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Catholic Exiles and the English State After the Gunpowder Plot

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Abstract

This paper discusses the immediate aftermath of the Gunpowder Plot, examining the overlooked legacies of this event in relation to its influence on emerging categories of extraterritorial state sovereignty, international law, and stateless persons. The English state used the Gunpowder Plot as a pretext for justifying an unprecedented legal and political innovation: that the state could circumvent the law of nations and unilaterally assert its sovereignty beyond its national borders. English officials attempted to extradite a group of English Catholic exiles in connection with the Plot and induce European states to cooperate in forcibly repatriating these subjects. This episode was only one component in a broader effort to confine political agency to sovereign state bodies, a process in which the English state vied to suppress the various rogue economies that flourished beyond the reach of state authorities, from piracy and mercenary service to the circulation of Catholic dissidents and their texts.

Keywords
Gunpowder Plot, English Catholic exiles

In December 1605, in the immediate wake of the Gunpowder Plot, Sir Charles Cornwallis, the English ambassador to Spain, met with the Spanish chief minister, the Duke of Lerma, to discuss the implications of recent events in England. For Lerma, the Gunpowder Plot posed a dilemma: if it constituted an unprecedented attack against the state, then on what basis could the English government decide to act? "Reason of state," he remarked, did demand that England take some course to reassert its sovereignty. But

how could the English respond, he queried, to something "soe farr beyond the Practizes of other states"?[1] In emphasizing that the plot was beyond the boundaries of acceptable statecraft, Lerma was, of course, speaking as a politician and protesting his own government's lack of foreknowledge or complicity. But his inability to comprehend the plot and its possible causes also stemmed from the fact that this action was not tied to any sovereign body. Meeting only three months after the Treaty of London had officially ended the decades-long undeclared war between their nations, Cornwallis and Lerma, architects of the recently forged Anglo-Spanish alliance, were brought together through an unexpected challenge to the diplomatic system that united them. Having assumed their own monopoly over political agency, these state representatives were confronted with an unprecedented situation in which non-state agents were able to impact the conditions of interstate negotiation. The Gunpowder Plot had made clear that political agency could stem from transcultural networks as well as sovereign bodies. These non-state actors challenged the interstate diplomatic system by appropriating one of the conventional foundations of state authority, its monopoly over the use of political violence. Cornwallis and Lerma were therefore confronted with a dilemma: how could states respond within the terms of diplomacy to agents and networks that had rejected the interstate diplomatic system itself?

For Cornwallis, it was precisely the unprecedented nature of the Plot that made possible a new, unexpected opportunity to adapt the law of nations to suit the necessities of reason of state: as the Ambassador concluded, "this Plott having no Example in former Ages, might afford a new President [*sic*] in the Punishment of the Offenders; thereby to leave to Posterity sufficient Testimony, how odious such Attempts ought to be in the Hearts of all Men."[2] If antecedents could not be found after "a diligent Inquisition" into histories, the state could arrogate the authority to create its own precedent, within or outside legal constraints. The precedents of case law, along with the models provided by historical sources, were consequently deemed no longer relevant. Freed from these constraints, the English state could use the Gunpowder Plot to write its own narrative of events. The state's response would create a precedent—or "sufficient Testimony"—establishing its own legal as well as interpretive framework through which the event would be remembered. Such measures would also provide the means to quell further inquiry into the

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1. Sir Ralph Winwood, *Memorials of Affairs of State in the Reigns of Q. Elizabeth and K. James I* (1725; New York: AMS Press, 1972), 2: 190.
2. Winwood, *Memorials of Affairs*, 2: 190.

implications of the attack: it would make visible and indisputably clear, as Cornwallis remarked, "how odious such Attempts *ought* to be in the Hearts of all Men."[3]

A revealing aspect of Cornwallis's phrasing was that it conceded the possibility that there could be differing interpretive responses to the Gunpowder Plot. Lerma's reaction, after all, reflected his own conceptual impasse, which had led him to pose a series of questions regarding the implications of the event. Cornwallis intended, by contrast, to ensure that the Plot would become an indisputable fact, that it would elicit a response of odium and nothing else. Yet in acknowledging that this was merely how it "*ought* to be in the Hearts of all Men," he also recognized the tenuousness of his project. To help him overcome this hermeneutic dilemma, Cornwallis was in desperate need of an enemy. He consequently outlined to Lerma an international conspiracy behind the Plot, one spearheaded by the most notorious of English Catholic exiles: Hugh Owen, an intelligence agent based in Brussels; Father William Baldwin, the Jesuit liaison for the English mission at the court of the Archdukes Isabella and Albert; and Sir William Stanley, the English captain who had switched allegiance and offered his garrison at the Low Countries town of Deventer to Spanish control in 1587. If the Plot was an unprecedented problem, Cornwallis proposed an unprecedented solution, and requested that Lerma authorize the extradition of these three exiles.

Lerma balked at this suggestion, and withheld his support on several grounds: First, as I will discuss later, he questioned what kind of sovereign authority England retained over its expatriated subjects, particularly those whose loyalties were to other states or institutional bodies. Secondly, he objected on the grounds of precedent, not only due to the lack of prior models for such policies of extradition, but also out of concern for the precedent such actions could set. And, lastly, he simply demanded proof of the exiles' involvement. Cornwallis responded by citing precedent, emphasizing the frequency with which states had assisted each other in apprehending and extraditing offenders. Drawing on a commercial language of trade and traffic, he noted the common practice of states exchanging less valuable targets, or suspects "of inferior Qualitie," "Which example might be a sufficient Instance to the Archdukes, not to stand so precisely upon those Points."[4]

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3. Winwood, *Memorials of Affairs*, 2: 190.
4. Winwood, *Memorials of Affairs*, 2: 190. Although Stanley would be included in the list of conspirators on the plaque commemorating the Gunpowder Plot (see n. 26, below), the English government had established his innocence early in their investigation. The state's reluctance to implicate Stanley may have additionally stemmed from the fact that

In the course of the ensuing negotiations, as Philip III and the Spanish council debated whether or not to hand over Owen and the others to English authorities, the Spanish king similarly invoked this commercial model, and even proposed a possible exchange: if Spain allowed the extradition of the Catholic exiles, England could make a reciprocal gesture and recall home those English merchants in the Low Countries who were aiding Dutch rebels. Ambassador Cornwallis, writing to the Earl of Salisbury, was exasperated by what he described as the Spaniards' "own Stupiditie" in making such an analogy between treason and the lawful commerce of war, declaring that it was "too absurd an Allegation, as to compare the King's commerce with them, to so vile and detestable Traytors as Owen and the rest."[5]

Contradicting the emphasis that Cornwallis and Lerma had placed on the unprecedented aspects of the Gunpowder Plot, the English state's response attested to a continuity of state policy both prior to and following 5 November. The discovery of the Gunpowder plot did not prompt a break from past policy, but rather offered an unexpected means for intensifying existing state objectives. One key issue with which the state was given a new mandate related to its longstanding efforts to extend surveillance and authority over English soldiers and mariners serving abroad. The status of extraterritorial laborers is a pervasive concern in the diplomatic correspondence of this period. In many instances, the problematic status of this group was linked with that of Catholic exiles and seminary priests. Through their characteristic circulation beyond national boundaries, these figures revealed the state's tenuous hold over its extraterritorial subjects. They also represented a challenge to James's aspirations for pan-European peace. In order to establish the conditions for interstate diplomacy, James had to limit the number of agents able to impinge on the actions of sovereign state bodies. Peace, for England's new monarch, solely entailed peace between states, and his project therefore required that each state assumed control over its extraterritorial subjects.

Some of James's efforts had preceded 5 November 1605. A Royal Proclamation from March of that year had prohibited English mariners from serving in foreign navies. It was only the second occasion, and the first instance in 50 years, in which the English state had banned its subjects from selling their labor power to foreign states.[6] But the ineffectiveness of this measure led to

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he had begun negotiations to allow his return to England. Nothing ever resulted from these talks, however, and Stanley died years later, still a pensioner to Spain (Hugh Ross Williamson, *The Gunpowder Plot* [London: Faber and Faber, 1951], 83–85).

5. Winwood, *Memorials of Affairs*, 2: 190.

6. James F. Larkin and Paul L. Hughes, eds., *Stuart Royal Proclamations, Volume I: Royal*

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a subsequent proclamation, in July of 1605, which specifically prohibited acts of piracy against Spanish vessels. Whereas the former proclamation was prompted by the perceived threat of Englishmen seeking employment from national enemies, the latter document was concerned more with the economic power of English subjects able to sell their labor power on a global market.[7] Due to the transnational mobility of maritime laborers, the Royal Navy was finding it difficult to staff its ships, particularly when foreign service offered mariners better wages and working conditions.[8] Peace with Spain had also exacted an economic toll on this population. James's subsequent prohibition of privateering had put an end to a thriving—and often sanctioned—economy of piracy, a factor that only further induced maritime laborers to seek better opportunities abroad.

There is another, more fundamental reason why Catholic exiles were associated with English pirates in the aftermath of the Gunpowder Plot. Early modern formulations of international law followed classical precedent in defining the pirate as the prototypical *hostis humani generis*, the enemy of the human race exempted from the benefits and protections of the Law of Nations. Such a figure had no legal status in international law: he could therefore "be brought to justice anywhere," and states were obliged not only to deny such a figure the right of refuge, but also to actively contribute to his judicial prosecution.[9] It is generally recognized that international law did not yet approximate a consistent and universally agreed upon set of standards and protocols in the early modern period. Yet, despite a lack of consensus regarding the rules operating within the interstate system, definitions of the law of nations nonetheless consistently depended on a category of a universal enemy lying outside of it and opposed to its values.

The codification of the status of the universal enemy within international

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Proclamations of King James I, 1603–1625 (Oxford: Clarendon, 1973), 108–111. For the proclamation of 1575, see Hughes and Larkin, eds., *Tudor Royal Proclamations*, 3 vols. (New Haven, CT: Yale University Press, 1969), 2: 395.

7. Larkin and Hughes eds., *Stuart Royal Proclamations*, 114–117.

8. See Mark Netzloff, *England's Internal Colonies: Class, Capital, and the Literature of Early Modern English Colonialism* (Basingstoke: Palgrave, 2003), 54.

9. Lassa Oppenheim, *International Law*, qtd. in Christopher Harding, "*Hostis Humani Generis*'—The Pirate as Outlaw in the Early Modern Law of the Sea," in *Pirates? The Politics of Plunder, 1550–1650*, ed. Claire Jowitt (Basingstoke and New York: Palgrave, 2007), 21. Among recent discussions of this topic, see Daniel Heller-Roazen, *The Enemy of All: Piracy and the Law of Nations* (Cambridge, MA: MIT Press, 2009) and Dan Edelstein, *The Terror of Natural Right: Republicanism, the Cult of Nature, and the French Revolution* (Chicago, IL: University of Chicago Press, 2009).

law was interconnected with a process of state formation in which sovereign state institutions asserted a monopoly over the use of force within their territories. What made the enemy a *universal* enemy was the fact that he was defined as an outlaw within his native state. The legal penalty of treason therefore reconstituted the subject as a stateless person. Denied a status as subject of any national body, this figure could, by extension, be deemed "the enemy of every State." And, conversely, in violating the general tenets of international law, the outlaw additionally lost the protections of membership under a specific state body. As the jurist Gentili phrased it, "Subject peoples ...can not acquire [a status under international law] by revolt, because rights are not acquired by offenses."[10] Rebellion against the state led to a loss of citizenship, and, without this status, the outlaw was relegated to a position outside the protections of international law as well. By redefining the rebel as stateless person, this legal tradition codified the monopoly of sovereign bodies over the political use of force, not only within their territories, as in the classic Weberian formulation, but also throughout the often anarchic space of extraterritorial commerce and negotiation.[11] For the state system to function, agency had to be confined to sovereign bodies.

In defiance of this legal paradigm, however, the Spanish government rebuffed English demands for the extradition of Owen and Baldwin by arguing that the exiles were not stateless persons at all but were rather members of other corporate or political bodies, a status that protected them from such forced repatriation. Baldwin's membership in the Society of Jesus, they asserted, demanded that any punishment be determined by his superiors, and not by a foreign state. For Hugh Owen, it was emphasized that he had become naturalized as a Spanish subject over the course of his 30 years in exile.[12] Cornwallis countered this defense by charging, "for naturalized he [Owen]

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10. Alberico Gentili, *De Jure Belli Libri Tres*, trans. John C. Rolfe (New York: Oceana Publications, 1964), 78.

11. Weber correlated state power with "a claim to the monopoly of the legitimate use of physical force in the enforcement of its order" (*The Theory of Social and Economic Organization* [New York: Free Press, 1964], 154). As Janice E. Thomson points out, Weber analyzed the workings of sovereignty solely within the state's own borders, and his model did not consider the complications resulting from the extension of state power beyond territorial boundaries (*Mercenaries, Pirates and Sovereigns: State-Building and Extra-Territorial Violence in Early Modern Europe* [Princeton, NJ: Princeton University Press, 1994]).

12. On exile and English Catholics in Europe, see especially Christopher Highley, *Catholics Writing the Nation in Early Modern Britain and Ireland* (Oxford: Oxford University Press, 2008).

might be in some of the Dominions of *Spaine*, but how *disnaturallized* with such Construction, as to become exempte from his naturall Allegiance to the Prince and Country from whence he had received his Being and Breeding, I for my part understand not, having ever conceaved that to be *Character indelebilis*."[13] Cornwallis, in keeping with the tenor of international law, refused to recognize the possibility of subjects changing their citizenship. National identity, in his mind, remained intrinsic and unaltered, despite exile, migration, or political allegiance. But, ironically, in order to justify England's legal claim over these exiles, Cornwallis was forced to acknowledge their rights as English subjects. Contradicting the equation of domestic treason with a loss of status under international law, what he asserts as the impossibility of becoming "disnaturalized" in fact argues against the premise that the exiles were stateless persons lacking any rights and protections.

Cornwallis grants the exiles a status under English law only while they remain in exile. In a sense, what he is demanding is that the exiles be returned home so that they may be denied their rights. A number of draconian measures were opportunistically pushed through Parliament by early 1606, statutes that increased fines against recusancy, and also banned Catholics from holding political office, practicing professions such as law and medicine, or living within 10 miles of the city of London. These efforts culminated with the Oath of Allegiance, which demanded that all adult subjects profess their obedience to James as their lawful sovereign. A key component of the Oath called on subjects not only to forswear assisting any foreign power or conspiring against the nation, but also to renounce the principle that subjects could depose their monarch. Historians have previously noted the instrumental role of the Oath in enabling James to create a legal apparatus to back up his ideology of absolutism. But as Michael Questier has noted, the Oath bracketed off matters of conscience and limited its pledge to civic matters alone.[14] More

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13. Winwood, *Memorials of Affairs*, 2: 187. In alluding to "character indelebilis," Cornwallis drew on a term with a long theological history: Paul had used the term to refer to the intrinsic qualities of grace that remained as an integral core of the subject regardless of outward conversion or apostasy. Augustine, by contrast, saw it as an external manifestation of self that was produced through an adherence to sacramental ritual. Cornwallis transposes the terms of this theological debate—grace versus liturgy—to the context of national allegiance. The Oath of Allegiance had similarly hinged on the question of whether English identity was intrinsic (following Paul's model) or merely a product of outward conformity (*pace* Augustine).

14. Michael C. Questier, "Loyalty, Religion and State Power in Early Modern England: English Romanism and the Jacobean Oath of Allegiance," *Historical Journal* 40 (1996): 311–329. Also see Chris R. Kyle, "Early Modern Terrorism: The Gunpowder Plot of

recently, Rebecca Lemon has argued that the Oath was part of a conciliatory program, offering a way for loyalist recusants to return to the national fold following the Gunpowder Plot. It also functioned, she adds, to separate these moderates from an extremist fringe in the Catholic community.[15] Essentially, those who did not agree to the Oath could be more effectively identified and targeted by the state. Through their passive resistance, their character, to borrow Cornwallis's phrasing, would be "indelebilis."

In its effort to drive a wedge between moderates and extremists, the Oath intended to reintegrate loyalist Catholics by separating them from the activist branches of the Catholic exile community. It therefore attempted to curtail the various personal, textual, and institutional networks that linked Catholics at home with their counterparts on the Continent. As a result, the English state assumed for the first time a centralized control over the travel of subjects passing beyond the territorial boundaries of the nation.[16] A 1606 proclamation increased the authority of the commissioners of English ports, who, two years later, were also given responsibility for administering Oaths of Allegiance to returning travelers. These new procedures were part of a broader effort to "shutt up all the portes," as it was described in Parliament, "that the passage of the Thames was in the Eye of the state, and therefore could be better obserued what persons passed there."[17] Although these statutes imagined blocking off access to the national body, they also conceded the futility of such efforts. It was due to the state's failure to impose legal restrictions on the illicit travel of Catholics, after all, that it resorted to instituting extra-legal procedures for the surveillance and possible apprehension of returning Catholic subjects.

1605 and its Aftermath," in *Terror: From Tyrannicide to Terrorism,* ed. Brett Bowden and Michael T. Davis (St. Lucia: University of Queensland Press, 2008), 42–55.

15. Rebecca Lemon, *Treason by Words: Literature, Law, and Rebellion in Shakespeare's England* (Ithaca, NY: Cornell University Press, 2006), 107–123.

16. The beginnings of the English Mission had prompted an earlier spate of travel regulations in the 1580s, proclamations that similarly targeted Catholic travelers: for discussion, see Mark Netzloff, "The English Colleges and the English Nation: Allen, Persons, Verstegen, and Diasporic Nationalism," in *Catholic Culture in Early Modern England,* ed. Ronald Corthell, Frances E. Dolan, Christopher Highley, and Arthur F. Marotti (Notre Dame, IN: Notre Dame University Press, 2007), 236–260, esp. 240–242.

17. British Library, Edmondes Papers, Stowe MS 168, f. 380. On 27 February 1606, Salisbury refused to grant travel licenses for English Catholics to serve overseas. But even as he tried to curb the mobility of Catholics following the Plot, Salisbury nonetheless acknowledged that European wars depended on a constant stream of English and Irish subjects recruited for Dutch as well as Spanish armies (BL, Stowe MS 168, f. 347).

Although the English state's pursuit of Hugh Owen and William Baldwin intensified in the period immediately following the Gunpowder Plot, this was a project that had been initiated much earlier. Led by Robert Cecil, Earl of Salisbury and Secretary of State, the English government had attempted to implicate the exiles in a number of conspiracies over a period of several years. Salisbury's protracted vendetta, which often specially targeted Hugh Owen, had the effect of creating an intelligence environment that exaggerated the importance of the Catholic exiles. A report sent to Salisbury in October 1601, perhaps pandering to its audience, had described Owen and Baldwin as the "most dangerous" of the English expatriates.[18] Writing from London in early 1605, the Spanish ambassador had similarly taken note of Salisbury's antipathy, remarking that Owen's name was "more hateful here than that of the devil."[19] And just four months prior to the Gunpowder Plot, an English spy named William Turner would name Owen as the instigator of an invasion plot, one that, of course, never materialized.[20] In the narrative constructed in the English state's intelligence reports, the path of all conspiracies led back to Hugh Owen in Brussels. Yet in drawing these conclusions, English officials conveniently overlooked information that countered this presumed role. For instance, contradicting the way that Owen's prior meeting with Robert Catesby would be used as evidence of his participation in the Plot, in the course of this exchange Owen had actually discouraged Catesby from plotting against England, or hoping to install the Archdukes in power, since "all these parts were so desirous of peace with England."[21] The state's obsessive efforts to locate a foreign conspiracy and its willful desire to prove its own bad intelligence served as mutually supporting fantasies.

The English state's determination to create a link between Catholic exiles and the Gunpowder Plot is reflected in a letter of 28 March 1606, in which Salisbury instructed Attorney General Coke "to make Owen, the Jesuit, as

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18. National Archives, SP 15/34/106; *Calendar of State Papers, Domestic,...Addenda, 1580–1625* [London: Stationery Office, 1872], 415.

19. Quoted in Albert J. Loomie, *The Spanish Elizabethans: The English Exiles at the Court of Philip II* (New York: Fordham University Press, 1963), 83.

20. Antonia Fraser, *Faith and Treason: The Story of the Gunpowder Plot* (New York: Anchor Books, 1997), 124. On Turner's intelligence work for Salisbury, see Francis Edwards, "The Earl of Salisbury's Pursuit of Hugh Owen," *Recusant History* 26 (2002): 2–38.

21. Owen's statement derives from Thomas Wintour's account of his meeting with him; this document is printed in Samuel Rawson Gardiner, *What Gunpowder Plot Was* (London: Longmans, 1897), 61.

foul as possible."[22] As he ordered the most noted legal mind of his generation to embellish the dossier against Owen, one gets the impression that even Salisbury might not have fully believed the evidence. However, as seen in Cornwallis's exchange with Lerma, lack of precedent or material record did not impinge on this process of misinterpretation. Instead, Salisbury spearheaded an effort to create his own archive of evidence against Owen and the other exiles. Owen's name was first mentioned, for instance, in the midst of the notorious torture sessions inflicted on Guy Fawkes. In his signed confession dated 9 November, Fawkes claimed to have communicated the plot to Owen earlier that year.[23] This document is more often remembered for the nearly unintelligible form of Fawkes's signature, a graphic trace of the torture used to induce this admission. Among the multiple copies of the confessions signed by conspirators, including those of Fawkes and Thomas Wintour, Owen's name appeared only in some versions of the documents, an indication that his name was a detail added at a later date.[24] In order to have a case against Owen, Salisbury and his officials needed to create one. By repeating the accusation enough times, as Salisbury advised Sir Thomas Edmondes, his ambassador in Brussels, Owen's guilt would "appear as evident, as Sunn in the clearest day."[25]

In replacing the archive of evidence with one of its own construction, the state succeeded in conjecturing a narrative of Owen's history of plots against England, inventing a precedent that could then justify their attempts to prosecute him. To return to Ambassador Cornwallis's phrasing, these efforts all served to render Owen's treason as indelibly marked on his character. As a material record of such attributed guilt, Owen, Baldwin, and Stanley were even listed among the Gunpowder conspirators on a plaque erected to commemorate the event in October 1608.[26] Despite the fact that their participation was

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22. SP 14/19/170v; *Calendar of State Papers, Domestic, of the Reign of James I, 1603–1610* (London: Her Majesty's Stationery Office, 1857), 306.

23. *CSP, Dom., 1603–1610*, 247.

24. Thomas Wintour's signed confession exculpated Owen of any role in the Plot (see n. 21, above), while Owen's name was inserted in Fawkes's signed confession of 20 January 1606 (Williamson, *The Gunpowder Plot*, 88, 190; Mark Nicholls, *Investigating Gunpowder Plot* [Manchester: Manchester University Press, 1991], 45n., 31).

25. BL, Stowe MS 168, f. 263. Following his instructions from Salisbury, Coke's report at the arraignment of the conspirators on 27 January 1606 concluded that Owen's "finger hath beene in euery Treason which hath been of late yeres detected" (*A trve and perfect relation of the whole proceedings against the late most barbarous Traitors* [London: Robert Barker, 1606], E3v).

26. Fraser, *Faith and Treason*, 201n.

never established, and that they were in fact never indicted, the inclusion of their names stood in as proof of the Plot's international dimension.

The monument served, in a sense, to indict Owen in absentia, and it represented a final, desperate effort on the part of the English state to make some charges stick against him. As Francis Edwards has shown, the English state had intensified its efforts to capture Owen immediately prior to the erection of the plaque in 1608.[27] After the failure of their earlier attempts to have Owen extradited, the English state instead chose to try to kidnap him. This proved to be a spectacular failure, however, and Salisbury's agent, arrested before carrying out his mission, revealed the entire operation to Spanish authorities in Flanders. What makes this odd little anecdote pertinent is the kind of precedent that it attempted to set. Whereas James's peace with Spain had aspired to establish diplomacy as the dominant mode of interstate exchange, the schemes of his chief minister instead opted out of the diplomatic system altogether. In its attempt to abduct Owen, the English state asserted its unilateral right to extend its sovereignty outside its territory. Moreover, it also assumed the prerogative to step outside the law of nations to achieve its objectives. The basis of this extraterritorial power was the claim of jurisdiction over its own expatriated subjects. As Cornwallis had noted, Catholic exiles could not be "disnaturalized." Through this claim over them, the English state also denied the possibility that subjects could acquire any other competing bonds of political association or identity. Even if exempted from the benefits of citizenship, and relegated to a position of exile, the state asserted its power over them, a sovereignty that could be extended in order to reclaim them, even by force.

In 1610, the English state did manage to apprehend and extradite one of the unindicted coconspirators, Father William Baldwin. Captured while traveling near Dusseldorf, he was transferred to London, where for eight years he remained imprisoned without charge until his release was secured through the intervention of the Spanish Ambassador Gondomar. It is not completely clear why Baldwin had the misfortune to have been passing through the Protestant territories of the Elector Palatine just at the moment when an English expeditionary force was in the area that could extradite him to England. Past references to this event have assumed that Baldwin, disguised as an Italian merchant, was merely en route to Rome when he was stopped by border guards and discovered with incriminating documents in his possession. But

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27. Francis Edwards, "The Attempt in 1608 on Hugh Owen, Intelligencer for the Archdukes in Flanders," *Recusant History* 17 (1984): 140–157 and "The Earl of Salisbury's Pursuit of Hugh Owen," *Recusant History* 26 (2002): 2–38.

Baldwin's capture also coincided with the fall of the nearby city of Juliers, which a contingent of English and Dutch forces had captured in order to prevent the succession of a Catholic heir to the region. Fleeing in advance of a Protestant army, Baldwin was forced to emerge from hiding and attempt a dangerously conspicuous border crossing.

The fact that his capture followed hard upon the Protestant victory at Juliers also explains the strangely formal process of his extradition. Once handed over to an English force—one led, ironically enough, by Sir Edward Cecil, the Earl of Salisbury's nephew—Baldwin was paraded from Dusseldorf in the midst of what was understatedly described as a "strong convoy," an enormous procession consisting of 45 harquebusiers on horseback, Cecil's entire company of horse, and 30 musketeers in wagons. Adding to this total, there was also a contingent of 500 horse- and footmen who trailed the convoy. The chief duty of this latter group, though, was to protect the funds en route to the troops.[28] Baldwin himself was described as "bound with a heavy chain from the neck to the breast, where it was turned and wound round his entire body, being twice as long as would have been required to secure an African lion."[29] The initial enthusiasm of this triumphal procession began to wane over the course of several days, however, as Cecil's forces eventually realized that they had been given the wrong directions and were forced to remain in place, with several hundred soldiers guarding a lone, chained Jesuit.[30] Eventually, responsibility for transferring Baldwin to England was delegated to two English soldiers.[31]

Instead of serving to display the prowess of England's military strength and espionage networks, it is perhaps only appropriate that Baldwin's extradition quickly descended into farce. Because of the accidental, contingent nature of his capture, any effort to attribute it to the directed power of the state assumed comic proportions. This episode illustrates the tenuous, mediated character of the extraterritorial workings of state power. The military company that seized Baldwin was, after all, a force that had only the tacit and general approval of the English state. As was often the case with English military interventions on the Continent, the English state could maintain a

policy of plausible deniability, refusing to acknowledge that their forces had state backing, particularly if the missions failed or led to protests from other nations.[32] When events went well, even if by chance, then the state could quickly claim credit, which may explain the ludicrous degree of ceremony prompted by Baldwin's arrest.

The English state had resorted to its policy of plausible deniability following the botched attempt to kidnap and extradite Owen two years earlier. After his agent, one Thomas Wilfourd, had been captured in the Low Countries and revealed his mission, Salisbury denied any knowledge of the plot: as he protested, "what were Owens death to the state?...I am not without daylie offers to have my choice of them cutt off, if I were so blooddilye disposed."[33] Two months later, Salisbury would write to his ambassador, Sir Thomas Edmondes, thanking him for his help in covering up the scandal.[34] As this episode reveals, a key function shared by the state's various agents —from ambassadors to assassins—was to cover the tracks of state authority: not only to carry out the covert, and often illegal, business of the state, but also to ensure that the workings of sovereignty remained untraceable. But the latitude conferred to these extraterritorial agents also reflected the tenuousness with which state authority was extended abroad, and the extent to which it was necessarily dispersed along networks of mediated authority. In extraditing Baldwin, for instance, authority had to be delegated to two English captains.

Offsetting an abstracted sense of the English state as an entity supported through an organized bureaucracy and established diplomatic channels, these examples attest to how the extraterritorial extension of state power depended on agents and networks that operated outside the state's rules and protocols. At the beginning of his reign, James I had aspired to inaugurate a new diplomatic mode for interstate exchange. Part of his efforts intended to repudiate any illicit activities on the part of the state, such as the sponsorship of privateering or the quasi-official raids that had continued throughout the late Elizabethan period. Moreover, early Jacobean diplomatic practice attempted to limit the kinds of delegated agency that subjects could claim for themselves

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28. Winwood, *Memorials of Affairs*, 3: 210.

29. Quoted in Francis Edwards, *Guy Fawkes: The Real Story of the Gunpowder Plot?* (London: Rupert Hart-Davis, 1969), 194.

30. Winwood, *Memorials of Affairs*, 3: 212.

31. Winwood, *Memorials of Affairs*, 3: 210. Sir John Burlacy and Captain Barnaby Dewhurst were the soldiers paid to transfer Baldwin from Dusseldorf to London (SP 14/57/64; *CSP, Dom., 1603–1610*, 637).

32. On the early modern state's use of policies of plausible deniability, see Thomson, *Mercenaries, Pirates and Sovereigns*, 21, 43.

33. BL, Stowe MS 170, f. 127v. As evidence of the pervasive suspicion regarding his motives, Cecil was forced to compose a pamphlet in which he countered charges that he himself had orchestrated the Gunpowder conspiracy (Richard Dutton, *Ben Jonson, Volpone and the Gunpowder Plot* [Cambridge: Cambridge University Press, 2008], 20).

34. BL, Stowe MS 170, f. 203.

in an extraterritorial context, as seen with the Jacobean regulations regarding foreign service, privateering, and travel. Contradicting its stated goals, the imperative to locate some kind of international conspiracy behind the Gunpowder Plot quickly led the Jacobean state to violate its own tenets. The state of emergency prompted by the discovery of the plot excused the state in exempting itself from its own principles.[35]

Throughout the eight-year period of his imprisonment, Baldwin was at the center of extra-diplomatic efforts by England and Catholic European states that represented a kind of traffic in subjects, with various sovereign authorities initiating schemes to kidnap and exchange subjects from opposing sides of the confessional divide. Within a month of Baldwin's capture, Salisbury's informants reported that the Papal nuncio was arranging to have members of Cecil's own family abducted while they toured the Continent.[36] Although nothing arose from these plans, a lower-ranking member of the Cecil traveling party—John Mole, tutor to Cecil's grandson Lord Roos—was later imprisoned by the Inquisition and unsuccessfully put forward as a bargaining chip in a possible exchange for Baldwin.[37] Hugh Owen was similarly at the center of some of these schemes: the Spanish ambassador, for instance, reportedly opted not to intercede on behalf of Father Henry Garnet and prevent his execution "lest the King should insist on the delivery of Owen."[38]

In Jacobean diplomacy, one of the preconditions for interstate peace was a suppression of the various illegal economies flourishing beyond the reach of state authorities, from privateering and mercenary service to the circulation of Catholic priests and their texts. However, in stepping outside the law of nations and legal precedent in its obsessive pursuit of the Catholic exiles, the English state began to resemble these "rogue" groups and their illicit

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35. As Carl Schmitt argues, sovereignty entails a "state of exception," an exemption of state authority from the laws that seemingly constitute it: "the authority to suspend valid law ... is ... the actual mark of sovereignty" (*Political Theology: Four Chapters on the Concept of Sovereignty*, trans. George Schwab [1922; Cambridge, MA: MIT Press, 1985], 9). Giorgio Agamben analyzes the implications of Schmitt's paradigm in *State of Exception*, trans. Kevin Attell (2003; Chicago, IL: University of Chicago Press, 2005).

36. Captain William Turner to Salisbury, 22 September 1610 (SP 14/57/88; *CSP, Dom., 1603–1610*, 634).

37. SP 14/71/34–34v; *Calendar of State Papers, Domestic, 1611-1618* (London: Stationery Office, 1858), 153.

38. Sir Dudley Carleton to John Chamberlain, 2 May 1606, in *Dudley Carleton to John Chamberlain 1603–1624: Jacobean Letters*, ed. Maurice Lee, Jr. (New Brunswick, NJ: Rutgers University Press, 1972), 81.

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economies.[39] In the wake of the Gunpowder Plot, the English state refused to recognize the possibility of groups whose interests and identities were not coterminous with sovereign state institutions. What resulted was a confused legal—as well as extra-legal—categorization that left no conceptual place for the exile, extraterritorial subject, or non-state agent.[40] Instead, a contradictory and opportunistic logic was applied that cast these groups alternately as outlaws, existing outside of and therefore unprotected by international law, or as traitors, rebels who must be forcibly brought back into the national fold and punished for their actions. But in this motivated and suspended state of emergency, the English state acquired the character of illegality and extraterritoriality attributed to its enemies.

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39. This point is indebted to Jacques Derrida's discussion of the classification of "rogue nations" in *Rogues: Two Essays on Reason*, trans. Pascale-Anne Brault and Michael Naas (2003; Stanford, CA: Stanford University Press, 2005).

40. The circumstances of Baldwin's arrest reflect the inability to categorize the position of the expatriated Catholic subject. Upon his capture, Baldwin is reported to have "acknowledged himself a subject of his Majesty of Gr. Brittayne" (SP 14/57/64; *CSP, Dom., 1603–1610*, 631). In this instance, Baldwin resumed an identity as a "British" citizen only as an effect of the state's claim of juridical authority over him.

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