

## Title

Christian Tolerance and Tolerance of the Christians: Natural Law and Conscience in James Dundas's *Idea Philosophiae Moralis* (1679)

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Natural law, conscience, tolerance, Restoration, Hobbes, Stoicism

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#### **Introduction**

Seventeenth-century Scotland does not exactly evoke the idea of tolerance regarding religion. Scottish authors are also usually absent from the studies on early modern tolerance in Britain, dominated by the English debates. However, there is an intrinsic difficulty in considering Penn, Williams or Locke, situated as they were in a different religious and political situation, as representative of Scotland. As part of the aim of this special issue to better weave some minor Scottish and English figures into the main early-modern narratives, this paper presents the first account of tolerance regarding religion in the incomplete manuscript *Idea philosophiae moralis* (1679) by James Dundas (c.1620–1679), First Lord Arniston. The *Idea* is significant for many reasons. It is an entirely new source for the intellectual history of pre-Enlightenment Scotland. It reveals Dundas's scholastic and classical education as well as his career in the judiciary, especially in the long reflections on Stoicism and natural law. Dundas was a Covenanter who resigned from the High Court in response to the anti-Covenanters laws of 1663. The *Idea* hints at how as a Restoration Covenanter who refused extremism and intolerance could come to terms with Restoration Scotland. It is the intellectual testament of a man who crossed the trajectory of Scottish history only briefly, but who enjoyed the friendship of two protagonists of Restoration Scotland such as James Dalrymple, Viscount Stair, and George Mackenzie of Rosehaugh. A man whose long-lost intellectual contribution has finally seen the light.

### **1. The Restoration and the *Idea Philosophiae Moralis* (1679)**

Some biographical notes about James Dundas help us put into focus important themes of his philosophy such as Christian tolerance, Stoicism, Calvinism, conscience, natural law, civil war and the unity of the state.

James Dundas, First Lord Arniston, was born around 1620 into a Presbyterian family. He was educated at St Leonard's College, St Andrews, by regent James Guthrie, who was converted by Samuel Rutherford to the Covenanting cause. After university, Dundas signed the Covenant on 12 December 1639. He became an Elder of the kirk in 1640, and served as an MP for Midlothian in 1648–50. Without a formal training in the law, he became a judge in 1660 and an ordinary member of the High Court of Session in 1662 with the title of Lord Arniston.

On 28 March 1661, the Restoration Parliament passed the so-called 'Rescissory Act', the *Act rescinding and annulling the pretendit parliaments in the years 1640, 1641 etc.* The act declared the years between 1633 and Charles II an *interregnum*, blamed the Covenanters for the civil war and declared to be legislating for the word of God (in its Episcopalian interpretation), monarchical government and 'the public peace and quiet of the kingdom.' The later *Additional Act concerning the declaration to be signed by all persons in public trust* of 7 August 1663 declared that no one who had not offered a formal renunciation of the Covenant shall 'exerse any publick trust or office'. As a judge and a Covenanter, Dundas was directly concerned.<sup>1</sup>

Dundas and James Dalrymple, later Viscount Stair, his friend and fellow judge, negotiated with Lord Lauderdale, the king's representative. They refused to declare that 'the National Covenant of 1638 and the Solemn League and Covenant were unlawful oaths', and Dalrymple proposed to qualify the renunciation with the words 'in so far as they were against the law, and against the oaths and obligations aforesaid, as they are construed to import any obligations to act or endeavour against law.' They were offered a public written renunciation and an oral *salvo* at a private audience with the king. Dalrymple eventually accepted the offer. In November 1663, Dundas was the only member of the High Court to resign. In a letter dated 7 January 1664 Dundas maintained that:

I did some weekes ago send a demission of my place in the Session of the Court [...] I shall noe longer be able to serve as a publick minister, yet I shall never omitt anything shall be in my powers as a private man.<sup>2</sup>

Dundas retired to private life at Arniston House, south of Edinburgh, where he died in September 1679. The anti-Presbyterian Restoration policies cost Dundas his public life and job, and his son James went into exile in the United Provinces until the Glorious Revolution. But he preserved the family wealth and an ‘intimate friendship with the ruling party’.<sup>3</sup> During the negotiations, Dundas did not argue for a version of the two-kingdom doctrine or of liberty of conscience, common in seventeenth-century Protestant arguments for non-conformism.<sup>4</sup> Dundas was willing to renounce the Covenant on condition that the king acknowledged its non-rebellious nature, for in 1638 it upheld the established church and monarchy. So the accent seems to be placed on *loyalty*, rather than on confessionalism. As Mason observed, ‘it was only *in extremis* that [...] the nobility would seriously consider their rights as active citizens to trump their duties as loyal subjects.’<sup>5</sup> During the final six months of his life Dundas wrote a Reformed scholastic treatise which survives as a 300-page, incomplete Latin manuscript entitled *Idea philosophiae moralis*. The *Idea* was discovered few years ago in the Dundas family library, so it represents an entirely new source for late seventeenth-century Scottish intellectual history and philosophy. Scholastic natural law theory, Hugo Grotius and the critical discussion of Thomas Hobbes provide the central arguments. The Gospel, Stoic themes (especially from Seneca and Cicero), Roman law, and the moral letters of René Descartes are incorporated in significant ways.<sup>6</sup> The investigation of tolerance regarding religion in the *Idea* runs into several difficulties, which suggest great caution. A general difficulty is that the *Idea* is unfinished and unrevised.

On page 217, Dundas notes that a longer discussion of Thomas Hobbes's contractualism takes place in a Section *de iustitia et legibus*. The *Articulus de Iustitia* begins on page 311 and ends, with the entire manuscript, on page 313. Perhaps the reference is to the Section *De prima regula morum* (185–197) which is followed by four appendices on conscience, and natural law, self-love and the state of nature against Hobbes (197–220), which will feature in this paper. On page 157 we read a reference to a discussion of the rational soul ‘ubi de incorporeo iam; plenius vero in pneumaticis’, which is not in the manuscript. A second difficulty is that the themes relevant to the seventeenth-centuries discussion of political and religious tolerance are not explicitly treated or arranged for the discussion of ‘tolerance’. As observed in the Introduction to this special issue, this is not uncommon, including in the eighteenth century. The explicit use of ‘tolerance’ concerns the kind of tolerance proper of a Christian, which will be our starting point. Thirdly, there is no history of the *Idea*: we cannot ascertain whether it was written for publication, whether Dundas discussed its content with others.<sup>7</sup> The *Idea* is not mentioned in Dundas's correspondence, there are no copies or drafts of it and Dundas's library was sold off in the late nineteenth century. In this relative lack of intellectual context, Dundas's life and the renunciation affair of 1663 remind us of the importance of looking at the *Idea* from the perspective of intolerance regarding religion.

## **2. Christian Tolerance and the Duty to the Self**

The *Idea philosophiae moralis* presents the traditional tripartition of justice into duties towards god, the self and the others in a strong natural law framework.<sup>8</sup> The duties towards god and the others will feature mainly in the discussion of conscience, natural law and the state. The duties towards the self are exemplified by ‘Christian tolerance’, the kind of tolerance which is appropriate to the believing Christian.<sup>9</sup>

### **2.1. Aristotelian virtue**

Tolerance as a virtue is discussed *passim* in the sections on patience, fortitude, magnanimity and Christian humility.<sup>10</sup> The capacity to *tolerari* (to forbear, tolerate), of “bending without breaking”, is a feature of the virtues of patience and fortitude. ‘Tolerance is a part of patience, by which the soul endures, easily and steadily, through the hardest things and most unpleasant to animal life, out of love of that which is the best’, namely god.<sup>11</sup> The other part of patience is continence, which protects body and mind from the influence of pleasure by teaching moderation about it, while tolerance teaches resilience against hardship and pain. The Stoic Epictetus summed up his whole moral philosophy with the words ‘sustain with tolerance, abstain with continence’ (‘sustine tolerantia, abstine continentia’).<sup>12</sup> Tolerance and continence contribute to the strength of character because patience is a ‘vi[r] et robur animae’ and not a ‘meram passivatem.’<sup>13</sup> Tolerance is also a part of fortitude, which is defined as ‘the virtue by which we help ourselves in pursuing those means towards the best end.’<sup>14</sup>

The virtue of patience is said to concern all moral actions,<sup>15</sup> because pain and pleasure always enter our moral practical judgments: we tend to avoid some good things because they are hard, and to indulge in bad things because they are pleasant.<sup>16</sup> Patience and fortitude have tolerance in common because tolerance ‘is about terrible and horrible things in the course of duty,’<sup>17</sup> and hardship in the performance of duty should not be a deciding factor. Following Cicero in *De officiis*, the moral dimension of *tolerari* becomes clear: ‘no one who fears death, pain, exile, and poverty can be truly just, nor can he who gives precedence to things which are against fairness – sincerity and patience, continence and tolerance strongly incline towards morality.’<sup>18</sup>

### **2.2. Stoicism**

This description of moral character is reminiscent of Stoic themes.<sup>19</sup> First and foremost, for Dundas belief in the Fall justifies the accusation of pride against the Stoics. The idea that virtue and consequent happiness are within our power is incompatible with the post-lapsarian condition of human nature described by Calvinist theology.<sup>20</sup> The Stoics have a ‘quasi-idolatric’ trust in reason: ‘fac te faelicem, inquit Seneca,’<sup>21</sup> and their ideal *apatheia* is against human nature and the Christian prescription of universal love.<sup>22</sup> Dundas believes that human nature is not the source of morality because the fallen human being is incapable of any good deed and of faith without divine assistance,<sup>23</sup> and rejects the idea that humankind’s natural inclinations are virtues,<sup>24</sup> perhaps with the only exception of the natural desire towards god. However, some Stoic themes are important precisely from the perspective of the Calvinist anthropology of the Fall. In *Romans* 1:20 Paul declared human beings ‘inexcusable’ because even the fallen human beings are not so entirely corrupt as to be unaware of their fallen condition and of god. This awareness is not a unique possession of the Christians: Dundas approves of Cicero’s passage in the *De officiis* where he commends ‘gratitude to god’ as the rational motivation behind the duty to obey the natural law.<sup>25</sup> Dundas looks favourably at the Stoic prescription to tame and subjugate the passions because corrupt human nature lacks the moral strength necessary to tolerate pain and pleasure, which threaten the autonomy and fairness of the moral judgments by usurping the guiding role of reason.<sup>26</sup> Seneca is the main authority, and about one-fourth of the *Idea* is a transcription and commentary of Seneca’s *Epistles* and *De vita beata*, in Justus Lipsius’s edition. Seneca’s main lesson is not only self-control and resilience, but also to appreciate hardship as a ‘good coming out of an evil’. No person is said to be ‘more unhappy than he who never suffers from anything bad or averse, for he is deprived of a fundamental learning and perfecting experience,’ and solace comes from the awareness that some ‘evils are forborne for the sake of something morally good.’<sup>27</sup> If they are correctly judged as part of a grand design, ‘adverse things are not bad things [happening

to] good people, but rather good means by which [good people] can exercise.’<sup>28</sup> Resilience and self-control are then part of the Christian psychological and moral equipment, and on this point the Stoics seem be closer than Aristotle to Calvinist anthropology.

Tolerance ‘is about terrible and horrible things in the course of duty’,<sup>29</sup> for it teaches resilience against the ‘servile [passions] which render someone incapable of performing their duty’.<sup>30</sup> Several commentators have noted that the Protestant natural law tradition’s emphasis on conduct and duty, rather than character education, is the counterpart of the belief in the corruption of human nature.<sup>31</sup> On this view, human society naturally reflects the fallen human nature. On the one side, fallen human nature cannot be the source of morality because ‘the hostile spirit originates from the corrupt nature.’<sup>32</sup> So, an external authoritative law is needed which prescribes and enforces duties and conduct.<sup>33</sup> On the other side, some passions which are directed towards others in non-egoistic ways argue for human beings’ natural sociability. Dundas agrees with Cicero that we human beings are ‘not born only to ourselves but also so that we benefit homeland, society and the others according to our means.’<sup>34</sup>

The conceptual move from tolerance of adverse things to tolerance of ‘bad people (the immoral, the heterodox, the infidel)’<sup>35</sup> is a political use of Stoic themes, along with emphasis on ‘immutable natural law’.<sup>36</sup> Dundas approvingly quotes Epictetus who taught to ‘forebear accidents and calamities, abstain from pleasures, vices and provocations’ either coming from others or directed at others.<sup>37</sup> As Allan has written, in the *Religio Stoici* (1663) Dundas’s friend Mackenzie wished ‘to encourage [...] to imitate the rational self-control and mutual respect achieved by the ancients.’<sup>38</sup>

### **2.3. Christian love**

Dundas believes that Thomas Hobbes, like the Stoics, has a wrong account of human nature. Hobbes’s idea that humankind’s natural state is one of constant war in one sense mistakes the

present post-lapsarian state for the natural state: human beings seek war and are incapable of moral and political self-government because of the Fall, not because of their nature tout court.<sup>39</sup> However, Dundas concurs with Hobbes that human beings need an external authority for the well-functioning of society, regardless of whether this is because of a ‘fallen’ or a ‘natural’ state. The message of Christian love has political relevance as the coronation of the teaching of the heathen philosophers. The Scriptures, and chiefly the teaching of Paul, provide the insight into the moral law.<sup>40</sup> One central text is 1 *Corinthians* 13:7: ‘Beareth all things, believeth all things, hopeth all things, endureth all things.’ (*King James Version*), which prescribes tolerance or forbearance as a central Christian virtue. For Dundas, Paul’s message of Christian universal love is at once a psychological, moral and social novelty, and all the gentile philosophers, including Aristotle, knew nothing of the commandment to ‘love thy enemy.’<sup>41</sup> Dundas believes that Ulpian’s famous dictum ‘honeste vivere, alterum non laedere, suum cuique tribuere,’<sup>42</sup> which borrows from Stoicism more than from Roman law,<sup>43</sup> is summed up more effectively by Christ’s teaching ‘si vis amari, ama,’<sup>44</sup> because the essence of justice is ‘do not do to others what you do not wish to be done to you.’<sup>45</sup> Equivalent versions are that ‘the innocent should not be harmed,’ and ‘to each one their own,’<sup>46</sup> the ‘golden rule of reciprocity.’<sup>47</sup> ‘Doing good even to the enemies is a useful and most reasonable advice’<sup>48</sup> because ‘hatred yields to soft words.’<sup>49</sup> *Vincit malos pertinax bonitas*, as Seneca wrote. Another classical author who understood some content of the law is Sallust. Dundas is particularly fond of the sentence from the *Bellum Jugurthinum* ‘concord makes small things grow, discord maximally destroys them’, which he cites at several important instances. He adds that both experience and the natural light prove that ‘the best means to concord is patience.’<sup>50</sup> The moral ideal is not Stoic apathy but Christian tolerance and love. How to make the move from individual tolerance to social peace?

### 3. Conscience and the Duty towards God

At the end of the Civil War Scotland was a bitterly divided and impoverished nation. The *Act concerning religion* (1661) of the Scottish Parliament commented that great was the sentiment ‘for public peace and quiet of the kingdom’. In Britain, quite some non-conformists like Robinson, Penn, Williams and Walwyn, and a latitudinarian like Chillingworth had advanced diverse arguments for tolerance on the grounds of liberty of conscience.<sup>51</sup> Conscience was proclaimed to be bound to God alone, and its liberty could not be transferred to the state. Penn went as far as to say that intolerance was the greatest sin because God alone had authority over individual consciences. Otherwise, preoccupation for the unity of the state and for the potentially disruptive ‘pretended liberty of conscience’ was shared by thinkers as diverse as Samuel Rutherford, Thomas Hobbes and the early John Locke. This is what Forst has called ‘the spirit of the Restoration.’<sup>52</sup>

Before the Restoration, Samuel Rutherford in *A Free Disputation against Pretended Liberty of Conscience* (1649) influentially argued against conscience as ‘a Prerogative Royall beside a rule’ and ‘our minde, [as] a free borne absolute Princesse.’<sup>53</sup> Conscience is a ‘knowledge with awareness’ which is ‘restricted’ to human actions and principles,<sup>54</sup> and ‘a principle of our acting in order to what the Lord commandeth in the Law and the Gospel.’<sup>55</sup> He argues that a conscience which refuses the fundamental beliefs necessary for salvation and which ‘obstinately holds errors in non-fundamentals’ is punishable by the magistrate:

Yee must beare one another infirmitie... Gal[atians]. 6.I. and yet not tollerate their errors, and forebear to admonish and also sharply rebuke them and if need be, the *Church* and *Magistrate* may proceed to further censures, to excommunication and the use of the sword, for justice is not contrary to meeknesse.<sup>56</sup>

Rutherford rejects arguments for tolerance based on the distinction between fundamentals and non-fundamentals because faith is from grace and ‘conscience cannot be compelled in the one more than in the other.’<sup>57</sup> Rutherford makes the resounding point that ‘Schisms and actual gatherings of churches out of churches cannot be tolerated.’<sup>58</sup> He interprets Paul’s teaching on forbearance as ‘against tolleration ... for the minde within ... and for the practice without.’<sup>59</sup> It is a Christian duty not to condone errors and to permit schisms in the church. John Locke in the *Two Tracts on Government* (1661–62) argued that conscience was too often used as a ‘false pretext’ to justify anti-establishment activities. Here, Locke feared for the integrity of the state not for the salvation of the soul.<sup>60</sup> There is no evidence that Dundas read Locke: if the universities are a good indicator, the first discussion of Locke’s ideas in Scotland started in the 1690s, arguably because of the success of *An Essay Concerning Human Understanding*. But he did read Hobbes’s *Leviathan*, especially the Latin edition of 1668, as textual evidence suggests. Hobbes is the main trigger for the discussion of political themes in the *Idea*.

Dundas rejects Hobbes’s argument against liberty of conscience. Dundas reports Hobbes’s view in *Leviathan* chapter XXIX that it is seditious to hold that ‘whatever the citizen does against conscience is a sin,’ and that the primacy of individual conscience runs counter to the higher principle of civil obedience only because he ‘is so scared of sedition’.<sup>61</sup> For Hobbes only the public law should bind the conscience, thus private conscience should be identified with public conscience.<sup>62</sup> Without this unifying principle, Dundas goes on, ‘society would divide into the great variety of opinions of the private consciences, and people would obey the highest power only as much as they see fit.’<sup>63</sup>

Against this view, Dundas formulates a version of the liberty of conscience argument in two directions. He believes that acting against conscience is a sin because there is a moral duty to

follow conscience as ‘God’s vicar’ (‘*dei vicaria*’).<sup>64</sup> This duty follows from the fact that conscience is the place where the divine law – rather than the Hobbesian egoistic motives – is made manifest. Dundas’s understanding of the prerogatives of conscience is grounded in Scriptures. Since God alone knows our hearts, ‘the church does not judge the things which are hidden, even less so does the civil republic,’<sup>65</sup> and the Epistle of James 4:11–12 condemns those who rashly pass judgments on their brethren’s conscience.<sup>66</sup>

However, conscience does not have ‘a Prerogative Royall beside a rule,’ to cite Rutherford, because conscience’s connection with God is mediated by the apprehension of the natural law. Conscience is really identified with the intellect,<sup>67</sup> and its sole task is to judge about the coherence between the god-given moral law and the particular circumstances of the moral action. With a juridical metaphor, in the moral syllogism ‘conscience is like a legislator in the major [premise], a witness in the minor, and a judge who pronounces the sentence in the conclusion.’<sup>68</sup> The second move addresses Hobbes’s fear of the pretensions of conscience against the state. Dundas objects that ‘one should not fear that following one’s own conscience is destructive or divisive of the state, since religion is the glue of society, in virtue of which the parts of society are knitted together most closely. True religion is above all pure, and as a consequence, peaceful.’<sup>69</sup>

Dundas believes that liberty of conscience is not a threat to the state because Paul taught that when God alone binds our conscience he does so by dictating obedience to the superiors.<sup>70</sup> Interpreting *Romans* 1:13, a classical locus in the Christian political thought about church–state relations, Dundas holds that ‘that which does not come from faith (that is, from god’s will and from our judgment in the conscience) is sinful, otherwise there would be no antithesis of whether it is better to obey man rather than god.’<sup>71</sup> Therefore, he who sins against conscience ‘well informed and morally certain,’<sup>72</sup> sins against God’s *two* vicars on earth: first conscience itself, then king and magistrate.

Conscience is not described as an inner awareness of the divine which grants access to truth other than the natural law. There is no room for enthusiasm: conscience really is the intellect when it apprehends the principles of the natural law and when it revises its own moral arguments.<sup>73</sup> Dundas draws from Cicero and Paul to argue that natural law is ‘engraved in our hearts’ (*‘lex naturae insculpta cordibus’*),<sup>74</sup> hence we are naturally made aware of it, and bound to it and by it. Since God is the only true legislator, a human law in contradiction with divine law cannot be right.<sup>75</sup> Admittedly, many in Restoration Scotland would have received with strong suspicion the claim that true religion is *‘pura, dein pacifica’*. Therefore, it is important to understand Dundas’s conception of the relation of religion and natural law.

#### **4. Natural Law**

Dundas holds a version of the divine command theory: the normative source of morality is the god-given law and *‘nulla lex nulla transgressio,’*<sup>76</sup> with the anti-contractualist remark that a world without law is metaphysically impossible because the law is from god eternal. In moral psychology as well as in God, the intellect has logical priority over the will: the will is the moving faculty but it can only follow, by way of necessity, the good presented by the intellect.<sup>77</sup> For Dundas, God is internally, hence freely, determined by his rational nature so he cannot act or prescribe anything against reason. God wills a given law because it is rational, hence good. Two questions follow: how the natural law is known, and what it prescribes. The content of natural law and right reason is one and the same,<sup>78</sup> and the archetype of right reason is god’s rational divine nature.<sup>79</sup> Divine law and natural law are one and the same because they flow from the rational divine nature. What changes is how we know them. This same *rational law* is accessible via the Bible as divine law, and via post-lapsarian natural reason as natural law. Therefore humankind is (twice) inexcusable. Divine law is the

Decalogue completed by Christian love. Calvin had argued that the existence of god, his eminence and due worship were the deliverances of the *sensus divinitatis*. For Dundas, these are the very first principles of natural law, or the duties towards god. Further content of the natural law is rationally established by god insofar as the rational creature exists.<sup>80</sup> Hence, the first rule of morals is divine right reason, while the proximate rule is created right reason, namely angels and human beings.<sup>81</sup> The love of god is ‘perceived as right’ by the creatures (‘*praesentitur ut bonum*’), just like its opposite, the hatred of god, is perceived as wrong.<sup>82</sup> From the perfection of god derives that god cannot lie, that he cannot reveal a falsehood – otherwise the believer’s faith in the veracity of revelation would be groundless.<sup>83</sup> Just as ‘god cannot abdicate from himself and his dominion over the creatures, so the rational creature cannot not be bound by the law of gratitude to worship and honour god.’<sup>84</sup> The normative power of natural law lies in its promulgation by the highest authority in the most unambiguous terms, via reason and Scriptures. Against Hobbes, natural law is truly a ‘law’ because it has all the characteristics of it: the power of the prescriber, the fairness of the prescribed content, and its manifestation via a sign, oral or written, which clearly manifests the will of the prescriber.<sup>85</sup> Ulpian had argued that the emperor’s decision was legally binding. Dundas objects that the *rescriptum*, the emperor’s case-by-case answer to individual legal questions, and the acts of parliament are not law properly speaking,<sup>86</sup> unless they conform with divine law. It is intriguing to remind us that these words come from a judge who suffered from an act of parliament.

The content of the natural law is marked by its rationality and deducibility from the first principles, accessible to post-lapsarian and heathen reason alike. We have seen above the duties towards the self and towards others: chiefly, that each one is entitled to their own, and that the innocent should not be harmed.<sup>87</sup> From these derives that peace should be fostered

and promises kept.<sup>88</sup> Further, more specific laws are included ('comprehenduntur'): from the duty to worship god, it derives that god should not be offended, that an idol should not be worshipped. From the law of gratitude it follows that parents (and God) should be honoured. From the duty not to harm the innocent and from the law that each one is entitled to their own, it follows that theft, deceit and cheat are not permitted.<sup>89</sup> Elsewhere, Dundas lists the principles of worshipping God, honouring the parents, loving the neighbours and the enemy, keeping one's word, seeking peace, respecting the innocent and the like. In general, to seek the good and to avoid evil are the foundation of all possible positive laws.<sup>90</sup> By its very nature natural and divine law does not concern contingent matters and Dundas illustrates this point with the example of a contingent law from the Bible, the Sabbath:

When god prescribed that the seventh day was to be sanctified, he could also have prescribed the sixth or the third [day], without incompatibility, also from the hypothesis of the rational creature ... that god was to be worshipped especially on the seventh day since creation, rather than on another day, does not seem to be evident by the natural light, nor to be engraved by nature in the hearts of human beings.<sup>91</sup>

The Sabbath is the only article of the Decalogue which is not in the natural law because it is contingent. Hence it is not from natural law which binds universally because of its intrinsic rationality, but from divine positive law which can change with respect to peoples and times. The main points of Dundas's natural law theory seem to be the following. Natural and divine law coincide, and human beings are inexcusable because natural law is both clearly promulgated and intrinsically rational, hence perfectly knowable and universal. Conscience is free not to obey the law, but *true* liberty lies in obeying the law: following Seneca, 'Deo parere, libertas est'.<sup>92</sup> This view targets the so-called argument from fallibilism.<sup>93</sup> If the law is

unambiguous, even in the post-lapsarian state, then the appeal to toleration of different beliefs on the grounds of humankind's limited and incomplete grasp of the law loses its epistemological foundation.

## 5. Civil war

'Civil war originates in disobedience and its effects are mostly uncivil, inconvenient and grave.'<sup>94</sup> For Dundas civil war is worse than a war between states because it provokes a fundamental breach of those social bonds most needed to maintain a society, namely the principle that 'trust should be preserved, and your promise kept,' which he finds in Grotius. Against Hobbes's contractualism about moral values, 'with Grotius, the Law is immutable, therefore there is something simply good before the foundation of society.'<sup>95</sup> Divine and natural law are about values which are 'morally good in the eyes of everyone' ('*honesta in conspectu omnium*'),<sup>96</sup> not by mere contract but by acknowledgment of what is essentially good. Dundas criticises two 'vicious circles' in Hobbes: first, that 'there is no supreme authority without a pact, yet the pact has no binding force unless [this force] comes from the supreme authority and the sword.'<sup>97</sup> Second, that self-preservation is the unique reason for obedience, therefore without self-preservation there would be no obedience, and a crime committed in the name of self-preservation would not be a crime.<sup>98</sup>

Rather, self-preservation is a consequence of respecting the pacts, which makes society thrive because it increases mutual trust, since history and everyday experience show that 'pacts should be kept because they are the bonds of society and of tranquillity.'<sup>99</sup> Otherwise, 'there would be no use for pacts and judgements, and no secure possibility for peace and commerce, and no one would trust one another.'<sup>100</sup> 'If words were not established as to signify concepts and so a will, then promises would not bind anymore.'<sup>101</sup> Whose will? In the first instance,

god's. Peace should be desired 'because god's glory maximally shines in a peaceful situation, more than when his subjects fight and slaughter one another.'<sup>102</sup> The glory and honour of god is the highest goal of all,<sup>103</sup> and 'mundus [est] civitas dei.'<sup>104</sup>

Dundas produces both duty-based arguments from the divine natural law and rule-consequentialist arguments from the practical advantages of the pacts. The rational creatures are bound by reason and gratitude to perform the duties expressed in the law, which come from god, the sole legislator and sovereign. The law is not arbitrarily imposed since god is a rational and benevolent ruler: the law is conducive of the greatest happiness possible in the post-lapsarian state according to the three duties – and consequent goods – about god, self and the others.

## **6. Intolerable Atheists ...and Tolerable Catholics?**

The identity of natural, rational and divine law is the architrave of the *Idea*. It enables Dundas to use Paul's inexcusability against arguments from fallibilism, and to "rationalise" the content of divine law, as against the arbitrariness and "mysteries" of the Roman Catholic Church. It also provides a strong rational foundation for positive law, which derives from the content-rich principles of natural law. The final question is: what happens to the discussions of the unity of the state, religious conscience and natural law from the perspective of tolerance regarding religion?

Dundas holds that people should not fear that religion is a threat to the integrity of the state ('nec metuendum...' on page 219), arguably the remark of a man who thought that his own Presbyterian faith was falsely accused of being such a threat. We have seen though, that conscience's link to god also commands, by the same rationale, to obey the magistrate.

Dundas also objects to Hobbes that 'religion is the glue of society,'<sup>105</sup> not the public law and

the sword. But then, the question arises of whether religious non-conformity immediately has political consequences. Rutherford taught that the intolerable was precisely the destruction of the unity of the Presbyterian church.

Let us look at the anti-Hobbesian ‘*nec metuendum*’ passage in its entirety, for it provides an important clue about Dundas’s conception of the *intolerable*:

One should not fear that following one’s own conscience is destructive or divisive of the state, since religion is the glue of society in virtue of which the parts of society are knitted together most closely. True religion is above all pure, and as a consequence, peaceful. He who is afraid of sinning against conscience as god’s vicar, will be also afraid of sinning against the king as god’s vicar in the state. And where he cannot give active obedience, he will give passive obedience ... Those subjects who believe that all oaths are nothing, will they be loyal subjects? ... Joseph in the *De bello judaico* narrates that the Sadducees are the worst sect of all because they are like the Epicureans – they deny the existence of incorporeal spirits, the immortality of the soul, and the resurrection of the dead.<sup>106</sup>

I identify four central views in this passage.

1) Religion knits ‘the parts of society together’, and human beings are the ‘*partes civitatis dei*.’<sup>107</sup> Thus, against Hobbes, what keeps society together is not self-preservation or a material advantage, but a communion of intent and beliefs which surpasses and grounds positive law. In a very rare mention of non-Biblical religious sources, Dundas writes that the paramount goal of society and of the individuals is God’s glory and honour, ‘as the first question of the [Westminster Short] Catechism says’.<sup>108</sup>

2) God alone binds conscience and God's law is to obey the secular power of the state. Hence conscience and king are the two vicars of God on earth. However, in the seventeenth century conflict ensued precisely from the hiatus between God's and king's laws. For Dundas, the king's law binds *conditionally*: only the law in conformity with divine law binds to active obedience.<sup>109</sup> Sovereignty only resides in God from whom alone human law receives authority. This seems to be the only way to eliminate the possible contrast between the two laws. Unlike in the 'two kingdoms' argument, Dundas does not seem to separate the sphere of private and public life, of conscience and positive law.

I interpret Dundas as holding that the solution of the tensions between political unity and religious conformity lies in two converging moves. On the one side, against a Rutherford-like position Dundas avoids the issue of the *confessionalisation* of the intolerable: Dundas does not *explicitly* include a specific Christian confession or church organisation in the content of natural law and public life. On the other side, Dundas's position might remind us of a 'universal moral-philosophical foundation for natural law,'<sup>110</sup> as in Hugo Grotius, structured around a 'minimalist' theory of justice about god, self and the others.<sup>111</sup> Only a sin against this universal core of the divine natural law, spelled out in a generally Christian way and in principle accessible to all people because intrinsically rational, would be intolerable. Dundas would then share some common grounds with Forst calls the 'humanist' argument for toleration: namely, the identification of a universal religiosity 'reduced to a handful of moral principles.'<sup>112</sup> This universal Christian religiosity would be essentially moral but not reduced to morality. What about the political and ecclesiastical translation of this idea, that of 'unity without uniformity'?.<sup>113</sup> It is probably fair to say that the *Idea* does not answer this question because it does not discuss, as pointed out above, the diverse Christian confessions.

3) This brings us to the important distinction between 'active' and 'passive' obedience. A subject is not exonerated from passive obedience even when the criteria for active obedience

fail to obtain. Dundas does not define passive obedience but one can infer its limits. A lesser evil should always be preferred to a greater evil, and civil war originating in disobedience is a greater evil than the evil implied in occasionally going against one's own conscience by obeying the king.<sup>114</sup> 'The public good, all other conditions being equal, should always be preferred over the private good.'<sup>115</sup> Consequently, conscience cannot be, in principle, compelled by an injunction to act outside divine law's commandments which grounds and gives authority to human law.

4) Lastly, in a duty-based natural law system such as Dundas's, *exclusion* from society is argued for on the grounds of one's own adherence to that duty. This is one of two passages where Dundas clearly presents criteria for the *exclusion* from public life. The atheists (here, the Epicureans, quasi-atheists because they worship 'an idle god',<sup>116</sup> were typically accused of materialistic beliefs with unacceptable political and social consequences. The denial that God exists and that the soul is immortal would undermine the atheists' belief in, respectively, a universal, objective, non-contractualist moral truth, and in punishment after death. Which in turn would undermine their reliability as law-abiding, trustworthy citizens. Dundas seems to imply that such a wholesale rejection of the core principles of justice, as expressed in a natural law theory, is a far greater threat to society than any religious dissent or non-conformity.

The second passage is the following:

For he who is weak or ambitious, or slave to the animal affections, cannot be loyal to anyone, neither to a prince nor to the homeland, nor to religion or to [his] friends, nor to himself or to god, [for] he would forsake everyone and expose them to dangers and damages if he had even the smallest hope to spare himself the troubles and the

difficulties of life. To such a point he fears and dreads these things. Men of this kind are most foreign to society, friendship and justice.<sup>117</sup>

This passage is arguably more “moralising” than the previous one. It is followed by Cicero’s remark that he who fears death and pain cannot be truly just.<sup>118</sup> In both passages the central issue is *loyalty*, addressed from the perspectives of certain religious and metaphysical views (mortality of the soul like the Epicureans), and character traits (weakness, ambition) which are deemed incompatible with a peaceful societal life.

This brings us to the issue of religious confessions and loyalty. In a slightly obscure passage, not only grammatically, Dundas seems to ascribe an Epicurean-like happiness to the ‘Mahometans’: ‘and granted this, that Epicurean happiness should be held in no consideration, what about the Mahometan [happiness] in the Quran? That what is said about Mahometan happiness in the Quran cannot be vindicated, on a par with Epicurean [happiness].’<sup>119</sup> Muslims and Epicureans would then be constantly suspected of disloyalty because of their materialistic beliefs. What about the Catholics? In seventeenth-century England, and famously in John Locke, the ‘typical limitation of Protestant arguments for tolerance was the intolerance toward the “papists”,’<sup>120</sup> in a context in which tolerance of other Protestant groups was already a very contested issue. The suspicion of the Catholics was motivated by their double allegiance: to their national king but also to the pope as god’s true vicar on earth, whom the *Westminster Confession of Faith* (1647–48) unequivocally identified as the anti-Christ.<sup>121</sup> Dundas’s relationship with the Catholics is double. The ‘pontificii’ or ‘jesuiti’, as he calls the Catholics, are criticised for their theology and philosophy but they are given due consideration. Occasionally, some Catholics and popes could even be right on important matters, such as in the moral psychology of free will and the compatibilism of liberty and necessity: ‘all the Dominicans and even two Roman popes, Pius V and Gregory III

are reported to have held that liberty of the will can be consistent with all non-binding necessity.’<sup>122</sup> Suffice it to say in this context that this view, inspired by John Cameron and against the majority of the Reformed theologians, is of paramount importance for Dundas.<sup>123</sup> Locke’s famous view that the Catholics should be excluded from tolerance because of their disloyalty is usually taken as representative of the period. However, Forst has argued that some non-conformist views such as William Penn’s and Roger Williams’ were ‘not only historically ahead of Locke’s,’ and that Locke’s enduring success was more due to ‘liberating familiar arguments from the religious garb’ than from producing innovative arguments.<sup>124</sup> Likewise, Parkin invites not to ‘overstate Locke’s exceptionalism.’<sup>125</sup> Against this background the idea that Dundas could have extended tolerance to law-abiding Catholics may gather some plausibility. Catholics would not be tolerated qua Catholics nor on the grounds of appeals to liberty of conscience, but only insofar as they subscribe to the principles of divine or natural law. Belief in these principles is the real ‘glue of society’, and their infraction is the properly *intolerable*.

The distinction between ‘active’ and ‘passive’ obedience lends weight to the idea that loyalty, order and obedience are central underground concerns in the *Idea*. Dundas himself might have been unwilling to give *active* obedience to the Restoration Episcopalians, nevertheless he declares that at least a passive form of obedience is a citizen’s duty. Is it an absolute duty? Dundas does not believe that it is, and again we have regrettably only hints at a theory of resistance, which is an important part of the Scottish Presbyterian conscience. The limit to passive obedience seems to be demarcated by what is intolerable. Towards the end of the manuscript Dundas discusses the causes for just war. Dundas argues that the intolerable which justifies war or taking up arms for a Christian are an actively atheist monarch, an assault to one’s own life, and a foreign invasion.<sup>126</sup> These intolerable actions are direct violations of the

three central duties of the natural law towards god, the self and the others and once more, there seems to be little room for the confessionalisation of these criteria.

Paraphrasing Dundas's own words against Hobbes,<sup>127</sup> 'tam abhorret Dundas a discordia et bello' that the word 'coercion' in the *Idea* only occurs in reference to those people who disrupt society against public preservation and advantage.<sup>128</sup> Such disrupt comes from the criticism of the superiors out of personal ambition, the pursuit of individual gain rather than public benefit, excessive trust in one's own wit, the use of words with the intent to deceive. All these actions 'provide the sparkle of discord, and smoulder wars' ('discordiarum fomitem, ministrent et bella foveant').<sup>129</sup>

## Conclusion

In the *Idea*, the first sense of tolerance is Christian tolerance, namely the tolerance proper of the virtuous Christian. Rooted in the doctrine of the Fall and influenced by Stoic themes, the principal sense of *tolerari* and *tolerantia* in Dundas refers to the tolerance of hardship and pain. It is a duty to the self, because it reinforces the moral autonomy of the agent in the course of moral duty. The political use of Stoicism is that individual tolerance bears positive consequences for society. The political meaning of the doctrine of the Fall is that humankind's natural sociability is damaged, hence it requires an external source of morality. Dundas does not discuss tolerance regarding religion directly. In this paper, I have attempted to present his views about conscience, natural law, the state and civil war when they are relevant to the seventeenth-centuries discussions of tolerance. I have argued that Dundas, perhaps inspired by Grotius, argues for a moral philosophical and religious core of divine or natural law which is intrinsically rational hence universal, hence accessible to all, because it is deduced from the rational natures, primarily divine and secondarily created. A functioning

state seems to be based on a shared belief in a “minimalist theology” – the expression is not in the *Idea* – of the Christian God (personal, all-knowing, all-powerful, merciful, worthy of worship) as the source of morality and of the consequent private and public duties to god, king, self and the others, as expressed in the natural law.

The *intolerable* would then be defined as the systematic and open infraction of these *core* duties: in this sense ‘not all sinners are heretical.’<sup>130</sup> Atheists and atheist-like people alone are explicitly denounced as incompatible with loyalty and trust in performing the natural law duties towards the others; hence, incompatible with social life under the same natural or divine law. The threat of atheism, on a par with threats to one’s own life and the integrity of the state, are the only reasons for just war for a Christian. Law-abiding Christians such as, controversially, the Catholics could be in principle compatible with public life, but it is worth reminding that Dundas does not make this claim and that, admittedly, the *Idea* is not about producing a political view of tolerance in any self-conscious sense. This brings us back to Dundas’s personal contexts and motives behind the *Idea*.

In the confessionally divided context of late-seventeenth century Scotland, the strong natural law structure of the *Idea* works against confessionality as a political philosophical category. Unlike in Rutherford, in the *Idea* the intolerable seems to include only the infraction of a “rationalised” divine law, identical with natural law. Certainly, Dundas’s idea of Christianity is Presbyterian, but he sought to tie together divine, natural and (the foundational aspects of) positive law. Did Dundas understand Christianity as rationality? He does not believe that the core of religion is reduced to morality but rather, that religion is intrinsically moral. As a judge, Dundas might have considered a rationalised and universal version of Christianity as the only philosophical position to ensure unity and conformity, while providing a solid, rational legal system to Scotland. This raises the interesting question of the intellectual proximity of the *Idea* and the *Institutions of the Law of Scotland* (1681), written by Dundas’s

friend James Dalrymple, Viscount Stair. In the *Institutions* Dalrymple reveals a similar Reformed scholastic tradition: he was sensitive to human beings' need of 'clear instruction' in the law because of the Fall, 'maintained a theological conception of law's foundation' and that 'people should use liberty to bring glory to God.'<sup>131</sup> The investigation of the intellectual relations between Dundas, Dalrymple and Mackenzie on natural law, Stoicism and natural religion right at a crucial time in Scotland's intellectual history is a new exciting possibility.<sup>132</sup>

The hard fact of being on the receiving end of intolerant policies might have awakened in Dundas the perspective of the discriminated minority, as well as given 'stimulation to specific philosophical concerns,' as Allan wrote about Mackenzie.<sup>133</sup> After the tragedies of the Civil War, Dundas might have also been particularly sensitive to the need for *order*. Obedience to the rightful sovereign ensures the stability of the state. Loyalty had always haunted the Presbyterians, who were proud of their theory of resistance. His letter of resignation from the High Court of Session spells the same concept as in the *Idea*: 'when someone cannot give *active* obedience, he shall give at least *passive* obedience.'<sup>134</sup>

I shall noe longer be able to serve as a publick minister, yet I shall never omitt anything shall be in my powers as a private man." (7 January 1664)

Arguably, when contrasted with the increasingly intolerant and uncompromising attitude of the Restoration Covenanters,<sup>135</sup> even resented compliance could be seen as moderate.

Dundas died just before a 'period of greater trial ... for the people of Scotland' in the 1680s.<sup>136</sup> One is left wondering how he would have reacted to the Exclusion Crisis, to the Test Act, and to the infamous 'Killing Times,' presided over in a significant way by his friend George Mackenzie. And whether, as a consequence, the *Idea* would have been a different book.

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1 *Records of the Parliaments of Scotland to 1707*. University of St Andrews,  
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2 Omond. *Arniston Memoirs*, 32.

3 Omond. *Arniston Memoirs*, 39.

4 Forst, *Toleration in Conflict*, 171.

5 Mason, "Beyond the Declaration," 281.

6 Alexander Broadie and I are working on the critical edition and translation of the *Idea* for Edinburgh University Press. See also Broadie, "The Reformed Scholasticism of James Dundas."

7 It is very plausible that Dalrymple and Dundas discussed their common interests, perhaps including the contents of the *Idea*.

8 Dundas, *Idea*, 172.

9 Something akin to the distinction between ‘forbearance’ (moral and religious sense, as in *The King James Version* translation of Paul *Ephesians* 4:2 and *Colossians* 3:13), and ‘tolerance’ or ‘toleration’ (moral, political) could be at work here. I have, however, chosen to translate *tolerantia* as ‘tolerance’ in both cases, in order to show that for Dundas the political sense of tolerance originates in the moral and religious sense.

10 Dundas, *Idea*, 286–294.

11 ‘Tolerantia pars est patientiae, qua anima durissima quaeque et animali vitae ingrattissima facile et constanter perfert, ob amorem illius quod simpliciter optimum est.’ Dundas, *Idea*, 287.

12 Dundas, *Idea*, 287.

13 Dundas, *Idea*, 287.

14 Dundas, *Idea*, 289.

15 ‘Sese diffundat ad omnes actiones morales.’ Dundas, *Idea*, 288.

16 Dundas, *Idea*, 288.

17 ‘Inter fortitudinem et patientiam praesertim quoad tolerantiam affinitas sit maxima; sic dicitur versari circa formidabilia et horribilia in via officii.’ Dundas, *Idea*, 290.

18 ‘nemo iustus esse potest, qui mortem, qui dolorem, qui exilium, qui egestatem timet; vel qui ea quae his sunt contraria aequitati anteponit; tantam vim ad probitatem habet sinceritas et patientia, continentia et tolerantia.’ Dundas, *Idea*, 289.

19 See also Gellera, “Pride Aside.”

20 Broadie, “Dundas on Seneca,” 259.

21 Dundas, *Idea*, 228.

22 Dundas, *Idea*, 154–155.

23 ‘Homo a lapsu ineptus est ad omne bonum opus, ... absque specialibus auxiliis divinae gratiae, sine qua nihil possumus bene.’ Dundas, *Idea*, 36.

24 Cumberland’s view. Haakonssen, “Divine/Natural Law,” 1344.

25 ‘In officiis erga deum et hominem, prima et certissima est lex gratitudinis. Ciceroni (Officiorum 3tio).’ Dundas, *Idea*, 175.

26 Dundas, *Idea*, 2.

27 ‘Nihil infaelicus eo cui nunquam nihil evenit adversi, non liquet enim illi se experiri’; ‘quanto plus tormenti, tanto plus gloriae. Solatio est pro honesto dura tolerare.’ Dundas, *Idea*, 96.

28 ‘Ista adversa non sint bonis mala, sed bona media quibus exercetur.’ Dundas, *Idea*, 91.

29 Dundas, *Idea*, 290.

30 ‘Fortitudo omnem non excludat timorem vel metum, sed servilem tantum; qui ineptum reddit ad officium obeundum.’ Dundas, *Idea*, 292.

31 Haakonssen, “Divine/Natural Law,” 1319.

32 ‘Ex natura corrupta, oritur hostilis animus.’ Dundas, *Idea*, 210.

33 Against the idea that man is a bearer of rights (Mautner 2013: 485).

34 ‘Non nobis duntaxat nati sumus, sed patriae, societati et sic aliis prodesse quoad poterimus.’ Dundas, *Idea*, 137, probably from *De officiis* I, VII.

35 Parkin, “Toleration,” 612.

36 Mautner, “Natural Law,” 473.

37 ‘Sustine iniurias et calamitates, abstine libidinibus, vitiis, provocationibus.’ Dundas, *Idea*, 154.

38 Alla, “In the Bosome,” 260.

39 Dundas, *Idea*, 208–209. See Broadie, “Dundas on the Hobbesian State of Nature,” 11: ‘all three natural states that Dundas lists are social states whereas the Hobbesian state of nature is not social.’

40 Dundas, *Idea*, 154–155.

41 ‘Ipsissimum praeceptum de patientia et amandis inimicis (licet de eo nihil Aristoteles et multi philosophi gentiles).’ Dundas, *Idea*, 153.

42 Dundas, *Idea*, 179.

43 Mautner, “Natural Law,” 473.

44 Dundas, *Idea*, 154.

45 ‘Quod sibi fieri non vis, alteri ne feceris.’ Dundas, *Idea*, 182.

46 Dundas, *Idea*, 172.

47 Forst, *Toleration in Conflict*, 178.

48 ‘Inimicis esse bene faciendum est utile et consultissimum monitum.’ Dundas, *Idea*, 154.

49 ‘Mollia verba cedant iram.’ Dundas, *Idea*, 154.

50 ‘Nam quotidiane constat experientia Salustianum illud, Concordia res parvae crescunt, discordia maxime dilabuntur. lumine vero naturae constat medium appositissimum ad concordiam esse patientiam.’ Dundas, *Idea*, 154.

51 Forst, *Toleration in Conflict*, 174–185.

52 Forst, *Toleration in Conflict*, 211.

53 Rutherford, *Pretended Liberty*, Preface. See Burton’s chapter in this volume.

54 Rutherford, *Pretended Liberty*, 2.

55 Rutherford, *Pretended Liberty*, 3.

56 Rutherford, *Pretended Liberty*, 61–62.

57 Rutherford, *Pretended Liberty*, 64.

58 Rutherford, *Pretended Liberty*, 98.

59 Rutherford, *Pretended Liberty*, 101.

60 Forst, *Toleration in Conflict*, 223–224.

61 ‘Tam abhorret Hobbius a seditione ut [...] habeat haec doctrina, quicquid facit civis contra conscientiam suam est peccatum est seditiosa, quia repugnat civili obedientiae.’ Dundas, *Idea*, 218.

62 Dundas, *Idea*, 218.

63 ‘Publica lex unicuique pro conscientia habenda est, aliter in tanta conscientiarum (id est inquit Hobbeus) opinionum privatarum varietate necessario civitas divideretur, nec summae potestati obediet quisquam, nisi quatenus sibi metipsi visum erit.’ Dundas, *Idea*, 218.

64 Dundas, *Idea*, 218.

65 ‘De occultis non iudicat ecclesia, nedum civilis respublica.’ Dundas, *Idea*, 219.

66 Dundas, *Idea*, 219.

67 Dundas, *Idea*, 197.

68 ‘Sic conscientia est quasi legislator in maiore, testis in minore et iudex sententiam pronuncians in conclusione.’ Dundas, *Idea*, 197.

69 ‘Nec metuendum, ne observatio conscientiae sit destructiva vel divisiva reipublicae, cum religio sit gluten quo civitatis partes arctissime conferruminantur. Vera religio est primo pura, dein pacifica.’ Dundas, *Idea*, 219. Note the term ‘metuendum’, likely critically directed against the central notion of ‘fear’ in Hobbes (Forst, *Toleration in Conflict*, 188).

70 Dundas, *Idea*, 197.

71 ‘quod non est ex fide (sc: deo placendi et sic ex iudicio conscientiae) est peccatum; aliter esset nulla antithesis, an melius sit obedire homini quam deo.’ Dundas, *Idea*, 218.

72 Dundas, *Idea*, 198.

73 Dundas, *Idea*, 197.

74 Dundas, *Idea*, 208.

- 75 Dundas, *Idea*, 219.
- 76 Dundas, *Idea*, 165, 193, 254.
- 77 ‘Voluntas necessario sequatur ultimum iudicium intellectus practici.’ Dundas, *Idea*, 223.
- 78 Dundas, *Idea*, 161–162.
- 79 ‘Recta vera ratio architypa primaria est natura rationalis divina.’ Dundas, *Idea*, 193.
- 80 ‘Ex hypothesi quod existat’ and ‘ex hypothesi rationalis creaturae.’ Dundas, *Idea*, 186, 190.
- 81 Dundas, *Idea*, 208.
- 82 Dundas, *Idea*, 186.
- 83 Dundas, *Idea*, 186.
- 84 ‘Sicut deus non potest abnegare seipsum et dominium suum in creaturis, sic creatura rationalis ex hypothesi quod sit, non potest non teneri gratitudinis lege, deum colere et honorare.’ Dundas, *Idea*, 189.
- 85 ‘Requiritur et sufficit ad legem proprie potestas praescribentis, aequitas rei praescriptae, sufficiens promulgatio, vel publicatio utriusque per signum aliquod voluntatis manifestativum, ut verbum vel scriptum’. Dundas, *Idea*, 168.
- 86 Dundas, *Idea*, 168.
- 87 Dundas, *Idea*, 180.
- 88 Dundas, *Idea*, 180.
- 89 Dundas, *Idea*, 184.
- 90 Dundas, *Idea*, 172, 183.
- 91 ‘Ubi praescripsit deus diem septimum a creatione esse sanctificandum, potuit tamen praescripsisse quamvis sextum vel tertium absque repugnantia, etiam ex hypothesi rationalis creaturae ... quod tamen colendus sit deus specialiter die septimo a creatione, potius quam

alio, non videtur innotuisse lumine naturae, nec cordibus hominum a natura insculptum.’

Dundas, *Idea*, 190.

92 Dundas, *Idea*, 118.

93 Parkin, “Toleration,” 618.

94 ‘Quod oritur ex inobedientia nempe bellum civile inter cives quoad effectus admodum incivile incommodum et grave.’ Dundas, *Idea*, 196.

95 ‘ex Grotio, immutabile est ius, sic aliquid est simpliciter bonum ante societatem initam.’ Dundas, *Idea*, 203.

96 Dundas, *Idea*, 203.

97 ‘vitioso circulo, quo sci supraema autoritas nulla nisi a pacto, et pactum nullam vim obligativam, nisi a supraema autoritate et gladio.’ Dundas, *Idea*, 217.

98 Dundas, *Idea*, 213.

99 ‘Pacta sunt servanda quia societatis et tranquillitatis vincula.’ Dundas, *Idea*, 207.

100 ‘Ex Grotio: fides est servanda ... Nullus esset pactorum vel iudiciarum usus, et sic nec pacis nec commercii tuta possibilitas, nec alter alteri paciscenti credere.’ Dundas, *Idea*, 181.

101 ‘Non instituta verba ut sint conceptuum et sic voluntatis et si promissa non obligarent.’ Dundas, *Idea*, 205.

102 ‘Quia statu tranquillo, maxime elucescit supraemi rectoris gloria, magis quam ubi subditi concertant dilacerantque alii alios’. Dundas, *Idea*, 207.

103 Dundas, *Idea*, 206.

104 Dundas, *Idea*, 207.

105 Dundas, *Idea*, 219.

106 ‘Nec metuendum, ne observatio conscientiae sit destructiva vel divisiva reipublicae, cum religio sit gluten quo civitatis partes arctissime conferruminantur. Vera religio est primo pura, dein pacifica. Qui veretur ne contra conscientiam peccet dei vicariam in anima verebitur

etiam peccare contra regem dei vicarium in republica Et ubi obedientiam activam nequit praestare passivam praestabit ... An fideles erunt subditi qui iuramentum fidelitatis ut omne iuramentum estiment nihili? ... Et denique Iosephus de bello Iudaico tradit Saduceos Epicureos (quod negabant spiritus incorporeos, animae immortalitatem, et resurrectionem mortuorum) omnium sectarum fuisse pessimam.’ Dundas, *Idea*, 219–220.

107 Dundas, *Idea*, 208.

108 ‘Prout prima questio catecheseos habet.’ Dundas, *Idea*, 208. *Westminster Shorter Catechism* 1648: Q. Quis hominis finis est praecipuus? R. Praecipuus hominis finis est, Deum glorificare.

109 Dundas, *Idea*, 196.

110 Hunter, “Natural law,” 479.

111 Mautner, “Natural law,” 489; Haakonssen, “Divine/Natural law,” 1326–1327, 1333.

112 Forst, *Toleration in Conflict*, 168.

113 Parkin, “Toleration,” 612.

114 Dundas, *Idea*, 197.

115 ‘Bonum publicum caeteris paribus praefertur bono privato’. Dundas, *Idea*, 212.

116 ‘Deus otiosus.’ Dundas, *Idea*, 95.

117 ‘Nam qui mollis est vel ambitiosus, vel ullius affectus animalis mancipium, nemini fidelis esse potest, nec principi nec patriae, nec religioni nec amicis, nec sibi ipsi nec deo, omnes prodit periculis, damnisque exponit, si vel minima spes effulgerit seipsum expediendi ab illis molestiis vitaeque difficultatibus; quas adeo timet et horret, sic tales homines a societate amicitia et iustitia sunt alienissimi.’ Dundas, *Idea*, 288.

118 Dundas, *Idea*, 288.

119 '[E]t dato quod ita, quid insuper habuit faelicitas Epicurea, quam machumidana ex Alcorano et quod de machumidana in alcorano quod non vindicare potest iuxta ac Epicurea.'

Dundas, *Idea*, 77.

120 Forst, *Toleration in Conflict*, 181.

121 See Maurer's paper in this special issue for the enduring importance of the *Westminster Confession of Faith* into the eighteenth century.

122 Dundas, *Idea*, 246.

123 Cameron's position was, for example, rejected at the Synod of Dort (1618–1619).

124 Forst, *Toleration in Conflict*, 179.

125 Parkin, "Toleration," 621.

126 Broadie, "Dundas on the Sixth Commandment," 156–158.

127 Dundas, *Idea*, 218.

128 'Eosque coercere, qui perturbant, ut contra conservationem et utilitatem communem.'

Dundas, *Idea*, 212.

129 Dundas, *Idea*, 212.

130 Dundas, *Idea*, 224.

131 MacQueen and Bogle, "Private Autonomy," 279–280. See also Bogle, *Liberty and Conscience*.

132 An interesting aspect is the mutual influence of philosophy on law and of law on philosophy. On Stair, see Jaffro "James Dalrymple," 157.

133 Alla, "In the Bosome," 252.

134 Dundas, *Idea*, 219.

135 Parkin, "Toleration," 618.

136 Omond, *Arniston Memoirs*, 39.