainstream Catholic perspective that political power was a natural by-product of human desire for association. Instead, he relied on Vázquez's unique interpretation of liberty to argue that domestic society was natural, but civil government was artificial and created from positive law. Rutherford drew heavily on Vázquez's view of liberty, arguing that all human beings are born free and equal, not just in the sense of slavery but in the sense of subjection to political authority. Outside of the domestic family unit, Rutherford maintained that "there is no law of Nature agreeing to all living creatures for superiority."⁵¹ As a result, "all men equally are not borne Kings, as is evident; and all men are not equally borne by nature under politique subjection to *Kings*."⁵² Rutherford constructed a stage between political association and the institution of government similar to that advanced by Vázquez when he argued, "When therefore a communitie by natures instinct and guidance, incline to *Government*, and to defend themselves from violence; they do not by that instinct formally agree to *Government* by *Magistrates*."⁵³ No human would willingly submit to authority knowing they would be subject to punishment. Furthermore, Rutherford deferred to "the learned Senator *Ferdinandus Vasquez*" to illustrate that "no man is borne under subjection to penall lawes or dying for his Prince."⁵⁴ Although Rutherford advanced some notion of a pre-civic state of natural liberty, this version was not fully Ciceronian like that advanced by Vázquez, nor was it a prototype for the state of nature that would be advanced by Thomas Hobbes and John Locke.⁵⁵ Rutherford did not postulate that all human beings lived independently, possessing their own natural right to self-defense, but instead emphasized community in this pre-civic state. Even though political authority was artificial, human beings were still inclined toward political association by nature, not just by necessity or utility as Vázquez had argued. Rutherford thus aligned himself more with Vázquez (albeit with some limitations) than with other Catholic authors, such as Bellarmine and Vitoria, who argued that political power was natural in the same way that domestic power was.

Apart from his reliance on Vázquez's ideas about liberty, Rutherford also adopted the jurist's arguments about the secondary law of nations to argue that naturally free human beings organized governments according to their own will through positive law. This step was essential for proving that the form of government (such as absolute monarchy) was not naturally determined and could be changed. Rutherford specifically framed this part of his argument with reference to the secondary law of nations drawn from Vázquez. As he argued in the opening pages of the treatise, "I judge that learned Senator *Ferdinandus Vasquius* said well, That Princedom, Empire, Kingdom,

⁵¹ Rutherford, *Lex, Rex*, 3.

⁵² Rutherford, 93.

⁵³ Rutherford, 4.

⁵⁴ Rutherford, 92.

⁵⁵ Thomas Hobbes, *Leviathan, or, the matter, form, and power of a common-wealth ecclesiastical and civil* (London, 1651); John Locke, *Two treatises of government* (London, [1689]).

or Jurisdiction hath its *rise from a positive and secondary law of Nations and not from the law of pure Nature.*⁵⁶ Rutherford's reliance on Vázquez's interpretation of the artificiality of government through the secondary law of nations had more specific implications for his ideas about political power itself. As Rutherford continued, "I conceive all jurisdiction of Man over Man, to be as it were Artificiall and Positive, and that it inferreth some servitude, whereof Nature from the womb hath freed us."⁵⁷ Rutherford thus preserved (and openly referenced) Vázquez's distinction regarding the secondary law of nations because it allowed him to defend the artificiality of political authority and argue that the form of civil government had not been dictated by natural law. This argument was important because it enabled Rutherford to challenge other Catholic authors and divine-right royalists in Britain who claimed that absolute monarchy was the best and most natural form of government. By contrast, as Rutherford concluded, the political power of a magistrate is "in its spece and kind, warranted by a positive law, and in the generall only, warranted by a law of nature."⁵⁸ The specific form of government—whether a monarchy, aristocracy, or democracy—was not naturally determined.

Even though Rutherford declared that the form of government could be determined by positive law, he affirmed that limited monarchy was the best and most proper form. His defense of the ability of human beings to choose their form of government did not result in an ecumenical endorsement of all types. Instead, this line of argument drawn from Vázquez allowed Rutherford to justify limited monarchy and allow Parliament to challenge the king's absolute sovereignty through the Scottish constitutional settlement. Unlike divine-right royalists who argued that God ordained and required absolute monarchy in the civil state, Rutherford argued that absolute monarchy might devolve into tyranny and arbitrary rule. He referenced "that learned Senator Ferdin. Vasquez" to argue that "absolute government in a sinfull and peccable man is a wicked government, and not a power from God, for God never gave a power to sin."⁵⁹ As he maintained, "An absolute and unlimited Monarchy is not onely not the best forme of Government, but it is the worst."⁶⁰ Instead, Rutherford challenged that a "limited and mixed Monarcy. . . seeme to me the best government," according to which the Estates of Parliament could prevent the arbitrary rule of an absolute king.⁶¹ For Rutherford, Vázquez's theory of the voluntary nature of political society empowered the people to create and remold governments when civil authorities failed to act for their citizens' utility and necessity. Using this theory of the civil state, Rutherford could justify the Scottish Covenanters' intention to use the people's representatives in Parliament to limit King Charles's royal prerogative as an absolute monarch and protect the kirk from the oversight of an idolatrous king.

Although Rutherford employed Vázquez's ideas about natural liberty and the law of nations, he returned to a more mainstream Catholic perspective regarding the role

⁵⁶ Rutherford, *Lex, Rex*, 3.

⁵⁷ Rutherford, 3.

⁵⁸ Rutherford, 5.

⁵⁹ Rutherford, 385, citing Vázquez, *Controversiarum illustrium*, bk. 1, chap. 5, no. 17: "Confirmantur nostrae sententiae, quia plenitudo potestatis ad malum & iniuriam non extenditur."

⁶⁰ Rutherford, *Lex, Rex*, 385.

⁶¹ Rutherford, 387.

of the people as the mediators of God's power in electing their officials. He argued that God no longer selected magistrates through divine revelation or through prophets, an important distinction between modern governments and the theocracy of the Old Testament Israelites. In New Testament times, the election of magistrates resulted from the people's choice rather than from divine command alone. Although God played a less direct role in the civil kingdom now than when he governed the Israelites, he was not absent from Rutherford's theory of the civil state. Rather, the people now elected their own magistrates as the mediators of God's power on earth. As Rutherford wrote, "that power of Government is *immediately* from God, and this or this definite power is *mediately* from God, proceeding from God by the mediation of the consent of a Communitie."⁶² The people mediated God's power by combining rationality with the guidance of scripture. According to Rutherford, once God bestowed the gift of governing and its relevant attributes on one particular man, the people needed to determine which ruler possessed that gift by exercising their rationality and appealing to scriptural precedents. Scripture alone could not advise who should rule, but human beings could discern this through their own reason and verify their decision against the Bible. As Rutherford argued, "I am sure [God] doth not immediately designe the man, but doth onely mark him out to the people, as one who hath the most royall indowments, and the due qualifications required in a lawfull Magistrate, by the Word of God."⁶³ God limited his direct agency in the temporal kingdom and instead allowed human beings to utilize their own rationality and free will to construct governments and institute godly kings. Rutherford concluded that only the "free suffrages of the States choosing a man whom they conceive God hath endued with these royall gifts required in the *King* whom God holdeth forth to them" legitimately constituted political authority.⁶⁴ Rutherford thus drew upon the political thought of Catholic scholastics who looked favorably upon human rationality to conclude that human beings mediated divine power by rationally electing their own magistrates. While scripture played an important role in advising God's people, Rutherford still relied on a favorable interpretation of human rationality drawn from the Catholic intellectual tradition that accorded human beings significant agency over political life.

This analysis of the election of magistrates (one based predominantly in a Catholic scholastic interpretation of human rationality) was important for how Rutherford justified resistance based on the people's original political power. Since human beings mediated God's power to elect officials, they could make and unmake magistrates by recalling their original power when the king failed to uphold his covenantal duties. Human beings never relinquished their original power when they elected officials. As Rutherford argued, the "*power of the king is but fiduciary*, and that is . . . a sort of power by trust, pawn'd or loane."⁶⁵ The king constantly borrowed his power from those who granted him his political position, such as the three Estates of the Scottish Parliament, and he could not claim it absolutely. Rutherford concluded that since the community "make him a King, and upon Law-grounds and just demerit, they may unmake him again; for *what men voluntarily doe upon condition, the condition being*

⁶² Rutherford, 5.

⁶³ Rutherford, 12.

⁶⁴ Rutherford, 72.

⁶⁵ Rutherford, 155.

removed, they may undoe again.”⁶⁶ Rutherford established this large category for human agency in electing and deposing magistrates by relying on Catholic scholastic political thought. Rutherford’s category contrasted the larger one for divine agency that royalists in Britain established. Royalists commonly argued that all authority was God-given and absolute. Rutherford feared this argument because it was intrinsically linked to the illegitimacy of resistance and to arbitrary rule. If political power originated with God alone rather than with nature and human will, Rutherford argued, “then Majors, Sheriffs, Provosts, Constables, are . . . extolled as persons, sacred, irresistible.”⁶⁷ In response to this excessive attribution of divine power to all political authorities, he needed to illustrate the natural origins of government and the power of human beings to elect their magistrates rather than to rely on God’s sovereignty alone. He concluded, “There is no cause why Royalists should deny Government to be naturall, but to be altogether from God . . . because it is not naturall to us to subject to Government, but against Nature.”⁶⁸ Rutherford’s emphasis on human rationality and agency (as opposed to the royalist emphasis on God’s sovereignty) challenges the notion that the Covenanters were fundamentally theocratic in their view of the civil state. Rather than attempt to control the temporal kingdom exclusively through divinely ordained magistrates, Rutherford accorded human rationality a significant role in establishing and maintaining civil government by incorporating the political thought of the Catholic scholastics.

Yet Rutherford equally distanced himself from Catholic political thought regarding when subjects might legitimately resist their superiors. Instead, he combined Catholic scholastic ideas about the voluntary origins of the civil state and the people’s power to elect and recall magistrates with a standard Reformed approach to resistance based on idolatry and defense of the true religion. Rutherford’s approach challenges Quentin Skinner’s claim that Reformed theories of revolution and resistance were not “specifically Calvinist at all.”⁶⁹ While Reformed authors like Rutherford drew upon political ideas advanced by Catholics and Lutherans to justify resistance, they also placed a distinct emphasis on idolatry as a legitimization for political resistance.⁷⁰ This is certainly the case with Rutherford’s criticism of Charles as an idolatrous king who introduced “popish” and corrupt reforms into the kirk. When justifying resistance, Rutherford turned for evidence toward the political thought of Reformed authors rather than Catholic ones. In part, his reasons for doing so were a response to contemporary cultural dynamics in Britain. In the aftermath of the Gunpowder Plot (1605), Catholics earned a negative reputation in both kingdoms as radical king-killers. Indeed, royalists often compared the English parliamentarians and the Scottish Covenanters to radical Jesuits who believed that kings could

⁶⁶ Rutherford, 231.

⁶⁷ Rutherford, 22.

⁶⁸ Rutherford, 3.

⁶⁹ Quentin Skinner, “The Origins of the Calvinist Theory of Revolution,” in *After the Reformation: Essays in Honor of J. H. Hexter*, ed. Barbara C. Malament (Manchester, 1980), 309–30, at 325.

⁷⁰ John Coffey, “The Language of Liberty in Calvinist Political Thought,” in *Freedom and the Construction of Europe*, vol. 1, *Religious Freedom and Civil Liberty*, ed. Quentin Skinner and Martin Van Gelderen (Cambridge, 2013), 296–316; Carlos M. N. Eire, *War against the Idols: The Reformation of Worship from Erasmus to Calvin* (Cambridge, 1989), 282–310.

be deposed by force. It is no surprise that Rutherford sought to distance the Covenanters from this connotation with treason and radicalism.

Apart from these negative cultural connotations regarding Jesuit resistance theory, there were also intellectual problems with how some Catholic authors justified resistance to temporal magistrates. For example, in conversation with King James VI and I in the early 1600s, Bellarmine and Suárez argued in favor of the papal deposing power, according to which the pope possessed coercive power over temporal princes.⁷¹ This position threatened the civil state by ensuring that the people's primary allegiance rested with the pope in Italy rather than with their own king. As Suárez argued, if the king proved heretical, the pope could legitimately deprive him of his dominion and "release those subjects from their oath of allegiance."⁷² Additionally, the majority of Catholics with whom Rutherford previously engaged in a favorable way argued that the pope played a crucial role in validating the people's decision to reclaim their power from a failed magistrate. While not all Catholics upheld the papal deposing power, Rutherford argued against those Jesuits who granted the pope such temporal authority. As he stated, "if a *King* degenerate in a *Tyranny*. . . we think the people have liberty to change *Monarchy* into *Aristocracy*. . . Jesuites deny that the people can make this change without the Popes consent."⁷³ There were thus a number of reasons, both situational and intellectual, for Rutherford to cease relying on controversial elements of Catholic scholastic political thought regarding when magistrates might legitimately be deposed.

Instead, Rutherford framed his legitimization of resistance within the context of standard Reformed arguments about the duty of inferior magistrates to resist on behalf of their subjects when the king broke his covenant to rule for the people's good and protect the true religion (Reformed Protestantism). He needed to demonstrate that resistance on behalf of the true religion was both legitimate and a duty imposed by God to challenge royalist arguments that obedience and the patient bearing of tyranny was the only acceptable Christian response. Rutherford agreed with royalists that obedience was the highest duty when the king fulfilled his covenantal obligations. Yet when the king failed to protect the church and instead threatened his subjects' lives, liberties, and religion, he must be resisted by divine command. Defending the true religion against idolatry played a significant role in Rutherford's resistance theory. As he argued, "The obedience of positive duties that subjects owe to Princes, cannot loose them from Natures Law of self-preservation, nor from Gods Law, of defending Religion against Papists in Armes."⁷⁴ Rutherford compared Charles to "papists" to justify the Covenanters' actions as protection of the true religion. Charles had introduced "popish" ceremonial practices into the kirk forcefully through his royal prerogative, evident by his institution of bishops and imposition of the Book of Common Prayer in 1637. As a result, he had failed

⁷¹ Robert Bellarmine, *Tractatus de potestate summi pontificis in rebus temporalibus, adversus Gulielmum Barclay* (1610); James I, King of England, *An apologie for the Oath of Allegiance [Apologia pro iuramento fidelitatis]* (London, 1607); Francisco Suárez, *A defence of the Catholic and apostolic faith against the errors of the Anglican sect [Defensio fidei Catholicae et Apistolicae adversus Anglicanae Sectae Errores]* (Cologne, 1614), bk. 3, chap. 23.

⁷² Suárez, *A defence of the Catholic and apostolic faith*, bk. 2, chap. 23.

⁷³ Rutherford, *Lex, Rex*, 417.

⁷⁴ Rutherford, 363.

to protect the true religion as he had sworn to do in his coronation oath, and the National Covenant of 1638 represented the Scots' attempt to secure the Presbyterian kirk against further idolatrous innovations. Charles's flirtation with Catholicism additionally meant that he failed to fulfill his duty to enforce and defend both Tables of the Decalogue, including commandments about true worship. Based on Charles's acts of aggression and his apparent persecution of Reformed Protestantism, resisting him in self-defense was simply following "a commandment of God in the law of nature."⁷⁵ Rutherford's emphasis on the king's failed duty to root out idolatry and protect the true religion therefore aligned him with standard Calvinist resistance theories advanced by canonical authors such as Johannes Althusius, Theodore Beza, and David Pareus, or with the *Vindiciae, Contra Tyrannos*.⁷⁶ There were thus limitations on the extent to which Catholic political thought informed Rutherford's political theory as he merged Catholic ideas about the origins of government with a traditional Calvinist emphasis on idolatry and the true religion as justifications for resistance.

Catholic scholastic authors, however, proved essential to Rutherford's political theory for a variety of reasons. First, his integration of these two intellectual traditions resulted in part from the different priorities of Catholic scholastics and Reformed authors in post-Reformation Europe. Whereas Reformed authors generally advanced ideas about resistance by inferior magistrates for self-defense as a means of protection against religious persecution, Catholic scholastics developed legal categories to justify missionary work or imperial expansion while elaborating a set of moral standards that they could apply to non-Christian nations.⁷⁷ They subsequently developed classical and medieval natural law traditions to a greater extent than Reformed authors. For this reason, when looking for legal foundations to explain the origins of civil government, Rutherford resorted to Catholic scholastics rather than to Reformed authors. Second, Catholic scholastic authorities (and especially jurists) played an important role in Reformed political discourse precisely because their development of legal categories represented a discipline that was not strictly confessional in nature. The political ideas of a Catholic jurist, such as Vázquez, would have been useful because he operated on the cutting edge of a non-confessional discipline that Catholic and Protestant authors alike practiced. Ideas about the law of nations did not necessarily come with confessional connotations. Lastly, Catholic scholastics may have been useful authorities for Reformed authors in Britain given their status as outsiders to a Protestant civil war. Catholic authors had no particular interest in the intra-confessional conflict and could be regarded with a different degree of objectivity than Reformed authors. These reasons all explain why Rutherford intentionally appealed to the natural foundations of government as established by Italian and Spanish Catholic scholastics and to the artificiality of political subjection advanced by Vázquez to defend the Covenanters' vision of a limited monarchy from outside a Reformed tradition. But Rutherford dismissed Catholic conversations about the pope's role in the deposition of magistrates by

⁷⁵ Rutherford, 357.

⁷⁶ Theodore Beza, *On the rights of magistrates over their subjects* [*De jure magistratuum*] (1574); Stephanus Junius Brutus, *Vindiciae, Contra Tyrannos*, trans. and ed. George Garnett, (Cambridge, 1994); David Pareus, *In divinam ad Romanos S. Pauli ap. epistolam commentarius* (Frankfurt, 1618).

⁷⁷ Brett, *Changes of State*, 62–89.

returning to a Reformed resistance theory that focused on idolatry and covenantal obligation, one developed as a result of the different priorities of Protestants in post-Reformation Europe.

Catholic and Reformed intellectual traditions offered Rutherford different ways of thinking about the best form of the civil state and the limits on the king's power, providing him with a well-rounded analysis of the voluntary form of civil government based on human liberty and popular consent. Since human beings created governments voluntarily, they could retain this power and recall it when the magistrate failed in his covenantal duties. For the Covenanters, these duties dealt with protecting the true religion, and resistance could be legitimized in defense of it. Rutherford thus bridged the gap between two intellectual traditions, drawing on unique elements of each tradition that reflected wider confessional priorities in the sixteenth and early seventeenth centuries.

RUTHERFORD'S WIDER ECCLESIOLOGICAL PROJECT

It is therefore evident that Rutherford used Catholic scholastic political theory—and particularly the legal categories developed by Vázquez—to legitimize limited monarchy while simultaneously drawing upon standard Reformed ideas about resistance on behalf of the true religion. But to view *Lex, Rex* exclusively as a political theory pertaining to the civil state overlooks the additional ecclesiological implications of the work. Although Rutherford wrote *Lex, Rex* primarily to defend limited monarchy and legitimize resistance, he authored lengthy theological treatises defending *jure divino* presbyterianism around the same time. Contextualizing *Lex, Rex* alongside these works and within a wider debate in early seventeenth-century Britain about compatible forms of church and civil government reveals that his political theory answered an important problem about the nature of the kirk. Vázquez's juridical framework, one that defended the artificial nature of civil government, enabled Rutherford to endorse *jure divino* presbyterianism as a form of church polity wholly compatible with limited monarchy. By identifying the form of civil government as a matter of voluntary creation or positive law, Rutherford could modify the civil polity to mirror the divinely ordained church polity.

When Rutherford advocated for a limited monarchy, according to which Parliament held the king accountable to the laws of the land, he was participating in a much broader debate about divine-right absolutism, a political theory that had been articulated by King James VI in the late 1590s. According to this theory, God mandated absolute monarchy in the civil state and directly ordained kings to rule. As a result, kings could not be held accountable to any other civil or ecclesiastical authorities. Instead, kings were sovereign over all laws, including those that regulated and provided for the church. James argued that absolute monarchy had been ordained by God and that “*Monarchie is the true paterne of Divinitie,*” evident by both scripture and ancient custom.⁷⁸ His view of civil government was also intrinsically connected to a defense of episcopal church government. Kings who possessed absolute civil sovereignty also had supremacy over the church and could institute

⁷⁸ James VI, King of Scotland, *The true lawe of free monarchies, or the reciprock and mutuall dutie betwixt a free king, and his naturall subjects* (Edinburgh, 1598), 3.

bishops to exercise that authority. Presbyterian church government, which placed ecclesiastical authority in presbyteries, synods, and the General Assembly rather than in the king and the hierarchy of individual churchmen whom he appointed, fundamentally challenged the king's ecclesiastical sovereignty. Presbyterianism thus limited the king's authority to appoint bishops and granted the church a degree of independence from royal oversight. This independence meant that ecclesiastical authorities might challenge the king or attempt to hold him accountable. As a result, only episcopacy complemented absolute monarchical rule by ensuring that the church would not operate independently from royal authority. This emphasis on the compatibility of absolute monarchy and episcopacy posed a problem for seventeenth-century English and Scottish Presbyterians who had to defend against claims that their preferred form of church polity threatened civil rule. For example, Polly Ha demonstrated how early seventeenth-century English Presbyterians attempted to reconcile presbyterianism with royal supremacy by giving the king "some measure of authority in church government," albeit not absolute authority through the appointment of bishops.⁷⁹ Yet as Ha also argued, Presbyterians "represented a continued challenge to supremacy" because they subjected "the crown's authority to collective jurisdiction and biblical precedent."⁸⁰ This same tension between presbyterianism and absolute monarchy characterized Scottish royalist political thought after the Union of Crowns in 1603 when James and Charles attempted to gain the same supremacy over the Church of Scotland that they held over the Church of England.

The Scottish context for this debate is most obvious in the work of Rutherford's main royalist adversary, John Maxwell, who argued that the Bible ordained both absolute monarchy and episcopacy. While Maxwell agreed with Rutherford that human beings were inclined to political association, he observed a natural structure of inferiority and superiority implanted in the hearts of human beings by God, a structure that tended toward absolute monarchy. For Maxwell, conservation of the human race required some form of order and structure. Within government (and within creation more generally), God established a hierarchy of inferiority and superiority in which he stood at the top and influenced human beings below him. To leave human beings with the choice to create their own systems of inferiority and superiority would mean that God ordered creation arbitrarily, fundamentally contradicting the reasonableness of his character. God therefore ordained absolute monarchy as the most natural hierarchical form of government. This also had implications for church government. As Maxwell argued, "In Scripture it is prophesied, *Ecce reges erunt nutritii tui, That kings shall be the Nurse-fathers of the Church*, there is no word to that sense for any other government besides Monarchie."⁸¹ He additionally stated that the "destruction of Episcopacy," as advocated by the Covenanters, would equate to "the totall overthrowing of Monarchy" because "in the one Kingdome the Presbytery, the Assembly is so soveraigne, so independent in Ecclesiasticall and Spirituall things, that it giveth Lawes, Orders to the Sovereigne Prince, and

⁷⁹ Polly Ha, *English Presbyterianism, 1590–1640* (Stanford, 2011), 13–20, at 17.

⁸⁰ Ha, *English Presbyterianism*, 15.

⁸¹ Maxwell, *Sacro-sancta regum majestas; or, the sacred and royall prerogative of Christian kings* (Oxford, 1644), 179.

Parliament.”⁸² For Maxwell, God ordained absolute monarchy in the state, and presbyterianism inherently threatened the king’s civil sovereignty.

Rutherford wrote *Lex, Rex* in direct response to Maxwell and therefore needed to challenge this tradition of divine-right absolutism by reconciling presbyterianism with the civil polity. This was particularly important because Rutherford and other Covenanter leaders believed that God mandated presbyterianism in the church. To compromise on presbyterianism threatened true worship. Around the time that Rutherford wrote *Lex, Rex*, he advanced this idea about proper church government in two treatises: *The due right of presbyteries* (1644) and *The divine right of church-government and excommunication* (1646).⁸³ Both were written during his time in London at the Westminster Assembly where he sought to influence his fellow divines to make provisions for presbyterianism in the Confession of Faith. In both treatises, Rutherford demonstrated that, unlike civil government, the form of church government was not artificial. Nor was it based on human will alone. As he argued in *The due right of presbyteries*, “so neither hath the wisdome of Christ appointed a governor in generall, and left it to the Churches discretion to specifie what this governour shall be, whether a Prelate, a Pastor, a ruling Elder. . . so must hee have determined such and such Governors, ruling Elders, rather than a certain creature named a Diocesan prelate.”⁸⁴

For Rutherford, the form of church government did not fall under the category of *adiaphora*, or things that were indifferent to God and therefore not clearly determined in scripture. Rutherford ardently defended presbyterianism by arguing that scripture did not leave the specific form of church government open to human interpretation or apostolic authority. During his time at the Assembly, Rutherford challenged those who, on matters of church polity, “acknowledge the word of God perfect in general, but left particulars to the church.”⁸⁵ As he concluded, the argument that “God may instit[ut] the genus & the church may specificate” was “the forme of argumentation that the papists used,” particularly John Duns Scotus, Suárez, and Bellarmine.⁸⁶ Whereas Rutherford believed that God ordained the office of the civil magistrate in general, leaving the particularities to the people to determine, this same framework did not apply to church government. Rutherford’s rejection of episcopacy was therefore not simply from a negative perspective, according to which scripture did not mandate bishops and so they were unnecessary. Rather, he believed that God expressly ordained presbyterianism, a form of church polity that restricted excessive royal oversight of the kirk and protected the church from the idolatrous reforms instituted through the king’s royal prerogative.

Rutherford’s use of Vázquez’s ideas about the voluntary nature of civil government enabled him to defend his views on presbyterianism by showing that, contrary to the arguments of divine-right royalists like Maxwell, absolute monarchy was not essential or beneficial for the civil state. By proving that neither God nor nature required

⁸² Maxwell, *Sacro-sancta regum majestas*, 69.

⁸³ Rutherford, *The due right of presbyteries or, a peaceable plea, for the government of the church of Scotland* (London, 1644); Rutherford, *The divine right of church-government and excommunication*.

⁸⁴ Rutherford, *Due right of presbyteries*, 155.

⁸⁵ Chad Van Dixhoorn, ed., *The Minutes and Papers of the Westminster Assembly, 1643–1652*, vol. 2, *Minutes, Sessions 45–119, 155–198 (1643–1644)* (Oxford, 2012), 400.

⁸⁶ Van Dixhoorn, *Minutes and Papers of the Westminster Assembly*, 411.

absolute monarchy, Rutherford could present presbyterianism as a form of church government that complemented limited monarchy, the best and most legitimate form of civil government. If the form of civil government could be changed by the people, as Rutherford argued in *Lex, Rex*, it could also be altered to conform to presbyterianism as the biblically prescribed form of church polity. Furthermore, if Parliament could hold the king accountable to laws of the kingdom in a limited monarchy, those civil laws that provided for presbyterianism in the Church of Scotland could also be used to restrict the king's authority to appoint bishops and impose other episcopalian reforms. Vázquez's argument that the form of civil government resulted from human will and positive law therefore allowed Rutherford to defend limited monarchy with the ecclesiological implication that presbyterianism could exist peacefully in the civil state. Through the political theory he advanced in *Lex, Rex*, Rutherford could ultimately modify civil government to reflect church polity and challenge divine-right royalist claims that presbyterianism threatened the civil state. Ironically, it was the work of the Catholic scholastics—particularly Vázquez—that enabled a strictly Scottish Calvinist to make the state safe for presbyterianism.

CONCLUSION

Rutherford's use of Catholic scholastic political thought to defend limited monarchy (and address contemporary debates about compatible forms of church and civil polity) raises important questions about the broader political and ecclesiological purposes of *Lex, Rex*. The text has generally been interpreted as the exemplar of Reformed resistance theory in Scotland, but this was not the sole purpose for which Rutherford wrote the treatise. Indeed, his treatment of resistance theory was particularly defensive and did not serve as an active call to arms. As the extended title of *Lex, Rex* reveals, the text was meant to defend the Covenanters' actions by advancing "the *Reasons* and *Causes* of the most necessary Defensive Wars of the Kingdom of Scotland."⁸⁷ It is unlikely that his hostile language against bishops and his consistent references to Maxwell as "the Popish Prelate" would have convinced English or Scottish moderates to join the parliamentarians and Covenanters in their cause. Additionally, the erudite and highly learned nature of the treatise would not have been accessible to the average Scot and would not have effectively mobilized the majority of Englishmen and Scots to resistance. The fact that the treatise was written in English rather than in Latin would have restricted its readership in continental Europe, suggesting that Rutherford did not seek simply to defend the Scots' resistance on an international scale. *Lex, Rex* served a defensive purpose by framing the Covenanters' actions as justifiable within broader Reformed resistance theory rather than by attempting to appeal to moderates and spur them to action.

There was another important purpose to Rutherford's *Lex, Rex* beyond legitimizing resistance to kings. While Rutherford used the treatise to defend limited monarchy and justify resistance, he also addressed a significant crisis of the Protestant church in Britain. Using Catholic scholastic political thought about the voluntary nature of government, he could address contemporary debates about compatible

⁸⁷ Rutherford, *Lex, Rex*, title page.

forms of church and civil government. As Rutherford's theological treatises from 1644 to 1646 suggest, he sought to promote a presbyterian church settlement for Britain. When he wrote *Lex, Rex* in 1644, he was already anticipating a presbyterian settlement and actively contributing to its establishment through the Westminster Assembly.⁸⁸ As a result, his primary audience was likely those Covenanter and English Parliamentary divines whom he hoped would accept and provide for a presbyterian church settlement before the negotiations at Uxbridge in January and February 1645. He was therefore interested in a predominantly British question about how to protect the church from an idolatrous monarch in light of Charles's contentious religious reforms. Faced with contemporary Erastian controversies about the extent to which the magistrate should possess supremacy over the church, Rutherford sought to defend a relationship between the spiritual and temporal kingdoms for Britain that prioritized scriptural mandates about church government over the form of civil government. He was able to reconcile a presbyterian national church with limited monarchy—and challenge the common divine-right absolutist position—by resorting to Catholic authorities rather than to Reformed ones alone.

I have thus reinterpreted a central treatise in Scottish political thought by analyzing its relationship with Catholic scholasticism and the ways in which this intellectual tradition fulfilled an additional ecclesiological purpose in seventeenth-century Britain. Catholic ideas about the civil state, ones that were based on natural law and human rationality, allowed Rutherford to build a sophisticated and erudite theory of political society that functioned according to human rationality, popular sovereignty, and the artificial construction of forms of government. These intellectual borrowings had significant implications for the language of political legitimacy and the relationship between church and state in civil-war Britain. Rutherford established a civil government that mirrored and existed peacefully alongside a presbyterian national church. The form of civil government was not divinely mandated and was instead a product of rational human will and positive law. This interpretation challenges the argument that the Scottish Covenanters were radical theocrats when compared to their English Puritan contemporaries. Although the Covenanters infused their language of resistance with religious meaning, arguing that the king should be resisted when he persecuted the church by introducing heresy or idolatry, they also accorded human beings significant agency in organizing and constructing political life through their reason rather than relying on scripture alone. As the Covenanters sought to establish a godly, covenanted nation, Rutherford's theory about the creation of the political authority revolved around a Catholic scholastic interpretation of human rationality and agency in the civil kingdom that was distant from biblical voluntarism. When Rutherford merged Catholic scholastic political theory with traditional elements of Calvinist resistance theory, he was best able to defend the Reformed faith from Charles's "popish" corruptions using the apparatuses available in a limited monarchy. This analysis thus urges us to reconsider not only the porosity of traditional confessional boundaries in early modern political thought but also the respective positions of both Calvinism and Catholicism in shaping the political ideas underlying the British revolutions of the mid-seventeenth century.

⁸⁸ Crawford Gribben, "Samuel Rutherford and Liberty of Conscience," *Westminster Theological Journal* 71, no. 2 (2009): 355–73.