

*Legal Fictions and Interpretation in  
Attorney General v Pickeringe (1605) and  
Ben Jonson's Masque of Queenes (1609)*

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Masques performed at the court of King James I, Stephen Orgel explains:

“... were not entertainments in the simple and dismissive sense we usually apply to the term. They were expressions of the age's most profound assumptions about the monarchy. They included strong elements of ritual and communion, often explicitly religious; and to participate in such a production involved far more than simply watching a play.”<sup>1</sup>

By means of poetry, music, and dance, court masques performed before the king, members of his court, and foreign dignitaries allegorised political and theological doctrines about the monarchy. The concept of the king's two bodies was a frequent theme of masques written by Ben Jonson. In masques, he explicated a rational juristic fiction that Sir Francis Bacon defined as the “influence or communication of qualities that... the body politic of the crown indueth the natural person of the king with...”<sup>2</sup> Bacon referred to three related concepts relevant to the legal fiction of the king's two bodies: the dynastic succession, the Crown, and the Dignity. In political practice as well as theory, according to Ernst Kantorowicz, the concepts of the Crown and the Dignity related the idea of a dynastic or hereditary succession of individual kings, who constituted the king's natural body, to the larger body politic composed of all English citizens. In the Crown rested “[t]he perpetuity of the sovereign rights of the whole

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<sup>1</sup> S Orgel, *The Illusion of Power: Political Theater in the English Renaissance*, Berkeley: University of California Press, 1975, 8.

<sup>2</sup> F Bacon, “Case of the Post-Nati of Scotland”, in *The Works of Francis Bacon*, J Spedding, R L Ellis, and D D Heath eds, Vol 7, London: Longman, Green, 1859, 668.

body politic, of which the king was the head"<sup>3</sup> whereas the Dignity was the sovereignty that the people, for the sake of the entire body of the realm, invested solely in the office of the king. This nexus of ideas that defined the political responsibilities and powers conferred on the monarchy as an institution informed the mythological and topical allegories of Ben Jonson's *Masque of Queenes*.

My analysis of the concept of the king's two bodies will not focus on its allegorical representation as a political doctrine but instead on its explication as a means of juristic interpretation in Jonson's masque and in the case of *Attorney General v Pickeringe* (1605). Ian Maclean has explained that the use of a legal fiction to reconcile laws and to avoid absurdity in the application of the law was an approved method of juristic interpretation throughout the Middle Ages and Renaissance. A legal fiction during these periods was defined variously as:

"*falsi pro vero, aequitate suadente, facta assumptio*" (the assumption made that something false is true, in the name of equity) and "*commentum iuris civilis ad visum vitae communis contra natura rerum contraque veritatem accommodatum*" (a falsehood in civil law made against the nature of things and truth in the interest of the common weal)."<sup>4</sup>

In the case of *Attorney General v Pickeringe* (1605), jurists used the legal fiction of the monarchy as an immortal corporate entity to interpret words that disrupted social order and brought "ill fame" to the king, the subject of Ben Jonson's *Masque of Queenes*. This article examines these forensic and epideictic arguments in which the legal fiction of a king who never dies functioned as a part of a system for the classification of true and false statements as seditious libels or seditious fames.

<sup>3</sup> E H Kantorowicz, *The King's Two Bodies: A Study in Mediaeval Political Theology*, Princeton: Princeton University Press, 1957, 383.

<sup>4</sup> I Maclean, *Interpretation and Meaning in the Renaissance: The Case of Law*, Cambridge: Cambridge University Press, 1992, 138.

## I

In the Court of Star Chamber on 14 May 1605, Lewis Pickeringe, a resident of Northampton known as a pious gentleman of scholarly interests, was convicted of writing and publishing a libel. The men who, according to custom, sat as judges and as members of the court were the king's Privy Councillors, the Bishop of London, the Archbishop of Canterbury, and the two Chief Justices. The members of the court were told by the Attorney General, Edward Coke, that Pickeringe had confessed to writing the following epigram:

"The lamentacion of Dickie for ye deathe of his brother Jockie	
Masked impietie	Cunninge hipocrisie,
Prelates' pope,	Jesuites' hope,
Papistes' broker,	Atheistes' Cloker,
Latin Doctor,	Devill's Proctor,
Dum dog's patron,	Non residentes' Champion,
Oure reformers' sclaunderer,	True pastors' punisher,
Colored Conformitie,	Vaine superstition,
Olde virgin's spectacle." <sup>5</sup>	

Because he had allowed a clergyman, Bywater, to read and transcribe this epigram, Pickeringe was held responsible as its publisher as well as its author. Without Pickeringe's participation, Bywater also "published" the poem by having it performed as a song at a public occasion. During the funeral of the Archbishop of Canterbury, John Whitgift, Bywater paid a chorus to sing the epigram as a parodic dirge, punctuated by the refrain, "Jockie is deade & gone, / And Dum Dickie is lefte alone."<sup>6</sup> Bywater was not tried with Pickeringe in the Court of Star Chamber. Yet the occasion of the epigram's publication as a dirge (organised by Bywater alone) influenced the interpretation of the poem's words by the Court of Star Chamber. The judges construed the referents of "Jockie" and "Dickie" to be the late Archbishop of Canterbury and his successor, Richard Bancroft. The judges made little reference to the epigram as an expression of Protestant prejudice against "popery" that mocked both Archbishops for their supposed sympathy with foreign Catholics resident in England. Instead they interpreted the epigram as a defamation of Elizabeth I and James I. The fact that the epigram's meaning was indeterminate and cryptic because, in Coke's words, it was in "circumlocutions, and not in express

<sup>5</sup> J Hawarde, *Les Reportes del Cases in Camera Stellata, 1593 to 1609*, W P Baildon ed, 1894, 223.

<sup>6</sup> J Hawarde, above n 5, at 222.

terms",<sup>7</sup> did not prevent the court from determining its significance to be libellous or the author's crime to be sedition.

The case of *Attorney General v Pickeringe* has been studied before in relation to the development of the doctrine of sedition and the history of the Court of Star Chamber. Roger B Manning has explained that *Attorney General v Pickeringe* elaborates upon earlier legal definitions of sedition:

"[w]hat came to be called sedition in sixteenth-century England was mostly comprehended under the heading of treasonable words in the fifteenth century if it touched the crown or the monarch, or under the doctrine of *scandalum magnatum* if it involved peers or high crown officials."<sup>8</sup>

These laws differentiated spoken and written words which threatened the crown and the peace of state from statements prosecuted as the tort of defamation.<sup>9</sup> Prior to Pickeringe's trial only false statements could be classified as seditious. In the fifteenth and sixteenth centuries, the Tudor laws of treason, *scandalum magnatum*, and libel prosecuted only false statements. As early as the mid-seventeenth century, William Hudson in a *Treatise on the Court of Star Chamber* objected to the precedent established by this case that allowed true words to be classified as illegal, in particular as seditious libels. The case, in Hudson's words, departed from:

"the rules of law and reason... that upon the speaking of words, although they be against a great person, the defendant may justify them as true; as in all actions *de scandalis magnatum*, which are as properly to be sued in the Star Chamber as in any other court, and he shall be there received to make truth appear."<sup>10</sup>

He objected that the criminal importance attached to Pickeringe's words about the Archbishops seemed an expedient that served the interests of the king and his officers rather than justice. Hudson believed that the judgement in this case amounted to a challenge to the doctrine of the rule of law that established the supremacy of political and statutory law to the prerogative powers of the monarch in order to prevent arbitrary government.<sup>11</sup>

<sup>7</sup> Sir E Coke, "The Case De Libellis Famosis, Or of Scandalous Libels", in *The Fifth Part of the Reports of Sir Edward Coke*, London: 1738, 125.

<sup>8</sup> R B Manning, "The Origins of the Doctrine of Sedition", (1980) 12 *Albion* 99.

<sup>9</sup> Spoken and written words against the crown were not legally defined as defamation. See Sir W Holdsworth, *A History of English Law*, Vol 8, rpt, London: Methuen, 1966, 333. On the laws of libel and sedition see P Hamburger, "The Development of the Law of Seditious Libel and the Control of the Press", (1985) 37 *Stanford Law Review* 661.

<sup>10</sup> W Hudson, "A Treatise on the Court of Star Chamber", in *Collectanae Juridica*, F Hargrave ed, Vol 2, London: 1792, 104.

<sup>11</sup> See W H Dunham, Jr., "Regal Power and the Rule of Law: a Tudor Paradox", (1964) 3 *The Journal of British Studies* 24.

My discussion of the trial studies the use of a legal fiction to interpret Pickeringe's epigram and to secure his conviction. I will discuss the forensic argument presented against Pickeringe by Coke, the Attorney General, in order to examine how it used a legal fiction as a means to interpret and classify statements as seditious and illegal. Although, as Hudson and Manning have explained, the case established a precedent or new dictum about seditious libels, the procedure followed was not in any way innovative. The procedure followed throughout Pickeringe's trial was the customary method of the Court of Star Chamber when a defendant during his examination by the king's counsel had admitted guilt of a crime. As T G Barnes has explained:

"in theory the confession of guilt in the investigatory examination was taken to be the defendant's answer [to the charge] and was the only proof necessary. Conviction as a matter of fact was assumed; as a matter of law, the Attorney General was called upon to construe the facts to amount to a conviction at law."<sup>12</sup>

Because the court was satisfied with Coke's submission, Pickeringe was immediately sentenced. It was by using the legal fiction of the king as an eternal corporate entity to interpret Pickeringe's epigram that Coke persuaded members of the Court of Star Chamber that it was necessary on such an occasion to classify a statement that was not factually false as illegal in order to prevent it from threatening social and political order.

The Court of Star Chamber's interpretation of Pickeringe's epigram was not constrained by his statement of authorial intentions and meaning. Prior to the court proceeding *ore tenus* against him, Pickeringe admitted during his examination by the Attorney General that he had written the epigram. But Pickeringe explained that he had assumed "it to be no lybelle, & that he gave a Copie of it, & beinge of a deade man he tooke it no offence."<sup>13</sup> Pickeringe declared that the meaning he intended the words to have pertained only to the late John Whitgift. After listening to how Coke construed the facts about the epigram's writing and its publication, the court denied Pickeringe's assumption that the epigram was not libellous because he intended it to refer to John Whitgift, a deceased rather than a living person.<sup>14</sup> But their decision to reject this defence was not based solely on the fact that civil law provided for prosecuting as slanderous some statements about deceased persons.<sup>15</sup> Instead the judges ac-

<sup>12</sup> T G Barnes, "Due Process and Slow Process in the Late Elizabethan–Early Stuart Star Chamber", (1962) 6 *The American Journal of Legal History* 221, 230. See M Stuckey, "A Consideration of the Emergence and Exercise of Judicial Authority in the Star Chamber", (1993) 19 *Monash University Law Review* 117.

<sup>13</sup> J Hawarde, above n 5, at 227.

<sup>14</sup> W Hudson, above n 10, at 104, explains that the tort of defamation does not concern deceased persons.

<sup>15</sup> Sir E Coke, *The Third Part of the Institutes of the Lawes of England* 174, cited in E Coke, above, at n 7.

cepted the case presented by Coke, that the epigram could be interpreted as a libel not only against the Archbishops but also "againste the late Queene of blessed memorie... & by implication againste o[u]r Kinge that now ys".<sup>16</sup>

As a result of Coke applying to the epigram the legal fiction that the monarch as a corporate institution "never dies", Pickeringe became accountable for words against the living, King James I and Archbishop Bancroft, and the dead, Queen Elizabeth I and Archbishop Whitgift. Persuaded by Coke's argument, the Lord Chief Justice commented, such:

"a libelle is a breache of ye peace, & is not to be suffered, but punished: yf a man kill one wth a sworde or poison, there is defence & justice for it, & this is a poison in ye Common wealthe, & no difference of ye deade or lyving; & th'offence to the state dyes not."<sup>17</sup>

The Lord Chief Justice viewed Pickeringe's poem as a public breach of the peace, a customary concern of the Court of Star Chamber that adjudicated cases involving riot, rout, and violent disputes.<sup>18</sup> But as his statement continued the Lord Chief Justice connected this definition of Pickeringe's crime to others more specifically concerned with the king and the common good. He asserted that the words of the epigram threatened the common good secured by civil order because slander of an individual magistrate or king, living or dead, brought disrepute to other monarchs who have governed or will govern.

All the judges concurred that the libel demeaned the monarchs under whom the archbishops held office. They agreed with Coke's argument:

"Queene Elizabethhe, she was Famous and renowned through[ou]t all the worlde for her wisdom, religion, Constancie, & for her magnanimitie admyrable; w[hi]ch is a very greate scandale to her to have suche a spectacle, & to the kinge to be Crowned by him."<sup>19</sup>

The judges accepted that the public spectacle caused by the performance of the epigram as a dirge at Whitgift's funeral was a scandal to Elizabeth I, then deceased, and James I, the reigning monarch who had been crowned by Whitgift. This meaning was not verified by citing a specific reference to the queen or king in the epigram. Only the Earl of Salisbury interpreted the epigram in a manner that identified words he believed literally referred to Elizabeth I. He argued that the concluding line, "Olde virgin's spectacle", mocked the late queen despite the fact that "it

<sup>16</sup> J Hawarde, above n 5, at 223.

<sup>17</sup> J Hawarde, above n 5, at 228.

<sup>18</sup> T G Barnes notes that "[t]he largest single category of crime charged (37 per cent) was crimes of violence. . . ." in "Star Chamber Litigants and their Counsel, 1596-1641", in *Legal Records and the Historian*, J H Baker ed, London: Royal Historical Society, 1978, 13.

<sup>19</sup> J Hawarde, above n 5, at 225.

is no vice to be an olde virgin & have spectacles".<sup>20</sup> This questionable construction of the epigram's meaning was the only statement by any of the judges that the semantic content of the epigram denoted a late or current monarch.

The conclusion of the judges depended on the use of a legal fiction concerning the monarch to interpret the epigram, a fact that draws attention to the juristic practice of interpretation because Pickeringe's poem did not specifically refer to Elizabeth I or James I. As a result, it is useful to trace the relation of Coke's argument to previous juristic traditions of prosecuting and interpreting scandalous words. The use of preceding juristic practice in courts other than the Court of Star Chamber allowed Coke to introduce the legal fiction of the king's corporate, eternal body. Before being prosecuted as a crime in the Court of Star Chamber and as a tort in King's Bench in the late fifteenth century, spoken or written "defamation" was judged in medieval local courts and punished in church courts. Coke, who presented the evidence against Pickeringe, cited theological texts in a manner that conformed with the earlier practice of church courts. Following precedents for the prosecution of defamation in courts of the church, Coke cited in his *Reports* biblical law (19 Leviticus and 22 Exodus) and dicta (10 Ecclesiastes) as well as other biblical prooftexts such as Job 30 and Daniel 3 as the bases of interpretation. In order to function effectively within Coke's argument, the biblical prooftexts required not only interpretation of their words to demonstrate their relevance to Pickeringe's epigram and its "publication" but also explication of the meaning and application of the epigram to the "king" and to social order.

John Hawarde in his *Reportes* recorded that Coke cited as relevant to the law of seditious or scandalous libel Exodus 22.28, "Thou shalt not raile upon the Judges, ne[i]ther speake evil of the ruler of thy people", and Ecclesiastes 10.20: "Curse not the Ki[n]g, no not in thy thought, ne[i]ther curse the riche in thy bed chamber: for the soule of the heaven shal cary the voice, & that which hathe wings, shal declare the matter".<sup>21</sup> Coke explicated in particular the words of "this texte 10 Ecclesi[astes]. The indignacion of the harte treason... and therefore any private delivery or writinge of a lybelle is a greate offence: yea, to see it, heare or reporte it".<sup>22</sup> By explicating the words of biblical prooftexts, such as Ecclesiastes 10, Coke established three criteria to define a libel: 1) a libel is of special concern if it defames a monarch, 2) a libel may be written or unwritten, and 3) a libel published by another is the responsibility of its author. The first of these criteria informed an argument that construed Pickeringe's words as a libel against Queen Elizabeth I and her successor, King James I.

<sup>20</sup> J Hawarde, above n 5, at 227.

<sup>21</sup> *The Geneva Bible*, facsimile of 1560 ed, Madison: University of Wisconsin Press, 1969.

<sup>22</sup> J Hawarde, above n 5, at 223.

Coke's explication of the epigram's slanderous meaning was confirmed with an argument about the order of society in which civil and ecclesiastical officers, such as Archbishops Whitgift and Bancroft, were representatives of the king. Because a king delegated or delivered to a magistrate an office and responsibilities of government, words criticising a magistrate's person or actions, Coke maintained, attempted to usurp power and to intervene in matters of state. He cited precedents from treason trials to support his contention that "by ye Course of lawe a lybelle is founde an olde sinne. for ye state & governmente is delyvered to ye magistrate".<sup>23</sup> According to this argument, libels about the government's officers meddled in matters of state and thereby threatened social order. This assumption based upon Coke's understanding of previous charges of treason that arose from libels allowed the private distribution and publication of such statements, written or spoken, to be evaluated as acts of usurpation. Precedents from treason trials and the writings of medieval jurists, such as Bracton, acknowledged ancient laws forbidding disputation about the king's selection of officers.<sup>24</sup> But Coke introduced a novelty to his argument by prefacing this evidence with a definition of a libel about a government or governors as "a great offense" whether "the libel be true and ye person infamous".<sup>25</sup>

In a report of this trial titled "The Case De Libellis Famosis, Or of Scandalous Libels",<sup>26</sup> Coke itemised the criteria that Pickeringe's judges agreed determined the crime and its punishment. According to the precedent of this case, subsequent trials defined a libel as a statement, written in words, pictures, or signs, or composed or published by speech, song, or transcription, that caused the scandal of a private person or magistrate, living or dead.<sup>27</sup> These stipulations referring to various means of publication applied to both true and false words. Coke's *Reports* stated: "It is not material, whether the libel be true or false".<sup>28</sup> It was possible, he asserted, to condemn as unlawful speech referring to "actual events" or "facts" — notions of the truth previously exempted from legal censure in cases of the tort of defamation and the crime of *scandalum magnatum*. The opposition legal and illegal replaced the customary notions of true and false words previously used to determine if statements were libellous. By using the legal fiction of the king as an immortal corporate entity to inter-

<sup>23</sup> J Hawarde, above n 5, at 225.

<sup>24</sup> Bracton, *De legibus et consuetudinibus Angliae*, G E Woodbine ed, Vol 2, New Haven: Yale University Press, 1915–1942, 109.

<sup>25</sup> J Hawarde, above n 5, at 225. The original passage reads, "althoughe the libel be true and the person infamous, yet it is a greate offence. and by ye Course of lawe a lybelle is founde an olde sinne. for ye state and governemente is delyvered to ye magistrate".

<sup>26</sup> Above, at n 7.

<sup>27</sup> Sir E Coke, above, at n 7, itemises dicta concerning libel determined by Pickeringe's trial.

<sup>28</sup> Above, at n 7.



pret the epigram, Coke was able to persuade Pickeringe's judges that it was necessary to classify the epigram as seditious because it threatened the common weal. This satisfied juristic custom that allowed a legal fiction to be used only if it secured equity or the common good, criteria that differentiated the use of a legal fiction from cavillation, a forensic argument based upon personal interest.<sup>29</sup>

The topics of social order and the common good ran through the judgments pronounced by some members of the Privy Council who attended the trial as judges. Several judges justified their classification of Pickeringe's epigram as seditious by means of arguments that related the juridical system of regulating the production of discourse to the goal of the common good of society, the end that defined a legal fiction in civil law. Salisbury, for example, advised caution when dealing with men such as Pickeringe who wrote a "Calumniacion, a serpentine humor; there ende is faction, their zealle blinde Furie".<sup>30</sup> By alluding to medical theory and myth, Salisbury created an allegory associating an individual's words to motives and effects that divided into factions the system of social order that unified and secured the common good. Another member of the court, the Lord Chief Justice, concurred with Salisbury's fear about religious and political factions caused by scandalous statements, when he stated, "these sorte of people woulde bringe all to disorder & confusyon, a pope in everye parische".<sup>31</sup> This argument assumed that the common good was threatened by anyone who spoke as a self-appointed authority. Such critics, according to this judge, usurped authority and threatened to dissolve the country's government into local factions or "parishes". The judgments quoted above assumed that Pickeringe's words should be interpreted as threats to the purposes and goals of English government and law as instruments of social order. In the statements that they used to explain their judgment, the judges applied a legal fiction about the king to the epigram in order to construe it as a potential threat that might cause offense or disrupt social order. It was the threat to social order posed by a potentially disruptive not a dishonest use of language that determined its classification as seditious. Within the sentences proposed by members of the court, the significance of Pickeringe's satirical epigram was not determined by its semantic meaning or formal linguistic properties but by its potential social consequences and effects. They suggested (but did not prove) that Pickeringe's words could initiate a sequence of ills threatening not only to the king but, more importantly, to the common good. In this manner the judges justified as equitable their interpretation of the epigram that depended upon a legal fiction.

<sup>29</sup> Above, at n 4.

<sup>30</sup> J Hawarde, above n 5, at 227.

<sup>31</sup> J Hawarde, above n 5, at 226.

The judges also evaluated the possible causes of scandalous and seditious words. Lord Chancellor Sir Thomas Egerton, for example, argued: "The Cause of lybellinge procedes from an inquiete & intemperate spirite, not obeyinge governem[en]te; the ende is yor will, or else overthrowe peace of churche & Common wealthe bothe: not uniformitie, but multiformitie".<sup>32</sup> In this remark, he directed attention to the probable causes and consequences of any libellous statement concerning the king or crown magistrates. He condemned Pickeringe as an example of an intemperate person who did not obey the government but instead spoke against its officers. Statements that articulated such an individual's will, Egerton feared, could result in factionalism disruptive to the order and doctrine of both church and state. He and other members of the Court of Star Chamber who judged Pickeringe feared a possible sequence of effects previously described by the sixteenth-century jurist Sir Nicholas Bacon who classified religious pamphlets criticising the doctrine of the Church of England as "seditious libels". Sir Nicholas Bacon reasoned that heterodox statements falsifying religious doctrine:

"maketh mens minds to be at variance one with another, and diversity of minds maketh seditions, seditions bring in tumults, tumults make insurrections and rebellions, insurrections make depopulations and bring in utter ruin and destruction of men's bodies, goods, and land."<sup>33</sup>

In his explication of the judgment of Pickeringe's case, Coke emphasised the potential threat to society posed by libels: "*If it be against a private man it deserves a severe punishment, for although the libel be made against one, yet it incites all those of the same family, kindred, or society to revenge, and so tends per consequens to quarrels and breach of the peace, and may be the cause of shedding of blood, and of great inconvenience*".<sup>34</sup> His analysis of the significance of libels about public and private individuals concerned the social ends or consequences of words. For Coke, it was not the truth or falsehood of words but instead the possible threat to the common good posed by words that determined their significance and their author's and publisher's punishment. Commonplace assumptions about the relation of social and linguistic order guided his legal judgment of the crime of scandalous or seditious libel. He argued, just as words concerning a private individual might provoke revenge by his relatives, words about a magistrate might cause a public breach of the

<sup>32</sup> J Hawarde, above n 5, at 229.

<sup>33</sup> Sir N Bacon's warning that importing Calvinist and Catholic tracts, "*libellus*" or "*little books*", into England threatened the peace of the state is quoted from DM Loades, "*The Theory and Practice of Censorship in Sixteenth-Century England*", (1974) Fifth Series, 24, *Transactions of the Royal Historical Society* 142.

<sup>34</sup> Above, at n 7.

peace. According to Coke, if words libel “a magistrate, or other public person” their speaker committed:

“a greater offence; for it concerns not only the breach of the peace, but also the scandal of government; for what greater scandal of government can there be than to have corrupt or wicked magistrates to be appointed and constituted by the King to govern his subjects under him?”<sup>35</sup>

Rumors, true or false, about a corrupt magistrate, Coke argued, implicitly suggested that the king abused his sovereign powers, the Dignity invested in the office of the king for the welfare of the entire realm. As a result, scandal discrediting a magistrate, such as an archbishop, could affect the government’s authority because he had been appointed by the king.

The *Reports* of Sir Edward Coke recorded the reasoning and criteria used by the judges of the Court of Star Chamber to interpret Pickeringe’s words as disorderly — as a seditious or scandalous fame that transgressed the law. The interpretation of Pickeringe’s words exemplified Foucault’s understanding of the procedures for ordering the production and operation of statements within society. The legal fiction of the king as a corporate entity functioned as part of a complex system for the production as well as the constraint of discourse that, in Foucault’s words, enabled the “[s]overeign, law and prohibition [to form] a system of representation”<sup>36</sup> which compensated for the unpredictable and threatening consequences of words. The judges interpreted Pickeringe’s words in order to regulate the production of discourse that, in their eyes, secured the social order and the common good. Believing that either true or false words that brought scandal upon an individual, living or dead, might involve others in dispute, Coke and the judges feared that words might initiate a concatenation of effects leading to riot and rebellion. By means not only of the trial but also of his public punishment, Pickeringe was to function as a text representing the law’s power to classify, condemn and nullify words, whether true or false. Recommended sentences included a fine of £1000, imprisonment, pillory, and “tacked” ears. Although these severe punishments were not fully implemented,<sup>37</sup> the spectacle of his public punishment recommended by the judges was intended to be a forceful statement of the law’s ability to use a legal fiction in order to produce discourse as well as to repress words.

<sup>35</sup> Above, at n 7.

<sup>36</sup> M Foucault, “Truth and Power”, in *Power/Knowledge: Selected Interviews and Other Writings 1972–1977*, C Gordon, L Marshall, J Mepham, K Soper trans, Brighton: Harvester Press, 1980, 121.

<sup>37</sup> J Hawarde, above n 5, at Appendix XVI.

## II

*The Masque of Queenes*, performed four years after Pickeringe's trial, allegorised the threat that good and ill fames posed not only to the king but also to social order. Jonson's use of the terms, good and ill fame, in the masque recalled Coke's terminology in his report of Pickeringe's case, titled "The Case De Libellis Famosis, Or of Scandalous Libels". As Roger B Manning has noted, Coke based his nomenclature upon Roman or civil law which treated defamation "as an *iniuria* — a species of delict which entitled the injured party to seek an *actio iniuriarum*. The name applied to this species of *iniuria* is *Libella famosa*".<sup>38</sup> But within his discussion of his argument about libels, Coke referred to the opposition of good and ill fame. For example, Coke asserted that just as "it is not material whether the libel be true", it did not matter "whether the party against whom it is made, be of good or ill fame".<sup>39</sup> In the holograph manuscript and printed texts of *The Masque of Queenes* Jonson used similar terms to explain to his readers that the masque's performance at Whitehall on 2 February 1609 presented a specific "Argument... *A Celebration of honorable, & true Fame, bred out of Vertue*".<sup>40</sup> But he also substituted categories of fame other than true and false statements. The masque classified words according to their consequences, that is, their good or ill effect upon the king's fame. Jonson did not simply use ill and good fame as synonyms for praise and blame. Instead these *topoi* of epideictic rhetoric merged with forensic vocabulary, good and ill fames, or seditious words. Jonson proposed that a masque, by praising a king, protected his "princely vertue, agaynst the good, or ill, of any Witnessse".<sup>41</sup>

In a dedication to the holograph manuscript of *The Masque of Queenes*, Jonson advised Prince Henry that poets could secure the memory of a ruler's good fame. Poets, he suggested, ensured "the Crownes theyr *Soveraignes* weare will not more adorne theyr Temples; nor theyr stamps live longer in theyr *Medalls*"<sup>42</sup> than in poems. Masques and other poems about a king, according to Jonson, created as long lasting and as stable a representation as a king's stamp, the mark or die impressed upon a coin or medal in order to verify its true value. He claimed that a poet's words could preserve a king's well-deserved fame as effectively as a fixed, indelible numismatic image when ill fame and rumors arose.

Despite his assertions in the dedicatory epistle to Prince Henry, elsewhere Jonson acknowledged that a poem's meaning, like an individual's good fame or reputation, depended upon others' interpretation. In the

<sup>38</sup> R B Manning, above n 8, at 114.

<sup>39</sup> Above, at n 7.

<sup>40</sup> B Jonson, "The Masque of Queenes", *Ben Jonson*, C H Herford and P & E Simpson eds, Vol 7, rev ed, Oxford: Clarendon Press, 1952, ll 6-7.

<sup>41</sup> B Jonson, above n 40, at ll 662-664.

<sup>42</sup> B Jonson, above n 40, at ll 25-27.

dedicatory epistle to the 1616 folio text of *Volpone*, Jonson complained bitterly about the vulnerability of a playwright to others' interpretations of his words:

"Application, is now, growne a trade with many; and there are, that professe to have a key for the decyphering of every thing: but let wise and noble persons take heed how they be too credulous, or give leave to these invading interpreters, to bee overfamiliar with their fames, who cunningly, and often, utter their owne virulent malice, under other mens simplest meanings."<sup>43</sup>

In his dedicatory epistle to *Volpone*, Jonson advised "wise and noble persons" not to be persuaded by those who misconstrued a dramatist's words by applying topical meanings not intended by the author. Those who practised interpretation in order to find "illegal" meanings, Jonson warned, posed a threat not only to the dramatist's welfare but also to other men's good "fames". The question that Jonson's apparently contradictory dedications posed was, under what peculiar conditions could a poet's words about a king function other than as mere praise in order to fix their laudatory signification and thereby secure good fame? Within his masque, I will argue, Jonson acknowledged that fixity could only be secured by language functioning within a system of representation secured by institutions, such as the law and the monarchy that provided specific means of interpretation, including legal fictions.

The following analysis of *The Masque of Queenes* will focus on the narrative describing the dramatic personae of Queen Anne and her ladies. Critics have frequently drawn attention to the narrative that is a feature of Jonson's holograph manuscript and the printed texts of the masque. Like many of the preceding texts to which it alluded, the masque used two emblematic figures of Ill Fame and Good Fame. But in order to escape this problematic dichotomy in which both remain ambiguous, Jonson's masque introduced a third emblematic figure, a pyramid of twelve queens who signified the legal fiction of the monarchy as an immortal corporate institution. The narrative in the holograph manuscript and the printed texts of the masque explicated the political concept of the Dignity and its relation to a hereditary succession of individual kings or queens. In *The Masque of Queenes* the emblematic figure of the legal fiction also confirmed its utility as a means to secure the king against rumors and reports.

In order to differentiate contradictory ideas of fame, Jonson opposed ill fame in an anti-masque to good fame in a masque proper that immediately followed. The anti-masque of twelve hags set in a scene of Hell transformed the causes and malignant effects of ill fame, personified in

<sup>43</sup> B Jonson, "Volpone", in Ben Jonson, C H Herford and P Simpson eds, Vol 5, rev ed, Oxford: Clarendon Press, 1954, dedicatory epistle. I thank Dr P Holbrook for bringing this dedication to my attention.

Claudian's *Against Rufinus*, into a concatenation of vices and kinds of speech in "opposition to all vertue", namely Ignorance, Suspicion, Credulity, Falsehood, Murmur, Malice, Impudence, Slander, Execration, Bitterness, Fury and Mischief.<sup>44</sup> The hags intended to threaten the king's good fame and the state's order by interrupting the rites of the masque honouring King James I. By banishing the witches before the masque proper began, the character Perseus re-enacted the slaying of Medusa, when he "cut off [f] Terror, [and] gat Fame".<sup>45</sup> He begot his daughter Good Fame at the moment when his heroic virtue eliminated Medusa's terrifying threat from his society. This mythological allegory celebrated King James's pacifism that eliminated the horrors of war as an act of heroic virtue worthy of good fame.

Jonson alluded to classical and medieval poems that characterised fame as an arbitrary reward of good or evil conduct in order to reveal the difficulty of signifying the good fame merited by King James I and his court. The allusions impeded Jonson's task of presenting "No Fame... but what is perfect"<sup>46</sup> in the masque. The iconography identifying Good Fame, the daughter of Perseus, merged the idea of Good Fame in the *Hieroglyphica* attributed to Horapollo and the *Iconologia* of Cesare Ripa with the malevolent *Fama* of Virgil's *Aeneid*.<sup>47</sup> More confusing were the allusions of the masque setting to Ovid's *Metamorphoses* and Chaucer's *House of Fame* in which the *domus* of *Fama* contained and dispersed true and false rumors.<sup>48</sup> In *The Masque of Queenes* the two settings, the anti-masque set locating the witches in a scene of hell and the masque set situating Perseus and Good Fame in a glorious palace, maintained the opposition of the two houses and two kinds of fame found in Chaucer's poem. But Jonson's description of the scene including the resounding walls of brass that echo with the noise of Error and Sedition in *Metamorphoses*, XII, 42–62<sup>49</sup> confused the boundaries separating the opposite aspects of fame. More importantly, the same subtext, Ovid's *ekphrasis* of the house of *Fama*, related the residence of Good Fame to the hags Credulity, Falsehood and Murmur who embodied aspects of ill fame in the anti-masque. Within the brass walls of the house of Ovid's *Fama* one discovered: "illic Credulitas, illic temerarius Error/vanaque Laetitia est consternatque

<sup>44</sup> Claudian, "Against Rufinus", in *Claudian*, M Platnauer trans, Vol 1, rpt, London: Heinemann, 1963, I iii 27–38.

<sup>45</sup> B Jonson, above n 40, at l 374.

<sup>46</sup> B Jonson, above n 40, at l 460.

<sup>47</sup> J Loewenstein, *Responsive Readings: Versions of Echo in Pastoral, Epic, and the Jonsonian Masque*, New Haven: Yale University Press, 1984, 111–117.

<sup>48</sup> The iconography of Chaucer's *House of Fame* is discussed in J A W Bennett, *Chaucer's Book of Fame*, Oxford: Clarendon Press, 1968, and P Boitani, *Chaucer and the Imaginary World of Fame*, New Jersey: Barnes and Noble, 1984.

<sup>49</sup> B Jonson, above n 40, at l 385.

Timores/Seditioque recens dubioque auctore Susurri".<sup>50</sup> The masque scene transgressed the boundaries dissociating the characters signifying ill and good fame.

Because Jonson could not dissociate the relation of good and ill fame in the sources to which the characters and settings alluded, the masque revealed the indeterminacy of interpretations of a king's reputation. The allusions raised doubt about the possibility of fixing the signification of the good fame of deserving heroes and governors by simply opposing true and false statements, that is, by classifying them, in Jonson's words, into the categories, "rumors, and reports, or true or vayne".<sup>51</sup> Jonson identified a complication created by the difficulty of dissociating words on the basis of their truth or falsehood, a difficulty that concerned the judges in *Attorney General v Pickeringe*. While I am not suggesting that Jonson specifically alluded to this case, his masque did address a paradox confirmed by a legal dictum stated in Coke's *Reports*: "It is not material, whether the libel be true or false".<sup>52</sup> As a result of the condemnation of both true and false statements as seditious fames, it seemed more difficult for Jonson to dissociate in others' minds true praise of the king's virtuous actions from false words. What facilitated a forensic system for classifying words as illegal confused the categories of praise and blame ordering the topoi of epideictic rhetoric. The confusion of true and false words, Jonson advised, made these categories a precarious means of maintaining the king's well-deserved good fame.

The speech of the masque presenter introducing the triumphal entry of twelve queens explained their important relation to the interpretation of good fame. As Queen Anne and her ladies entered seated on a triumphal throne, Perseus explained honour was seen:

"In yond' bright Bevie, each of them a *Queene*.  
 Eleven of them are of Times, long gone.  
*Penthesilea*, the brave *Amazon*,  
 Swift-footed *Camilla*, *Queene* of *Volscia*,  
 Victorious *Thomyris* of *Scythia*,  
 Chast *Artemisia*, the *Carian* Dame,  
 And fayre-hayr'd *Beronice*, *Ægipts* fame,  
*Hypsicratea*, *Glory* of *Asia*,  
*Candace*, pride of *Æthiopia*  
 The *Britanne* honor, *Voadicea*,  
 The vertuous *Palmyrene* *Zenobia*,  
 The wise, and warlike *Goth*, *Amalasunta*,  
 And bold *Valasca* of *Bohemia*.

<sup>50</sup> "Here is Credulity, here is heedless Error, unfounded Joy and panic Fear; here sudden Sedition and unauthentic Whisperings." Ovid, *Metamorphoses*, F J Miller trans, Vol 2, rpt, Cambridge: Harvard University Press, 1946, XII, lines 59–63.

<sup>51</sup> B Jonson, above n 40, at l 392.

<sup>52</sup> Above, at n 7.

These (in theyr lives, as fortunes) crown'd the choyse  
 of Woman-kind) and 'gaynst all opposite voyce  
 Made good to Time, had after death the clayme  
 To live aeternis'd in the *House of Fame*."<sup>53</sup>

The masque's culminating image described in this speech was a triumphal procession of twelve queens, an allegorical figure of the historical continuum of fame and virtue from antiquity to the new golden age restored by the Stuart monarchy. They signified the succession of authority and virtue that descended to King James and his queen from past governors, who (the masque presenter explained) "by theyr fame, to yours, / And every Age, the Benefit endures".<sup>54</sup> The queens and the masque car on which they sat formed a visual emblem of the legal fiction of the eternal corporate institution of monarchy. The queens formed a continuous series of natural bodies or individuals representing the Dignity and hereditary succession throughout time.

In the holograph and printed texts of *The Masque of Queenes* Jonson interpolated a narrative concerning the dramatic personae of the courtly masquers after their triumphal entry. He stated that the narrative provided a "more particular description... of the *Persons* they presented".<sup>55</sup> As Stephen Orgel has remarked, the narrative did not describe the characters' appearance (according to conventions of texts that commemorate masque performances) but instead narrated their biographies.<sup>56</sup> By proceeding according to chronology from the most ancient mythical character, Penthesilea, to the one contemporary, Bel-Anna, the narrative recounted testimony from histories and poems about a succession of queens who exemplified good fame because of their heroic virtue and honour. The biographies began with Penthesilea who was "most upward in time." Jonson noted, for example, that Penthesilea was a Queen of the Amazons who:

"was present at the Warre of Troy, on theyr part, agaynst the *Greekes*, where (as *S Justine* gives her testemony) *inter fortissimos viros, magna eius virtutis documenta extitere*. She is no where mentiond, but with the praeface of Honor, and virtue; and is allwayes advanced in the head, of the worthiest Women."<sup>57</sup>

By citing Diodorus Siculus and Propertius who praised her, Jonson annotated and secured her good fame with historical evidence. Time, he asserted, did not erase but instead secured testimony about her well-deserved fame. The chronologically ordered catalogue of biographies

<sup>53</sup> B Jonson, above n 40, at ll 396–413.

<sup>54</sup> B Jonson, above n 40, at ll 445–446.

<sup>55</sup> B Jonson, above n 40, at ll 476–477.

<sup>56</sup> S Orgel, above n 1, at 52.

<sup>57</sup> B Jonson, above n 40, at ll 484–489.



moved downward to contemporary history during the lifetime of Queen Anne, whose dramatic persona was Bel-Anna. Jonson anticipated that some of the audience or his readers might object that the twelve dramatic personae created an anachronistic fiction. He posited that such people might ask:

*"How I can bring Persons, of so different Ages, to appeare, properly together? Or, Why... I joyne the living, with the dead? I answere to both these, at once, Nothing is more proper; Nothing more naturall: For these all live; and together, in theyr Fame. And so I present them."*<sup>58</sup>

His response recalled the idea of the relation of a succession of individual rulers who throughout time constituted the monarch's natural body. Emblematically, Jonson explained, the dramatic personae of the masquers represented the monarchy as a immortal corporate entity.

Bel-Anna was described as "[S]afe in her princely vertue, agaynst the good, or ill, of any Witsnesse"<sup>59</sup> because she was the "whole scope" of the other eleven queens' virtues; that is, she marked the culmination of a succession of royal persons. Jonson did not simply explicate the succession of queens in relation to political doctrines, such as the Dignity and the Crown, topics well-known to the audience of the performance as well as their contemporaries who read the commemorative masque text. Instead in the biographical narrative and in the masque presenter's speech about the dramatic personae, Jonson associated them with the legal fiction of the king's two bodies as a means of interpreting good and ill fames about them. Testimony concerning their heroic virtue, he claimed, was also true praise of Anne, the culmination and conclusion of the catalogue. The legal fiction signified by the emblem could determine the interpretation of words about the queen or king and thereby could secure them from blame or slander spoken by "any Witsnesse".

The anti-masque and masque opposed ill and good fame in order to symbolise the need to differentiate and to dissociate these two kinds of fame. The hags in the midst of their dance invoking the disruption of the natural and social order vanished at "a sound of loud Musique". In the manuscript and printed texts of the masque, Jonson indicated the meaning of their disappearance to the reader: "the whole face of the *Scene* alterd; scarce suffring the memory of any such thing: But, in the place of it appear'd a glorious and magnificent Building, figuring the *House of Fame*".<sup>60</sup> Jonson informed the reader that the sudden change of scene demarcated the hags from characters worthy of memory, that is, those celebrated for their good fame in poetry. The transition from anti-masque to

<sup>58</sup> B Jonson, above n 40, at ll 671-677.

<sup>59</sup> B Jonson, above n 40, at ll 662-664.

<sup>60</sup> B Jonson, above n 40, at ll 358-360.

masque proper identified epideictic poetry honoring heroic virtue as a means to promote and preserve the good fame of James I and his court. The speech of the masque presenter, Heroic Virtue, concluded with a panegyric of James I whose worthy good fame, he explained, arose not only from the blessed peace of the king's reign but also from the queen's masque. *The Masque of Queenes* fulfilled the customary social function of a Jacobean court masque by celebrating the king as the source of the nation's virtue and honour. The fiction of the masque, the election of Bel-Anna, the dramatic persona of Queen Anne, to the House of Fame, represented the occasional poem's effect upon the good fame of the Stuarts. The masque suggested that its ceremonial performance secured a laudatory interpretation of the king's reputation in a manner similar to juristic interpretation based on the fiction of the king's two bodies.

In the holograph and printed texts of *The Masque of Queenes* Jonson resolved the confusion of truth and falsehood that complicated the signification of good fame. The annotated biographical narrative about the dramatic personae of the courtly masquers restricted the effects of truth to the names of good governors by symbolically ordering them within an allegorical fiction. Jonson advised his royal patrons that a king's good fame relied upon such means of memorialising "*Heroique Virtue* [which] sinks not under length/Of yeares, or Ages, but is, still, the same/While he preserves, as when he got *good Fame*".<sup>61</sup> Jonson's *Masque of Queenes* made it apparent that a poet understood as effectively as jurists that a system of representation, including laws defining seditious libel and masques commissioned by members of the king's court, compensated for the ambiguous interpretation of true and false words in Jacobean England. Both Jonson and the jurists judging Lewis Pickeringe argued that words, either false or true, could be threatening or seditious to a king without a discursive system in which fictions functioned effectively to interpret words and thereby determined their signification.

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<sup>61</sup> B Jonson, above n 40, at ll 383–384.