

# The Function of Proper Names in Early Stuart Literature and The Law of Proof

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"Quoting of Authors", John Selden remarked, "is most for matter of Fact, and then I cite them as I would produce a Witness; sometimes for a free Expression; and then I give the Author his due, and gain myself praise by reading him."<sup>1</sup> Selden's comparison of an author and a witness was not unusual. In fact many of his contemporaries would have known that he specifically referred to classical rhetoric, which categorised an author's proper name as one kind of inartificial proof. The names of "poets and men of repute whose judgements are known to all," according to Aristotle, could be cited by jurists as witnesses.<sup>2</sup> This forensic function of an author's name received close scrutiny by Selden's contemporaries, both poets and Members of Parliament. In order to evaluate the functions of a proper name in the law of proof, the Parliaments of 1614 and 1626 studied medieval jurists' writings and parliamentary judicature concerning common fame and witnesses. In civil and canon law, common fame, that is, an accusation based upon statements of what is commonly known and accepted as true, rather than testimonial evidence presented by named people, could be used to satisfy the standard of proof. The questions studied by Members of Parliament such as

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<sup>1</sup> John Selden, *The Table-Talk of John Selden*, S W Singer (ed), John Russell Smith, 1856, p 24.

<sup>2</sup> Aristotle described two categories of witnesses: "By ancient [witnesses] I mean the poets and men of repute whose judgements are known to all. ... By recent witnesses I mean all well-known persons who have given a decision on any point, for their decisions are useful to those who are arguing about similar cases." See Aristotle, *The "Art" of Rhetoric* I:15.13-15, Heinemann, 1926. See also, Ian Maclean, *Interpretation And Meaning In The Renaissance: The Case Of Law*, Cambridge UP, 1992, pp 75-82; and Michel Foucault, "What is an Author?" in *Language, Counter-Memory, Practice: Selected Essays and Interviews*, Donald F Bouchard (ed), Cornell UP, 1977, pp 121-24.

"What functions do proper names serve in the law of proof?" and "Are proper names essential to testimonial evidence?" also preoccupied early Stuart poets, particularly Ben Jonson. His commendatory poems and epigrams referred to his name as a criterion differentiating truth from defamation and flattery. Like his contemporaries who were jurists and politicians, he addressed a question studied by this article: what function does a proper name have in both law and literature?

### Proper Names and the Law of Proof in Parliamentary Judicature

Members of Parliament in 1614 and 1626 discussed the law of proof in which proper names not only have particular referents, witnesses who provide testimonial evidence, but also have a peculiar function. Proper names determine the evaluation and interpretation of statements in the law of proof. As a result of a proper name identifying a witness, a statement will customarily be classified as testimony. An anonymous statement, on the other hand, may be classified as a rumour, defamation, or slander rather than evidence. Common fame, Members of Parliament learned, in civil and canon law accounted for certain circumstances when anonymous statements served as a quantum of the evidence required for investigation or apprehension of a suspect.

Both civil and canon law specified how judges could quantitatively evaluate anonymous statements and testimony by named persons. Detailed analysis of the function of *fama* in the law of proof appeared in the writings of continental jurists from the thirteenth to the fifteenth century. Jurists, such as Gandinus, noted that Roman law required a defendant's confession or two unimpeachable witnesses' testimony for full, formal proof. Nevertheless in some circumstances common fame, in Richard Fraher's words, could determine "an individual's legal status"<sup>3</sup> if accused or suspected of a crime. *Fama* was valued as a half proof, a quantum of the proof required in criminal cases. Civilians and canon lawyers defined circumstances when with other evidence, for example, circumstantial evidence, *fama* could satisfy full,

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<sup>3</sup> See Richard Fraher's article "Conviction According to Conscience: The Medieval Jurists' Debate Concerning Judicial Discretion and the Law of Proof" (1989) 7 *Law and History Review* 33. See also Fraher above, at 29 for evidence that thirteenth century canon law used the idea of *fama* as it was explicated in Roman law to introduce a new "procedural threshold" for inquisitorial judges: "the canonists invented a whole new category of procedure based upon the notoriety of a crime, which was proved 'by the very evidence of the thing.' A minority of civil jurists followed Thomas de Piperata's suggestion that a full proof could arise out of overwhelming circumstantial evidence, and many Italian statutes granted magistrates broad power to punish defendants without the full proof of Roman law."

formal proof.<sup>4</sup> Canon law instituted in the thirteenth century also accepted "the notion of a fact 'proving itself' by its very notoriety, so that a judge could proceed as an inquisitor on the basis of his own knowledge. ..." <sup>5</sup> Jurists, including Gandinus and Aretinus, who were authorities of civil and canon law, debated circumstances when discretionary powers should enable a judge to convict on the basis of formally insufficient proof.<sup>6</sup>

Debate among members of the Commons in 1626 did not bring to common fame the rigorous scholarship or logic of medieval jurists. Political expediency provoked members of the Commons in 1626 to engage in debate about common fame.<sup>7</sup> George Villiers, Duke of Buckingham, after the reign of James I, when his position as the king's favourite brought him wealth, social rank, and government offices, became the chief minister of Charles I. The duke had bought, or had been appointed by the king, to many offices, including Lord Admiral, Warden of the Cinque Ports, and Master of the Horse.<sup>8</sup> As early as 1621 Parliament associated Buckingham with grievances. This subject was resumed in Parliament during 1625 when Buckingham was accused of incompetence because of his own and others' spending of the war supplies allocated in 1624. Although Buckingham was named again on 22 February 1626 in connection with a complaint about the

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<sup>4</sup> Barbara J Shapiro characterises a medieval judge as an "accountant" whose function was to add the fractions of proof against a defendant, and then convict only if the sum was the legal equivalent of two witnesses' testimony, in "To a Moral Certainty: Theories of Knowledge and Anglo-American Juries 1600-1850" (1986) 38 *Hastings Law Journal* 155. See also, The summary of rules of quantitative proof in Julius Stone, *Evidence Its History and Policies*, Butterworths, 1991, pp 13-14.

<sup>5</sup> Fraher above, n 3 at 34.

<sup>6</sup> Fraher, above, n 3 at 33 explains that canon law initiated civil lawyers' discussion of *fama* when the Church instituted new criminal procedures: "The inquisitorial process instituted by the Fourth Lateran Council permitted a magistrate to proceed *ex officio*, without any accusation being lodged, whenever public *fama* indicated that somebody had committed a crime. . . . But by making *fama* the procedural threshold that had to be surmounted before the inquisitorial magistrate could institute criminal proceedings, Innocent [III] made *fama* analogous to the common law theory of probable cause. . . . The two central issues [in thirteenth-century canonistic literature] were how to establish the existence of *fama*, so that the judge would know when to proceed, and how far the judge could proceed on the basis of *fama*."

<sup>7</sup> On the proceedings against Buckingham in the Parliament of 1626 see Colin G C Tite, *Impeachment and Parliamentary Judicature in Early Stuart England*, Althone Press, 1974, p 1. On the varieties of judicature practised by Parliament see Allen Horstman, "A New *Curia Regis*: The Judicature Of The House Of Lords In The 1620s" (1982) 25 *The Historical Journal* 411-12 and William Stacy, "Impeachment, Attainder, and the 'Revival' of Parliamentary Judicature under the Early Stuarts" (1992) 11 *Parliamentary History* 40-56.

<sup>8</sup> Buckingham's other offices and honours were Constable of Dover Castle, Justice in Eyre of Trent, Constable of Windsor Castle, Gentleman of His Majesty's Bedchamber, member of the Privy Council, and Knight of the Garter. See Roger Lockyer, *Buckingham*, Longman, 1981, pp 48-289.

seizure and arrest of ships in England and France, the Commons had difficulty establishing evidence to declare a grievance against him. On 11 March a parliamentary committee was established to investigate the causes and remedies of evils affecting the kingdom. Focussing on two evils, the kingdom's reduction in honour and strength and the stopping of trade, this committee directed its attention to Buckingham. The influence he commanded because of his grossment of offices and his role as the king's adviser provoked the Commons, dominated by members who, as Conrad Russell has explained, held Buckingham accountable for the growth of Arminianism and Anglo-French conflict.<sup>9</sup> Their suspicions, encouraged by his antagonists, Pembroke and Arundel, motivated a wider examination of the duke.<sup>10</sup> In a speech to the Committee of the Whole House on 11 March, Dr Samuel Turner, the member for Shaftesbury, suggested the Committee of Evils, Causes, and Remedies should investigate six questions concerning Buckingham's use of his offices and patronage.<sup>11</sup> The Commons' investigation of Buckingham continued until 8 May when eight members of the house, each with two assistants, presented thirteen charges or articles against him to the Lords. The presentation, that continued on 10 May, was answered by Buckingham on 8 June.

Evidence about the questions defined by the Committee of Evils, Causes, and Remedies was not readily forthcoming from witnesses who recognised the danger of being named for speaking against Buckingham. It was the utility of the charge of common fame against so powerful a governor as Buckingham that encouraged John Selden to address the question, "whether this House may proceed to transmit to the Lords upon common fame; else no great man shall, for fear of danger, be accused by any particular man. The faults of the gods might not be told, till the goddess fame [was] born."<sup>12</sup> He alluded to Virgil's *Aeneid* in which *Fama*, a personification of rumour, published the misdemeanours of the gods whose powers placed them above revenge or justice.<sup>13</sup> Selden uses Virgil's poem as inartificial proof or "a witness" that vouchsafes common fame as a means of accusation. To Selden and other members of the Commons, Virgil's *Fama* provided a

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<sup>9</sup> Conrad Russell, *Parliaments and English Politics 1621-1629*, Clarendon Press, 1979, 266-69.

<sup>10</sup> Russell, above, n 9, pp 266, 269, and 289.

<sup>11</sup> See *Proceedings in Parliament 1626*, William B Bidwell and Maija Jansson (eds) Yale UP, 1992, Vol 2, pp 261-62.

<sup>12</sup> Bidwell and Jansson, above, n 11, Vol 3, p 46.

<sup>13</sup> Virgil, "Aeneid," in *Virgil*, Vol. 1, 4, H Rushton Fairclough trans., Harvard UP, 1978, pp 173-90. See also, Sir Francis Bacon, "Of Fame. A Fragment" in *Francis Bacon: A Selection of His Works*, Sidney Warhaft (ed), Odyssey Press, 1965, pp 195-96.

topical, political allegory of common fame that, in their eyes, justified their disregard of the potential for defamation in its use. According to Selden, common fame was a means to investigate accusations against Buckingham whose influence with the king and a faction of the Lords prevented him from being compelled to account for his actions. Selden went on to compare indictments to common fame: "*De eo male creditur*, upon a matter in indictments."<sup>14</sup> That Latin phrase used in indictments of murderers, Selden argued, was tantamount to stating common belief that a person had committed crimes justified his accusation or trial. He also supported his assertion by noting, "This course of accusation [is] held in all the Courts of Christendom,"<sup>15</sup> meaning that canon law accepted *fama* as proof.

Dr Turner was less concerned with the procedures of either civil or canon law than Selden. In one of many speeches Turner made to the Lower House on the subject, he candidly advocated that rather than pursuing evidence for specific charges to prove Buckingham responsible for the kingdom's decline in honour and trade: "It is fit there should be a *causa generalissima* stated, which should be the mother of the rest. The common fame presents one man to be this cause."<sup>16</sup> In the absence of specific accusations attributed to named witnesses Turner proposed that the Commons use anonymous statements as a legally valid basis of inquiry. He argued there were precedents in parliamentary history for the use of "the imperial laws [to] allow common fame to be a way of presentment"<sup>17</sup> of charges. Turner believed the Commons could make Buckingham accountable for his actions by following the precedents of other Parliaments.

Precedents in the Good Parliament of 1376 confirmed common fame justified an accusation by its "notoriety."<sup>18</sup> The legal definition of notoriety occurred in the decretals of Innocent III, which, Fraher notes, explained, "the essence of procedure *per notorium* [was] that the judge did not need to unearth eyewitness testimony. The core of *notorium* was based on common knowledge of circumstantial evidence sufficient to convince the local

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<sup>14</sup> Bidwell and Jansson, above, n 11 at Vol 3, 46.

<sup>15</sup> Bidwell and Jansson, above, n 11 at Vol 3, 46.

<sup>16</sup> Bidwell and Jansson, above, n 11 at Vol 2, 261.

<sup>17</sup> Bidwell and Jansson, above, n 11 at Vol 2, 299.

<sup>18</sup> Tite, above, n 7 at 13. See also, Fraher, above, n 3 at 35 note 77, which explains, "The canonistic definition of *notorium* was expressed in X.3.2.7 and X.3.2.8 . . . The canonists' glosses to these decretals provided the basis of scholastic discussions of *notorium*, *manifestum*, *fama*, *occultum*, and related concepts. See also, Bartolus, *In ius universum civile commentaria*, Dig. 48.16.6.3."

populace."<sup>19</sup> This procedure of the canon law was borrowed by the Good Parliament. In June 1376, as Plucknett has documented, William Latimer, chamberlain of Edward III, was tried in Parliament not on the basis of an indictment naming a specific accuser but instead because he was "accused by the clamour of the commons."<sup>20</sup> Richard Lyons was also made to answer charges during the same Parliament when "accused by the commons."<sup>21</sup> Latimer and Lyons, in Plucknett's words, were required to answer charges of misconduct "because the facts were 'notorious', as was attested by 'the clamour of the people'."<sup>22</sup> Records of this Parliament's proceedings were cited as precedents for the procedures and standard of proof used by the Commons in 1626.<sup>23</sup> The Commons in 1626 did not attempt to establish its procedure strictly observed the criteria of notoriety in canon law, that required not only public outcry but also circumstantial evidence and public notice. When the king on 29 March criticised both Houses for their investigation of Buckingham's conduct, the Commons insisted upon examining the legality of "proceeding on a notoriety of the fact and upon c[ommon] fame."<sup>24</sup> In a remonstrance presented to the king on 5 April the Commons justified its proceedings as the practice of:

the ancient, constant, and undoubted right and usage of parliaments to question and complain of all persons, of what degree or quality soever, found grievous in commonwealth and who have abused the trust and power committed to them by their sovereign; a course not only approved in your late father's days but by frequent precedents in the times of your most famous progenitors appearing in records and histories. Without which liberty no private man, no servant to a king, perhaps no councillor, can be a means to call great officers into question for their misdemeanors without exposing himself to great enmity.<sup>25</sup>

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<sup>19</sup> Fraher, above, n 3 at 43.

<sup>20</sup> T F T Plucknett, "The Origin Of Impeachment" (1942) Fourth Series, 24 *Transactions Of The Royal Historical Society* 70. See also, Tite, above, n 7 at 5-23.

<sup>21</sup> Plucknett, above, n 20 at 70.

<sup>22</sup> Plucknett, above, n 20 at 71. See also, Plucknett, "The Impeachments Of 1376" (1951) Fifth Series, 1 *Transactions Of The Royal Historical Society* 153-64 and Tite, above, n 7 at 13-14 on the wording of accusations based on clamour and notoriety.

<sup>23</sup> For precedents cited in support of this argument see Bidwell and Jansson, above, n 11 Vol 3 at 45 note 7.

<sup>24</sup> Bidwell and Jansson, above, n 11, Vol 2 at 420.

<sup>25</sup> Bidwell and Jansson, above, n 11, Vol 2 at 433-34.

The remonstrance explained in gracious yet direct terms the political necessity of the manner of investigating the duke's conduct. For good reason the remonstrance evaded stating the number of parliamentary precedents for the proceedings; several precedents revealed the uncertain juridical validity of common fame. Accusations based solely upon common fame were more often discounted than pursued by medieval parliaments.

The debate of the Committee of the Whole House in 1626 foundered on the precedent recorded in the *Year Books* during the reign of Henry VI. Then there was "a general rumor and noise, of [the Duke of Suffolk's] great offenses against the state. The Commons, taking notice thereof, acquainted the Lords with that general rumor, praying them he might be committed to the Tower which the Lords, upon consultation with the judges, refused, because the charge [was] only general."<sup>26</sup> Only when particular evidence was supplied for the charge did the Lords commit Suffolk to the Tower. On the basis of this case, the Commons in 1626 concluded the criterion differentiating common fame from a rumour was the possibility of citing specific charges rather than general grievances and complaints against the accused.

Suffolk's case was only one of the precedents found in response to Glanville's motion on 21 April that the Commons direct a select committee to search for arguments in the *Year Books* and precedents in records of Parliament to determine the question, "whether common fame [was] a ground for this House to proceed upon, because it conduces much to the business now in hand".<sup>27</sup> Mr Mallet began the debate the following day by referring to recent experience, "the case of the Bishop of Durham, 12 *Jac*".<sup>28</sup> This case in 1614 proved to Mr Mallet that without other evidence than an accusation based on common fame the House of Lords could reject the Commons' case. This had been the outcome of a message sent on 28 May 1614 by the Commons to the Lords to accuse Neile "by public and constant Fame"<sup>29</sup> of speaking words that brought scandal upon the Lower House. Neile had spoken the words to which the Commons objected in the Upper

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<sup>26</sup> Bidwell and Jansson, above, n 11, Vol 3 at 46. See also, Vol 2 at 342 and 344.

<sup>27</sup> Bidwell and Jansson, above, n 11, Vol 3 at 38. See also, Vol 2 at 345.

<sup>28</sup> On Neile's tenure as Bishop of Lincoln, Durham, and Winchester, and Archbishop of York, see Elizabeth Reed Foster, *The House of Lords 1603-1649*, U of North Carolina P, 1983, p 329. On the extended debate concerning his words and common fame from 25 May to 1 June 1614 see *Proceedings in Parliament 1614 (House of Commons)*, Maija Jansson (ed) American Philosophical Society, 1988, pp 339-412.

<sup>29</sup> *Cobbett's Parliamentary History of England*, Johnson Reprint, 1966, Vol 1 at 1160.

House on 23 May 1614 when participating in debate. He had opposed a request made by the Commons which wanted to meet with the Lords in order to discuss impositions. Reports came to the Commons that while debating against the proposed meeting of the two Houses Neile had warned the Commons might utter "undutiful and seditious speeches, unfit for their lordships to hear".<sup>30</sup> The Commons could not readily prove that he had said these words because they were not recorded in the official *Journal* of the Lords.<sup>31</sup> Parliamentary privilege also prevented the Lords from being compelled to disclose statements made while the Upper House was in session. As a result the Commons could not secure the names of witnesses to prove what Neile had said. Instead, the Commons accepted the advice of a select committee argued common fame constituted "certain ground enough" for accusing Neile for words spoken in the Upper House.<sup>32</sup> In response to the Lords' message of 30 May 1614 that their complaint was not based on direct or sufficient proof, the Commons acknowledged common fame would not have been acceptable in another court of justice. It argued parliamentary precedents made it sufficient for the Lords' consideration.<sup>33</sup> In its response to the Commons, the Lords implicitly accepted the accusation against Neile but reiterated its opinion that common fame alone did not, and would not in the future, constitute sufficient grounds to proceed against a member of the Lords.<sup>34</sup>

This precedent also revealed to Buckingham's opponents in 1626 the tenuousness of the legal validity of common fame for a proceeding such as impeachment for incompetence or abuse of office. In most instances, common fame was the basis of investigating or apprehending individuals commonly accused of a felony, such as murder or robbery, for which a charge subsequently could be proved true or false on the basis of material evidence. Later this point would be clarified by Sir Edward Coke in *The Second Part of the Institutes of the Lawes of England*. He argued the use of common fame could be justified in certain circumstances, such as "When treason and felony is committed and the common fame and voice is that A is guilty, [then] it is lawful for any man that suspects him to apprehend

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<sup>30</sup> Cobbett, above, n 29, Vol 1 at 1160.

<sup>31</sup> Thomas L Moir, *The Addled Parliament of 1614*, Clarendon P, 1958, p 125.

<sup>32</sup> Jansson, above, n 28 at 355.

<sup>33</sup> Cobbett, above, n 29, Vol 1 at 1161.

<sup>34</sup> Cobbett, above, n 29, Vol 1 at 1162. See also, Jansson, above, n 28 at 400, and Moir, above, n 31 at 132.



him".<sup>35</sup> Coke's description of common fame in his *Institutes* did not suggest common fame could function as evidence that would justify a conviction. The notion of the sufficiency of proof limited the Commons' proceedings, based solely upon common fame, to investigation and accusation. As Colin Tite has explained, it was in this respect the proceedings against Buckingham differed from those against Sir Francis Bacon and Lionel Cranfield, earl of Middlesex, during the Parliaments of "1621 and 1624, in which detailed evidence had been secured from particular witnesses".<sup>36</sup>

The dicta of legal authorities, such as the medieval jurist Bracton were readily interpreted to support the Commons' investigation and presentation of charges against Buckingham. The description of common fame as a trope of forensic rhetoric in Bracton's treatise *De Legibus et Consuetudinibus Angliae* (c. 1259) specified criteria that, if satisfied, would validate the Commons' method of establishing the existence of common fame about Buckingham's misconduct of office. Bracton advised caution concerning two criteria: "Fama quae suspicionem inducit, oriri debet apud bonos et graves, non quidem malevolos et meledicos, sed providas et fide dignas personas, non semel sed saepius, quia clamor minuit et defamatio manifestat".<sup>37</sup> In particular, Bracton stated a person's "good" character determined whether his statements about another should be credited with juridical value. Bracton also insisted there must be many such individuals who voiced the same accusation. The criterion that the fame or report should be held in common by many people was intended to differentiate it from unreliable rumours, described by Mr Wentworth as accusations "where a man can bring forth but one author".<sup>38</sup> Nevertheless, the criterion that a report be held in common failed precisely to differentiate common fame from defamation or rumour. Accusations based upon common fame, Bracton explained, had different referents than indictments naming witnesses. The standard of full, formal

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<sup>35</sup> Sir Edward Coke, *The Second Part of the Lawes of England*, Garland, 1979, p 52.

<sup>36</sup> Tite, above, n 7 at 191.

<sup>37</sup> Lib. 3. f. 143. "Fame, which induces suspicion, ought to arise from good and grave men; not, indeed, from malevolent and malicious men, but from cautious and credible persons; not only once, but frequently; for clamor diminishes, and defamation manifests." Bracton is quoted from Coke, above, n 35 at 52. See also, The wording of canon law cited in Fraher, above, n 3 at 70 note 77: "X.5.1.24, in which Innocent III asserted that *fama* had to arise from *providis et honestis*, and not from *malevolis et maledicis*." See Barbara J Shapiro, "Beyond Reasonable Doubt" And "Probable Cause": *Historical Perspectives on the Anglo-American Law of Evidence*, U of California P, 1991, p 155.

<sup>38</sup> Bidwell and Jansson, above, n 11, Vol 3 at 46.

proof in civil law required proper names that referred to particular individuals whose words, and knowledge upon which the words were based, satisfied the law of proof. An accusation based on common fame did not specify the proper name of a witness to whom its words could be referred. Instead the character and number of people determined whether an accusation based on common fame satisfied a particular juridical body or judge. Bracton's description of the origins and criteria of common fame provided important (if generalised) guidelines to evaluate the use of commonly accepted statements about Buckingham and his conduct. The frequent complaints about Buckingham as well as the identity and reputation of the Members of Parliament who spoke those accusations conformed, the Commons believed, with Bracton's criteria.

The relevance of the criteria specified by Bracton to the case being constructed against Buckingham could easily be construed to favour the Commons' opinions. Mr Browne argued common fame was "a parliamentary way"<sup>39</sup> of proceeding that allowed the Commons to present accusations which could be considered mere defamation outside parliament. Another member of the Commons, Mr Wilde, noted the importance of Bracton's criterion that an accusation based on common fame should be the consensus "from men of the better sort".<sup>40</sup> But Wilde reduced Bracton's description to the truism, "all suspicion [is] grounded upon fame,"<sup>41</sup> and as a result should be investigated. Other more discerning minds introduced relevant qualifications to Mr Wilde's argument. Littleton argued, there is "[a] great difference between common fame and rumor. The general voice is common fame. *Vox populi vox Dei*," referring to a case in the *Year Books* 11 Edward IV to prove, "common fame [is] more than the saying of any man, for that the voice of many men. Common fame [is] a good ground of imprisonment for treason, or felony. ..." <sup>42</sup> According to Littleton's understanding, common fame based upon anonymous statements that voiced the consensus of a number of people amounted to proof an accusation did not arise from individual grievances or malice. Veracity was sought by the Commons in "accusations of common fame," described by Dr. Samuel Turner, as "all

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<sup>39</sup> Bidwell and Jansson, above, n 11, Vol 3 at 50. See also, Vol 3 at 48 where Browne refers to civil law in order to explain, "Common fame called by civilians, *semi-plena probatio*, arising out of apparent signs. If a private man accuse, he liable to punishment if false . . . otherwise, where a member of the House does it."

<sup>40</sup> Bidwell and Jansson, above, n 11, Vol 3 at 49.

<sup>41</sup> Bidwell and Jansson, above, n 11, Vol 3 at 45.

<sup>42</sup> Bidwell and Jansson, above, n 11, Vol 3 at 46.

bearing the significature of *vox populi*.<sup>43</sup> Dr. Turner did not repeat phrases associated with parliamentary precedents that specified an accusation referred to "notorious" facts attested by "the clamour of the people."<sup>44</sup> Instead he (like Littleton) used a maxim, *vox populi, vox dei*.<sup>45</sup> Both men invested special significance in this maxim, perhaps because maxims, according to common law, codified custom and experience as an irreducible principle that could be used to differentiate truth from falsehood. The maxim *vox populi vox dei*, in Turner's eyes, was a statement of general truth that verified the consensus voiced by the people's representatives in Parliament.

The thirteen articles against Buckingham presented on 10 May did not name witnesses but instead stated accusations and reports that substantiated his misconduct and abuse of his offices. Buckingham's response on 8 June established the articles against him did not define charges or crimes but instead political offences, such as receipt of royal favours and patronage that benefited his family and himself. He offered "the law of nature and the King's royal favour ... for his excuse".<sup>46</sup> Even his political indiscretions, such as accumulating many offices, he explained, conformed with customary political practices. With tact and rhetorical skill Buckingham excused not only himself from acts against the interests of the kingdom but also the Commons from malicious accusations. Attributing the best motives to the Commons, he insisted it had been misinformed by common fame that amounted to no more than the public's poor opinion of him. He encouraged the Lords to investigate his answers and advised it in light of such evidence to consider "how far verbal affirmations or informations extrajudicial shall move your judgments when judicial acts and those things which were acted and executed do prove the contrary".<sup>47</sup> He discounted the truth of accusations based not upon the testimony of named witnesses but instead upon common fame by characterising the latter as "extrajudicial." While extrajudicial evidence could satisfy private persons about facts requiring proof, Buckingham emphasised, it did not constitute full, formal proof. He referred specifically to common fame as a quantum of proof, half of that required by civil law, when he asked the Lords to consider the questions,

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<sup>43</sup> Bidwell and Jansson, above, n 11, Vol 2 at 316-17.

<sup>44</sup> Plucknett, above, n 20 at 71.

<sup>45</sup> On the maxim "the voice of the people is the voice of god" see George Boas, "Vox Populi", in *Dictionary of the History of Ideas*, Philip P. Wiener (ed) Charles Scribner's Sons, 1973, Vol 4, pp 496-500. On the function of maxims in common law see Lawrence Manley, *Convention 1500-1750*, Harvard UP, 1980, pp 100-101.

<sup>46</sup> Bidwell and Jansson, above, n 11, Vol 1 at 577.

<sup>47</sup> Bidwell and Jansson, above, n 11, Vol 1 at 575.

who accused me? Common fame. Who gave me up to your Lordships? The House of Commons. The one is too subtle a body (if a body), the other too great a one for me to contest with. I am confident when my cause shall be tried [n]either the one [n]or the other, [n]or part of either, will be found to have any ground of being my enemies; but, as fame is subtle, so is it often (and especially in accusations) half.<sup>48</sup>

His argument focussed the Lords' attention on the limitations of the articles of accusation that required supporting evidence from named witnesses in order to convict him of specific offences. Anonymous accusations documented in the articles of impeachment presented by the Commons conformed with legal descriptions of common fame but were only valid as a basis for inquiry, accusation, or imprisonment. For this reason, Buckingham advised the Lords "how full of danger and prejudice it is to give too ready an ear and too easy a belief unto reports or testimony without oath which are not of weight enough to condemn any".<sup>49</sup>

Buckingham effectively discounted the legal relevance of the Commons' articles of accusation as evidence but he could not eliminate the suasive effects of common fame, the truth the Commons assumed to be expressed by the *vox populi* that condemned him as untrustworthy. In response to the Commons' investigation of Buckingham, the king protested that he objected to its questioning of his choice of officers. In a message read to the House of Commons by Sir Richard Weston, the Chancellor of the Exchequer, on 14 March 1626, Charles I objected not only to the proceedings concerning Buckingham but also to words spoken against the duke by individuals, particularly, "Doctor Turner, who . . . without any ground of knowledge in himself, or any offer of particular proof to the House, took upon him to make an inquiry upon articles against the Duke of Buckingham as he pretends, but indeed against the honor and government of himself [*i.e.*, the king] and his blessed father."<sup>50</sup> The efforts of the Commons to investigate Buckingham on the basis of common fame, as Charles realised, amounted to a devaluation of the king's word, particularly his nomination of officers of state. The proceedings of the House of Commons, the representatives of the *vox populi*,

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<sup>48</sup> Bidwell and Jansson, above, n 11, Vol 1 at 565. See Fraher, above, n 3 at 71 note 99 for the wording of Auccursius's gloss to the Digest 22.5.3: "Alii dicunt quod [fama] cum alio firmat. ... Facit ergo secundum hos probationem semiplenam."

<sup>49</sup> Bidwell and Jansson, above, n 11, Vol 1 at 579.

<sup>50</sup> Bidwell and Jansson, above, n1 11, Vol 2 at 285. See Conrad Russell, *The Crisis of Parliaments: English History 1509-1660*, Oxford UP, 1988, 302.

challenged the idea the king's endorsement of a councillor as an individual worthy of honour and trust should determine Buckingham's reputation.<sup>51</sup> The attempt of the Commons on 10 June to continue investigating Buckingham's negotiations with Spain in 1624,<sup>52</sup> according to Roger Lockyer, was one of several causes of the king's decision to dissolve Parliament on 15 June. The articles based on investigations initiated because of common, anonymous accusations did not enable the Commons to remove Buckingham from his offices or from the king's favour. Common fame alone was inadequate to satisfy the standard of proof despite precedents in parliamentary judicature. The proceedings in the House of Commons in 1626 and the juridical theory to which they referred did clarify the function of proper names that common fame was intended to replace. A proper name of a witness did not in itself signify a meaning but instead facilitated description and categorisation of statements as accusations and evidence. Common fame, that is, the repeated affirmation of accusations made by people of "good" character, also facilitated the description or classification of the semantic content of their statements in relation to the law of proof. The outcome of Buckingham's impeachment revealed common fame could be discounted much more easily than the testimony of a named witness. These ideas that emerge as themes in Ben Jonson's poems will be discussed in the following section.

### The "Common Voyce" and "Great Names" in Ben Jonson's Poems

Jonson explained in a dedicatory epistle to his *Epigrammes* addressed to William Herbert, Earl of Pembroke, that some readers, without justification, might undermine the poems' reception because "*in their ignorant and guiltie mouthes, the common voyce is (for their securitie) Beware the Poet. ...*"<sup>53</sup> Jonson's wording is similar to Littleton's statement made during the proceedings of the Commons in 1626: "The general voice is common fame."<sup>54</sup> In Jonson's epistle the adjective "common" signifies more than simply "many men", as it did in Littleton's and Bracton's description of common fame. "Common" in Jonson's usage characterises some readers as low and immoral persons who nevertheless can destroy his reputation. Their

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<sup>51</sup> See Clayton Roberts, *The Growth Of Responsible Government In Stuart England*, Cambridge UP, 1966.

<sup>52</sup> Bidwell and Jansson, above, n 11 Vol 3 at 416.

<sup>53</sup> Ben Jonson, "Epigrammes," in *Ben Jonson*, Vol 8, C H Herford, P and E Simpson (eds) Clarendon Press, 1954, p 25. All references to Jonson's poems will be cited from this edition.

<sup>54</sup> Bidwell and Jansson, above, n 11, Vol 3 at 46.

slandrous statements, Jonson suggests, are not evidence but instead common rumours that can be countered by the testimony of a witness, such as Pembroke, whose name, character, and social degree merit respect and deference. In order to preserve his own good name, Jonson requests from Pembroke "*protection of truth, and libertie*". In return within his collected *Epigrammes* Jonson includes the Earl of Pembroke among men whose "*good, and great names*" will preserve "*their remembrance with posterity*",<sup>55</sup> such as the "great, and worthy" William, Lord Monteaule, the "saver of my country" (*Epigram 60*), Robert, Earl of Salisbury, who shows "the judgement of the king" (*Epigram 63*), and Thomas Egerton, Lord Chancellor, a man "no lesse wise, then skilfull in the lawes" (*Epigram 74*). Jonson offers to reciprocate the "*protection of truth*" extended to him by the statesmen named in his poems. He believes the proper names of these statesmen and the poet have similar functions within his collection of *Epigrammes*. From the corpus of lyric poems that he had written over a period of more than a decade Jonson carefully selected those included in the chapter titled *Epigrammes* in the folio volume of *The Workes of Benjamin Jonson*, printed in 1616. Many of these epigrammatic poems had originally appeared in different contexts, such as verse epistles to potential patrons or commendatory poems within his friends' books. The epigrams' proximity within the 1616 folio volume emphasises a common theme; repeatedly they examine how the names of good men resolve errors of interpretation caused by common fame.

Many of Ben Jonson's *Epigrammes* examine a problem evident in the proceedings against the Duke of Buckingham in 1626 and in the careers of other statesmen: the difficulty of determining whether common fame either refers to, or instead hides, the truth. These men are difficult subjects to praise without qualification. As Robert Wiltenburg suggests, the career of a politician "who is concerned not to serve some clear moral imperative but to serve the state--often through intrigue, rumor, spies, and the deliberate manipulation of patronage, friendship, truth, and even justice itself"<sup>56</sup> may merit both blame and praise. How to differentiate good from bad actions and how to discriminate true from false accusations therefore pose special problems. In *Epigram 43* (written in 1605) Jonson, however, proposes that malicious lies can paradoxically provide evidence of the service Robert Cecil,

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<sup>55</sup> Jonson, above, n 53, Vol. 8 at 25.

<sup>56</sup> Robert Wiltenburg, "'What need hast thou of me? or of my *Muse*?': Jonson and Cecil, Politician and Poet", in "*The Muses Common-Weale*": *Poetry and Politics in the Seventeenth Century*, Claude J. Summers and Ted-Larry Pebworth (eds), U of Missouri P, 1988, p 35.

Earl of Salisbury, offered to the king. The poet remains confident that "should thy countries love to speake refuse, / Her foes enough would fame thee, in their hate" (ll. 3-4). Jonson rests assured that the hatred of Cecil expressed by England's enemies can justly indicate the peer's true merit and honour. When stated by enemies, Jonson proposes, rumours, enmity and blame should effectively signify to loyal, perspicacious Englishmen that Cecil's deeds are truly honourable. The paradox that defamatory rumours can express the truth about a good man informs the language used by Jonson. In *Epigram 43* "To Robert, Earle of Salisburie," *Epigram 51* "To King James," and *Epigram 67* "To Thomas, Earl of Suffolk" words that are either true or false verify evidence. By commenting upon this ambiguity, Jonson enables his reader to understand the importance of a witness's proper name to the standard of proof.

Cecil's reputation, as Pauline Croft documents,<sup>57</sup> declined after his death in 1612 when libels and scandalous epigrams about him suddenly proliferated. In an epistle to Dudley Carleton, John Chamberlain remarked upon the sudden shift in opinion about Cecil; whereas days before his death, Cecil was honoured with public prayers for his well being after his death Cecil's reputation became

dayly worse and worse and more libells come as yt were continually, whether yt be that practises and juglings come more and more to light, or that men love to follow the sway of the multitude: but yt is certain that they who may best maintain yt, have not forborn to say that he jugled with religion, with the King, Quene, theyre children, with nobilitie, Parlement, with frends, foes and generally with all. Some of his chaplains have ben heard to oppose themselves what they could in pulpit against these scandalous speaches but with litle fruit.<sup>58</sup>

Chamberlain acknowledges his own uncertainty as to whether the "truth" about Cecil is coming "to light" or being clouded by popular opinion. In Jonson's 1616 folio *Epigram 63* (a poem presumably written before Cecil's death) resonates against his posthumous reputation. This epigram spoke strongly in defence of Cecil, the former Lord Treasurer. Jonson advised

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<sup>57</sup> Pauline Croft, "The Reputation Of Robert Cecil: Libels, Political Opinion And Popular Awareness In The Early Seventeenth Century" (1991) Sixth Series, 1 *Transactions of the Royal Historical Society* 43-69.

<sup>58</sup> *The Letters of John Chamberlain* cited from Croft, above, n 57 at 43.

when envy maligned such a man no one could "be silent ... Without his, thine, and all times injurie" (ll. 9-10). Silence, in such circumstances, Jonson suggests, allows unsubstantiated accusations to be augmented. In fact, he notes, Cecil's decision throughout his career not to seek "reward . . . from the publike voyce, but private fact" (ll. 5-6) may have fostered mistaken opinions. Modesty and discretion about Cecil's service to the king left scandalous rumours unchecked. Jonson reminds readers that "the judgment of the king" (l. 4) who trusted Cecil as a councillor should also guide others' judgment. After Cecil's death, *Epigram 63* allows Jonson to offer testimony about the statesman's "true worth" (l. 12). In this and other poems Jonson explains how his epigrams serve the ends of justice by amending common fame, that is, anonymous accusations against statesmen. Jonson's own name on the frontispiece of *The Workes of Benjamin Jonson* identified the proper name of a witness whose words are testimony for praiseworthy men and their actions. The persona of *Epigram 63* and other lyric poems within the 1616 folio implicitly referred to the proper name of their author.

In *Epigram 67* addressed to Thomas Howard, Earl of Suffolk, Cecil's successor as Lord High Treasurer, Jonson explicated the problems of interpreting praise and blame. For his contemporaries, Jonson asserts, the significance of praise has changed because most people believe laudatory language does not refer accurately to "things" done by their contemporaries: "Since men have left to doe praise-worthy things, / Most thinke all praises flatteries" (ll. 1-2). The phrase *res et verba*, things and words, according to A C Howell, was used by classical Roman and Renaissance orators and writers who carefully considered "the relation of style to subject-matter, for which *res* was the normal rhetorical term".<sup>59</sup> Similar terms guided interpretation of the law by Renaissance jurists whose glosses on the Digest, according to Ian Maclean, explained:

[i]nterpretation is the act of making meaning certain ("*sententiam incertam reddere certam*"); it must "declare" or "represent" the law. It is distinguished from other operations on language or signs, namely signification, conjecture or presumption. Signification is the process of giving sense, the act of representing something, usually by a word, external to the thing signified: "*verba significant, et res significantur*", as the Accursian gloss has it: "*Et est significare, demonstrare rem de qua quaeritur, proprio nomine ei attributo* (gl.

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<sup>59</sup> A C Howell, "*Res et Verba: Words and Things*", in *Seventeenth-Century Prose*, Stanley E Fish (ed), Oxford UP, 1971, p 188.



ad D 50.16: "words signify, things are signified. And to signify is to demonstrate the object in question, having attributed to it its proper name"). *Res* in this sentence is not easy to translate; but in nearly all contexts, it refers to a prior, existent object, matter, action or mental state, and thus is implicitly referential. ...<sup>60</sup>

Like Renaissance jurists, Jonson explained that interpretation must be practised in a manner that recognised language and style were referential. For this reason only by using the "proper" term or word to designate an act could that act be judged with certainty. In Jacobean poetry the appropriate *verba* or style of praise, seems to Jonson, dissociated from *res*, its actual subject-matter, honourable and good statesmen, because so many poets have praised unworthy men. Because deeds and subjects that merit praise - true words, honest actions, and virtue - have become rare, laudatory poems have been bestowed on those who deserve blame. As a result, flattery and honest praise cannot be differentiated with certainty by readers. Because of the dissociation of honourable deeds from the customary meaning and style of laudatory words, Jonson explains how to interpret the meaning of praise and blame in his poems.

Proving that Thomas Howard's character and actions were blameless was of consequence when Jonson's poems were at press from 1615 to 1616. Accusations of corruption and criminal conduct were commonly spoken about members of the Howard family. The divorce and remarriage of Thomas Howard's daughter, Frances, in 1613 were followed by the revelation in 1615 she was implicated in the murder of Sir Thomas Overbury.<sup>61</sup> The subsequent "fall" of the Howard faction at court did not end Thomas Howard's own career in government; until 1619 he maintained his appointment as Lord High Treasurer. Yet scandal and ill fame, merited by his daughter, also sullied the reputation of Thomas Howard, who had hoped her marriage to Robert Carr, Earl of Somerset, in 1613 would end factional strife at King James's court. It is possible Jonson's epigram alluded specifically to these circumstances because, as Martin Butler has explained, while Jonson's folio was in press the *Epigrammes* were revised to refer specifically to events at court in January 1616.<sup>62</sup> Whether it was Jonson's

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<sup>60</sup> Maclean, above, n 2 at 95-96.

<sup>61</sup> See David Lindley, "Embarrassing Ben: The Masques for Frances Howard" (1986) 16 *English Literary Renaissance* 343-59 and Martin Butler and David Lindley, "Restoring Astraea: Jonson's Masque For The Fall Of Somerset" (1994) 61 *English Literary History* 807-27.

<sup>62</sup> Martin Butler, "Jonson's Folio and the Politics of Patronage" (1993) 35 *Criticism* 380-81.

intention to allude to these events when he wrote *Epigram 67*, they would have affected interpretation of the poem in the 1616 folio by his contemporaries.

In *Epigram 67* Thomas Howard's family name appears set in upper case characters. Perhaps because of the disrepute vitiating that name the epigram does not use the name-as-praise *topos* characteristic of Jonson's poems about noblemen.<sup>63</sup> Instead Jonson subordinates Suffolk's inheritance, including his family name, to his merit. During Suffolk's early career people supported his promotion because they respected him. Because the public valued Suffolk's "vertues", Jonson asserts, "all thy honors were by them first sought" (ll. 6-8). Evidence of Suffolk's virtues lies in others' good wishes "Which, by no lesse confirm'd, then thy kings choice, / Proves, that is gods, which was the peoples voice" (ll. 11-12). Jonson uses the maxim *vox populi vox dei* to clarify the relation of his words about Suffolk to the truth. By revising the maxim *vox populi vox dei* Jonson expresses the fame Suffolk merits; it is the choice of Suffolk not by the people but instead by the king, God's vice regent and administrator of justice on earth, that determines it is just. Nomination by the king, a divinely appointed intermediary, determines whether his subjects' statements about Suffolk truly coincide with the voice of God. The truth or falsehood of commonly believed statements, Jonson proposes, can be confirmed by referring to the king who, as the representative of the monarchy and the church, definitively voices the truth. Suffolk was just one of many councillors whose reputation could not be easily safeguarded from common fame, which Jonson represented in *Epigrammes* as uncertain evidence of whether an individual deserved praise or blame.

A similar theme informs Jonson's commendatory poems evaluating other authors and their writing. Jonson included in *Epigrammes* commendatory poems he originally wrote for other writers' printed books, such as plays, scholarly translations, and musical scores. Commendatory poems written by one poet for another are often dismissed as "puffing" and flattery.<sup>64</sup> These poems alert us to the functions of an author's name that customarily appeared

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<sup>63</sup> On the name-as-praise *topos* see Joshua Scodel, *The English Poetic Epitaph: Commemoration and Conflict from Jonson to Wordsworth*, Cornell UP, 1991, pp 53-56.

<sup>64</sup> See Peter R Allen, "Utopia and European Humanism: the Function of the Prefatory Letters and Verses" (1963) *Studies In The Renaissance* 91-107, Franklin B Williams, Jr, "Commendatory Verses: The Rise of the Art of Puffing" (1966) 19 *Studies in Bibliography* 1-14 and Franklin B Williams, Jr, *Index of Dedications and Commendatory Verses in English Books Before 1641*, Bibliographical Society, 1962.

beneath a commendatory poem on the printed page. In a commendatory poem Ben Jonson's name and character, as well as those of his subjects, have a particular function whether printed in their original context in another author's book or reprinted within his folio. When a poet, such as Jonson, affixes his own name to another's book in order to verify its value, he offers his words as testimony and himself as a witness. Commendatory poems articulate Jonson's concern with the issue of authorial attribution, in particular the responsibility he bore in such circumstances for another's work. Jonson draws readers' attention to a poem's attribution, his production of, and relation to, its words in order to stake his own name and reputation as an honest man skilled in speaking.<sup>65</sup> Jonson's belief that the truth of words of praise and blame find verification in their author's name and character makes attribution an important criterion of interpretation for a reader.

When writing about authors, poets, playwrights, historians, and translators rather than statesmen, Jonson is a credible authority able to determine the truth or true value of their words. His own reputation as a scholar and poet invests his name with authority seemingly dissociated from the taint of patronage, power, and flattery that affects his poems about statesmen. His understanding of the term "author" was shared by medieval and Renaissance scholars for whom, A J Minnis explains, "in a literary context ... *auctor* denoted someone who was at once a writer and an authority, someone not merely to be read but also to be respected and believed".<sup>66</sup> Jonson often described his predecessors, such as Martial and Camden, in a manner that associated their names with a poetic or scholarly standard of proof. By alluding to forensic rhetoric, Jonson also associates these authors' or authorities' names with juridical evidence, witnesses, testimony, and proof.<sup>67</sup>

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<sup>65</sup> See Thomas M Greene, *A Light in Troy: Imitation and Discovery in Renaissance Poetry*, Yale UP, 1982, pp 274-75 on Jonson's use of humanistic criteria, particularly the integrity of an orator skilled in the use of rhetoric, an ideal that Renaissance writers borrowed from Quintilian.

<sup>66</sup> A J Minnis explains that the "author" according to medieval and Renaissance grammarians, "derived its meaning from four main sources: *auctor* was supposed to be related to the Latin verbs *agere* 'to act or perform', *augere* 'to grow' and *auieo* 'to tie', and to the Greek noun *authentim* 'authority'... to the ideas of achievement and growth was easily assimilated the idea of authenticity or 'authoritativeness'", in *Medieval Theory Of Authorship: Scholastic literary attitudes in the later Middle Ages*, Wildwood House, 1988, p 10.

<sup>67</sup> Maclean, above, n 2 at 77-78 explains that in field of forensic rhetoric "[t]he *causae* or *status coniecturales* concern questions of fact: in this category falls the consideration of evidence, both in the form of *inartificiales probationes* (brute signs of all kinds--circumstantial evidence, rumours, the depositions of witnesses, the results of torture and interrogation) and *artificiales probationes* (approximately, what the advocate can make of these for the benefit of his client." See also, Minnis, above n 66 at 102 note 56.

Jonson in his commendatory poems himself claims the authority of a witness who is qualified to judge his own and others' writing.

Juridical metaphors characterise Jonson's persona in his commendatory poem prefaced to Christopher Brooke's *The Ghost of Richard the Third* (printed c. 1614). Jonson speaks not as judge or jurist but as a witness in his poem "To his friend the Author upon his *Richard*."<sup>68</sup> Rather than confidently adding his name to those of Chapman, Browne, Wither, Daborne, and Dynne, Jonson inquires, "When these, and such, their voices have employd; / What place is for my testimony void?" (ll. 1-2). Following upon their poems that affirm the worth of "such a worke" (l. 5), Jonson considers what space and function remain for his own poem and name within Brooke's book. He proposes that among a multitude of others his own name seems unnecessary as a seal or guarantee. The testimony of many witnesses, particularly other well-known writers, secures the name and reputation of the work and its author. Knowing the importance of testimony confirming not only the author's but a work's character, Jonson adds his praise of both to others' commendations that will "crowne, / Thy *Richard*, rais'd in song, past pulling down" (ll. 6-7). It is praise offered by such witnesses that crowns Brooke's literary work with a poet's crown of laurels more secure than the crown usurped by his subject, Richard III.

Praise, rather than judicious words offered as testimony, Jonson warns, can on occasion have an adverse effect upon the reputation of an author or book. In his commendatory poem "To my truly-belov'd Freind, Mr BROWNE: on his *Pastorals*,"<sup>69</sup> printed in 1616, Jonson warns "Some men, of Bookes or Freinds [sic] not speaking right, / May hurt them more with praise, then Foes with spight" (ll. 1-2). "Speaking right" is Jonson's priority; he refuses to be a false witness who offers undeserved or exaggerated praise of another writer. As a result he offers Browne, a novice writer, neither excessive nor scant praise, but instead measured judgment and advice. Speaking as a mentor, Jonson reminds Browne, "I have seene thy worke, and I know thee: / and, if thou list thy selfe, what thou canst bee" (ll. 3-4). It is upon the basis of his knowledge and expectation of such a young writer who treads "early in these pathes" that Jonson offers an important statement of commendation: "I find thee write most worthy to be read. / It must be thine owne judgment, yet, that sends / This thy worke forth: that judgment mine commends" (ll. 6-8).

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<sup>68</sup> Ben Jonson, above, n 53, Vol 8 at 385.

<sup>69</sup> Ben Johnson, above, n 53, Vol 8 at 386.

He does not commend Browne's poems but instead his ability to judge his own writing.

Jonson notes as well Browne's astute decision to offer to the public a few well-chosen commendatory poems. This determines the maturity of the young writer's judgment, an important lesson Browne offers to others. Appreciating the propriety of Browne's concise selection of commendatory poems to preface his *Pastorals*, Jonson praises the young man's volume as exemplary: "I wou'd / More of our writers would like thee, not swell / With the *how much* they set forth, but th'*how well*" (ll. 14-16). Browne does not attempt to deceive his readers with an indiscriminate host of authors whose names confirm the value of his own. Instead he shows a discriminating attitude by requesting only a few commendatory verses, a fact that will affect the reception of his book. His book will not be bought or appreciated by "most" people, those Jonson dispenses with because they "reade bookes, on *Authors* fames, / Or, like our Money-Brokers, take up names / On credit, and are cossen'd" (ll. 9-11). Such indiscriminating readers who buy and read volumes on the basis of how many authors offer commendatory poems in praise of the book, Jonson insists, are not themselves wholly to blame but are in fact deceived or robbed. Jonson approves of Browne's method of "offring not more sureties, then inow" (l. 12). Comparing his own commendatory poem to the name of a guarantor affixed to a letter of credit, Jonson describes the function of his own poem within *Britannia's Pastorals* with the legal metaphor of an attesting witness.<sup>70</sup> His poem is offered on the same basis as a guarantor's name affixed to an "*Exchange of Letters*" between creditor and debtor; he offers his name as testimony for another man's worth because he believes Browne can repay the reader for his investment. To Jonson, a commendatory poem is not a simple courtesy to be offered without hesitation but rather a commitment that has personal consequences damaging to his own welfare if offered to another writer who fails to repay his debt to his readers. Jonson describes his own name affixed to the commendatory poem within Browne's volume of poems and within *The Workes of Benjamin Jonson* as that of a witness who has the authority and integrity to speak the truth.

## Conclusion

The repeated association of the ideas of a name, fame, and testimony in poetry written by Jonson echoes the terms of parliamentary proceedings in 1614 and 1626. In the first section of this article I discussed parliamentary

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<sup>70</sup> Stone, above, n 4 at 25.

proceedings but not in order to argue that Jonson refers explicitly to them in his poetry. Instead their comparison reveals a proper name functioned as a criterion of interpretation in both the law and literature of early Stuart England.<sup>71</sup> The Commons in 1614 and 1626 learned quantitative rules of evidence in civil and canon law guided the practice of interpretation by determining the relative weight given to anonymous and attributed statements in the law of proof. Two witnesses' testimony satisfied the standard of proof necessary for conviction. Jurists' treatises and precedents from medieval parliaments revealed common fame required corroboration from circumstantial evidence or a confession in order to secure a conviction. Quantitative rules of evidence that reduced common fame or the *vox populi* to only a fraction of the proof provided by two witnesses' testimony enabled a judge or juridical body to interpret evidence. By allowing supporting evidence to corroborate common fame, the law of proof enabled a judge to determine if common fame was true, and if it signified evidence according to the law of proof. The Commons in 1626 argued common fame must be the basis of proceeding against Buckingham because his power and influence made individuals who had evidence refuse to be named as witnesses. The Commons' arguments and articles against Buckingham proved insufficient to persuade the House of Lords which accepted his statement the classification and interpretation of anonymous and attributed statements should observe criteria defined by the law of proof. Ben Jonson feared the general public who were ignorant of the concept of the standard of proof would too readily assume common fame alone was sufficient evidence to justify the condemnation of a statesman. As a result he used juridical metaphors that identified his poems with the testimony of a named witness in order to prevent common fame from discrediting statesmen. In poems about politicians and poets, Jonson advises his readers the name of a speaker in the law of proof is a ground of interpretation, that is, a means of ascertaining what an accusation signifies. Jonson used juridical concepts of proof, evidence, and testimony to teach readers how to "judge" or interpret statements attributed to him. Attribution of a poem or statement to a proper name in either literature or law, Jonson proposed, functioned as a device to classify and evaluate meaning. When he discussed the functions of his own name, particularly in his poems defending statesmen and poets from blame, Jonson assumed a proper name functioned in law and literature as a criterion enabling one to differentiate true and false statements.

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<sup>71</sup> See Fraher, above, n 3 at 33.