



Citation: L.F. Hernández Arana (2021), Between Sin and Crime: The Contrasting Hermeneutics of J. Ogilvie's Trial and Execution, according to the *Relatio incarcerationis* and *A true relation of the proceedings against John Ogilvie*. *Jems* 10: pp. 49-81. doi: <http://dx.doi.org/10.13128/JEMS-2279-7149-12539>

Copyright: © 2021 L.F. Hernández Arana. This is an open access, peer-reviewed article published by Firenze University Press (<https://oajournals.fupress.net/index.php/bsfm-jems>) and distributed under the terms of the Creative Commons Attribution - Non Commercial - No derivatives 4.0 International License, which permits use, distribution and reproduction in any medium, provided the original work is properly cited as specified by the author or licensor, that is not used for commercial purposes and no modifications or adaptations are made.

Data Availability Statement: All relevant data are within the paper and its Supporting Information files.

Competing Interests: The Author(s) declare(s) no conflict of interest.

Between Sin and Crime The Contrasting Hermeneutics of J. Ogilvie's Trial and Execution according to the *Relatio incarcerationis* and *A true relation of the proceedings against John Ogilvie*

Luis Fernando Hernández Arana
Regina Apostolorum Athenaeum Rome (<lhernandez@legionaries.org>)

Abstract

The article explores the relationship between the old conceptualization of crime, inherited from Scholasticism, and the new – modern – conceptualization of crime through the controversial case of the Jesuit John Ogilvie, executed in Glasgow in 1615. It contextualizes the two main published accounts of his arrest, trial and execution, the autobiographical account known as the *Relatio incarcerationis* and the Scottish official account of Ogilvie's trial and execution, *A true relation of the proceedings against John Ogilvie*. These two accounts represent two different worldviews. The Catholic narrative insists on the universality of dogma and is based on the theological conception of sin. The national-Protestant narrative considers it a crime of treason to deny the full authority of the king in his own nation and bases its conception of the crime on the legal rather than theological ground. By showing the contrasting elements of these worldviews, the article evidences the development of these two different conceptions of crime. The complex process of the transitional conceptualization of crime in the early modern period demands first a broader analysis to understand the conceptual evolution that took place after the Renaissance period.

Keywords: A true relation of the proceedings against John Ogilvie, *Early modern conceptualization of crime*, *Early modern conceptualization of sin*, *John Ogilvie*, *Relatio incarcerationis*

ambiguo lapsu refluitque fluitque
occurransque sibi venturas aspicit undas
et nunc ad fontes, nunc ad mare versus apertum
incertas exercet aquas.
Ovid, *Metamorphoses*, VIII, 163-166

1. *Introduction*

It is not easy to try to explain in the space of one article the conceptualization of crime from the perspective of a Scottish Jesuit priest, executed for treason in 1615, and the conceptualization of crime in the Calvinist Scotland of James VI and I,¹ who was trying to strategically align his government. The difficulty, but also the opportunity, increases precisely because we have both the Jesuit's autobiographical account and the official record of the trial and sentence. The accounts offer two different interpretations of the same events and two different conceptions of what should be considered 'criminal'.

From an even broader perspective, the fact that Ogilvie's death is located at the beginning of modernity, while Europe was going through a cultural metamorphosis inherited from the Renaissance, makes this case a particularly interesting object of study. In addition, Ogilvie was the only Scottish Catholic martyr of the post-Reformation period. All of this presents great challenges to any scholar who seeks to articulate the facts and context in such a way as to bring to light the contrast between the two world views that are embodied and confronted in this case.

Although this necessarily imposes some limits on our study, we cannot give up the effort to try to understand the facts and ideological currents, and their context in an organic and articulated way.

When the Jesuit Matthias Tanner published the lives of three hundred and twelve Jesuit martyrs in 1675, he began John Ogilvie's account by explaining its controversial and complex context from a Catholic perspective: 'Regnum Scotiae Fidei Catholicae quondam tenacissimum, pestilente Calvini haeresi, sub eadem quibus Anglia tempora, depravari caepit; donec Jacobo Stuarto Rege ad sceptrum Angliae assumpto, in unam coronam coalescens, perfidiae penitus cessit. In eo . . . natus est Joannes Ogilbeus' (82).² It is therefore also necessary to outline the political framework within which the controversial motives that led to John Ogilvie's hanging can be understood. Implicit in his trial is the conflict between the Society and the Kingdom of Scotland, and between the Catholic faith and the Protestant confession, and – in the historical collision between the two – there are also other problems, no less important, that arise owing to the changed cultural context.

In fact, we cannot ignore the wide-ranging cultural and scientific transition that was taking place at the beginning of the seventeenth century.³ Astronomy left the geocentric theory aside and adopted heliocentrism. Aristotle's scientific methodology based on logic was replaced by experimental science. Aristotelian physics was displaced by new theories that embraced the possibility of vacuum, inertia, and other modern physical concepts. Politically, there was a shift from papal universalism to royal absolutism, such as that presented by James VI in his *Basilikon*

¹ With the exception of the bibliographical entry for his *Political Works*, where the author appears as 'James I', I will refer to King James VI and I simply as James VI, given that the facts we are discussing pertain mainly to Scotland. I wish to thank B. Killoran, M. Sternhagen and Professor C. Kennedy for their help; and Professors A. Kennedy and S. Dropuljic for their advice.

² The Kingdom of Scotland, which had once been faithful to the Catholic faith, began to be corrupted by the pestilential Calvinist heresy at about the same time as England, until it finally gave in to perfidy when King James Stuart came to the English throne by uniting the two in a single crown. In this kingdom John Ogilvie was born. All translations from Latin, Spanish and Italian are mine.

³ The new cultural map had a difficult and complex evolution, rather than a lineal one. Its progress can be expressed in the words of Ovid's *Metamorphoses* quoted in the epigraph of this essay, when the author describes the dynamic movement of the Maeander river (VIII, ll. 163-166): 'it flows backwards and forwards with ambiguous flow / and moving forward contemplates the waves that are coming to it / and it drives the uncertain waters / now to the springs of water, now into the open sea'. Therefore, it can be said that modernity is characterized by this progressive movement between the old worldview (*ad fontes*) and the new one (*mare apertum*) which was arising from the metamorphic rebirth of knowledge and science.

Doron (1599). Similarly, the concept of crime that was rooted in the scholastic theology of sin began to lose its theological roots⁴ and was transplanted into the field of law ‘as commanded’, in accordance with the philosophy of the English philosopher Ockham, *bonum quia iussum*.

In this article, therefore, I will deal with the religious, political, cultural and legal context of John Ogilvie’s case in order to illustrate in a more integrated way the two contrasting conceptions of crime that emerge from the aforementioned accounts and from the personalities of the two main protagonists, the Jesuit, Ogilvie, and the Archbishop of Glasgow, John Spottiswoode.

Since this is a non-fictional event that clearly shows various motivations at play, I will also briefly discuss the impact of the precarious situation of Scottish Catholicism on the Catholic Church, and of Ogilvie’s death within the minority Catholic community and the Scottish nation, being aware that the ultimate motive for the Jesuit’s execution in 1615 is still a matter of debate.

To understand these aspects as a whole, we must remember that this case places us before two different narratives, one Catholic and the other national-Protestant. From the Catholic perspective it is a case of religious persecution, while from the national-Protestant view, it is a case of the monarch needing to deal harshly with all opposition to his legal, political, and religious authority. Both perspectives are inserted in a social theocratic vision, although the ultimate authority according to Ogilvie was not the king, but the pope. For the king, on the other hand, the pope was an intruder and an impostor. The Catholic vision is framed in continuity with the Council of Trent; the embodiment of this approach in the person of Ogilvie further accentuates this position, given that the Society of Jesus, in its humanistic, philosophical and theological tradition, had placed itself at the forefront of the defence of the Catholic faith. Such a vision contrasts sharply with that of John Spottiswoode, who was a promoter of Erastian episcopacy, which was in favour of the political vision of King James VI.

There are two correlated – and apparently antinomic – levels that help to frame Ogilvie’s case: the political and religious level, and the legal and theological level. Each of these elements makes it possible to understand a different aspect of the context of John Ogilvie’s trial under Archbishop Spottiswoode. Like various threads of a web that converge into the hub, these four elements, without being exhaustive, are interconnected and allow one to discover a central point which is historically significant from a political, juridical, theological and religious point of view.

Let us briefly examine the contrasting perspectives on these different levels. From the political point of view, there is a contrast between the Catholic attempt to achieve the conversion of James VI and influence the Scottish nobility, and the king’s desire to send a clear political message of national identity, linked to his jurisdiction. At the religious level, there is a confrontation between the Catholic confession, sustained by submission to the pope, and the Calvinist faith, which prefers to exclude all mediation with God, including the pope. For the persecuted, the sentence is martyrdom, while for those who exercise justice it is only rightful punishment for the crime of treason. Also at the juridical level, there is a contrast, since Ogilvie believed himself to be innocent, and spiritually subject only to the pope; while the proceedings record that the reason for his condemnation is treason for not recognizing the total authority of

⁴ It is necessary to distinguish today between sin and crime, between the morality of acts and the conception of crime (see Bernard *et al.* 1998, 4-5). Sharpe writes about the lack of distinction between sin and crime in early modern England: ‘[they] were unused to the idea of any clear-cut division between sin and crime. This suspicion is strengthened by the way in which contemporary commentators were addicted to the idea that minor sins and vices, if uncorrected, might lead all too easily to major crimes ... When dealing with a society which regarded such conduct as the usual first step towards a career of serious crime, historians are obviously obliged to attempt to fit contemporary ideas on sin and its correction into their terms of reference’ (2013, 8-9; see also Prodi 2000, 259-267).

James VI. Finally, from the theological perspective, there are two opposing views: the Catholic view, which defends martyrdom, and the Protestant view, which finds in *sola Scriptura* sufficient and well-founded reasons to obey the king and be subject to a national faith.

Viewed from today's cultural perspective, this article sheds some light on the history of Scottish criminology in the early modern period.⁵ At the same time, it catalyses at a glance the various elements that were at stake on a socio-political level in Scotland, embracing many of the ideologies and cultural changes of the time. Furthermore, it also sheds light on the current situations of religious pluralism and inter-faith dialogue by showing the vast complexity of any issue that seems to be *merely* religious, but which is actually socially relevant. Every religious issue is permeated by *trans-religious* problems.

The current study is limited to the aforementioned sources, since we will take as our primary reference points the autobiographical account of John Ogilvie and the official records of his trial in which John Spottiswoode's hand probably played a role. In addition to this methodological limitation, it is important to emphasize that this article has little in the way of historical contributions, since it is concentrated on the theoretical articulation of the various aspects of Ogilvie's case.

In order to have a more integrated understanding of this study, we must not lose sight of the four levels on which we rely as pivots: the political, religious, juridical, and theological perspectives. In an era of cultural metamorphosis, as was the time of Ogilvie, the boundaries between one aspect and another, between one view and another, oscillated frequently. Therefore, although all these elements help to clarify certain historical issues, they cannot give an exact and distinct account of it in the Cartesian way: the coordinates of history are always dynamic.

Considering this ideological oscillation of history's pendulum, as well as the evident *continuum historicum* which transcends every change of era, the two narratives will be presented separately: the Catholic one by John Ogilvie, based on his own account, and then, the national-Protestant, one based on the record of Ogilvie's trial, and then finally a critical synthesis of both.

First, I will explore the cultural, philosophical, institutional and religious context of John Ogilvie's trial in order to situate his own autobiographical account of imprisonment and conviction within this context. Secondly, I will contextualize John Spottiswoode's legal, political and religious sphere and present his role and intervention in John Ogilvie's trial. Thirdly, we will analyze the complex legal-theological hermeneutics of Scottish criminal law in the case of John Ogilvie, in order to gain a clearer understanding of the relationship between different conceptions of crime and their social consequences. In the conclusion, I will summarize some of the corollaries mentioned above and give an overall view that will allow us to frame the study of Ogilvie's case in a more integrated way.

2. *The Catholic Narrative: 'What you are asking me does not pertain to the King, because I haven't committed any crime'*

2.1 *John Ogilvie and His Autobiographical Account*

John Ogilvie was born into a Calvinist family in Scotland, around 1579. When he was seventeen, while studying in northern Europe, he converted to Catholicism. Three years after

⁵ It is known that Scottish criminological studies on the early modern period are much less developed than the English ones (see A. Kennedy 2016, 1).

his conversion Ogilvie made an important step in his life by joining the Society of Jesus, one of the most important and influential Catholic religious congregations at the time of the Counter-Reformation.

Ogilvie's entrance into the Society of Jesus was a fundamental aspect of his very Catholic identity. From November 5, 1599 until his death on February 28, 1615, Ogilvie was an active member of the Society. Considering that he died very young and that his entry into the Society took place only a few years after his conversion, his eleven years of formation and his five years of ministry as a Jesuit priest are crucial to understanding both his own world view and the outlook of post-Tridentine Scottish Catholicism.⁶

In 1613, he was sent to Scotland as part of the Jesuit mission to serve Scottish Catholics who were in need of priests.⁷ Already in 1584 Archbishop James Beaton – the last bishop before the Reformation, who was formally restored to his see in Glasgow in 1598 until his death – had requested Pope Gregory XIII to send Jesuit missionaries to Scotland: 'They write from Scotland that the harvest is great, the labourers few, and that it is desirable to send some to them for the purpose of keeping the Catholics firm, and assisting those who are ready to return' (Forbes-Leith 1885, 196-197).

Ogilvie's clandestine ministry⁸ was carried out mainly in the cities of Edinburgh, Renfrewshire, and Glasgow. It was in Glasgow, in late 1614, that Andrew Boyd betrayed the Jesuit priest, although he had had little contact with Ogilvie.

John Ogilvie was arrested, according to the Julian calendar, on October 4, 1614 and was hanged in Glasgow for treason on February 28, 1615. According to the Gregorian calendar, he was arrested on October 14, 1614 and died on March 10, 1615.⁹

During the months in prison, Ogilvie spent most of his time under the direct supervision of the Archbishop of Glasgow, John Spottiswoode, successor to the Catholic James Beaton. During those months, he began to write a Latin account of the time he spent in detention and especially of the dialogues he had with Archbishop Spottiswoode, his interrogators and examiners. This account is known as his *Relatio incarcerationis*; the complete original title is: *Relatio Incarcerationis, et Martyrii P. Ioannis Ogilbei Natione Scoti, e Societate Iesu Presbyteri, Ex Autographo ipsius Martyris, in carcere exarato Glasgae in Scotia octiduo ante mortem: continuata verò deinceps per eiusdem conceptiuos, qui eius Martyrio interfuerunt*.¹⁰ This autobiographical account must therefore be distinguished from the testimony of the other Catholic prisoners who were with Ogilvie,¹¹ a third-person account known as the *Continuatio*. Both stories were first published in Douai in 1615, and the following year in the German cities of Mainz, Würzburg, Ingolstadt and Constance.

⁶ Scott Spurlock (2008), followed by P. Goatman (2020a, 5), has recently argued about the existence of a Scoto-centric Catholicism after the Reformation.

⁷ Ogilvie explains that his mission was to reconcile Catholics who had abdicated their faith.

⁸ It was illegal for Catholic priests to exercise ministry in Scotland. I discuss this issue in 2.4.

⁹ The latter date should be taken as the most reliable, because it explains the fact that, as *A true relation* states, Ogilvie's arrest happened on Tuesday, and that on this same weekday he was judged. This dating follows the Julian calendar; otherwise, the days of Ogilvie's arrest and final trial would not correspond to the official records' dating. In addition, it should be noticed that most of the official Catholic sources, including the *Compendium vitae virtutum ac miraculorum necnon actorum in causa canonizationis beati Ioannis Ogilvie* (1976), refer that Ogilvie's arrest occurred on October 14, following Nieremberg's version. The same date is indicated by J. Quinn (2001, 2863). Many other Catholic sources refer wrong dates for the arrest and execution.

¹⁰ The Latin text is taken from Duncan (1834, 79-108). The *Relatio* was translated into English by Charles J. Karlake in 1877.

¹¹ According to John Ogilvie's testimony there were at least fourteen other Catholics among the detainees.

The *Relatio* is structured as follows: 1) a letter addressed to an anonymous friend, whom he calls ‘dominus’, with precise instructions on what was to be done with Ogilvie’s manuscript and to whom it was to be given; 2) a brief description of Ogilvie’s discussions and arguments before his opponents; 3) a short letter to Father General Claudio Acquaviva, who died on January 31, 1615, to whom he asks prayers; 4) a paragraph that probably belongs to the brief description of his discussions; 5) Ogilvie’s narration introduced with an explicit address to a Catholic audience (*Catholice lector*).

Among all this material, four explicit motives can be found for Ogilvie’s decision to write his story: to communicate to his superiors what had happened to him¹² to ask for prayers,¹³ to give joy to his Catholic readers because of his witness in defending his own faith¹⁴ and to demonstrate that his arrest was unjust because he was innocent.¹⁵

John Ogilvie had religious and apologetic motives for disclosing his situation and the way he had handled his defense. At first sight, all these reasons could be the exclusive interest of the Scottish Catholic circle or even of the Jesuit circle alone. That was not the case, however. Ogilvie’s account, as mentioned, was first printed in Douai on July 29, 1615 and was reprinted a year later in four different cities in Germany. One might therefore ask what interests were at stake in the story of a young Scottish Jesuit who died on a mission, after a short time of underground work.

The Jesuit John Eusebius Nieremberg aptly and pompously summarized the apologetic interests raised by John Ogilvie’s account:

El singular valor, y fortaleza Christiana que tuvo el Padre Iuan Ogilbeo, el animo con que estuvo en las prisiones, la superioridad con que hablò a los tiranos, la resolucion con que confesò su Fè, la libertad con que tratò a los hereges, el gusto, y fiesta con que padecio los tormentos, y por dezirlo assi, la burla que hazia dellos, le han dado nombre tan ilustre, que merece ser comparado con los mas señalados Martires que en tiempo de Diocleciano padecieron. (1644, 70)¹⁶

The apologetic interest of his story was, therefore, a sufficient reason to make him known in the Catholic world of the time. However, the speed with which it was published also speaks of strategy, especially since Ogilvie was the first Scottish martyr after the Reformation. One cannot ignore the relationship between this particular case, the interests of the Society and the historical confrontation between Catholicism and the Protestant Reformation: the ‘tyrants’ of whom Nieremberg speaks is James VI, the ‘heretics’ are the Protestants and the model of martyrdom is that of the first Christians.

The *Relatio* as a whole is a significant expression of the worldview of Catholic narrative. The fact that it is a narrative of events and discussions, and that it is not a systematic treatise, makes the *Relatio* an exceptional apologetic tool, for its impact could be greater and more effective since it is addressed to a wide audience and not only to theologians.

¹² ‘trade ista Rectori ... et roga ut descripta correcte Patri Claudio Aquavivae exemplaria mittat’ (Duncan 1834, 81).

¹³ ‘pro me oret’, ‘pro Joanne Ogilbeo orent’; ‘pro me orare’ (Duncan 1834, 81 and 83).

¹⁴ ‘concertationes describam; sane tristes mihi, laetas lectori’ (Duncan 1834, 82).

¹⁵ ‘Exclamo ... promittens fore ut totus mundus aliquando sciret quam barbare me tractassent nemini nocentem sine ulla iuris formula vel caussa dicta’ (Duncan 1834, 84-85).

¹⁶ The singular courage and Christian strength that Father John Ogilvie maintained, the courage with which he was in prison, the superiority with which he spoke to the tyrants, the resolution with which he confessed his faith, the freedom with which he treated heretics, the taste and joy with which he suffered the torments and, so to speak, the mockery he made of them, have given him a name so illustrious that he deserves to be compared with the most famous martyrs who suffered in the time of Emperor Diocletian.

The publication of the *Relatio* at the beginning of the seventeenth century is a manifestation of an important shift in the apologetic perspective. This idea is supported by M.W. Elliot, who emphasized the greater insistence by the Jesuit apologists on the role of the conscience and on a passive, nonviolent response, as opposed to radical political action, such as tyrannicide (2020, 73 and 82).¹⁷

For all these reasons, I will analyze some of the contextual and theoretical aspects that were at stake in Ogilvie's account and in the interest of its immediate publication.

2.2 *John Ogilvie and the Educational Program of the Society of Jesus*

One of the keys to reading Ogilvie's autobiographical account is his cultural and institutional education. As Daniel MacLeod (2016) has shown, one cannot fully understand Ogilvie's apologetic position and temperament without understanding the strong cultural influences of his formative period within the Society of Jesus. MacLeod studied the importance of the Jesuit culture of martyrdom and their emphasis on utilizing inspiring testimonies of life which included: the celebration of martyrs and their merits (especially in the figure of Edmund Campion), the prospect of the Jesuit mission in Scotland, the documented presence of martyrologies in Scottish Jesuit schools, and Cornelius a Lapide's positive view on martyrdom.¹⁸ In the same direction, M.W. Elliot (2020) has pointed out the relevance of biblical exegesis, especially that of Juan Maldonado, who interpreted the Gospels in the light of the need for the shepherd not to abandon his flock.¹⁹ In addition, Ogilvie expressed, both in behaviour and words, his determination not to run away, and to die for his faith (MacLeod 2016, 184-194).

Therefore, I will discuss some basic aspects of the formation that Ogilvie received in the Society of Jesus, which are more directly related to the argumentative content and communicative style of his account.

One of the outstanding aspects of the Society of Jesus was its clear and solid institutional identity, especially as expressed in its Constitutions. In the prologue of the Constitutions that Ogilvie knew, the Society is compared to a 'body', that is, to an organized group. Each of its members had to be well selected, educated and finally sent to the 'vineyard' (Jesuits 1838, 6), meaning the world where he had to work. This same dynamism is in fact what we find in Ogilvie's life. His mission was precisely to be sent to the 'vineyard' of Scotland, where 'the labourers were few' (Forbes-Leith 1885, 196-197).

It is surprising that most of his autobiographical prison notes focus on discussions and controversies with his interrogators with almost no mention of his religious apostolate. It is no mere coincidence that Ogilvie concentrated on challenging his opponents. In the Society, at the time of the Counter-Reformation, the cultural education system included a demanding curriculum which focused on achieving a high rhetorical, argumentative and theological quality in its students. Ogilvie, therefore, received an education centered on the communicative and argumentative sciences of his time: *grammatica*, *rhetorica*, *studia humanitatis*, *philosophia* and *theologia*.

This program of study was called *Ratio atque Institutio Studiorum Societatis Iesu*, and it enjoyed great success and diffusion in Jesuit schools in Europe and America for a little over two centuries. In fact, the last version of the *Ratio Studiorum* was published in 1599, the same

¹⁷ Harro Höpfl suggests the same thing, but he nuances the extent of the change in orientation in the way tyrannicide is approached by Jesuits at that time (2004, 338).

¹⁸ Cornelius a Lapide was one of Ogilvie's professors.

¹⁹ A more extensive treatment of this point is in Elliot 2020, 77-79.

year that Ogilvie entered the Jesuit novitiate in Brunn (Brno). This program of study was his guide during the eleven years of his formation.

The *Ratio Studiorum*'s approach was so thorough that it even specified the readings and authors to be taught and followed; in philosophy, it was Aristotle and, in theology, St Thomas Aquinas (Lukács 1986, 55, 106, 280 and 315).²⁰

This curriculum is particularly relevant to understanding the *ratio* with which Ogilvie defended himself verbally before the accusations and examinations to which he was subjected during his imprisonment. In his *Relatio* we can find philosophical, theological, juridical and even merely syllogistic discussions, as when he writes, at the beginning: 'Dum primo syllogismo dicto negatam propositionem nescirent secundo syllogismo probare, dicebam illos non posse probare quae dicerent, & instabam, ut si possent, probarent; alioquin eos malam, ac falsam defendere causam: nam qui tacet, cosentire videtur' (Duncan 1834, 82).²¹ During the period of philosophical studies, one of the obligatory subjects in the *Ratio Studiorum* curriculum was Aristotelian logic. Students had to practice the art of discourse and argumentation (*ars disputandi*) on a monthly basis. In addition, special emphasis was placed on argumentative precision, as when the *Ratio* recommended: 'Sic ab ipso Logicae initio iuvenes instituantur, nihil ut eos magis pudeat in disputando, quam a formae ratione deflexisse; nihil ab illis severius exigat praeceptor, quam disputandi leges ac statas vices' (Lukács 1986, 400).²²

The insistence on the use of logic supported the rigorous development of this discipline within the Society to such a degree that E.J. Ashworth pointed out that the Jesuits created a 'Jesuit Logic', with a long tradition of manuals and books on this topic (2019, 95-114).²³

A kind of discussion similar to the philosophical *disputatio* was the *concertatio*, which was rhetorical in nature, and consisted in a competition between students to encourage learning and mental agility. It is striking that Ogilvie introduces his discussions during his imprisonment with this name, *concertatio*, as if to underline the polemical nature of his dialogues with his Protestant interrogators.

There are several examples of the use of logic and rhetorical art in the *Relatio*: the enumeration of arguments ('primo ... ; secundo ... ') (Duncan 1834, 87), Spottiswoode's impatience with his argumentative style ('apage cum hypothesibus tuis') (90), the impatience of one of the senators with his persistent polemical attitude ('Magnates disputandi gratiã non venisse') (94) and the initial warning about the syllogistic ignorance of his interrogators.

The apologetic function of logic, rhetoric and philosophy in the *Relatio* is quite clear and faithfully reflects the function of the Jesuit *Ratio Studiorum* in the era of the Counter-Reformation.

The linguistic instrument of the Society and the Catholic Church of the Counter-Reformation was Latin. The *Ratio Studiorum* required the rector of the college to diligently observe ('diligenter conservandum') (Lukács 1986, 370) the daily use of Latin, except during

²⁰ This edition contains the history and documents of the different official texts of the *Ratio Studiorum*. Already from the first version, in 1586, the Jesuits had Thomas Aquinas and Aristotle as guide-authors in theology and philosophy.

²¹ Since they did not know how to prove with a subsequent syllogism the proposition that I was contradicting using a syllogism, I said they could not sustain what they were saying, and I insisted that they should prove it, if they were able. Otherwise, they would defend an evil and false cause: because he who is silent seems to agree.

²² Teach young people from the beginning of logic that nothing should embarrass them more when arguing than to deviate from the correct argumentative form; nothing should be demanded by the teacher with more severity than to observe the laws of argumentation and the established order.

²³ Ashworth clarifies that she focuses her attention only on the main Jesuit Logicians, the ones whose works were most frequently published during the early modern period.

the vacation period. He was also required to have all his students communicate in Latin in correspondence with other Jesuits. For this very reason, it is not surprising that Ogilvie was concerned about his Latin, even asking his friend to correct the manuscript he was sending him before forwarding it to the Father General of the Society.

Even in this linguistic aspect, the narrative difference between the Protestant Reformation and the Catholic Counter-Reformation can be discerned. While the *Relatio* is written entirely in Latin, the official minutes of Ogilvie's trial and the other documents concerning him were published in English. The development of national languages also found a cause for growth in opposition to the universal language of the Catholic Church.

Finally, the theological content of the discussions held by Ogilvie and his questioners remains to be addressed.

In his initial description, Ogilvie himself specified the three topics that, in his opinion, were the main object of the discussions: the celebration and validity of the Mass, the Petrine – or Papal – succession, and the authority of the person who was to judge the controversial cases (Duncan 1834, 83).²⁴

Ogilvie considers the first topic to be of a sacramental nature, that is, it could only be regulated by the Church and could not be controlled by the king (88). The second topic, Petrine succession, is known to be one of the most controversial problems between Catholics and Protestants. Ogilvie answers using Gospel texts that were commonplace among Catholics. In fact, their arguments taken from the Gospels are almost identical to the quotes inside St. Peter's Basilica that date from the same period: 'TV OMNES CHRISTI PASCIS AGNOS ET OVES' and 'SVPER HANC PETRAM AEDIFICABO ECCLESIAM MEAM'.²⁵ The third topic also leaves no room for doubt, and Ogilvie clearly states that he will only allow himself to be questioned on religious matters by 'the judge of religious disputes, that is, the pope, or by whoever has the authority from the pope' (88-89).²⁶

2.3. *John Ogilvie and Martyrdom*

From the beginning of the Reformation, as is known, there was a race between Catholics and Protestants to add to their numbers as many 'witnesses' as possible, that is, martyrs.

'The battle over martyrdom in the Reformation period' – as Paul Middleton points out – 'was essentially a battle for legitimacy' (2020b, 18). For Protestant groups, it was a matter of legitimizing the rebirth of the authentic Church of Christ, while Catholics 'worked hard to present those executed in England under Elizabeth for treason as religious martyrs rather than political miscreants' (*ibid.*). It is in this religious trend that various means of dissemination are introduced. First, we find martyrologies.²⁷ In the Protestant context, John Foxe, recently called 'England's Eusebius',²⁸ stands out for his work *Actes and Monuments of these latter and perillous days, touching matters of the Church* (1563). Among the Calvinist martyrologies, there is Jean Crespin's *Histoire des martyrs* (1554). Among Catholics, the official and liturgical use of the *Martyrologium Romanum* was imposed as early as 1584, although martyrologies actually had an

²⁴ 'Concertationes prae cipuae de Missa, de Sancto Petro, de iudice controversiarum'.

²⁵ You feed all Christ's sheep and lambs, On this rock I will build my Church. See Duncan 1834, 88.

²⁶ 'iudex controuersiarum Religionis, id est a Papa, vel ab ipso auctoritatem habente'.

²⁷ An overview of this topic can be found in Culpepper 2011.

²⁸ The expression is by Sarah Covington, although the figure of John Foxe had already been compared with that of Eusebius of Caesarea; see Covington 2020, 305-321.

ancient history that goes back to the *Acta*. Prior to the official mandate of the *Martyrologium* we find the stories of Laurentius Surius (1570-1581) and Aloysius Lipomanus (1565).

Secondly, there are literary and theatrical works. This genre was encouraged by Luther and the Protestants from the beginning of the Reformation (Parente 1981, 156), and later by the Catholics. However, under the strong influence of the principle of *sola Scriptura*, the dramas concentrated on biblical motifs, and accentuated the interpretations, depending on the Christian confession. Simultaneously with the martyrdoms, there was a multiplication in hagiographic plays on both sides. Since the cult of saints and martyrs in the Protestant world was controversial, martyrdom dramas were slow to emerge among these authors in comparison with the rapid adoption in the Catholic world (Parente 1987, 186). Protestant playwrights include Andreas Gryphius and Daniel Casper von Lohenstein. Among the Catholic authors, we find Gregorius Holonius and, later, the Jesuits and their students, for example, the playwrights Giuseppe Simon, Leone Santi, Giambattista Giattini, Bernardino Stefonio and Alessandro Donati.²⁹ Neither musical productions should be forgotten, which most of the time were inspired by prayers or liturgical texts.

Thirdly, there is iconography. There is much less iconographic material in the Protestant world than in the Catholic world,³⁰ because of the Protestants' theological rejection of *idolatria*. The Catholic baroque art-form is known for its abundant architectural, sculptural and pictorial production. The Jesuit-inspired baroque art of Rome is in itself eloquent; an example of this were the paintings celebrating the martyrs that were produced in Santo Stefano Rotondo during the 1580s.

This was the religious, artistic, and rhetorical background of the time when Ogilvie was sent to work underground and was publicly executed for treason. Art and religious literature had an apologetic and didactic function with diversified accents, depending on one confession or another.

For this reason, there are also two interpretations of Ogilvie's martyrdom. Paul Goatman summarized them in the expressions 'exemplary deterrent' and 'theatre of martyrdom' (2020b, 47- 66).³¹ They are not casual expressions, and both reflect two different and complementary points of view.

If we look at the ideological aspect of Ogilvie's account of martyrdom, we can ask two questions. On an individual level, to what extent was John Ogilvie aware of being a martyr and what message did he intend to convey with his account? At the same time, on an institutional level, what message did the Company want to convey by publishing a martyr's autobiographical account?

The answer to these questions is almost obvious, but does need some clarification. In four different places of his *Relatio*, Ogilvie declares his resolve to suffer and die. The first time, he declares that he would die for a truth of faith ('etiam sanguine ... pro illâ moriar') (Duncan 1834, 88 and 100); in the second, he makes clear his resolve to die for a papal doctrine ('ego volo mori') (90); in the third, he sustains his determination to suffer more torments for his faith ('volo pro hâc causâ plura libenter pati') (95). Finally, in one of his dialogues with Spottiswoode, the latter makes Ogilvie see that his desire to want to die so quickly is the product of passion and is something unnatural ('nemo vult citò mori, cū benè possit vitâ servare') (96), to which Ogilvie replies that he does not speak 'from his own passion, but deliberately from his reason' ('Non ex passione sed ex deliberato animo loquor') (*ibid.*).

²⁹ A good resource about Jesuit drama can be found in Ford *et al.* 2014.

³⁰ An example of Protestant iconography can be found, in fact, in the iconographic illustrations of John Foxe's Protestant martyrology, published in London in 1563; see Carpo 2001, 86-88.

³¹ Especially see Carpo's conclusion, 65.

The *Continuatio* expresses that, before being executed, John Ogilvie publicly declared the reason for his execution: ‘now I am delivered to death because of religion alone’ (‘Nunc autem ob solam Religionem morti trador’) (106).

Considering the formative context in which Ogilvie was immersed for eleven years, it should not be surprising to see the resolute accent of his will and the clarity of his decision not to flee from death. For this reason, MacLeod has challenged the common thesis that Ogilvie would have died mainly as a scapegoat for mere political reasons.³² However, we cannot ignore the fact that the explicit statement on the religious motive of his death is found in the *Continuatio*, which was not written by Ogilvie himself.

On an institutional level, Ogilvie’s heroism acquired iconic importance, since his witness served as a counterweight to the Protestant eagerness to discredit Catholic arguments. There is no stronger argument for the truth than someone willing to give his life for it. This is how Jesuit John Eusebius Nieremberg presented Ogilvie’s heroic victory over the heretics:

Stava il P. Ogilbeo molto fiacco, perche il vegliare tante notti, e giorni l’havea debilitato, di maniera che appena sapeva qualche diceva, o faceva, o deve stava, o in che città. Cominciano ivi l’Heretici a maltrattarlo, ingiuriarlo, et a dimandarli, chi fussero quelli, che havea pervertiti in Scozia? Minacciandoli atrocissimi tormenti se non li scopriva. Ma il santo Martire con un animo degno di quei primitivi Martiri, rispose: Benche havessi havuto volontà di dirli, adesso non li direi, accioche non paia che li dica sforzato, e che mi lascio muovere, e portare per il sentimento come bestia, e non come huomo di raggione. (Archivium Romanum Societatis Iesu 1651(?), 177-178)³³

There is a certain passivity noticeable in this form of viewing martyrdom and the heroic value of the martyr is accentuated according to the cruelty and dramatic character of the scene. Nieremberg was not inventing any martyrological genre in the mid-seventeenth century, since this same dramatic and theatrical strategy had already been used by John Foxe at the end of the sixteenth century. It is especially at this institutional level that a particular connection developed among religion, theology, rhetoric and literature in a time of change when there was no clear distinction between the humanistic and religious spheres.

The Jesuits sought to promote the causes of the saints and martyrs through an official process, first by beatification and then by canonization in the Catholic Church. John Ogilvie’s trial was initiated in Rome and Würzburg in 1628.³⁴ But his beatification was not concluded until the twentieth century. One probable reason for the delay was the new directives of Pope Urban VIII in the processes of beatification and canonization.³⁵ Moreover, it should not be forgotten that not all the martyrs of Tanner’s *Societas Iesu usque ad sanguinis et vitae profusionem*

³² That is the interpretation made by MacDonald (2016, 155). MacLeod challenges it (2016, 189-190).

³³ Father Ogilvie was very gaunt, from being awake so many nights and days which had weakened him in such a way that he barely knew what he said, or did, or where he was, or in which city. The heretics started maltreating him, they insulted him, and asked him who were those he had corrupted in Scotland, as they threatened him with atrocious tortures if he did not reveal who they were. But the holy martyr answered, with a courage similar to that of the first martyrs: Even if I wanted to tell you those names, I will not say them now, in order to avoid the appearance of revealing them in my weakened state, and to avoid the idea that I let my persecutors convince me, and let myself be moved by sentiments as an animal, and not as man of reason.

³⁴ See ARSI *Archivium Romanum Societatis Iesu* (1628), *Copia autenticata del processo sul martirio istruito a Würzburg*, Archivio della postulazione generale (APG).

³⁵ In fact, the attentive examination of the life, virtues and miracles of the saints began a process of further criticism and institutionalization as part of the Counter-Reformation movement. The study of this particular issue can be found in Sodano 2020, especially 67-72.

militans (1675) have been officially canonized by the Catholic Church, so Ogilvie's case is not exceptional. Robert Bellarmine, although not a martyr himself, was one of the most representative apologists of the Catholic Church; however, he was not canonized until 1930.

2.4 *Two Narratives and Two Parallel (Antinomic) Legal Systems*

The Reformation in Scotland is placed in a complex political and legal context. For Scotland to obtain autonomy, the country had to be Protestant, which allowed the king to disengage himself from the control and supervision of the Church of Rome. It is therefore not surprising that the legitimacy of such a claim required a legal act. The year 1560, the year of the Confession of Faith Ratification Act, signified not only a chronological parameter or a conventional reference point for determining the beginning of the Reformation. Its meaning is significant, since Protestant theologians had so urgently pushed the need to confess the authentic faith and underlined the value of *sola Scriptura*, the falsehood of papism, the individualization and nationalization of the faith, that the legislation on these matters was established even before they gave the Kirk a practical and theoretical organization. Catholic institutions did not cease suddenly, but simply lost their legal status on several points: papal jurisdiction ceased in Scotland, the Catholic veneration of images was abolished, and the celebration of Mass was outlawed. In 1567 the Parliament ratified all these points.

This is the Scotland into which James VI, John Spottiswoode and John Ogilvie were born: where it was necessary to put into practice *ante litteram* the maxim of Hobbes *auctoritas, non veritas, facit legem*.³⁶ In other words, the first step was to lay the legal foundations of the new nation.

In 1582 Pope Gregory XIII published the amended version of the *Corpus iuris canonici*, which contained the norms and laws of the Catholic Church. Ogilvie was legally bound to these norms. His purpose in absolving five Catholic apostates at one time resulted in the reconciliation of the spiritual situation of these faithful with the Church of Rome, which was one of the main intentions of the new edition of the *Corpus*:

Cum pro munere pastorali humeris nostris iniuncto id precipue nobis propositum habemus, ut omni studio diligentiaque omnes Christifideles his presertim tam grauibus calamitosisque temporibus in recta et catholica fide continere curemus, ac propterea id in primis nobis agendum et prouidendum sit, ut omnem omnibus aberrandi ab ea occasionem subtrahamus. (Friedberg 2000, vol. I, 20)³⁷

Ogilvie declares his willingness to prefer to die rather than deny any truth of the faith. In the code of the Catholic Church, the denial of certain fundamental doctrines could even lead to excommunication, the maximum penalty for a Catholic. On the other hand, Ogilvie was also aware that his arrival in Scotland as an active priest had criminal consequences, which was why he was working undercover. His post-arrest decision not to swear the Oath of Allegiance made it clear which of the two legal systems he adhered to.

³⁶ In this case, we are interpreting '*veritas*' as the 'historical truth' of Scotland. This maxim, therefore, could be expressed as follows, *auctoritas, non veritas historica, facit legem*, i.e. it is authority, not historical truth, which makes the law. The Scottish national identity was still being forged. That is why its identity process went through a metamorphosis that involved leaving behind the cocoon of Catholicism so that the chrysalis could develop in its own national environment.

³⁷ Our main purpose is to ensure, with commitment and diligence, that all the Christian faithful remain in the Catholic faith, especially in these difficult and calamitous times, and therefore, above all, we must act and provide the means to remove from all of them the occasion to depart from their faith.

When Ogilvie answered the question of whether he recognized James VI as sovereign of Scotland, he stated that King James was *de facto* king of Scotland (Duncan 1834, 86). This response implied that Ogilvie was aware of the legal consequences of the distinction between a *de iure* and a *de facto* situation. Therefore, he added in his notes a psychological reaction to his answer: ‘Hic multū timui: sed stupidi terminos iuris ignorantes nescierunt examinare’ (*ibid.*).³⁸ Ogilvie did not want to recognize the legitimate and full sovereignty of James VI over Scotland, although he also knew what he could expect for not doing so. As we shall see later, the records of his proceedings contain the questions posed to Ogilvie in order to ascertain his final position on the matter. For the moment, we can affirm that Ogilvie’s *Relatio*, besides reporting his answers, adds theological, juridical and psychological elements that allow us to glimpse his intentions.

Since Ogilvie’s first discussions with his interrogators were centered on mere dialectical controversy, it was necessary to specify more and more the central and controversial points: ‘Aiunt: crimen est lefae majestatis asserere Papam habere iurisdictionem spiritualē in Dominijs Regis. R. De fide est ipfum habere. Dicunt: audes subscribero? R. etiam sanguine, si opus, erit. Et sic subcripsi’ (88)³⁹. At play in this short interrogation were some issues widely discussed by theologians, jurists and politicians of the time. It is sufficient to recall the controversy between the Scottish jurist William Barclay (with the works *De regno et regali potestate* in 1600 and the posthumous *De potestate Papae*, 1609) and the Jesuit theologian Roberto Bellarmino (mainly with the *Tractatus de potestate Summi Pontificis in rebus temporalibus, adversus Gulielmum Barclay* in 1610). Roberto Bellarmino argued that the pope enjoyed *potestas indirecta* in temporal matters under exceptional conditions because of the potential danger to the faith of the subjects of an irresponsible sovereign. However, as exceptional as such indirect authority from the pope was, it implied in itself the right to intrude on the jurisdiction of a self-governing nation like Scotland. This controversy had become so important that to deny the supreme and total authority of the Scottish sovereign in Scotland was considered a crime of *lèse majesté*.

Let us now clarify what Ogilvie meant when he said that he could not renounce any ‘question de fide’. Technically a question of faith is a dogmatic proposition which, because of its doctrinal significance, must be believed by the Catholic believer and which, if denied, could cause him to incur some canonical penalty.

It should not be forgotten that in Catholic doctrine the teachings of faith are placed hierarchically after the divine right (*ius divinum*). For this reason, Roberto Bellarmino emphasized in his *Disputationes* the apostolic origin of the same:

certe quod Ecclesia de Fide esse credit, sine dubio est de Fide: at nihil est de Fide, nisi quod Deus per Apostolos, aut Prophetas revelavit, aut quod evidententer inde deducitur; non enim novis revelationibus nunc regitur Ecclesia, sed in iis permanet quae tradiderunt illi, qui ministri fuerunt sermonis, et propterea dicitur Ephes. II. Aedificata supra fundamentum Apostolorum et Prophetarum: igitur illa omnia quae Ecclesia Fide tenet, tradita sunt ab Apostolis, aut Prophetis, aut scripto aut verbo. (1586, 93 A-B)⁴⁰

³⁸ At this point I was much afraid, but they, being ignorant of the legal terminology, did not know how to examine me.

³⁹ They said: it is a crime of injured sovereignty to assert that the pope has spiritual jurisdiction in the king’s lands. [I answered] It is a question of faith [*de fide*] to believe it. They added: do you dare to sustain it? [I responded] Even with blood if it is necessary.

⁴⁰ Certainly, what the church believes that is *de fide*, it is without doubt *de fide*. There is nothing *de fide*, except what God revealed through the apostles or the prophets, or what evidently is deduced from it. The church is not governed by new revelations, but it remains in those teachings that were transmitted by those, who were the ministers of the word, and, therefore, it is said in the letter to the Ephesians: [the church] is built on the foundation of the apostles and the prophets: hence, everything that the church sustains by faith was transmitted orally or in writing by the apostles or the prophets.

Ogilvie links his decision to affirm up the questions of faith with his readiness to shed his blood for them. In other words, he knew that denying the complete sovereignty of King James VI in Scotland could cost him his life.

James VI, meanwhile, had already established a system of criminal legislation to counteract the influence of Catholic priests, and Jesuits in particular, on the Scottish soil. In the same decade that the Jesuit mission began in Scotland, James VI strengthened the laws which specified the activities by priests and Jesuits that should be considered criminal. Thus, in 1587 on the fourth day of Parliament in Edinburgh, it was legislated about 'tryall and punishment of the offences of the adversaris of the trew religious presentlie professit within this realme'. It stated that 'professit and avowit Jesuitis or seminary preistis salbe fund in ony pairt of his realme ... salbe takin, apprehendit, callit and persewit and incur the pane of death and confiscatioun of all thair guidis movable' (Brown *et al.* 2007-2019, 1587/7/13).⁴¹

This law was ratified five years later, in 1592, against 'the Jesuits, mass priests, trafficking papists and resettlers of them' specifying that it was a 'crime of treason' (1592/4/32).⁴² The next year it was again ratified that all these criminals 'shall incur the pain of treason' (1593/4/30).⁴³ At the 1598 Parliament there was an extension of the penalties to accomplices in these kinds of crimes (1598/10/3).⁴⁴ Since James VI wanted to reinforce the efficiency of his legal system against Catholics, the parliament of November 1600 stated that

Jesuits, seminary priests, excommunicate and tried trafficking papists presently being within this realm, or that shall happen to be within the same, shall immediately after their report to his majesty be taken and apprehended by the ordinary magistrates of the bounds where they resort and committed to ward until they be converted to the religion. (1600/11/40)⁴⁵

There are also two other records of Parliament legislations against Jesuits in 1607 and 1609 (1607/3/13 and 1609/4/19).⁴⁶

To conclude, it is sufficient to note that the policy of James VI proved effective in this regard. An anonymous source bears a defeatist approach regarding the plight of Catholicism in early seventeenth-century Scotland:

Aid would be difficult, but essential. ... few priests ... operated within the kingdom, and ... the perilous conditions rendered impossible permanent residence. Some priests resided in the north of England with periodic sacramental forays into Scotland. Fixed abodes in Scotland were impossible. Many nobles professed Catholicism, but most attended Protestant services and few allowed priests in their homes. ... Because the Kirk exercised nearly complete authority throughout the kingdom, priests were arrested before they could produce any fruit. Foreign clergy were useless because of their inability to master the language and customs. (McCoog 2017, 528)⁴⁷

⁴¹ *RPS (Records of the Parliaments of Scotland to 1707)*, 1587/7/13, <<http://www.rps.ac.uk/mss/1587/7/13>>, accessed 1 February 2021.

⁴² *RPS*, 1592/4/32, <<http://www.rps.ac.uk/mss/1592/4/32>>, accessed 1 February 2021.

⁴³ *RPS*, 1593/4/30, <<http://www.rps.ac.uk/mss/1593/4/30>>, accessed 1 February 2021.

⁴⁴ *RPS*, 1598/10/3, <<http://www.rps.ac.uk/mss/1598/10/3>>, accessed 1 February 2021.

⁴⁵ *RPS*, 1600/11/40, <<http://www.rps.ac.uk/trans/1600/11/40>>, accessed 1 February 2021.

⁴⁶ *RPS*, 1607/3/13 and 1609/4/19, <<http://www.rps.ac.uk/mss/1607/3/13>> and <<http://www.rps.ac.uk/mss/1609/4/19>>, accessed 1 February 2021.

⁴⁷ This situation matches the description that G. Donaldson makes of the inoperative Roman Catholicism in Scotland during James VI's reign, precisely because of the lack of leadership and the dearth of priests (1983, 40-56; especially 46).

While a more in-depth commentary of this interesting report lies beyond the scope of this article, here it is enough to mention that precisely because of the difficult situation of Scottish Catholicism and the adverse laws, Ogilvie felt challenged to accept his complex mission.

We will now turn to the official version of Ogilvie's trial and its main actor, the Archbishop of Glasgow, John Spottiswoode.

3. *The National-Protestant Narrative: 'the saide Iohn Ogilvie, for the Treasons by him committed, should be hanged and quartered'*

3.1 *John Spottiswoode and A true relation of the proceedings against John Ogilvie*

John Spottiswoode was born in 1565, in Greenbank, Edinburghshire, to a Protestant family. At the age of eighteen, he started assisting his father, who was a Protestant reformer and superintendent of Lothian and Tweeddale. John's church career was early and quite successful, as A.S.W. Pearce has shown by examining his strong influence in Church-State affairs during the reign of James VI and Charles I.⁴⁸ Spottiswoode was appointed to the see of Glasgow after the death of the Catholic Archbishop James Beaton. He was the archbishop of Glasgow from 1603 to 1615. During this period, his last important achievement was the arrest, trial and execution of the only post-Reformation Catholic martyr, John Ogilvie. After this he was elevated to the metropolitan see of St. Andrews. He was key in the reinstatement of Erastianism in Scotland and in the battle against the Roman Catholic recusancy.

I will now introduce what is known as *A true relation of the proceedings against John Ogilvie*.⁴⁹ In fact, the title describes the entire contents of this short publication printed in Edinburgh in 1615: *A True Relation, Of The Proceedings against Iohn Ogilvie, a Iesuit, executed at Glasgow, the last of Februarie, anno 1615. Containing Sundrie Speeches vttered by him at his Arraignment, and others, that assisted the Commissioners deputed for his triall: With all that passed at his execution.*

A true relation is structured as follows: 1. a letter to the reader; 2. a description of the arrest and its circumstances (Glasgow, October 4, 1614); 3. Ogilvie's first examination (secluded in a chamber until December 8, 1614); 4. a detailed description of the second examination (Edinburgh, December 12, 1614); 5. a description of the sleep deprivation inflicted on him; 6. discussion with Ogilvie regarding the jurisdictional power of the king and the pope (January 18, 1615); 7. the sending of the answers of the examination to the king; 8. the arraignment of John Ogilvie (Glasgow, February 28, 1615); 9. the indictment of John Ogilvie and the plea; 10. the intervention of the archbishop of Glasgow; 11. the verdict and sentence; and 12. the account of Ogilvie's execution.

As Robert Pitcairn points out in his notes prior to the reissue of the records of the proceedings against Ogilvie:

a Special Commission having been granted to the PROVOST AND BAILIES OF GLASGOW, within whose jurisdiction Ogilvie was taken, his Trial is not recorded in the Books of Adjournal, but was reported by the Commissioners and their Assessors to the Privy Council, from whom their powers directly emanated. There cannot be a doubt that the Report of this Case was drawn up for publication, with the view

⁴⁸ In fact, Pearce (1998) argues that John Spottiswoode (1565–1639) was one of the most relevant churchmen in early modern Scotland.

⁴⁹ All quotations of *A true relation* are from Pitcairn 1833, vol. III, 332-352.

of being extensively circulated in England. The phraseology is carefully revised, so as to be perfectly intelligible to an English reader; and though imprinted at Edinburgh by Andro Hart, immediately after the Trial took place, it must have been revised by some person skilled in the English Law, and familiar with its technicalities and practice. (Pitcairn 1833, 330)

These observations allow us to understand the nature of these proceedings. To begin with, as Pitcairn notes, this is a matter handled by the Privy Council, which was a juridical body at the service of the monarch. In addition, Pitcairn notes that this is a text prepared for wide dissemination by the printing press. And finally, it says that the text was printed immediately after the trial, taking into account the time used for reviewing the records. Therefore, there does not seem to be a great lapse in time between the publication of the *Relatio* in Douai and that of *A true relation* in Edinburgh.

There is some consensus in attributing most of the drafting of *A true relation* to John Spottiswoode, based on the convergence of data available to us. John Spottiswoode, already archbishop of Glasgow, had received the privilege of regal jurisdiction in his archdiocese in 1608 and, in addition, had been appointed an ecclesiastical member of the Privy Council. John Spottiswoode was Assessor and Ogilvie's chief examiner during his arrest and trial. Even David Masson, editor of the *Register of the Privy Council of Scotland* (1613-1616), suggests that the amount of space Spottiswoode devotes to Ogilvie's case in his *History of the Church and State of Scotland* may be linked to his interest in publicizing his own perspective, as it was a controversial case (Masson 1891, 304, n. 1). Although we don't have the ultimate proof of who the author of *A true relation* is, we can assume that it is John Spottiswoode.

What is certain is that John Spottiswoode did write directly to James VI, due to the interest that the Jesuit Ogilvie's case could arouse, and notified him of Ogilvie's arrest with a letter sent the day after the apprehension, on October 5, 1614:

It hes plesit God to cast in my handis a Jesuit that callis himself Ogilvy. He cam to this citie and said some massis, at whiche we haif tryit eight of our burgessis to bein present. He was busie in perverting sum others, that went too far with him, for sum of þam [i.d. them] preasit to resist my servantis in his apprehensioun. (Duncan 1834, 165-166)⁵⁰

Spottiswoode's intervention in Ogilvie's case was prompt and firm from the very beginning, as evidenced by the fact that he informed the king about the arrest of the underground Jesuit the day after.

This promptness raises certain questions about the relationship between the publication of the *Relatio* and *A true relation*. Both were published in 1615. From the indications offered by Pitcairn, we could assume that *A true relation* circulated before the *Relatio*, at least among Scottish and English readers. However, the letter to the reader suggests that there were known 'reports' of Ogilvie's case circulating among Catholics in Scotland and elsewhere. The *Relatio* is not mentioned explicitly, so we cannot presume that it was known directly by the author of *A true relation*. What we can assume is that various oral versions, or even fabrications, were probably circulating among the subjects of James VI, including the Catholic versions, which could have had the *Relatio* as their source. Although it may

⁵⁰ The original manuscript belongs to the Advocates' Library in Edinburgh, a. 2, 51. It is referred, for example, in Duncan 1834, 165-166. W. J. Anderson has tried to provide further biographical information beginning from this letter (1964, 56-65).

seem irrelevant, we cannot ignore the fact that the two versions of the story are nominally (and perhaps intentionally) related, as they are both entitled *Relation*.

If the attribution to Spottiswoode is true, *A true relation* raises two issues that should be clarified: firstly, the local Scottish view of what happened and the justification of the death of a Catholic Scotsman in a rather tolerant environment, and secondly, the national-Protestant view of an event that could become, under a different interpretation, a banner for Catholic propaganda. As Pearce notes, it was written in English in order to uphold the king's supremacy as well as to oppose Catholic recusancy among English readers (1998, 172-173).

Hence, *A true relation's* letter to the reader has special relevance as a hermeneutic lens to understand the official records of the proceedings against Ogilvie.

The letter is preceded by an epigraph of several Latin quotations. This epigraph functions as a hermeneutic key to John Ogilvie's supposed martyrdom.

2 Pet. 2. 10. "Audaces, et sibi placentes, dominatum despiciunt, et non horrent dignitates convitiis incessere." — *Tertul. adversus Hermo.* "Hermogenes haereticus loquacitatem, facundiam existimat, et impudentiam constantiam deputat, et maledicere singulis officium bonae conscientiae iudicat." — *Cyprian de duplici martyrio.* "Non statim martyr est qui occiditur, occiduntur piratae, et sicarii, supplicium non facit martyrem, sed causa' ". (Pitcairn 1833, 332)⁵¹

The first quote of the epigraph (St. Peter 2.10) interprets Ogilvie's refusal of King James' authority as something condemned by the apostolic authority of Peter. The second quote (by Tertulian) highlights Ogilvie's stubbornness and propensity to controversy. The third one (by Cyprian) tries to dissociate Ogilvie's case from the concept of martyrdom.

The letter as such exposes the two aims and purposes of publishing the records of Ogilvie's trial: the first was to satisfy 'those, who desire to be informed of his behaiour', and the second 'to obviate the misreportes of the enemies of true Relegion, who wrest and draw all thinges' (333).

In summary, the letter to the reader contains a series of apologetic, religious, national and theological considerations against Jesuit doctrines, their methods, and beliefs. It even quotes some Jesuits expressly, such as Juan de Mariana, Bellarmino and Suárez, with whom there was already a history of religious and theological controversy.

At the heart of the letter we find a biblical quote from Ezra (4:15)⁵² that the author of *A true relation* applies to the Society of Jesus, a 'rebel sect which harms kings'. The most important thing in his mind was to make the public understand that the Jesuits were a danger to the monarchy, that is, to the self-government of Scotland. Hence, he assured his readers that 'posteritie shall have an aduantage in vnderstanding the doctrine of Jesuites by their printed books ... by the attempts they have made against the estates and liues of princes' (Pitcairn 1833, 334).

The author's interest in presenting a true account to his readers is clear in the last lines of the letter:

⁵¹ I translate these sentences since they do not follow the current critical editions on which English translations are based: *2 Pet. 2. 10.* The audacious, and those who give pleasure to themselves, despise dominion, and are not frightened if they attack dignities with insults. — *Tertul. adversus Hermo.* The heretical Hermogenes thinks that loquacity is eloquence, considers impudence to be constancy, judges a duty of good conscience to curse everyone. — *Cyprian. de duplici martyrio.* It is not immediately martyr who is killed, the pirates are killed, also the murderers, the punishment does not make the martyr, but the cause.

⁵² *A true relation* refers the following Latin version 'Secta haec rebellis est, et nocens regibus' (Pitcairn 1833, 334). The Vulgate says instead 'urbs illa, urbs rebellis est, et nocens regibus' (Ezra 4:15).

By this is there no meane left to bee a Catholike, and remaine the Kings loyall subiect. To beleue the Popes power is such, is vndenyable treason; To refuse it, is to renounce Catholick religion; which last, I perswade myselfe all true and naturall Scots will choose, and of the choise shall it neuer repent them. (335)

The authority of the pope, as opposed to the sole authority of the king, is an act of treason. The true hermeneutic – of Scotland’s national, legal, religious and political identity – for the author of *A true relation* is to affirm that.

3.2 Catholics and Scottish Politics

It is generally believed that the Scottish Reformation was driven by church leaders who wanted to make the nation a godly society. Jenny Wormald, however, has contested the common view of a supposedly godly Scotland:

It is of course unarguable that Scotland became a Calvinist country, though at no time did those arch enemies (the Catholics) disappear. What is arguable is the emphasis on the success of godliness, at the expense of those, recognized by King James, who as time passed became increasingly accustomed to being members of a Protestant rather than a Catholic Kirk, yet strenuously objected to being godly. (2012, 213)

Politics in James VI’s Scotland are quite complex at the beginning of the seventeenth century; tensions between the civil and ecclesiastical authorities were notorious, in spite of the advances in the implementation of the Reformation and the fight against the Counter-Reformation. In fact, the conflict between Presbyterianism and episcopacy was symptomatic of that period (see Campbell 2017, 85-113).

The civil policy of James VI was emblematically linked to theological arguments, Scotland being a Calvinist country. The sonnet that opens James VI’s *Basilikon Doron* gives a clear picture of the divine right that inspired his monarchical policy:

GOD giues not Kings the stile of *Gods* in vaine,
 For on his Throne his Scepter doe they swey:
 And as their subjects ought them to obey,
 So Kings should feare and serue their God againe
 If then ye would enioy a happie raigne,
 Obserue the Statutes of your heauenly King,
 And from his Law, make all your Lawes to spring:
 (James I 1918, 3)

This vision (no papal mediation between the king and God) gave a strong political and religious foundation to the directives with which the monarchy was strategically imposing itself at different levels. It is enough to recall, for example, the effort towards active cooperation between the crown and the nobles (see Brown 2011, 208-237), the nominations of bishops from 1600 onwards (see Wormald 2012, 215), and the liturgical reforms (see MacDonald 2016, 148-170). The Erastian episcopacy was linked to this political strategy, although it was not reduced to mere politics.

In 1620, John Spottiswoode defended this same policy in his *Refutatio libelli de regimine Ecclesiae Scoticanae* and explained that there was ‘ita arctè, copulatèque cohærent ciuilib, et Ecclesiastica Politia, vt hac semel euersa, illa diu subsistere non possit’ (Maidment 1844, 55).⁵³

⁵³ So close and strong was the union between civil and ecclesiastical policy that, if the latter was subverted, the former could not survive either.

From this we can deduce how important it was for James VI, supported by Spottiswoode, to put an end to the missionary attempts of the Catholic Church and of the Jesuits in particular. For Spottiswoode it was a question of church politics, not church theology.

However, we must make some observations. John Ogilvie explicitly says that he went to Glasgow to absolve five apostates; he does not mention that this was a large number of people. The reason is not only that, when working underground, he had to attend meetings in small groups, but also that the number of Catholics – especially noble Catholic families – he was trying to serve had become smaller. Goatman even illustrates this situation by alluding to the family coats of arms in the Scottish palaces of that time in which there are Catholic as well as Jesuit symbols (2020a, 6-7).

Furthermore, Catholicism ‘posed no sustained nor serious threat to the civil or religious establishment in Scotland during the seventeenth century’ (Macinnes 1987, 35). As we have seen, the situation of Scottish Catholics was rather precarious, since it could not rely on an adequate number of priests.

If the number of Catholics in Scotland was already small, this number was even more reduced in the circle of the nobility. However, this fact alone was sufficiently relevant to counteract the nobles who resisted the Reformation, since they could become an obstacle in James VI’s policy.

Therefore, the support given by the noble families to Ogilvie had its price; many of them were imprisoned or judged. Marion Walker and her son Archibald Mure were Catholics who stood out for their support of Ogilvie. James Stewart of Flock and James Forrett were among the judges of that period. Many of Ogilvie’s supporters and the men associated with him ‘were prominent members of Glasgow’s town council and magistracy’ (Goatman 2020b, 53). Ogilvie talks about fourteen other detainees with him, although there are also accounts which speak of fifteen men arrested. All this shows that, at least in intention, Spottiswoode ‘attempted to use John Ogilvie’s trial and execution as a show of royal and archiepiscopal power in the local era’ (66). It is known, however, that Catholics continued to hold local positions over the following decade.

Macinnes has recently shown how Scottish Catholicism remained alive after Ogilvie’s execution. Financial support came from Rome to advance this cause. The Jesuits continued to mission, although they remained on the sidelines of other missionaries, especially the regular clergy. Pilgrimages were not totally eradicated either and the tradition of Catholic singing remained alive in spite of resistance. That is to say, in a certain sense Ogilvie’s martyrdom, although of local dimensions, reinforced the Catholic missionary effort in general (2020, 43-46).

3.3 *The Crime of John Ogilvie*

We cannot lose sight of the fact that the legislation against the ‘Papists and the Jesuits’ had been solidified during the reign of James VI, with various severe penalties being imposed for the crime of treason. But one wonders which of all the possible charges against Ogilvie justified capital punishment for treason (Macinnes 2020, 41).⁵⁴ ‘You are not accused said Maister William Hay after the indictment of saying Masse, nor of seducing his Maiesties subjects to a contrarie

⁵⁴ I left aside the consideration of the possibility of forced exile for those who opposed the supreme authority of the king in the state and in the Kirk.

religion, nor of any point touching you in conscience, properly' (Pitcairn 1833, 343). The case for treason focused instead on the fact that he was 'declining his Maiesties authoritie' and 'maintaining treasonable opinions' (*ibid.*).

The charge against Ogilvie, therefore, was not linked to the celebration of Mass, or the attempt to convert a Scottish subject to Catholicism, nor even to an action involving his conscience. All this was already clearly punishable under Scottish law. Any of the above-mentioned charges could place Ogilvie's case in the religious sphere and would end up giving the tint of martyrdom to his execution, and Ogilvie, even from the legal point of view, would have died for a merely religious cause. To do so meant losing the clear political direction that James VI's state apparatus was giving to the nation.

On the other hand, it is not possible to ignore the underlying religious controversy, since it is not possible to separate the historical evolution of criminal law from the event of the Reformation and the rise of James VI to the throne of England. The application of the capital punishment for an act of treason, therefore, makes it possible to focus on the connection among all these elements.

Treason was the most significant offence in law. It had different forms, but mainly encompassed the killing of the sovereign or one of the members of the royal family, raising war against the king, or associating with the king's enemies. Nevertheless, the Reformation caused a parallel reform in legislation: 'new treasons were invented by statute in order to stifle opposition to the king's ecclesiastical reforms, and under these severe measures the mere expression of opinion could in some cases constitute high treason' (Baker 2019, 569).

Ogilvie's case illustrates this point quite clearly. He had not made any attempt on the king's life, nor was he a conspirator. He was an opponent of the political system as such because he refused to recognize the supreme authority of the king. Moreover, his opinions are qualified as 'treasonable' precisely because, if any concrete political action were to follow from them, this would jeopardize the stability of the political system.

What is surprising is that such a young priest with a rather small circle of influence, was given such prominence, when Catholicism did not represent a real danger in Scotland, either for the Reformation or for national identity. However, the message that his presence, opinions and the tenacity of his character could divulge were considered sufficient to deem his position as treacherous. It is important to note that the Jesuit Moffat was released around the same time for refusing to support Ogilvie's claims.

The semantics used by the *Relatio* and by *A true relation* can shed further light on this point. In his *Relatio* Ogilvie uses the terminology '*crimen/criminalis*' (crime) seven times and '*peccare/peccatum*' (sin) seven times. *A true relation*, without including the introductory letter to the reader, uses twenty-seven times the terms 'treason/treasonable'; and uses 'crime/criminal' only five times. It is interesting to note the absolute absence of the term 'sin' within the official text. The two narratives, therefore, move within different semantic spheres. Ogilvie's religious, philosophical and theological background produced a type of Catholic narrative that was completely different from the national and Protestant narrative which emphasized the political and juridical prospect.

In this regard, Victor Houliston and Aislinn Muller have rightly pointed out how in the time of Queen Elizabeth

Official and Protestant narratives insisted that those who were executed had been condemned for committing treason against their queen and country, while Catholic writers insisted that the martyrs had died for their religious beliefs and were being persecuted for their faith. ... Prominence was given to

the answers of condemned priests who refused to answer straightforwardly or admitted to their belief in the queen's deposition, in order to justify the government's assertion that the priests were being executed for treason. (2020, 325-326)

It is not surprising, therefore, that this was the same strategy adopted in Ogilvie's case. *A true relation* refers to the five questions which Ogilvie had to answer:

1. Whether the Pope be iudge, and haue power, in *spiritualibus*, ouer his *Maiestie*, and whether that power will reach ouer his *Maiestie*, euen in *temporalibus*, if it be in ordine ad *spiritualia*, as Bellarmine affirmeth?
2. Whether the Pope haue power to excommunicate Kings, (especially such as are not of his church,) as his *Maiestie*?
3. Whether the Pope haue power to depose Kings, by him excommunicated; and in particular, Whether he haue power to depose the King his *Maiesty*?
4. Whether it be no murther to slay his *Maiesty*, being so excommunicated and deposed by the Pope?
5. Whether the Pope haue power to assoyle subjects from the oath of their borne and natural allegiance to his *Maiestie*? (Pitcairn 1833, 337-338)

Ogilvie was not very cooperative in stating his clear opinion on all these thorny issues. In fact, *A true relation* only mentions his partial answers to the first and the second questions. Ogilvie stated that 'hee will not declare his mind', except to the pope, about the last three questions (338).

The *Relatio* contains his broader answers without following this precise order, but it fundamentally coincides with *A true relation*. In the *Relatio* Ogilvie refused from the beginning, for reasons of conscience, to say whether he celebrated any mass in Scotland and then refused to take the Oath of Allegiance. Later on, he even refers to some moments when he mocks his interrogators (seven times he uses the verb 'to laugh' in Latin, *ridere*), and states that, since the king was only a layman, he could not have any kind of jurisdiction over Ogilvie, who was a priest. He does not answer directly or clearly the question on whether the pope could depose a king. And, as we have already mentioned, he claims that only the pope or his delegate could decide on controversial theological questions.

Spottiswoode and the other interrogators were therefore forced to find other substantial grounds or assumptions that could aggravate Ogilvie's accusation of treason, since Ogilvie's answers were not satisfactory. Hence, it is said in the records: 'Thereby, not onely declining, treasonably, his *Maiesties* jurisdiction and authoritie royall; but *by your not answering clearely*, that it is altogether vnlawfull, damanable, and diabolicall, . . . you haue committed most heinous, pernicious, and vnardonable treason' (342, my italics). The use of the tricolon ('unlawfull', 'damnable' and 'diabolicall'), a rhetorical device consisting in a series of three similar-meaning terms, sought to emphasize the seriousness of the crime, making it clear that this was a theoretical, rather than a factual issue: the insufficiency of Ogilvie's answers was sufficient reason for his condemnation. This same paragraph allows us to specify that the kind of crime committed by Ogilvie was related not to the material transgression of the law, nor to any damage caused to the nation, but to the fact of putting the supreme sovereignty of the king at risk in the eyes of the nation. That was, ultimately, that to reject theoretically royal authority meant to reject the nation.

4. *The Complex Legal-Theological Hermeneutics of Scottish Law in the Light of Ogilvie's Case*

4.1 *The Theological Interpretation of the Legal Environment in the Early Modern Period*

Ogilvie's treason case raises some fundamental questions within Calvinist-inspired Scottish legislation: how was it possible, in a religious environment, to justify that not explicitly recognizing an authority was a crime of treason?

The influence of the Reformation and godliness had played an inspirational role in the legal-political orientation of Scotland's national identity. Theology (especially in its ecclesiological and dogmatic ramifications) had served as a political and national catalyst for it. However, as I have outlined above, this did not mean *de facto* an 'eradication of sin'. One reason for this is that, as Wormald states, it is not enough to examine the Kirk-session records in order to obtain an accurate picture of the overall situation (2012, 206-207), precisely because such records show only one side of the case.

Ogilvie's case illustrates this point well. The *Book of Discipline* contemplated the problem of heresy and its penalties. Ogilvie was not formally charged with heresy and, therefore, it was not necessary to bring him to the Kirk court to be judged on any controversial religious point or immoral conduct. What happened, in fact, was that his case was heard in the Privy Council, a secular entity. Paradoxically, the person most involved in this case was an archbishop, an official ecclesiastical authority. This is not a contradiction *in factis* or a confusion of roles, but a phase in the process of Reformation on the one hand, and the shaping of national identity on the other. The Scottish criminal law of the early modern period is a good example of this metamorphic dynamic.

Chloë Kennedy has already demonstrated how 'close examination of ... Balfour's *Practicks* (1579) and Sir George Mackenzie's *Matters Criminal* (1678), reveals that both authors' conceptions of the principles of the criminal law and their discussions of particular crimes bear the mark of Protestant theology and Calvinist doctrine' (2012, 180). It also reveals hints of a theological approach through the moralistic features of Scottish criminal law. Scottish substantive law reflects the belief that the moral teachings of the Bible are valid sources for law. Hence, the judicial authorities, with the support of the church authorities (196), considered the punishment of sinful conduct to be legitimate. Morality, theology, law and religion seem to be indissociable.

In the same way that there is a certain continuity between canon law and the newly reformed juridical structures (Prodi 2000, 242-247), there is also a certain continuity between the pre-Reformation theological approach, based on the scholastic system, and the birth of the newly reformed theology within the genesis of confessional states.

According to the scholastic vision, crime, as well as law in general, was located and grounded on the theological sphere. Not every human law was morally valid, since morality depended on the objective good founded on God. The first watershed of this theological and philosophical foundation happened to be through nominalism, which established a metaphysical separation between the moral good and the freedom of the 'Lawgiver', God. This meant that God could have created a moral order different from the one that was known; it meant, for example, that he could have made adultery a morally good act.

This theoretical claim ended up subverting the traditional metaphysical and scholastic order, since it claimed that good is good because it is commanded or, in more modern terms, it is good because it is legislated. It is important to emphasize that in this case the concept 'good' is unrelated to any ethical foundation and denotation.

In any case, nominalism still moved in a theological sphere, although it was metaphysically disruptive, and, as an epistemological tool, proved to be very fruitful in modernity. The effects of this in the political sphere were practical rather than theoretical, since the Reformation allowed the political birth of new nations as well as new forms of law.

Without seeking to elaborate a concise picture of such a complex issue, we can say that Ogilvie was treated as a traitor precisely because his presence in Scotland, motivated by religious and confessional reasons, constituted an act that contradicted the established authority, the *auctoritas posita*. Yet, we could ask, an authority established by whom and for what purpose? This is a valid question, since the legitimacy of this authority could depend on the answer to this question.

The king's authority was based directly on the will of God, the ultimate authority. And, therefore, the juridical acts of the *auctoritas posita* analogically – in reference to God – generated *positive* laws that had to be obeyed by all the subjects of his jurisdiction, which was limited only by the criterion of territoriality. It is extremely delicate, from the academic point of view, to affirm something in such a general and synthetic way, but I believe that this theoretical problem contains a part of the historical truth that James VI's Scotland was going through.

This same logic, partly founded on theology and partly rooted in the new national legal configuration, is found in the general framework presented by Sir James Balfour in his *Practicks*:

Law is devydit in thré partis; in the law of nature, the law of God, and in the positive law. The natural law is that quhilk is written be the finger of God, or of nature, in the heart of man, and quhilk nature hes gevin and ingenerate in all leiving creatures: the law of God is that quhilk is reveillit, and declarit in his maist halie will and word: the law positive is this quhilk is made be man allanerlie. (McNeill 1962-1963, 1)

Natural law is an inheritance of the scholastic system, but Balfour circumscribes it to the human sphere, and thus ends up assimilating it to the natural moral law. Divine law is identified with God's revelation, which, in the case of Protestant theology, is Holy Scripture (word). Finally, the positive law is clearly distinguished from the two previous ones, since it is elaborated only by man. The link that connects positive law to natural law and divine law is the divine legitimization of the 'positive' lawmaker, that is, the king. Hence, the divine right of the sovereign is of central importance in the validation of this juridical construct.

That is why it should not be strange that the records against Ogilvie allude to the theological foundation of the king's total sovereignty. In Ogilvie's trial records, there is a reference to 'God, the author of all righteous gouvernement', who 'established Kings and Magistrats his lieuutenants vpon earth, for repressing of violence, oppression, and vice, and the promouing of pietie and justice' (Pitcairn 1833, 340).

Such a combination of the secular (or positive) and the ecclesiastical (or theological) domains is not simply symmetrical. It is not God who directly creates the nation; God constitutes the king, but it is the king who constitutes the nation. Therefore, from this point of view, Ogilvie is committing primarily a crime against the king's authority, rather than a sin against God, who is the guarantee of the royal authority.

Ogilvie is not acting against natural law or against divine law. Ogilvie is acting against the sovereign's positive law. This is why his crime is presented exclusively as a treason, leaving no room for it to be considered a sin.

Now let us try to explore the other perspective. Ogilvie, as I have said, expressly alludes to sin during his autobiographical account. In doing so, he opens up a horizon that we cannot ignore: the theological horizon of post-Tridentine Catholicism.

4.2 *The Placement of Crime and Sin in the Scholastic and Post-Tridentine Theological System*

Although I have already alluded *en passant* to the theological placement of crime and sin, that is, of morality and transgression of the law, within the scholastic system, it is necessary to analyze briefly how the difference between this system and the new way of conceiving crime in modernity took shape.

What Ogilvie expresses in his *Relatio* reflects to some extent the mentality of his Catholic contemporaries. In fact, what concerns Ogilvie least in his *Relatio* is the illegality of his actions; what worries him the most is the possibility of sinning against God's will.

When his interrogators ask him to take the Oath of Allegiance, he refuses saying that 'frustrà iurare, peccare est' (Duncan 1834, 87).⁵⁵ When they ask why he does not reveal the names of the Catholics he was meeting, he replies: 'quia non obligor, & nolo peccare'. (*ibid.*)⁵⁶ Therefore, Ogilvie was thinking within a theological map that was quite different from the new criminological map of early modern legal thought.

When the Jesuit Francisco Suárez, well known for his contributions to the philosophy of law, published his *Defensio fidei* against the Oath of Allegiance in 1613, he had stated clearly that it was a grave sin to take the oath:

Concludo igitur, in illis verbis huius iuramenti non tantum postulari à subditis civilem obedientiam, sed etiam professionem huius erroris, quod Papa non habeat potestatem, & iurisdictionem ad ferendam contra Regem depositionis sententiam quacumque ex causa Et inde ulterius inferitur, peccare grauissime subditos illud iuramentum prestando. (1613, 711 D-712 A)⁵⁷

The interesting fact is that Suárez' reflexions on law are regarded as one of the bridges between the old legal perspective and the modern one (Villey 1986, 323-338; Pink 2012, 175-208). Nevertheless, we find that, in his view, the boundaries between crime and sin are unclear.

In his monumental work on law, *Tractatus de legibus ac Deo legislatore*, first published in 1612, Suárez presented a definition of law that was broader than the Thomistic definition, but rooted in it: law is, Suárez writes, 'mensura, non quorumcumque actuum, sed moralium, quoad bonitatem & rectitudinem eorum simpliciter, ratione cuius ad eos inducit' (1619, 6 D).⁵⁸ From this, we can easily understand how deeply rooted was the theoretical link between morality and legality, especially in the Catholic Reformation worldview, within which Ogilvie had been educated. Suárez explains then – in a *reductio ad absurdum* – that 'qui caret lege

⁵⁵ It is vain to take an oath, it is to sin.

⁵⁶ I am not obligated to do it and I do not want to sin.

⁵⁷ I conclude, therefore, that in those words of this Oath [the king] is requesting from his subjects not only the civil obedience, but also the profession of this mistake, which consists in saying that the pope does not have power and jurisdiction to carry on the deposition against the king for any reason And from this it is possible to deduce that the subjects that take that Oath sin gravely. Ogilvie declares in his *Relatio* that he had not read Suárez's book, referring to his *Defensio fidei*: 'Dicunt, Soaris doctrinam defendis? R. Non legi Soaris librum' (Duncan 1834, 94). We may suppose that, because the *Defensio fidei* was published in 1613, Ogilvie was too busy and hidden as to be able to read it, but it is also probable that he knew about the book, because he was aware of the controversy of the Oath of Allegiance, as he testifies in his *Relatio* (see Duncan 1834, 99-100).

⁵⁸ The measure, not of any kind of acts, but of moral acts, simply as for their goodness and rectitude, for which it induces to these acts. The title – *A treatise about the laws and God the lawmaker* – speaks somehow by itself; while the modern conception of law goes towards a distinction between law and morality, Suárez states a distinction not about law, but only about the product and the producer: the laws and the ultimate source of all laws, God. I am using the 1619 Latin edition published in London, close to the geographical area where Ogilvie was working.

peccare non potest, rationalis autem creatura potestatem habet peccandi, ergo et legi necessario subdita est' (1619, 9 B).⁵⁹

Even though Suárez subsequently developed a theory of penal law, we should not be surprised by the fact that sin, as such, appears here as a transgression of law. The power to sin, according to this reasoning, is enabled by the existence of law; nevertheless, the original framework for this claim is theological. In fact, for scholasticism, positive law depends on natural law, which in turn depends on divine and eternal law.

We should keep in mind that theological discussion on sin during the Middle Ages developed in the context of creation, as part of the reflection on original sin. Therefore, criminal behaviour was ultimately immersed in the context of the transgression of divine law. This explains why Ogilvie did not dare to transgress what could offend God, as this transgression was considered 'sin'.

That conceptualization of crime helps to understand why Ogilvie identifies collaboration with the Scottish authorities as a transgression of divine law. The Scholastic relationship between sin and crime, which today seems only a confusion,⁶⁰ was coherent within the theological context in which it arose. Aquinas, as most Scholastics, distinguished between different kinds of *peccatum* (error, mistake, sin); 'peccare', he writes in his *Summa Theologiae* 'nihil est aliud, quam declinare a rectitudine actus, quam debet habere, sive accipiatur peccatum in naturalibus, sive in artificialibus, sive in moralibus' (1961, I, q. 63, 1 c.).⁶¹

Aquinas wrote some *quaestiones disputatae* about evil, and in his definition of sin he establishes an equivalence between sin as a transgression against the reason and as a transgression against God's law: 'peccare nihil est aliud, quam transgredi rectitudinem rationis vel legis divinae' (2002, vol. VI, q. 2, art. 9, ob. 4).⁶²

Thus, Scholasticism clearly distinguished between different levels of transgressions, but, due to the fact that positivism had not yet been developed, the legal level was absent. On the other hand, Scholastics assigned every human act, including sin and crime, a place in the divine order and in connection to divine law.

There are two other problems that arise from this. First, we have the problem of authority. The theological foundation of modern criminal law differs from the scholastic foundation for several reasons. The sovereign is a 'positive' legislator, that is, he can validly legislate in everything that is not already determined by the natural law or revealed divine law. In scholastic theology, on the other hand, the separation between the divine legislator and the human legislator was neither clear nor distinct. Therefore, in the Tridentine scholastic system, the Church had a moral supremacy over other sovereigns as a result of the underlying theological system. The authority conferred by Christ on the pope gave his voice the only valid word in the legal and moral sense. That is why the post-Tridentine Catholic Church emphasized the legitimacy of papal excommunication of a heretical prince. This same tendency provoked in the national

⁵⁹ He who lacks the law cannot sin, but the rational creature has the possibility/power to sin, therefore, it is necessary for the rational creature to be subjected to the law.

⁶⁰ This point of view has been accentuated by positivism, and, therefore, the early modern criminological theory should not be considered only from a positivist perspective. The clearer separation of law and morals was only little by little elaborated in the seventeenth century.

⁶¹ To sin is nothing but to deviate from the rectitude of an act, which it should have, either if it is understood as a sin (*peccatum*) in nature, art, or morals.

⁶² To sin means to transgress the rectitude of reason or of divine law. These *quaestiones disputatae* were composed by Aquinas during the same years of composition of the *Summa Theologiae*.

churches a new theological foundation that discarded papal mediation between God and the king. This also gave birth to a new ecclesiology, sacramental theology and doctrinal discipline.

Secondly, there is the problem of conscience and law. As Paolo Prodi has noted, while the Catholic Church wanted to maintain the unification of forums in its juridical frame, the Protestant churches generated a new configuration of forums, introducing the origin of an intermediate forum in which the secular and ecclesiastical branches collaborated (2000, 233 and 238-239). This intermediate forum replaced the pope's Catholic mediation, which sought to be universal. In this way, the collaboration of the political and ecclesiastical sectors facilitated the generation of a national identity of their own, since each ecclesiastical reality had greater autonomy and the possibility of adapting to its own territorial reality.

4.3 *Between Sin and Crime*

We cannot lose sight of the historical orientation of law, specifically, the gradual shaping of positive law through the Enlightenment. It is not my intention to investigate this field, but only to keep in mind that modern law moved in this direction. In this sense, John Austin warned: 'Of Laws and Rules there are various classes. Now these classes ought to be carefully distinguished. For the confusion of them under a common name, and the consequent tendency to confound Law and Morals, is one most prolific source of jargon, darkness, and perplexity' (1998, 371).⁶³

Without losing sight of this distinction, the fruit of long years of the configuration of law, we must try to outline a way to understand the relationship between crime and sin at a time when this distinction was just starting to exist.

Moreover, one of the characteristics of the early modern period is its changing and revolutionary dynamism. History does not advance without regressions, nor does it return from them without a certain progression. In no cultural or scientific field is there a linear, flat, and regular evolution. The transition between the Renaissance and the modern age at its apex is marked by a process of metamorphosis that is difficult to classify.

Even the distinction between sin and crime had flexible boundaries during the early modern period. A good example of this transitory state is the way modern philosophers place the role of God within their systems. Descartes, for example, is unquestionably innovative in the philosophical and critical field, putting the subject at the center of philosophical attention. His system, though, recognizes God as the guarantee of the existence of the world. In the same way, Hobbes presents innovative political thought, but this does not eliminate the theological foundation from his argumentation.

In his *Leviathan*, Hobbes defines sin, for instance, within a quasi-scholastic scheme:

A SIN, is not only a transgression of a law, but also any contempt of the legislator. ... A CRIME, is a sin, consisting in the committing (by deed, or word) of that which the law forbiddeth, or the omission of what it hath commanded. So that every crime is a sin; but not every sin a crime. (1998, 192-193)

Every crime is a sin. In this affirmation we still find the scholastic residues of theology, since sin – as contrary to the order established by divine law – encompasses every crime, precisely because a global moral order is supposed to exist. Nevertheless, Hobbes defines sin as a transgression, but cleverly fails to specify whether it is a transgression of divine, natural or positive law. He holds that sin is a transgression of the law as such. This absence of an explicit reference to God already

⁶³ See also Shilling 1987, 289-310 and Elton 2002, vol. III, 291.

implies a fundamental change, since the transgression of a positive law in the modern sense could be considered a sin. Moreover, it adds that sin is also contempt of the legislator, namely, the monarch or the competent authority. This shows that the foundation of law lies in the fact of legislating and no longer in divine authority which endorses the legislator. The theological foundation is only material, to say it in scholastic terms, while the juridical foundation is formal. This means that Hobbes conceived law fundamentally as something 'placed/established', that is, as an act, and not as being part of a metaphysical order.

Hobbes' definition of crime fits perfectly in Ogilvie's case of treason since, according to this definition, Ogilvie does not act according to law, but rather against it. He went back to Scotland to do missionary work which was prohibited by the king and furthermore refused to take the Oath of Allegiance and to answer his interrogators' questions.

While *sola Scriptura* (i.e. nonmediation) is a fundamental principle for the Reformation, mediation is a basic principle for the Counter-Reformation. This is particularly apparent in the case of Ogilvie, who could not answer the questions about his faith without requesting the mediation of the Roman Pontiff. The same applies to his opinion on the matter of the deposition of the king by the pope; although James VI is *de facto* king of Scotland, according to Ogilvie, the pope could depose him, which means not only acknowledging the juridical-spiritual supremacy of the Church of Rome, but also the universal mediation of the pope on the international political scene.

The various accents of these universalistic doctrines further contributed to the shaping of national identity, since they put at risk some fundamental issues without which the new Scottish national identity could not be born.

National autonomy developed gradually in an atmosphere that was increasingly detached from the theological roots of its promoters. The fruit of the seeds sown before and during the Reformation would eventually become evident: the importance of national identity which absorbed religious identity through a *professio fidei*; the 'modulation' not of sin, but of the theological foundation of the legislation itself; and the centrality of the national entity, under the figure of the monarch.

5. Conclusions

There are two tasks in research that complement each other, as in the drawing of a circle. On the one hand, tracing a circle from the centre becomes easier the more precisely the centre is determined. On the other hand, finding the centre of a circle becomes easier the more complete its circumference is. I have tried to carry out these complementary tasks, presenting both accounts and placing them in their respective contexts within a broader vision.

The historical fact of John Ogilvie's arrest and execution in 1615 offers two diverse narratives that reflect two antinomic world views. Each of these views presents its own apologetics with different accents. The case of John Ogilvie, although confined to a region of Scotland, represents one of the tips of the iceberg of political and religious contrasts of the post-Reformation period in Europe. Each of the institutional instances at stake made a different interpretation of the facts. Each of them based its interpretation on a different theological and legal framework. Each emphasized different values. These values were subordinate components of a whole.

From the Catholic narrative, Ogilvie's martyrdom, his sufferings and his death are interpreted in the light of the universal value of Catholic dogma in contrast to the national value of the Reformed churches. In the case of the Protestant narrative, Ogilvie represents an obstacle to the pure doctrine of the gospel and to the development of the confessional nation.

In the light of Ogilvie's education and the context in which he grew up, it is possible to understand that his presence in Scotland represented precisely a political and legal order parallel to the national one. The clandestine Jesuit priest symbolized the Scottish Catholic confession that had to operate with rules parallel to the official ones of the state in order to survive. In this sense, Ogilvie's death was presented by the Catholic narrative as maintaining papal supremacy, although in reality it achieved just the contrary.

The available means of diffusion – art, literature, drama, and rhetoric – were used to emphasize this apologetic approach. The instrumentalization of knowledge and art in favour of one's own religious confession allowed the birth of innovative scientific and instructive methods. Thus, there emerged, for example, textbooks for students, hagiographic literature and the historiography of the Church produced with the support of history, criticism, archaeology, epigraphy, philology, etc. Even hermeneutics was born from the confluence of scientific interest, biblical study, and the theological need of the Reformation to determine the originality of the sacred texts.

This whole context is not unrelated to the conceptualization of crime at that time and the development of a different conceptualization from that of the Middle Ages. On the contrary, it is within this historical and scientific context that a new legal order was born in modern states.

Nevertheless, my study does not seek to embrace the totality through the singular, but to clarify the totality through the singular. The case of Ogilvie, his struggle to contradict his interrogators and his interest in making his process public, is only one manifestation among many of the conflicts that exist in modern times and also of the historical complexity of the same.

This complexity shows that, even if it is a Catholic Jesuit priest who is imprisoned by a Scottish Protestant archbishop, the case is neither exclusively nor mainly religious. The protagonists in this case belonged in full right to the hierarchy of two different confessions and therefore represented them officially. But this does not necessarily mean that everything that happened took place in a merely religious sphere. On the contrary, my analysis has shown that various factors and elements were at play. These factors were part of what I have called '*trans-religious* problems'.

Of course, this does not mean that religious or moral analysis should be disregarded. Indeed, such an analysis is necessary, since, as we have seen, the accused defends himself several times by alluding to his desire not to commit any sin. We cannot discard these observations by Ogilvie as irrelevant. They were not irrelevant, because they were based on the concrete preconceptions of the individual subjected to this criminal trial. The meaning of this religious awareness of sin on the part of the Jesuit priest reflects a mentality and is not just the result of purely personal judgment.

As it is valid to question the reasons that led the secular arm to care about the moral order of its subjects during the early modern period, so it is valid to question why a detainee refused to collaborate with the authorities in order to maintain his own religious opinions even with the awareness that his non-collaboration could cost him his life.

On the other hand, the formation of the national identity stands out in this whole case since Ogilvie could represent an 'enemy bastion' if he remained in Scotland or if he remained alive. The proportion between his crime and his sentence is an interesting question, because it reveals the political and legal dynamics of early seventeenth-century Scotland.

Another interesting aspect of this case is that Ogilvie was accused of treason against the king's authority, a crime which is not of a religious nature. However, the theory of the divine right of the sovereign was one of the theoretical pillars of James VI's politics. In this respect, Ogilvie's treason was not simply against the law, but against the legitimate legislator, namely, against the one who had the divine authority to exercise full sovereignty over his subjects.

How did these two worldviews develop on the stage of history? We can make a comparison to better illustrate how the contrast between the notion of sin according to Ogilvie, and the crime of treason according to the official narrative represents the contrast between two conceptual worlds in development.

In the philosophical and theological field, the Catholic Church maintained its adherence to the Aristotelian-Thomistic vision of the world for a long time. By firmly affirming this Catholic identity, the Protestant world gradually distanced itself from this philosophical and theological system. One of the fruits of this separation was the development of new philosophical and theological perspectives in the Protestant sphere, such as, for example, the influence of confessional politics on Hobbes and of pietism on Kant. Likewise, in the Catholic sphere, the cultural diffusion of the Jesuits had vast repercussions on science and philosophy, as was the case with Descartes, and the mathematicians and astronomers of the seventeenth and eighteenth centuries. In the Catholic sphere, these fundamental philosophical and theological lines were not only preserved, but the whole approach of the council of Trent was maintained as a sure guide.

This explains in part the long period of time between the Council of Trent and Vatican I, in the Catholic world; during those three hundred years there was no conciliar pronouncement on dogma. Still, the multiplication of Protestantism and its sects shows a peculiar vitality precisely during that same period of time. Moreover, during those three hundred years, politics, in theory and in practice, and the sciences, both empirical and human, achieved remarkable progress.

The concept of sin and crime that we find in Ogilvie's *Relatio* is found in the midst of these dynamics. It is not a coincidence that the first edition of the Code of Canon Law of the Catholic Church dates from the beginning of the twentieth century. This means that, to a certain degree, Trent promoted a marked institutionalization that favoured homogeneity (also opposing reactions), and the crystallization of dogma. For instance, it is worth noting the religious connotation of Ogilvie's martyrdom according to the Catholic view that emerges in the homily preached by Pope Paul VI in Ogilvie's canonization Mass in 1976:

Questa assolutezza riconosciuta alla fede è il nucleo centrale della psicologia del martire, cioè del testimonio di Cristo. Lo è anche per Giovanni Ogilvie. ... E quale fu la causa del martirio dell'Ogilvie? È facile scoprirla: la fede, dicevamo. Ma la fede è un mondo: quale punto della fede, quale verità della fede fece da centro al combattimento del suo martirio? (Sancta Sedes 1976, 648)⁶⁴

One question remains to be answered. What is the meaning and scope of this kind of canonization, after so many years, in a political and religious context which is quite different from that of the early modern period? For this reason, it is worth asking about Ogilvie's case in particular since it can help to illustrate far-reaching – but hardly obvious – problems.

The difficulty I have encountered in articulating the relationship that existed between morality and the legal sphere reveals an 'original' historical problem. This historical problem does not allow us to completely overcome the continuous rethinking of the relationship between the two. We find a tension between the moral and legal poles from the embryonic stage of modern law. It is clear that morality and law are different realities, but this does not necessarily

⁶⁴ The core of the martyr's psychology is the absolute value of faith, that is to say, it is the foundation of the testimony of Christ. This is true also for John Ogilvie. ... And which was the cause of the martyrdom of Ogilvie? It is easy to discover it; faith, as we said. But faith is a vast reality. Which point of faith or which truth of faith was the core of the struggle of his martyrdom?

mean that they are alien to each other, either in theory or in practice. This problem, therefore, still affects the relationship between morality and law today.

The historical problems that we have been able to discover in Ogilvie's case help us to give a better framework to the birth of religious pluralism. They can also offer some useful insights on the present debate in this same area, which promotes inclusiveness and tolerance. In the same century in which Ogilvie was executed, Locke published his work on tolerance, which shows that the early modern period posed problems that are still in the process of social clarification and discernment.

However, this does not mean that our conception of history should be moralistic, *historia magistra vitae*. What we are interested in highlighting in this conclusion are some theological, religious, legal and political tensions that appeared in the arrest and execution of John Ogilvie, but which were not ultimately settled in that case. Although in our time these same tensions do not always manifest themselves drastically, they continue to impact today, in new ways, on our life and culture.

Works Cited

- Anderson W.J. (1964), 'A Jesuit That Calls Himself Ogilvy', *Innes Review* 15, 1, 56-65.
- Aquinas Thomas (1961 [1951]), *Summa Theologiae*, vol. I, Matritum, BAC.
- Aquinas Thomas (2002), *Le questioni disputate. Il male*, vol. VI, trans. by R. Coggi, Bologna, ESD, 6 vols.
- ARSI *Archivium Romanum Societatis Jesu* (1628), *Copia autentica del processo sul martirio istruito a Würzburg*, Archivio della postulazione generale (APG).
- ARSI *Archivium Romanum Societatis Jesu* (1651), *Vitae* 16.
- ARSI *Archivium Romanum Societatis Jesu* (1964), *Schedario bibliografico di John Ogilvie*.
- Ashworth E.J. (2019), 'Jesuit Logic', in C. Casalini, ed., *Jesuit Philosophy on the Eve of Modernity*, Leiden-Boston, Brill, 95-114.
- Austin John (1998 [1832]), *The Province of Jurisprudence Determined and The Uses of the Study of Jurisprudence*, Indianapolis-Cambridge, Hackett Publishing Company.
- Baker J.H. (2019 [1971]), *An Introduction to English Legal History*, Oxford, Oxford University Press.
- Bellarmino Roberto (1586-1593), *Disputationes Roberti Bellarmini Politiani, Societatis Jesu, de controversiis christianae fidei adversus hujus temporis haereticos*, Ingolstadii, Ex officina typographica Davidis Sartorii, 3 vols.
- Bernard T.J., A.L. Gerould and J.B. Snipes, eds (1998 [1958]), *Vold's Theoretical Criminology*, New York-Oxford, Oxford University Press.
- Brown K.M. (2011), *Noble Power in Scotland from the Reformation to the Revolution*, Edinburgh, Edinburgh University Press.
- Brown K.M., A.J. Mann and R.J. Tanner (2007-2019), *The Records of the Parliaments of Scotland to 1707 (RPS)*, St Andrews, <<https://www.rps.ac.uk/mss/1587/7/13>>, accessed 1 February 2021.
- Campbell A.D. (2017), *The Life and Works of Robert Baillie (1602-1662): Politics, Religion and Record-Keeping in the British Civil Wars*, Woodbridge, The Boydell Press.
- Carmo Mario (2001 [1998]), *Architecture in the Age of Printing: Orality, Writing, Typography, and Printed Images in the History of Architectural Theory*, trans. by Sarah Benson, Cambridge-London, The MIT Press.
- Covington Sarah (2020), 'England's Eusebius: John Foxe and the *Acts and Monuments*', in P. Middleton, ed., 305-321.
- Culpepper Scott (2011), 'Martyrs and Martirology', in J.T. Kurian, ed., *The Encyclopedia of Christian Civilization*, Chichester-Malden, Wiley-Blackwell, Vol. III, 1431-1435, 4 vols.
- Donaldson Gordon (1983 [1973]), 'The Scottish Church 1567-1625', in A.G.R. Smith, ed., *The Reign of James VI and I*, London-Basingstoke, The MacMillan Press, 40-56.

- Duncan W.J., ed. (1834), *Miscellaneous Papers, Principally Illustrative of Events in the Reigns of Queen Mary and King James VI*, Glasgow, printed for the Maitland Club.
- Elliot M.W. (2020), 'Jesuit exegesis, Jacobean Theology, and the Scottish Church in the First Two Decades of the Seventeenth Century', *Journal of Jesuit Studies* 7, 1, 67-82, doi: 10.1163/22141332-00701005.
- Elton G.R. (2003 [1974-1992]), *Studies in Tudor and Stuart Politics and Government*, vol. III, Cambridge-London-New York-New Rochelle-Melbourne-Sydney, Cambridge University Press, 4 vols.
- Forbes-Leith William, ed. (1885), *Narratives of Scottish Catholics under Mary Stuart and James VI*, Now First Printed from the Original Manuscripts in the Secret Archives of the Vatican and other Collections, Edinburgh, William Paterson.
- Ford Philip, Jan Bloemendal and Charles Fantazzi, eds (2014), *Brill's Encyclopedia of the Neo-Latin World*, Leiden, Brill, 2 vols.
- Friedberg E.A. (2000 [1879]), *Corpus Iuris Canonici editio Lipsiensis secunda post Aemilii Ludovici Richter*, vol. I, Union, The Lawbook Exchange, LTD, 2 vols.
- Goatman Paul (2020a), 'Introduction: New Perspectives on John Ogilvie's Martyrdom, the Society of Jesus, and Scottish Catholicism during the Sixteenth and Seventeenth Centuries', *Journal of Jesuit Studies* 7, 1, 1-10, doi: 10.1163/22141332-00701001.
- Goatman Paul (2020b), 'Exemplary Deterrent or Theatre of Martyrdom?: John Ogilvie's Execution and the Community of Glasgow', *Journal of Jesuit Studies* 7, 1, 47-66, doi: 10.1163/22141332-00701004.
- Hart H.L.A. (1958), 'Positivism and the Separation of Law and Morals', *Harvard Law Review* 71, 4, 593-629.
- Haskell Yasmin (2014 [1995]), 'The Passion(s) of Jesuit Latin', in P. Ford, J. Bloemendal and C. Fantazzi, eds, 775-790.
- Haskell Yasmin (2019 [2017]), 'Latinitas Iesu: Neo-Latin Writing and the Literary-Emotional Communities of the Old Society of Jesus', in I.G. Županov, ed., *The Oxford Handbook of the Jesuits*, New York, Oxford University Press, 553-574.
- Hill Benjamin and Henrik Lagerlund, eds (2012), *The Philosophy of Francisco Suárez*, New York, Oxford University Press.
- Hobbes Thomas (1998 [1651]), *Leviathan*, ed. by J.C.A. Gaskin, Oxford-New York, Oxford University Press.
- Höpfel Harro (2004), *Jesuit Political Thought: The Society of Jesus and the State, c. 1540-1630*, Cambridge-New York, Cambridge University Press.
- Houlston Victor and Aislinn Muller (2020), 'The Elizabethan Martyrs', in P. Middleton, ed., 322-337.
- James I (1918), *The Political Works of James I*, Reprinted from the Edition of 1616, with an introduction by C.H. McIlwain, Cambridge, Harvard University Press.
- Jesuits (1838), *Constitutiones Societatis Jesu, anno 1558. Reprinted from original edition with AN APPENDIX, containing A TRANSLATION, AND SEVERAL IMPORTANT DOCUMENTS*, London, J.G. and F. Rivington.
- Kennedy Allan (2016), 'Crime and Punishment in Early-Modern Scotland: The Secular Courts of Restoration Argyllshire, 1660-1688', *International Review of Scottish Studies* 41, 1-36, doi: 10.21083/irss.v41i0.3581.
- Kennedy Chloë (2012), 'Criminal Law and Religion in Post-Reformation Scotland', *The Edinburgh Law Review* 16, 2, 178-197, doi: 10.3366/elr.2012.0102.
- Lukács Ladislaus, ed. (1986), *Monumenta Paedagogica Societatis Iesu. Ratio atque Institutio Studiorum Societatis Iesu (1586 1591 1599)*, vol. V, Roma, Institutum Historicum Societatis Iesu, 157 vols published to date.
- MacDonald A.R. (2016 [1998]), *The Jacobean Kirk, 1567-1625: Sovereignty, Polity and Liturgy*, New York-Abingdon, Routledge.
- Macinnes A.I. (1987), 'Catholic Recusancy and the Penal Laws, 1603-1707', *Records of the Scottish Church History Society* 23, 27-63.

- Macinnes A.I. (2020), 'John Ogilvie: The Smoke and Mirrors of Confessional Politics', *Journal of Jesuit Studies* 7, 1, 34-46, doi: 10.1163/22141332-00701003.
- MacLeod Daniel (2016), 'Declining His Majesty's Authority: Treason Revisited in the Case of John Ogilvie', in J. McCallum, ed., *Scotland's Long Reformation: New Perspectives on Scottish Religion, c. 1500 - c. 1660*, Leiden-Boston, Brill, 179-201.
- Maidment James, ed. (1844-1845), *The Spottiswoode Miscellany: A Collection of Original Papers and Tracts, Illustrative Chiefly of the Civil and Ecclesiastical History of Scotland*, vol. I, Edinburgh, printed for The Spottiswoode Society, 2 vols.
- Masson David, ed. (1891), *The Register of the Privy Council of Scotland: A.D. 1613-1616*, vol. X, Edinburgh, H.M. General Register House, 17 vols.
- McCoog T.M. (2017), *The Society of Jesus in Ireland, Scotland, and England, 1598-1606: "Lest Our Lamp Be Entirely Extinguished"*, Leiden-Boston-Rome, Brill-Institutum historicum Societatis Iesu.
- McNeill P.G.B., ed. (1962-1963), *The Practicks of Sir James Balfour of Pittendreich*. Reproduced from the Printed Edition of 1754, vol. I, Edinburgh, Stair Society, 2 vols.
- Middleton Paul, ed. (2020a), *The Wiley Blackwell Companion to Christian Martyrdom*, Hoboken-Chichester, John Wiley & Sons.
- Middleton Paul (2020b), 'Creating and Contesting Christian Martyrdom', in Id., ed., 12-30.
- Mirbt Carl (1924 [1901]), *Quellen zur Geschichte des Papsttum und des römischen Katholizismus*, Tübingen, J.C.B. Mohr.
- Nieremberg J.E. (1644), *Firmamento religioso de luzidos astros, en algunos claros varones de la Compañía de Jesus*, Madrid, Por Maria de Quiñones.
- Parente J.A. Jr. (1981), 'Counter-Reformation Polemic And Senecan Tragedy: The Dramas Of Gregorius Holonius (1531?-1594)', *Humanistica Lovaniensia* 30, 156-180.
- Parente J.A., Jr. (1987), *Religious Drama and the Humanist Tradition: Christian Theater in Germany and in the Netherlands 1500-1680*, Leiden-New York, E.J. Brill.
- Pearce A.S.W. (1998), *John Spottiswoode, Jacobean Archbishop and Statesman*, PhD Thesis, University of Stirling.
- Pearce A.S.W. (2004), 'Spottiswoode, John (1565-1639)', *Oxford Dictionary of National Biography*, Oxford, Oxford University Press.
- Pink Thomas (2012), 'Reason and Obligation in Suárez', in B. Hill and H. Lagerlund, eds, *The Philosophy of Francisco Suárez*, New York-Oxford, Oxford University Press, 175-208.
- Pitcairn Robert, ed. (1833), *Criminal Trials in Scotland from MCCCCLXXXVIII to MDCXXIV Embracing the Entire Reigns of James IV, James V, Mary Queen of Scots and James VI Compiled from the Original Records and Mss with Historical Notes and Explanations*, vol. III, Edinburgh, William Tait.
- Prodi Paolo (2000), *Una storia della giustizia. Dal pluralismo dei fori al moderno dualismo tra coscienza e diritto*, Bologna, Il Mulino.
- Quinn James (2001), 'Ogilvie (Ogilbie, Ogilvy), Juan', in C.E. O'Neill and J.M. Domínguez, eds, *Diccionario histórico de la Compañía de Jesús*, vol. III, Madrid-Roma, Universidad Pontificia Comillas-Institutum Historicum, 2863-2864, 4 vols.
- Sancta Sedes (1976), *Acta Apostolicae Sedis (AAS)*, 68, Città del Vaticano, Typis Polyglottis Vaticanis, <<http://www.vatican.va/archive/aas/documents/AAS-68-1976-ocr.pdf>>, accessed 1 February 2021.
- Schilling Heinz (1987), '“History of Crime” or “History of Sin”? — Some Reflections on the Social History of Early Modern Church Discipline', in E.I. Kouri and T. Scott, eds, *Politics and Society in Reformation Europe: Essays for Sir Geoffrey Elton on His Sixty-Fifth Birthday*, London, Macmillan, 289-310.
- Sharpe J.A. (2013 [1984]), *Crime in Early Modern England 1550-1750*, London-New York, Routledge.
- Sodano Giulio (2020), 'El nuevo proceso de canonización de la edad moderna', *Anuario de Historia de la Iglesia* 29, 53-72, doi: 10.15581/007.29.008.

- Spurlock Scott (2008), ‘“I do disclaim both Ecclesiasticke and Politick Popery”: Lay Catholic Identity in Early Modern Scotland’, *Records of the Scottish Church History Society* 38, 5-22.
- Suárez Francisco (1613), *Defensio fidei catholicae et apostolicae aduersus Anglicanae sectae errores*, Conimbricae, Apud Didacum Gomez de Loureyro Academiae Typographum.
- Suárez Francisco (1619 [1612]), *Tractatus de legibus, ac Deo legislatore, In decem libros distributus*, Lugduni, Sumptibus Horatij Cardon.
- Tanner Mathias (1675), *Societas Jesu usque ad sanguinis et vitae profusionem militans, in Europa, Africa, Asia, et America, contra gentiles, Mahometanos, Judaeos, Haereticos, impios, pro Deo, fide, Ecclesia, pietate*, Pragae, Typis Universitatis Carolo-Ferdinandae.
- Villey Michel (1986 [1968]), *La formazione del pensiero giuridico moderno*, trans. by R. D’Ettorre and F. D’Agostino, Milano, Jaca Book.
- Wormald Jenny (2012), ‘Reformed and Godly Scotland?’, in T.M. Devine and J. Wormland, eds, *The Oxford Handbook of Modern Scottish History*, Oxford-New York, Oxford University Press, 204-219.

Exchanges within Criminography

