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Scandalum Magnatum: The "Scandal of Magnates" in English Law, Society, and Politics

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SCANDALUM MAGNATUM:
" "
THE "SCANDAL OF MAGNATES" IN ENGLISH LAW, SOCIETY, AND POLITICS

A Thesis

Presented to

The Faculty of the Department of History
The College of William and Mary in Virginia

In Partial Fulfillment

Of the Requirements for the Degree of
Master of Arts

by

John C. Lassiter

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the requirements for the degree of

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ABSTRACT

The purpose of this study is to trace the history of the statutes of scandalum magnatum from their enactment in the later middle ages to their repeal in 1887, with particular emphasis on the special legal remedy provided by the statutes exclusively for the "great men of the realm," for members of the English nobility whose dignity and honor had allegedly been abused by "scandalous words."

The origins and early interpretation of the statutes of scandalum magnatum are considered in light of the few records surviving from the thirteenth, fourteenth, and fifteenth centuries. These records point to the fact that the offence of scandalum magnatum was originally conceived as a criminal, seditious offence for which no civil remedy was available.

The development over the sixteenth and early seventeenth centuries of a civil interpretation of the statutes of scandalum magnatum is considered in the context of the declining power and prestige of the nobility in the years preceding the Civil War. Legal records illustrate how the statutes served in defense of the dignity, social status, and political position of the nobility and were often used as weapons in the feuds which raged among members of the aristocracy.

While the statutes of scandalum magnatum continued in use as a defense of the honor, status, and reputation of noblemen in the later seventeenth century, after the Restoration, they increasingly came to be used as a political weapon as well, serving to silence criticism and stifle opposition in political disputes. The use of the law in this manner is considered in the context of the party warfare surrounding the Exclusion crisis, late in the reign of Charles II, when the largest number and most destructive of actions of scandalum magnatum were brought. The destructiveness of the actions brought during those years of acute political instability contributed to the future reluctance of the courts to award large sums in damages to noblemen. As a result of this and other factors, the number of actions of scandalum magnatum declined sharply after the 1680's, and the statutes soon fell out of use altogether, to be repealed after over a century of disuse in 1887.

The conclusions reached by this study suggest that reliance on the statutes of scandalum magnatum was a function primarily of the loss of power and prestige suffered by the nobility, and also of the political instability which plagued England, especially during the later seventeenth century. Once the nobility recovered from its "crisis" and adapted to its new role in society, and once stability came to English politics, the statutes were no longer needed.

Within the learned Volumes of the Laws,
Made to doe Justice in the Subjects Cause,
A Bugbear Statute stands in potent force,
Strong, legal and destructive in its course;
The Title Scandalum Mangatum bears,
A Privilege of Princes, Prelates, Peers,
By then enjoy'd above Three Hundred Years.

Scandalum Magnatum: or,
Potapski's Case, 1682.

SCANDALUM MAGNATUM:

THE "SCANDAL OF MAGNATES" IN ENGLISH LAW, SOCIETY, AND POLITICS

INTRODUCTION

Throughout English history, the law has attached varying degrees of importance to words, both written and spoken, as they reflected unfavorably on individuals; and often, not only was the nature of the words themselves the concern of the law, but so was the "quality of the person of whom the words [were] spoken."¹

The subject to be explored in the following pages--the law of scandalum magnatum--though only an obscure and now obsolete part of the multi-dimensional law of defamation, provides the foremost example of this concern of the law for the "quality" of the person defamed. As such, its claim to historical importance lies not only in its legal implications but also in its social and political implications, "quality" being defined by the law in terms of specific social and political status. Therefore, what might appear to be a narrow legal topic assumes a much broader scope.

The results of this investigation, it is hoped, will exemplify what Professor A. L. Cross so convincingly demonstrated in 1913, namely, the usefulness of legal materials as sources for the study of English history, not simply the history of the law, but a far wider range of historical topics.²

¹William Sheppard, Action Upon the Case for Slander (London, 1662), 5.

²Arthur L. Cross, "Legal Materials as Sources for the Study of Modern English History," American Historical Review, XIX (July, 1914), 751-771.

CHAPTER I

STATUTORY ORIGINS AND EARLY INTERPRETATION

"Disgraceful words and speeches against eminent persons have been grievously punished in all ages," wrote William Hudson in the first quarter of the seventeenth century as he attempted to account historically for the jurisdiction exercised by the Court of Star Chamber in cases of "scandalous words against nobles."¹ Specifically, he was concerned with the offence known as scandalum magnatum, a medieval Latin legal expression which was coming into general use in the early seventeenth century to describe the "scandal of magnates."² The need to establish a broad historical basis for dealing with this offence had sent Hudson and his contemporaries on a search through court records in an effort to locate legal precedents. A generation earlier, the Elizabethan jurist Richard Crompton had consulted the records stored in the Tower of London in preparation for his work L'authoritie et Jurisdiction des Courts (first published in 1594), and there he examined the original statute on which the offence was based, carefully taking note of all

¹William Hudson, A Treatise of the Court of Star Chamber (written c. 1620), ed. F. Hargrave, in Collectanea Juridica (London, 1792), II, 102.

²Oxford English Dictionary, s.v. "Scandalum magnatum." The expression began to appear in dramatic literature and poetry of the period: e.g., in Thomas Middleton's play The Phoenix (1607), II, iii, 171; in Philip Massinger's play The City Madam (1623), I, i, 11; and in John Taylor's poem "Farewell to the Tower Bottles" (1630).

details, including a discrepancy which he found between the original wording of the statute and the wording as it appeared in print.³

This concern for the statutory origin of scandalum magnatum was shared by the most famous and reputedly the most learned English jurist of the period, Sir Edward Coke. The results of Coke's research on the subject appeared in the second part of his Institutes, an exposition of "many ancient and other statutes," first published in 1642.⁴ This work included the first Statute of Westminster, which was enacted in 1275, early in the reign of King Edward I. Its thirty-fourth chapter formed part of the statutory basis for the crime of scandalum magnatum: "that from henceforth none be so hardy to tell or publish any false news or tales, whereby discord, or occasion of discord or slander may grow between the King and his people, or the great men of the realm." Imprisonment awaited the offender "until he hath brought him into the court, which was the first author of the tale."⁵

The offences punishable by this statute, according to Coke, were punishable also by the law of God. The scriptural authority he cited in this instance included the eighth and tenth verses of the Epistle of Jude, a condemnation of "those that despise rulers and speake evill of those that be in authority," as well as those who simply "speake evill of those things which they know not." Exodus 22:28 likewise placed the

³Richard Crompton, L'authoritie et Iurisdiction des Courts (London, 1637), 35; see also Crompton, Star Chamber Cases (London, 1630; reprint ed., Boston, 1881), 36.

⁴Edward Coke, The Second Part of the Institutes of the Laws of England (London, 1797), 226.

⁵3 Edward I, c. 34 (Statute of Westminster the First, 1275), Statutes at Large, I, 53. For the full text of this statute, consult the appendix.

offence under divine law, commanding that "thou shalt not raile of the judges nor speak evill of the ruler of the people." Citation of scriptural authority was a legal device frequently employed in the days of the Star Chamber when there was a reluctance among lawyers and judges to rely upon statute law. Coke's intention here was clearly to demonstrate the doubly serious nature of the crime: it was a transgression not only of the King's law, but also of God's law.

In discussing the origins of the statute, Coke cited Polydore Vergil's account of the reign of King Henry III (1216-1272), a time of "discord and scandall" which saw the outbreak of "fearfull and bloody warres and rebellions," aggravated by the circulation of "false bruits and rumors" of the sort described in the preamble of the statute. The events of the civil war, which culminated at Evesham in 1265 (when Simon de Montfort "our English Cataline" met a bloody end), demonstrated to the future King Edward I "the wofull effects of such false rumors and reports" and the need for "severe and rigorous laws" to deal with them; hence, according to Coke, the enactment of the statute ten years later.

Historians have generally accepted this account;⁶ Daines Barrington, writing in the eighteenth century, elaborated upon it somewhat by describing a ballad composed in 1265 defaming Richard King of the Romans (Richard, Earl of Cornwall, brother, and loyal supporter of Henry III). The ballad (which, to Barrington, afforded "a curious specimen of the liberty assumed by the good people of the land, of abusing their kings and princes at pleasure") was supposedly written by a supporter of Simon de Montfort. Coming as it did in 1265, the year of Evesham, and only

⁶See, for example, Alan Harding, A Social History of English Law (Baltimore, 1966), 80.

ten years before the enactment of the first Statute of Westminster, Barrington concluded that "it is not improbable that it might have occasioned this part of the law."⁷ Whatever the specific occasion, it appears entirely logical that when Edward I prepared in 1274 to meet his first Parliament, he would have taken steps to pave the way for better relations between himself and the great barons, to prevent discord from again arising "between the King and his people, or the great men of the realm." After all, it was to the King's advantage, especially in the early years of the reign, to provide for the welfare of the magnates, to secure their support when he most needed it and to avoid their hostility later in the face of rising royal power.

To depart temporarily from seventeenth- and eighteenth-century accounts of the enactment of this early law, some general observations need to be made about its place in medieval English legal and constitutional history. The first Statute of Westminster dealt with defamation in a purely political context; the spreading of "false news or tales" was made a criminal, seditious offence, punishable in the King's courts, and there was no provision for the civil action which came to be associated with the offence of scandalum magnatum in the sixteenth and seventeenth centuries. The possibility of a feudal magnate bringing a civil action for defamation against a particular individual in the King's courts did not exist in the middle ages. It is a well-known, though perhaps curious, fact that the King's courts did not entertain pleas of defamation in medieval times.⁸ A dispute between two Irish magnates was

⁷Daines Barrington, Observations Upon the Statutes, 2d ed. (Dublin, 1768), 66.

⁸F. Pollock and F. W. Maitland, The History of English Law Before the Time of Edward I (Cambridge, 1911), II, 536; S. F. C. Milsom, Historical Foundations of the Common Law (London, 1969), 332-333.

brought before the court at Westminster in 1295, twenty years after the enactment of the first Statute of Westminster, and the rule was laid down then that "in this realm it is not the practice to plead pleas of defamation in the King's Court."⁹

This rule did not mean, however, that medieval Englishmen had no legal remedy for defamation at their disposal, nor did it mean that the offence was not taken seriously. To the contrary, defamation had long occupied a place in English law, dating back to the Doms of Alfred the Great in the late ninth century, when it was enacted that "if anyone utters a public slander . . . he shall make amends on no lighter terms than the excision of his tongue . . . ;"¹⁰ and the Norman Ancienne Coutume which set fines and required acts of public humiliation as punishments for defamation.¹¹ An element of the Roman law of defamation was also present in England; the offence came under the general classification of injuria. As Bracton wrote in the thirteenth century, "an injuria is committed not only when a man is struck with a fist or flogged or beaten with clubs but when he has been insulted or victimized by defamatory verses and the like."¹² This Roman element was present in ecclesiastical law in England, and since defamation was classified as a spiritual offence, it fell within the jurisdiction of the church courts. Despite

⁹Rotuli Parliamentorum, I, 132-134, cited by T. F. T. Plucknett, A Concise History of the Common Law, 2d ed., enl. (Rochester, New York, 1936), 429.

¹⁰Stephen B. Baxter, ed., Basic Documents of English History (Boston, 1968), 6; cf. Plucknett, Concise History, 427n.

¹¹Van Vechten Veeder, "The History of the Law of Defamation," in Select Essays in Anglo-American Legal History (Boston, 1909), III, 449.

¹²Henry de Bracton, De Legibus et Consuetudinibus Angliae, ed. George E. Woodbine; trans. Samuel E. Thorne (Cambridge, Mass., 1968), II 438.

a limitation placed on ecclesiastical courts in cases of defamation in 1285 by the writ Circumspecte Agatis,¹³ the offence remained primarily within the jurisdiction of the church until the sixteenth century. It was only then that the common law finally came to include defamation clearly within its own jurisdiction.¹⁴

Spiritual courts, however, were not the only courts which heard cases of defamation in the middle ages; secular manorial and other seignorial courts also provided a legal remedy for the offence. It was to these local courts that most ordinary Englishmen could go when they had been injured by "vileynes paroules," and the records of these courts reveal a relatively large number of cases for slander.¹⁵ Such actions demonstrate the fact that in the middle ages, the King's courts simply did not undertake to enforce the entirety of English law, and that defamation was one of those areas which fell outside its jurisdiction.¹⁶ With these facts in mind, the significance of the thirty-fourth chapter of the first Statute of Westminster becomes clearer. It defined a special political offence, punishable in the King's courts, that was more serious than ordinary defamation, but not serious enough to be considered treason. By the fourteenth century, the offence which came to be known as scandalum magnatum occupied a middle ground in the range of legal

¹³E. B. Graves, "Circumspecte Agatis," English Historical Review, XLIII, 1-20.

¹⁴Milsom, Historical Foundations, 332; see also Coke's report of Palmer v. Thorpe, 4 Co. Rep. 20a, 76 Eng. Rep. 909 (1583).

¹⁵For examples in the thirteenth and fourteenth centuries, see F. W. Maitland and W. P. Baildon, eds., The Court Baron (London, 1891), and F. W. Maitland, ed., Select Pleas in Manorial and Other Seignorial Courts (London, 1889).

¹⁶Maitland and Baildon, The Court Baron, 116.

action that could be taken for words: between the remedy available to the individual in church or local courts and the remedy available to the crown in actions of treason for words.

The early interpretation of the first Statute of Westminster is illustrated by a case which came before the Court of King's Bench in 1279, only four years after the enactment of the statute. A charge was brought against one Hugh of Crepping for speaking words "in many districts" to the effect that "the king had universally forbidden anyone to scythe meadows or to reap corn, and . . . that war would come in a short time." The charge clearly matched the offence defined by the statute--the spreading of false news whereby discord might arise between the King and his people--though Hugh convinced the court that he never spoke the words alleged against him in the first place and was thus found innocent of contriving "anything to the injury of the king and the realm."¹⁷ The wording of both the accusation and the acquittal demonstrates the sense in which the law was first applied. The words allegedly spoken, as they involved the King, were too dangerous in their implications to be considered mere slander, but, at the same time, they were not strong enough to amount to treason.

The concept that the great men of the realm were due special legal protection from "false news and tales" evolved over the century following the enactment of the first Statute of Westminster. In 1340, for instance, a justice of the King's Bench brought an action (a bill of trespass) against a woman who had accused him of being false to the King and to his charge as a judge, in essence, challenging his reputation

¹⁷Coram Rege Roll, no. 49 (Michaelmas, 1297), m. 39d., in G. O. Sayles, ed., Select Cases in the Court of King's Bench Under Edward I (London, 1936), I, 51.

as administrator of the King's justice.¹⁸ Four years later, an action was brought against John of Northampton for the offence of scandalum iusticiariorum et curiae, resulting from a letter he had written claiming that the King's justices would do nothing more "to meet the demands of the king or of Philippa, the queen of England, than of anyone else in the kingdom."¹⁹ These cases reflected the growing concern of the justices of the King's courts for their professional reputations, both as individual judges and as members of the royal judiciary.

During the reign of King Richard II (1377-1399), the provisions of the first Statute of Westminster became more clearly identified as a special protection for the reputation of the great men of the realm. The first twelve years of the reign saw the enactment of two new statutes which reenforced the statute of 1275 and elaborated upon the offence of scandalum magnatum. The emphasis in these new statutes was clearly on the great men of the realm; the first, enacted in 1378 at Gloucester, enumerated those who were entitled to protection: "prelates, dukes, earls, barons, and other nobles and great men of the realm, and also . . . the Chancellor, Treasurer, Clerk of the Privy Seal, Steward of the King's house, Justices of the one bench or of the other, and . . . other great officers of the realm." The purpose of the law was restated in stronger terms than the 1275 version, invoking the security of the kingdom itself:

¹⁸Coram Rege Roll, no. 321 (Trinity, 1340), m. 124, cited in G. O. Sayles, ed., Select Cases in the Court of King's Bench Under Edward I (London, 1939), III, lxxxii.

¹⁹Coram Rege Roll, no. 338 (Michaelmas, 1344), m. 162d, in G. O. Sayles, ed., Select Cases in the Court of King's Bench Under Edward III (London, 1965), VI, 36. This case was one of two cited by Coke in his discussion of libel in the third part of his Institutes, first published in 1644. See Coke, The Third Part of the Institutes of the Laws of England (London, 1797), 174.

". . .whereof great peril and mischief might come to all the realm, and quick subversion and destruction of the said realm, if due remedy be not provided . . ."20 The fact that the 1275 statute required this elaboration clearly suggests that the offence of scandalum magnatum had become the cause of some alarm among the great men of the realm. The circumstances surrounding the enactment of this statute reenforce this suggestion.

The 1370's were bad times for England. The political peace of the preceding decade, sustained by the spoils of war with France, was shattered by a series of developments which would lead eventually to the acute disorders of the 1380's. The deaths of Queen Philippa in 1369 and of Edward the Black Prince in 1376, along with the rapid personal decline of King Edward III, had a demoralising effect on the English court and severely weakened royal government. When the ten-year-old Richard II came to the throne in 1377, conditions in England had reached a low point, aggravated by a threat of invasion from France which lasted until the death of Charles V in 1380. Beneath these developments was increasing discontent among the lower orders of English society, where the effects of the bubonic plague were still felt. A series of poll taxes levied in the years between 1377 and 1381 helped cause this discontent to erupt into violence, culminating in the Peasants' Revolt of 1381.

These years of crisis bred the need for a scapegoat, an identifiable oppressor who could be blamed and attacked for the troubles which beset England. One figure, among many, met the requirements for scapegoat, namely, John of Gaunt, the powerful Duke of Lancaster, who, in the eyes of many, personified the worst evils of the ruling order. The verbal

²⁰ Richard II, c. 5, Statutes at Large, I, 342-343. For the full text of this statute, consult the appendix.

abuse suffered by Gaunt in these years is almost evidence enough to identify him with the enactment of the 1378 statute against the "devisors of false news and of horrible and false lies."²¹ Barrington remarked that the statute was "certainly occasioned by the defamation of John of Gaunt, by those who supported the lower people and villeyns against the barons," citing a writ entitled Pro Rege Castellae contra defamaciones insurgentium to support his statement.²² Gaunt himself had addressed the King and the Lords in Parliament in 1377 to protest against certain words which "had been long, though falsely, spread about the kingdom" to his discredit. He stoutly defended his own reputation and that of his ancestors, declaring himself "ready to defend himself by his body or otherwise, as the king and lords should award, as if he was the poorest knight bachelor of the realm." He concluded his address by urging that "a good act, or ordinance, might be provided in this parliament and a just and speedy punishment assigned to all the inventors of such evil reports, for the preventing the danger of them for the time to come."²³ This effort on the part of Gaunt in defense of his reputation was presumably the origin of the statute enacted at Gloucester in 1378.

Little evidence exists of the early application of this statute. Given the nature of the events which took place in the three years following its enactment, one can reasonably assume that it was virtually useless

²¹W. F. Finlason, Reeves' History of the English Law, new American edition (Philadelphia, 1880), III, 401. See also the notes to Lord Cromwell's case, 4 Co. Rep. 12b, 76 Eng. Rep. 877 (1578), where the enactment of the statute is attributed to a quarrel between John of Gaunt and "W. Wickham," who had "slandered Gaunt with illigitimacy."

²²Barrington, Observations, 242-243. Gaunt had assumed the title of King of Castile.

²³Cobbett's Parliamentary History of England (London, 1806), I, 159. No source is given for this speech.

in silencing criticism against the ruling order. It certainly did not prevent the spread of the Peasants' Revolt in the spring and summer of 1381; indeed, it is difficult to conceive of this law being effectively enforced until after the revolt, and even then, only one example survives, that being an action brought in 1383 against John Cavendish, a fish-monger, for accusing Michael de la Pole, the Lord Chancellor of England, of bribery.²⁴ Whatever the case, it became necessary to enact yet another statute in 1388, only ten years after the one enacted at Gloucester. In a further attempt to get at the sources of "false news," a small but significant change was made in the judicial process prescribed for dealing with the offence: "It is accorded and agreed in this Parliament that when any such is taken and imprisoned and cannot find him by whom the speech be moved, as before is said, that he be punished by the advice of the council, notwithstanding the said statutes."²⁵ By the provisions of this third statute of scandalum magnatum, the King's council assumed an important role in dealing with the offence, a role which was to become the basis for the jurisdiction exercised by the Court of Star Chamber in cases of "scandalous words against nobles" in the sixteenth and seventeenth centuries.

Historians dealing with the statutes of scandalum magnatum in their medieval context have often described them as examples of "class legislation."²⁶ The term implies that the statutes were enacted to

²⁴Rotuli Parliamentorum, III, 168-170, cited by William Holdsworth, A History of English Law (Boston, 1922), III, 409.

²⁵12 Richard II, c. 11, Statutes at Large, I, 381. For the full text of this statute, consult the appendix.

²⁶For example, see Frank Carr, "The English Law of Defamation," Law Quarterly Review, 18 (1902), 260; and J. J. Jusserand, English Way-faring Life in the Middle Ages, trans. L. T. Smith (New York, 1929), 276-279.

further the interest and security of a particular class in society at the expense and to the disadvantage of another. While this interpretation may be valid, the wording of the statutes themselves does not identify any particular element of society as its target--anyone found guilty of spreading false news or tales could be punished--and despite the enumeration of those protected by the law, the interest of more than just the ruling class was served. Theoretically, at least, the statutes were a benefit to all society in the sense that they were designed to preserve public order, to prevent discord from arising "whereof great peril and mischief might come to all of the realm, and quick subversion and destruction of the said realm, if due remedy be not provided." To consider this a genuine motive behind the enactment of this statute is not at all unreasonable when one remembers how few means existed in the middle ages to preserve public order; and in an age when there was no reliably accurate source of news, and when communication was primarily by word of mouth, the thinking behind these statutes appeared more logical than it would in later times.²⁷

The acute political instability which afflicted England periodically from the 1370's until the end of the fifteenth century was severely aggravated by the circulation of false news and tales. The reign of Henry IV, for instance, was plagued by a number of rumors that the deposed (and now dead) Richard II was still alive and in Wales. These rumors were so serious that they were often dealt with as treason.²⁸ An illustration

²⁷See Justice Atkyns' remarks in the case of *Lord Townsend v. Dr. Hughes*, 2 Mod. 161-162, 86 Eng. Rep. 1000-1001 (1677). His observations were made at a time when the statutes of scandalum magnatum had become more of a "class" weapon than ever before.

²⁸J. G. Bellamy, The Law of Treason in the Late Middle Ages (Cambridge, 1970), 116.

of the severity of the law in this respect can be found in the case of John Sparrowhawk, brought before the Court of King's Bench in 1402. Sparrowhawk had made the fatal mistake of repeating in public certain things he had heard from a tailor's wife, who, in an angry tirade against the King (Henry IV), had gone so far as to blame even the bad weather on royal policy. She had claimed that the Earl of March was the rightful monarch (this was Edmund Mortimer, Earl of March, who had a strong claim to the throne, his family having been designated heirs by the childless Richard II). She also insisted that "Owain Glyn Dwr" was the legal Prince of Wales (this was Owen Glyndwr, one of the gentry of the Welsh Marches who had declared himself Prince of Wales in 1400 and led a revolt against Henry IV). The King, she claimed, "had not kept his covenant with his commons," and he "did not wish to obey the commands of the pope of Rome, for that reason all the bad weather for many days past." By repeating all this in public, Sparrowhawk found himself accused and convicted of "inciting and arousing the people in this matter against their . . . liege lord." He was sentenced to be "drawn as the king's traitor from the Tower of London . . . to Tyburn and there . . . to be hanged and afterwards beheaded, and . . . his head, thus cut off is to be placed upon Newgate . . . in the sight of all there passing by, as an example to all beholders."²⁹ The severity displayed in this instance reflected the instability of the early Lancastrian regime.

The records of the politically tumultuous fifteenth century afford numerous examples of government pre-occupation with false news and tales, especially during the period of the Wars of the Roses. The

²⁹Coram Rege Roll, no. 564, m. 12 (Crown) in G. O. Sayles, ed., Select Cases in the Court of King's Bench Under Richard II, Henry IV, and Henry V (London, 1971), 123-124.

recurring insanity of King Henry VI gave rise to a number of cases involving words spoken against the King and his council. In 1450, for instance, two men from Sussex were indicted for saying that "the King was a natural fool and would oftentimes hold a staff in his hand, with a bird over the end, playing therewith as a fool; and that another King must be ordained to rule the land." In 1455, John Gayle was indicted for saying "rex et omnes domini sui circa personam suam, et concilium suum, falsi sunt." The courts under Edward IV dealt with similar cases, most of them arising from verbal challenges to the King's claim to the throne. In 1462, one Oliver Germaine was hanged, drawn and quartered for suggesting that Edward IV was not the rightful king.³⁰

This concern with words was by no means unfounded in the late fifteenth century; after all, it might be argued, the Yorkist throne itself was toppled by the circulation of "false tales" regarding the whereabouts of the two young princes (sons of Edward IV) who mysteriously disappeared from public view in 1483. The enemies of Richard III identified him as the murderer of the princes and exploited the rumors of their deaths to great advantage. Even after Bosworth, rumors continued to circulate about their whereabouts, now to the disadvantage of the usurper Henry VII who had to deal with Yorkist pretenders claiming to be the princes.

Government concern with words, however, was not limited only to politically dangerous rumors. Verses and ballads which reflected unfavorably upon those in power also came to be dealt with severely in

³⁰The examples cited in this paragraph are among twenty-three such cases used as precedents in the trial of Hugh Pine in 1629 for speaking disrespectfully of King Charles I. They all date from the late fifteenth century. See the Case of Hugh Pine, Esq., Cro. Car. 117-126, 79 Eng. Rep. 703-711 (1629).

the latter half of the fifteenth century. A favorite example of sixteenth- and seventeenth-century legal writers was that recorded in Fabyan's Chronicle, concerning one William Colingbourne who in 1485 had composed "a rime . . . in derision of the kyng and his counsaill:"

The Cat, the Rat and louel our Dogge
Ruleth all Englande vnder a Hogge.

This seemingly harmless verse contained ill-disguised references to three of Richard III's councillors, Sir William Catesby, Sir Richard Ratcliff, and Lord Lovell, as well as to the King himself, whose cognizance was the white boar. For this crime, Colingbourne "was put to the most cruell death at the Towre Hill."³¹ A similar example came in 1493 when Thomas Bagnal was indicted for "publishing poems and ballads to the disgrace of the King (Henry VII) and his council," the punishment for which was to be hanged, drawn, and quartered.³² Sir Francis Bacon's Historie of the Raigne of King Henry the Seventh recounts how there "came forth swarms and vollies of libels . . . containing bitter invectives and slanders against the King and some of the counsel: for the contriving and dispersing thereof (after great diligence of enquiry) five mean persons were caught up and executed."³³

From the examples cited thus far, it is clear that the offences

³¹The Chronicle of Fabyan (London, 1559), 519. This case was among those cited in Pine's case, Cro. Car. 123, 79 Eng. Rep. 708-709 (1629). Hudson refers to it in his Treatise as an example of "libels which touch the alteration of government," Collectanea Juridica, II, 100. Shakespeare, among others, made effective literary use of the hog image, derived from the King's badge, the white boar (e.g., The Tragedy of Richard the Third, I, iii, 228).

³²Pine's case, Cro. Car. 124, 79 Eng. Rep. 709 (1629).

³³Francis Bacon, The Historie of the Raigne of King Henry the Seventh (London, 1622), reprinted in The Works of Francis Bacon, ed. James Spedding, R. L. Ellis, and D. D. Heath (London, 1870; reprint ed., New York, 1968), 153-154.

involving words spoken against those in power--including the offence of scandalum magnatum--were conceived primarily as political and therefore criminal offences and were frequently treated as treason when they involved the King and his council. For this reason, the statutes of scandalum magnatum can be counted among the origins of the notion of seditious libel, a notion which would develop more clearly during the sixteenth and seventeenth centuries in the Court of Star Chamber.³⁴

The civil nature which the offence of scandalum magnatum was to acquire in the sixteenth century was absent in the middle ages. In fact, the first recorded civil action on the statutes of scandalum magnatum came in 1497, well over a century after the last of the statutes had been enacted.³⁵ This gap frequently annoyed seventeenth-century lawyers in their attempts to justify the enormous civil suits they themselves were bringing on behalf of insulted noblemen. Francis Pemberton, for instance, arguing for the plaintiff in the case of Lord Townsend against Dr. Hughes in 1677, found his arguments challenged by the counsel for the defense, who reminded him that "upon this statute . . . there was no action brought until 13 Hen. 7, which was above an hundred years after the making of that law," implying, of course, that the plaintiff had no sound precedent upon which to base his action. Pemberton, however, dismissed this point on the grounds that "in those days the English were quite of another nature and genius from what they are at this time." The lengthy explanation that followed was in many respects historically accurate: "The

³⁴Plucknett, Concise History, 431-432.

³⁵Lord Beauchamp v. Sir Richard Croft, Keilwey 26-29, 72 Eng. Rep. 182-186 (1497). Holdsworth incorrectly dated this case 1569, apparently having mistaken James Dyer's report of the case in that year as being contemporary with the case itself. See Holdsworth, History, III, 409n.

constitution of this kingdom," observed Pemberton, "was then martial and given to arms; the very tenures were military . . ." From this, he proceeded to give "the true reason why so few actions were formerly brought for scandals, because when a man was injured by words, he carved out his own remedy by his sword." In those days, noblemen had "immediate recourse to their arms . . . and seldom or never used to bring any actions for damages . . . and having thus made themselves judges in their own cases, it was reasonable that they should do themselves justice with their own weapons."³⁶

The weaknesses of his own case aside, Pemberton's arguments are historically appealing. The political anarchy of the fifteenth century was in large measure the result of noblemen carving out their own remedy by their swords. As Professor Lawrence Stone has observed, "Before the sixteenth century physical force had been widely dispersed among the nobility and gentry and had been readily used by them in pursuance of personal ends." Therefore, one of the major tasks facing the Tudors in the sixteenth century was to limit the military capacity of the nobility, "to persuade the nobility themselves that resort to violence was not merely illegal and impolitic but also dishonorable and morally wrong."³⁷ This was essentially the import of Pemberton's argument: the reason that no civil actions of scandalum magnatum were brought until 1497 was that prior to then, noblemen pursued "the military way of revenge to which they had been accustomed."³⁸ It followed from his argument that when

³⁶Lord Townsend v. Dr. Hughes, 2 Mod. 154-156, 86 Eng. Rep. 997 (1677).

³⁷Lawrence Stone, The Crisis of the Aristocracy (Oxford, 1965), 199, 201.

³⁸Lord Townsend v. Dr. Hughes, 2 Mod. 156, 86 Eng. Rep. 998 (1677).

noblemen began to abandon (or were forced to abandon) their military habits, only then did they become inclined to pursue their ends in less violent fashion. The degree to which this line of thinking furthered Pemberton's own case was perhaps slight, but it did provide a reasonable explanation for why the first civil actions of scandalum magnatum were brought when they were.

For noblemen, getting into the habit of taking disputes into court may have been difficult, but the discovery of a set of statutes which offered them special legal protection from abusive language no doubt encouraged them in some small way to seek their revenge by means other than the sword, especially when there was the prospect of collecting substantial sums of money in damages. Lord Beauchamp (Richard, Baron Beauchamp of Powick) was apparently the first to make this discovery; it was he who, out of resentment for being brought to court by Sir Richard Croft on a charge of being "un forgeor de faux faits et de divers autres choses," availed himself of the remedy provided by these statutes and brought against his accuser the first recorded civil action of scandalum magnatum.³⁹ The Court of King's Bench, composed of judges loyal to the Tudor regime, reacted to this action by establishing a rule which prohibited even a peer of the realm from suing for words spoken in judicial proceedings. Citing this case, Sir Edward Coke recorded the rule in his Institutes; the statutes of scandalum magnatum, he wrote,

extend onely to extrajudiciall slanders, &c. And therefore if any man bring an appeale of murder, robbery, or other felony against any of the peeres or nobles of the realme, &c. and charge them with murder, robbery, or felony, albeit the charge be false, yet shall they have no action de scandalis magnat', neither at the common

³⁹Lord Beauchamp v. Sir Richard Croft, Keilwey 26, 72 Eng. Rep. 182(1497); also reported in 1569, 3 Dyer 285a, 73 Eng. Rep. 639.

law, nor upon either of these statutes for the bringing of his action. . .

In support of this rule, Coke quoted the maxim: "Que home ne serra puny pur suer des briefes en court le roy, soit il a droit ou a tort." Stated simply, "men should not be deterred to take their remedy by due course of law."⁴⁰ John March, in his treatise on slander, referring also to this case, observed "for a suit or other legal prosecution in course of justice against a nobleman, or Great Officer, no action lies, . . . so that . . . there is no difference betwixt a noble man and another person."⁴¹

The establishment of this rule placed a crucial limitation on the privilege of the nobility in early Tudor courts. Had the nobility secured the privilege to bring actions of scandalum magnatum against those who had accused them in court of various wrongs, the entire judicial process might have been undermined. It would have become useless for anyone to attempt to bring a peer of the realm to justice as long as he risked being sued in return for scandalum magnatum. Thus, the rule established in the case of Lord Beauchamp against Sir Richard Croft strengthened the means by which the early Tudor courts could bring the nobility more closely under legal control. At the same time, however, the case marked the first instance of a nobleman taking advantage of the statutes of scandalum magnatum instead of resorting to violence or other private, extrajudicial means to defend his reputation against allegedly scandalous words.

⁴⁰Coke, 2 Institutes, 228. See also Hudson's Treatise, Collectanea Juridica, II, 80; and Crompton, Star Chamber Cases, 37; cf. 2 Edward III, c. 11 (1328), a statute which protected a person from being charged with defamation in a spiritual court for a suit brought in the King's court.

⁴¹John March, Actions for Slauder (London, 1647), 132.

While Lord Beauchamp had failed, because the words were spoken of him in judicial proceedings, other nobles would continue to invoke the statutes. Henry Percy, Earl of Northumberland, for example, only a few years later found himself the defendant in a case brought by one John Goryng in the Court of Star Chamber. The action was brought on a charge of false imprisonment with intent to extort money, resulting from the Earl's having seized Goryng as a ward. In response to Goryng's bill of complaint, the counsel for the indignant Earl insisted that the "seid bill is untrew and made only to the grettist disclaunder of the seid Erle;" and then reminding the court that the Earl of Northumberland was "oone of the Nobyl Per[c]ys of this realme," the defense urged that Goryng "be punysshed according to the moste honorabill lawes and statutes in like cases ordeyned and provyded," referring to the statutes of 2 Richard II, c.5 and 12 Richard II, c. 11.⁴²

The "thin stream" of these cases (as Holdsworth described them)⁴³ in the early sixteenth century represented the gradual acquiring of a new habit on the part of the English nobility. Indicative of this new habit was the powerful Duke of Buckingham--known for his twelve private castles and hundreds of armed retainers (and later for his attainder)--bringing an action of scandalum magnatum in 1512 for the words: "You

⁴²Goryng v. Earl of Northumberland (c. 1500), in I. S. Leadam, ed., Select Cases Before the King's Council in the Star Chamber, 1477-1509 (London, 1903), 101-102. The outcome of this case is not recorded. The court might well have ruled in favor of the Earl, however, despite the rule prohibiting a suit for words spoken in judicial proceedings, because of another rule stating that if a peer was charged in the Star Chamber (or in any other court) for an offence not within the jurisdiction of that court, he could have an action of scandalum magnatum against the plaintiff, because technically it would have been an extrajudicial slander. See Coke, 2 Institutes, 228; cf. Sheppard, Action Upon the Case, 17.

⁴³Holdsworth, History, III, 409.

have no more conscience than a dog." These words were held actionable in the Court of Star Chamber.⁴⁴

So it was that noblemen now found themselves in the possession of a new and useful weapon with which to defend their reputations and to strike back at those who had insulted them. The increasing use of this weapon over the course of the sixteenth century was only one example of the "astonishing growth in litigation" described by Professor Stone: "All the pride, obstinancy, and passion that hitherto had found expression in direct physical action was now transferred to the dusty processes of the law."⁴⁵ It was within this historical context that the set of medieval statutes enacted to prevent discord from arising "between the King and his people, or the great men of the realm," became the basis for a privilege which would be enjoyed by the English nobility for over two hundred years.

⁴⁴Crompton, L'authoritie et Jurisdiction des Courts, 13; cited by Justice Atkyns in Lord Townsend v. Dr. Hughes, 2 Mod. 164, 86 Eng. Rep. 1001-1002 (1677); see also March, Actions for Slauder, 136; and F. L. Holt, The Law of Libel (London, 1816), 167.

⁴⁵Stone, Crisis, 240-241.

CHAPTER II

CRIMINAL AND CIVIL DEVELOPMENTS

The origin of the Court of Star Chamber, once a subject of some debate, has now been clearly established by historians: "Star Chamber was simply the king's council sitting as a court and inheriting . . . the old jurisdictional authority which the council exercised on the king's behalf."¹ One area of the council's jurisdictional authority which was inherited by the Star Chamber in the sixteenth century was that prescribed by statute in 1388 to deal with persons responsible for spreading "false news, lies or other such false things of the prelates, dukes, earls, barons," and a host of royal officials.² The offence of scandalum magnatum thus fell clearly within the jurisdiction of the Court of Star Chamber and remained there until the Court was abolished in 1641. Despite the fact that the Court frequently chose not to rely on legislation as the basis for its authority in certain matters, preferring instead to invoke the absolute power inherent in the royal prerogative (as in Bates' case in 1606),³ there was clear statutory basis for its authority in cases of scandalum magnatum, a fact easily overlooked or forgotten in the

¹G. R. Elton, ed., The Tudor Constitution: Documents and Commentary (Cambridge, 1962), 159.

²12 Richard II, c. 11 (1388), Statutes at Large, I, 381. See above, page 13. For the full text of this statute, consult the appendix.

³Plucknett, Concise History, 431.

frequent absence of statutory citations in Star Chamber records. Richard Crompton's reference to the two statutes enacted in the reign of Richard II in his work on the jurisdiction of the Star Chamber served to remind his readers of this statutory authority.⁴

Sir Thomas Smith, writing in 1565, attributed the revival of the Court of Star Chamber, "after some intermission by negligence of time," to Cardinal Wolsey, Archbishop of York and Chancellor of England, an observation which is supported by the rapid increase of proceedings in the Star Chamber during Wolsey's rule, following a period of comparative inactivity in the earliest years of Henry VIII's reign.⁵ Among those proceedings recorded during Wolsey's time were cases involving words spoken against the Lord Cardinal himself, evidence that Wolsey used the Court as a personal weapon. In 1516, for instance, a privy councillor was sentenced for speaking "scandalous words" against the Lord Cardinal, and in 1517, a Justice of the Peace from Surrey was likewise punished for "certain words" directed against him.⁶ From this evidence, Wolsey can be given much credit for the early exercise of the jurisdiction of the Court of Star Chamber in cases of false news and lies against "eminent persons." By 1520, Star Chamber had become distinctly recognized as the chief court for dealing with the scandal of magnates.⁷

In the Star Chamber, the offence of scandalum magnatum continued

⁴Crompton, Star Chamber Cases, 19, 35.

⁵Thomas Smith, De Republica Anglorum (1565), quoted in Elton, ed., Tudor Constitution, 165.

⁶Hudson, Treatise, Collectanea Juridica, II, 102.

⁷Ibid. The first such case cited by Hudson, aside from those involving Cardinal Wolsey, came in 1521, when "one Saye was sentenced for raising a false report of the lord Dacres, of South" (Thomas Fiennes, Lord Dacre of the South).

to be interpreted as a criminal, seditious offence, just as it had been since the enactment of the first Statute of Westminster in 1275. The criminal nature of the offence--as opposed to the civil nature it gradually acquired over the course of the sixteenth century--increased in scope, especially during the second half of the sixteenth century, during the reigns of Queen Mary and Queen Elizabeth. In 1554, less than a year after coming to the throne, Queen Mary issued a proclamation directed against those who sought "devilishly to nourish dissension and to defame . . . noblemen and other personages of good worth, credit and fame."⁸ This proclamation was accompanied by a statute, enacted in the same year, confirming and elaborating upon the first Statute of Westminster (1275) and the 1378 Statute of Gloucester.⁹ The new law gave Justices of the Peace in every shire and city the authority "to hear and determine the said offences and to put the said two statutes in execution." It was further enacted that protection be provided not only for the great men of the realm, but also to the King and Queen, such that if anyone were convicted for "speaking maliciously of his own imagination, any false, seditious, and slanderous news, saying, or tales," about the King or Queen, he would suffer the loss of both his ears on the pillory. If the source of the false, seditious, and slanderous news were other than the "imagination" of the offender--that is, if he were merely repeating what he had heard another say--he would lose only one ear on the pillory. Finally, if the false, seditious, and slanderous news were spread by "book, rhyme, ballad, letter or writing," then the offender, upon convic-

⁸P. L. Hughes and J. F. Larkin, eds., Tudor Royal Proclamations (New Haven, Conn., 1964), II, 41-42.

⁹1 and 2 Philip & Mary, c. 3 (1554), Statutes at Large, II, 469. For the full text of this statute, consult the appendix.

tion, would have his right hand stricken off.

Many factors suggest themselves as possible motivations behind the issuing of the proclamation and enactment of the statute, most notably those associated with Queen Mary's initial attempts to bring her kingdom back to the Roman Catholic faith. The return of Catholicism to England meant the reinstatement of Catholic prelates, the appointment of Catholic officials, and the creation of Catholic peers; it also meant the marriage of the Queen to the future King of Habsburg Spain, whose reputation as arch-defender of the Catholic Church did not endear him to his new subjects. These transformations within the ruling order were bound to generate opposition, which was quickly forthcoming with the outbreak of several violent insurrections (the most serious of which was that led by Sir Thomas Wyatt in Kent). These circumstances made it necessary for the government to enact new laws to deal with every type of opposition, be it violent or non-violent, written or spoken, ranging from heretical attacks on the church to slanderous words against the Queen and her nobles. The cruel punishments specified in the 1554 statute for dealing with slanderous and seditious news or tales demonstrated the seriousness with which the government viewed the offence.¹⁰

Several new distinctions arose as a result of the Statute of 1554, one of which was the delegation of authority to Justices of the Peace, an attempt to deal with the offence on a local level. The jurisdiction of the Star Chamber, however, was in no way affected by this provision. The statutes which had been re-enacted and reenforced were those of 1275 and 1378; the Statute of 1388, which had authorized the

¹⁰For examples of the punishment of "sedyssyous words and rumors" during the reign of Queen Mary, see Henry Machyn, *Diary*, ed. John G. Nichols (London, 1848; reprint ed., New York, 1968), 69, 71, 150, 154, 164.

council to deal with the offence, remained in force, leaving the jurisdiction of the Star Chamber untouched. A second distinction came with the addition of the word "seditious" to the law. This addition brought the offence of scandalum magnatum much closer to that of treason, a major step in the development of the law of seditious libel. Queen Mary had modified the law of treason somewhat in 1553 in an attempt to return to the relatively mild definition established in 1352 (25 Edward III, Stat. 5, c. 2), though finding it necessary a year later to include "shameful slanders and lies" against her marriage to Philip of Spain and against Philip himself as treason, and in 1555 to include words spoken against the restored Catholic Church as treason.¹¹

Words spoken against the Queen herself, when they did not fall within the definition of treason, were dealt with under the provisions of the first Statute of Westminster, as re-enacted in 1554, a practice illustrated by Oldnoll's case in 1558.¹² This case involved a Yeoman of the Guard named Oldnoll, who had been indicted and convicted in the Court of King's Bench for "horrible and slanderous words spoken of the Queen." Oldnoll was spared the pain of losing his ears on the pillory, leaving the nature of the sentence in question, "whether he should be imprisoned and kept in prison until he should find in court him by whom the words were moved according to the Statute of Westminster, or according to the statute 12 Richard 2, c. 11 . . . that he should be punished

¹¹1 Mary, c. 1 (First Treason Act, 1553); 1 and 2 Philip & Mary, c. 10 (Second Treason Act, 1554); 1 and 2 Philip & Mary, c. 9 (1555), cited by Elton, Tudor Constitution, 60, 69-72.

¹²Oldnoll's Case, 2 Dyer 155a, 73 Eng. Rep. 336. See also, W. S. Holdsworth, "Defamation in the sixteenth and seventeenth centuries," Law Quarterly Review, 40 (July, 1924), 309; cf. Crompton, L'authoritie et Jurisdiction des Courts, 35.

by the advice of the council." In essence, the question before the Court was whether punishment should be dealt out by the common law courts or by the Star Chamber. After deliberation, the justices ruled that Oldnoll should be imprisoned and fined according to the provisions of the first Statute of Westminster "and not according to the judgment or advice of the council . . . for that is when the slander touches the nobles and great officers." The Court held that the King or Queen was not included among "les hauts, ou grands homes ou nobles," and therefore the Court of Star Chamber had no jurisdiction in cases of words spoken against the monarch. This rule, which was an obvious attempt to limit the jurisdiction of the Star Chamber, was not universally accepted, though Coke cited it in his discussion of the first Statute of Westminster.¹³ Crompton, for one, did not feel bound by the rule when he wrote of this case, "it seemeth that the offence might have been examined in the Starre-chamber, and punished there as well as anywhere else."¹⁴

Regardless of which court could claim jurisdiction in such cases, however, an important distinction had arisen within the scope of scandalum magnatum as a criminal offence: while the King or Queen continued to enjoy the same protection offered by the law to the great men of the realm, he or she now did so in a different statutory context. The courts had ruled that since the monarch was not one of the great men of the realm enumerated in the statutes of 1378 and 1388, he was protected from the offence only by the provisions of the first Statute of Westminster. As a result of this distinction, at the beginning of the second half of

¹³Coke, 2 Institutes, 228.

¹⁴Crompton, Star Chamber Cases, 37; L'authoritie et Iurisdiction des Courts, 35.

the sixteenth century, the crime of scandalum magnatum technically had two definitions, one applying to the slander of the King or Queen, the other to the slander of the great men of the realm. By the early seventeenth century, however, when the expression came into general use, the first definition was generally ignored, making the offence literally the "scandal of magnates."¹⁵

The reign of Queen Elizabeth I saw many significant developments in the interpretation of the laws of scandalum magnatum. The offence, of course, retained its criminal, seditious nature, with Elizabeth's government regarding it in much the same light as did her late sister's government. One of the first enactments of the new reign was a confirmation of the penalties specified in the 1554 statute for "speaking false, slanderous news."¹⁶ Throughout her reign, Elizabeth's government demonstrated a concern for words which in any way might have imputed "lewd qualities against her majesty, or the nobility of the realm."¹⁷ The severity with which her government enforced the law in this respect is demonstrated by the fate of John Stubbs in 1579. Stubbs had written a book critical of the Duke of Anjou's visit to England, denouncing his attempts to woo the Queen as "unmanlike" and "unprincelike." He identified the Duke as a "son of Henry the second, whose familie . . . is fatal, as it were, to resist the Gospell," and he described the Duke's supposed intentions to marry Queen Elizabeth as those of "an imp of the crown of Fraunce, to marye with the crowned nymphe of Englande." Such outspokenness could not go unnoticed; the government considered the work

¹⁵Oxford English Dictionary, s.v. "Scandalum magnatum."

¹⁶1 Elizabeth, c. 6 (1558), Statutes at Large, II, 523.

¹⁷Hughes and Larkin, eds., Tudor Royal Proclamations, II, 341-342.

as "Puritanical" (not an unfounded judgment, since Stubbs was the brother-in-law of Thomas Cartwright), and in an order of council to the Lord Mayor of London, it accused Stubbs for "verie contemptuouslie" intermeddling in matters of state "towching her Majesties person," and uttering certain things "to the dishonour of the Duke of Anjou, brother to the Frenche Kinge."¹⁸ Stubbs was prosecuted on the Statute of 1554, and received the punishment there specified for writing "maliciously of his own imagination . . . false, seditious and slanderous news, sayings, or tales." On 3 November 1579, he had his right hand cut off with a butcher's knife and a mallet in the market-place at Westminster.¹⁹

The conviction and punishment of John Stubbs illustrated how the statutes of scandalum magnatum could be applied to matters of state directly involving the monarch. This side of the law remained primarily within the jurisdiction of the Council and the Court of Star Chamber where, of course, the statutory distinctions laid out in the ruling in Oldnoll's case were ignored, as were nearly all statutory distinctions. So it was that words spoken against the person of the monarch continued to be treated with severity in the courts throughout the reign of Queen Elizabeth and well into the seventeenth century. By then, even though the offence still matched that described in the first Statute of Westminster, it was seldom so identified nor was it referred to as scandalum

¹⁸John Harington, Nugae Antiquae (London, 1804), I, 145, 154-155. Stubb's book was The Discoveringe of a gaping gulfpe, whereinto England is like to be swallowed by another French marriage if the Lord forbid not the banes by lettinge her Majestie see the sin and punishment thereof.

¹⁹Ibid., 157. An eyewitness observed that the crowd which had gathered in the market-place to watch remained "deeply silent . . . out of an horrour at this new and unwonted kind of punishment," suggesting perhaps that the letter of the law was seldom carried out. There was, however, nothing particularly unusual about this type of punishment; see Hudson, Treatise, Collectanea Juridica, II, 224.

magnatum. The other side--and for the purposes of this investigation, the more important side--of the criminal offence of scandalum magnatum, the side which retained its legal, statutory identity even in the Court of Star Chamber, was that which directly involved the "great men of the realm."

The definitive treatment of this side of the criminal offence of scandalum magnatum came in 1605 with the case De Libellis Famosis, prosecuted in the Court of Star Chamber by Sir Edward Coke, who was then Attorney General. In reporting this case, Coke set down four rules regarding libel which provide probably the best summary of prevailing legal attitudes towards the offence.²⁰ The first rule involved a basic distinction between public and private libels: "Every libel . . . is made either against a private man, or against a magistrate or public person." With this distinction in mind, Coke declared that both offences were serious, the former deserving a severe punishment because "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." However, the latter offence, the libel of a public person, is 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?" This line of reasoning continued in use throughout the seventeenth century, not only in criminal cases, but also later in

²⁰De Libellis Famosis, 5 Co. Rep. 125-126, 77 Eng. Rep. 250-252 (1605). See Plucknett, Concise History, 431.

civil cases,²¹

The second rule laid down by Coke in the case De Libellis Famosis was that even if a man be dead, a libel against him is still punishable, especially in the case of a public figure, because in committing such an offence, "the libeller traduces and slanders the government, which dies not." The third rule held that libel was punishable either by indictment in a common law court or by confession in the Court of Star Chamber, the punishment itself being determined by the "quality of the offence." The fourth and perhaps most important rule was the denial of truth as a defense in libel cases. Though disputed under certain circumstances, this rule constituted a cornerstone in the seventeenth-century law of libel.²² Coke in 1605 summarized what he felt was the logic behind this rule:

It is not material whether the libel be true, or whether the party against whom it is made, be of good or ill fame; for in a settled state of government the party grieved ought to complain for every injury done him in an ordinary course of law, and not by any means to revenge himself either by the odious course of libelling, or otherwise . . .

Coke equated the crime of libelling with that of poisoning; both crimes were committed in such a way as to deprive the victim of his ability to defend himself. "Of such nature is libelling," he wrote, "for it is secret and robs a man of his good name, which ought to be more precious to him than his life." In typical Star-Chamber fashion, Coke cited scriptural authority rather than statutory authority as the basis for the four rules established in the case De Libellis Famosis: "Libelling and calumniation," he wrote, "is an offence against the law of God." Among the scriptural citations was the thirtieth chapter of the book of Job,

²¹For example, see the arguments for the plaintiff in Lord Townsend v. Dr. Hughes, 2 Mod. 157, 86 Eng. Rep. 998, 1002 (1677).

²²Plucknett, Concise History, 433.

with Coke observing that "Job, who was the mirror of patience . . . became quodammodo impatient when libels were made of him; and therefore it appears of what force they are to provoke impatience and contention." Finally, in completing his report of the case, Coke listed "certain marks by which a libeller may be known:" (1) by an "increase of lewdness;" (2) by a "decrease of money;" and (3) by a "shipwreck of conscience."²³ Whether Coke based these criteria on the facts of the case is difficult to determine, but they clearly demonstrate the repute in which those who criticized public figures were held.

The circumstances to which Coke's rules were applied deserve a brief examination. The case which Coke reported as De Libellis Famosis was that brought by the Attorney General on behalf of the King against one Lewes Pickeringe, a gentleman from Northamptonshire, "a scholer religiously disposed."²⁴ Pickeringe was charged with libelling the late Archbishop of Canterbury, John Whitgift, and his successor, Richard Bancroft, in a rhyme entitled "The lamentacion of Dickie for the deathe of his brother Jockie," "Dickie" referring to Bancroft and "Jockie" to Whitgift. The burden of the rhyme went as follows:

Jockie is deade and gone,
And Dum Dickie is left alone.²⁵

When questioned about the verse, Pickeringe answered that he "took it to be no lybelle . . . beinge of a dead man," to which Coke responded with his second rule, asserting as well that it was a "defamacion of the

²³De Libellis Famosis, 5 Co. Rep. 125b-126a, 77 Eng. Rep. 251-252 (1605); cf. Coke, 2 Institutes, 226.

²⁴John Hawarde, Les Reportes del Cases in Camera Stellata, 1593-1609, ed. W. P. Baildon (London, 1894), 222.

²⁵Ibid., 223. This rhyme or "dirge" was allegedly sung by the "collyers of Croydon" on the occasion of Whitgift's funeral.

deade and lyving." The libel was further interpreted to be not only against Whitgift and his successor, but also by "implication" against the late Queen and King James, the former having been served by Whitgift, the latter having been crowned by him.

Pickeringe was charged with attempting to "stirre the people to a desyre of reformacyon, which is not tolerable in a monarchie but in a democracie," a statement supported by the usual scriptural citation.²⁶ Completing his prosecution, the Attorney General turned to address the Court as it was about to determine the sentence, urging those present to devise a punishment to suit the crime: "The psalmiste saythe those lips shall be put to sylence that speake cruellye, disdainefullye, and dispitefullye." The remainder of the proceedings against Pickeringe consisted of comments from those present on the Court (including Bancroft himself), most of whom took advantage of the opportunity to lavish praise on Archbishop Whitgift and the late Queen and to denounce "the seede of schisme and sedition" allegedly planted by Pickeringe. The Lord Chancellor ended the proceedings by citing a list of examples to demonstrate how libellers were dealt with in various countries--the Lydians "per torturam et mortem," the Indians, "by drawinge bloude oute of the tonge and eares and to be offered in sacrifice"--all of which made Pickeringe's punishment seem particuarly light: he was fined 1000l, imprisoned for a year, and made to stand on the pillory in London, Northampton, and Croydon. The Lord Chancellor aptly concluded: "Now it is a lybelling time."²⁷

²⁶Ibid., 225. Among the scriptures cited was Ecclesiastes 10, containing the appropriate verse, "Curse not the king no, not in thought: and curse not the rich in they bedchamber: for a bird of the air shall carry the voice, and that which hath wings shall tell the matter."

²⁷Ibid., 226-229.

The importance of Pickeringe's case, or the case De Libellis Famosis as it is better known, lay in the rules it established regarding the defamation of public figures, dead or alive. In this respect, it defined the criminal side of the offence of scandalum magnatum and provided an interpretation of the law which would survive throughout the seventeenth century, for civil as well as criminal proceedings. Examples of its early application survive in Star Chamber records, both before and after Pickeringe's case, which had merely confirmed and, by virtue of Coke's definitive report, set down rules which were generally accepted by the courts. Among the examples was the case brought before the Court of Star Chamber in 1596 against a young soldier named Smith for "spreading sclaunderous newes" about the Earl of Essex and Lord Admiral Effingham.²⁸ The action against Smith was laid under the statutes of 3 Edward I (Westminster the First, c. 34) and 1 and 2 Philip and Mary, though Coke assured the Court that "without law the Councillors could punish these offences . . . at their discretion," a reminder that they did not have to rely on statute law. Smith's punishment was to lose both ears, one upon the pillory at Westminster, the other at Windsor, and then to be whipped, imprisoned, and fined 20 $\frac{1}{2}$ ("which showlde have bene farre greater but for his baseness, beinge a peasante and a boye"). A month later, another man received a similar sentence for calling the Lord

²⁸ Ibid., 39-40. The "sclaunderous news" allegedly spread by Smith was a story to the effect that the Earl of Essex had seized Lord Admiral Effingham "by the berde" and called him a traitor in the presence of the Queen. The circumstances out of which this incident arose, according to Smith's account, resulted from a search conducted by the Earl of Essex of Effingham's ship, where gunpowder barrels were found to contain ashes and sand rather than gunpowder. 1596 was the year when Essex and Effingham led an attack on Cadiz and later faced a threatened Spanish invasion of Ireland, hardly the time for "sclaunderous newes" to be spread about.

Admiral a traitor.²⁹

More examples survive from the first few years of the reign of King James I. In 1604, the Star Chamber proceeded against a man named Fourde for speaking words against the Lord Chancellor, and, when sentenced to the usual punishment (loss of ears, imprisonment and a fine), Fourde was reported to have taken it "grievously and impatiently," prompting the Court to declare: "Let all men hereby take heede how they complayne in wordes againste any magistrate for they are gods."³⁰ Statements of that nature were becoming frequent in Star Chamber proceedings, as the interpretation of words against the great men of the realm became more severe. "Trenching upon the honor of a noble gentleman" was equated with trenching upon the honor of "King and State,"³¹ an equation which provided the necessary theoretical justification for both the criminal and civil prosecution of offenders.

All of the cases cited thus far, however, have illustrated only the criminal side of the offence of scandalum magnatum as it was defined primarily in the Court of Star Chamber in the late sixteenth and early seventeenth centuries. In each case, the words allegedly spoken were held to have political, seditious implications and thus matched the first statutory description of scandalum magnatum, the spreading of "false news or tales whereby . . . discord or slander may grow between the King and his people, or the great men of the realm." The same period which saw the development of this criminal interpretation of the offence also saw the formulation of a civil interpretation of the offence which made it a

²⁹Ibid., 44-45.

³⁰Ibid., 177.

³¹Samuel R. Gardiner, ed., Reports of Cases in the Courts of Star Chamber and High Commission (London, 1866), 20.

tort as well as a crime. Attention is now turned to this side of the law.

The origin of scandalum magnatum as a civil offence can be traced as far back as the reign of Henry VII, where at least two examples survive of noblemen bringing actions of scandalum magnatum against those who had accused them in court of certain wrongdoings.³² These attempts were not well received by the early Tudor courts, where there existed a great concern for the establishment of a judicial system which could be relied upon to protect those who availed themselves of its services. No man would care to risk bringing a peer of the realm to justice if he could be sued in return for scandalum magnatum, so the courts quickly ruled that the statutes of scandalum magnatum applied only to extrajudicial slander, "for no punishment was ever appointed for a suit in law, however it be false."³³ While this rule was surely a deterrent to noblemen, it did not prevent them from eventually taking full advantage of their new-found weapon; a small number of cases of scandalum magnatum can be traced through the first half of the sixteenth century.³⁴ By the middle of the century, the civil side of the offence came to be fully recognized by the common law courts. Their interpretation of the law in this respect was based on the doctrine that where a statute defined a particular offence and prescribed a punishment for it, a person injured

³²See above, pages 20-22.

³³Lord Beauchamp v. Sir Richard Croft and others, 3 Dyer 285a, 73 Eng. Rep. 639 (1569); Coke, 2 Institutes, 228.

³⁴Among these cases were the Bishop of Winchester's case in 1510 for words which "in respect of his place and dignity . . . were holden actionable;" 1 Leonard 336, 74 Eng. Rep. 305; and the Duke of Buckingham's case in 1512 for the words "you have no more conscience than a dog;" Crompton, L'authoritie et Iurisdiction des Courts, 13. See above, page 23.

by the offence was entitled to a civil action and hence to damages even though the statute made no such provision.³⁵ So it was that a civil remedy was extracted from the statutes of scandalum magnatum in the sixteenth century: the offence the statutes defined was a criminal offence and no civil remedy was specifically provided; however, in keeping with the doctrine, if a nobleman was injured by words which by a stretch of the legal imagination could be interpreted as "horrible and false lies," he was entitled to a civil action on the statutes and to damages, a legal practice which would be carried to great extremes especially in the second half of the seventeenth century.

It was during the second half of the sixteenth century, however, that noblemen first took full advantage of the civil interpretation of the statutes of scandalum magnatum. The gradual increase in the number of these cases from the 1580's onward can be attributed to many factors, each of which in some way reflecting the changing position of the aristocracy in the social hierarchy of late Elizabethan and early Stuart England. The so-called "crisis" of the aristocracy has been frequently interpreted as a result of the Tudor policy which deprived the aristocracy of its military power and its capacity for violence.³⁶ The attempts to channel the energies of noblemen away from private warfare to less violent pursuits resulted in, among other things, an increase in litigation; disputes which in earlier days would have been the occasion for open violence were now transferred to the law courts, which became the "cockpitt

³⁵Earl of Northampton's Case, 12 Co. Rep. 134, 77 Eng. Rep. 1410 (1613). See also, Thomas Starkie, A Treatise on the Law of Slander, 1st American ed. (New York, 1826), 148; and Plucknett, Concise History, 430.

³⁶J. H. Hexter, "Storm Over the Gentry," in Reappraisals in History (New York, 1961), 148; Stone, Crisis, 199-201.

of revenge," as one contemporary described it.³⁷ The feuds which were carried on among members of the nobility and gentry in the late sixteenth and early seventeenth centuries, often still occasions for violence, now found their way into the courts where they were pursued with the same spirit of revenge and destruction as they would have been in open armed conflict.

A case of scandalum magnatum figured prominently in the feud which raged off and on in the 1590's between Gilbert Talbot, Seventh Earl of Shrewsbury and Sir Thomas Stanhope, members of two prominent landed families who were neighbors in Nottinghamshire. The Talbot family was well known for its violent habits which characterized even the relationships among its own members, evidenced by the constant plotting which went on between the brothers Gilbert and Edward.³⁸ Their feud with the Stanhopes was carried to ridiculous extremes, as in 1593 when the Earl of Shrewsbury got together a group of men one night to pull down a weir belonging to Sir Thomas Stanhope and later tried to get his servants to destroy a wall in the Stanhope's park at Horseley and to engage Mr. John Stanhope in a fight, hoping to "wholly disfigure" him.³⁹

Not satisfied with merely inflicting damage on Stanhope's property, however, the Earl decided to take advantage of some words which had passed between Sir Thomas and one Francis Fletcher involving a petition

³⁷J. Smyth, Lives of the Berkeleys (Gloucester, 1883), I, 242, quoted in Stone, Crisis, 240.

³⁸Dictionary of National Biography, s.v. Talbot, Gilbert; Edmund Lodge, Illustrations of British History, Biography, and Manners (London, 1791), III, 50-64 passim; Hawarde, Reportes, 13, 19.

³⁹Historical Manuscripts Commission, Salisbury Manuscripts (London, 1894), V, 227, 229, 255; Calendar of State Papers, Domestic, 1595-1597, IV, 48.

which had been brought before the Privy Council concerning the destruction of the weir. With Fletcher's help, the Earl brought an enormous civil action of scandalum magnatum against Sir Thomas in 1595 for accusing him of disloyalty to the Queen, alleging damages in the sum of 20,000^l.⁴⁰

The only obstacle to the Earl's plans was one of his own servants named Nicholas Williamson who was then in prison for participating in the destruction of Stanhope's weir and in trouble with the government on several other counts.⁴¹ Williamson, who must have felt abandoned by his master, offered to appear before the Council and testify that it was the Earl of Shrewsbury himself who was responsible for the destruction of the weir and that Sir Thomas Stanhope was "wrongfully charged" in the action of scandalum magnatum. To make matters more difficult for Shrewsbury, Williamson claimed to possess evidence to support his testimony. His motivation seems to have been to persuade the Earl to procure his pardon and pay him a sum of money in exchange for his silence, but the Earl did not go along with this and instead ordered a search of Williamson's home in hopes of locating the evidence himself.

In a letter to Sir Robert Cecil, Williamson offered to prove "that in that certificate which my lord sent to the Lords of the Council against Sir Thomas Stanhope touching the supposed scandalous speeches, he used a most dishonourable practice, whereby Sir Thomas is in justice to be discharged." In another letter to Cecil several weeks later,

⁴⁰Gilbert, Earl of Shrewsbury v. Sir Thomas Stanhope, Popham 67, 79 Eng. Rep. 1181.

⁴¹Calendar of State Papers, Domestic, 1595-1597, IV, 64-65. Coke, the Attorney General, noted that Williamson was a "dissembling, discontented Papist," who had been previously involved in an attempt to convert James VI of Scotland to Roman Catholicism.

Williamson described the "dishonourable practice" he had alluded to: Francis Fletcher, to whom the words alleged against Stanhope were spoken, had sent the Earl a verbatim account of their exchange, and upon receipt of this account, the Earl "corrected" it, "leaving out the material words of Sir Thomas."⁴² When the case came to trial before the Court of King's Bench, Justice Fennor acknowledged that the defendant, Sir Thomas Stanhope, "shews matter . . . which proves the words to be spoken in another sense than the declaration imports," suggesting that Williamson's evidence may have been used in court.⁴³ Whatever the case, the defense was upheld, and the Earl of Shrewsbury did not recover his 20,000^l in damages, temporarily put off in his effort to ruin Sir Thomas Stanhope. The Earl of Lincoln, whose feud with Sir Edward Dymock was the occasion for a similar legal action in 1610, met with greater success than did Shrewsbury; unlike Shrewsbury, he had the pleasure of seeing his adversary imprisoned and fined.⁴⁴

A factor in many ways related to the feuding habits of the aristocracy was the loss of prestige and respect suffered by English noblemen, especially at the hands of the gentry. By the early seventeenth century, this loss had become painfully apparent.⁴⁵ Aware of their inability to command the respect they once enjoyed, noblemen were increasingly sensitive to assaults upon their honor, and often overreacted to the slightest of insults. Actions of scandalum magnatum brought

⁴²Nicholas Williamson to Sir Robert Cecil, 3 June 1595; 22 June 1595, Historical Manuscripts Commission, Salisbury MSS, V, 230, 255.

⁴³Shrewsbury v. Stanhope, Popham 67, 79 Eng. Rep. 1182.

⁴⁴Historical Manuscripts Commission, Third Report, Alnwick Manuscripts (London, 1872), 57.

⁴⁵Stone, Crisis, 747-752.

by noblemen were frequently the result of such insults, and the proceedings in these cases usually demonstrated an overriding concern for status and reputation on the part of the injured nobleman. The case of Lord Morely and Sir Henry Colte in 1608 is an example. Lord Morley (Edward Parker, Twelfth Baron Morley), while hunting one day in Hatfield Chase (Essex), encountered Sir Henry Colte, one of the local gentry and exchanged a few harsh words with him, "demaunding of Sir Henry Colte what he was." To this, Colte responded that "for oughte he knewe, he might be as good a man as he," a comment which provoked "many ill wordes" from Lord Morley. Then, deciding to leave, the angry Lord bade Sir Henry "god buye, goodman Colte." Sir Henry, not to be outdone, replied in "greate passyon . . . 'god buye, goodman Morlye,'" only to find himself the defendant in an action brought by the insulted Lord Morley in the Court of Star Chamber.⁴⁶

The Earl of Lincoln, whose name appears more than once as plaintiff in cases of scandalum magnatum, provides another example of this sensitivity to insulting words. In 1598, he brought an action of scandalum magnatum against a man named Michelborn who had accused him of forging a warrant and "recovered great damages by verdict" in the Court of King's Bench.⁴⁷ In 1608, he brought another action of scandalum magnatum, this time against one Roughton for the words "My lord is a base earl, and a paltry lord, and keepeth none but rogues and rascals like himself." The

⁴⁶Hawarde, Reportes, 348. "Goodman" was the form of address for a yeoman. See Peter Laslett, The World We Have Lost (New York, 1965), 38. As illustrated by this case, the Court of Star Chamber entertained pleas of a civil nature as well as pleas of a criminal nature. In cases of slander, the court not only fined the offender but also awarded damages to the plaintiff; see for example the case of the Earl of Suffolk v. Sir Richard Grenville (1631), in Gardiner, ed., Reports, 108. In Lord Morley's case, however, the court dismissed his bill of complaint because it was "incertainly laid."

⁴⁷Earl of Lincoln v. Michelborn, Goulds. 116, 75 Eng. Rep. 1033 (1598).

defendant pleaded not guilty, but the court ruled that the words "touched him [the Earl] in his honour and dignity; and to term him 'base lord' and 'paltry earl' [sic] is matter to raise contempt betwixt him and the people, or the king's indignation against him," adding that "such general words in the case of nobility will maintain an action, although it will not in case of a common person."⁴⁸

The Earl of Lincoln, whose conduct among the Lincolnshire gentry was reputed to be that of a "great tyrant,"⁴⁹ continued to avail himself of the protection offered by the law from insulting words. In 1610, he brought an action in the Court of Star Chamber against Sir Edward Dymock and several others "for contriving and acting a stage play . . . containing scurrilous and slanderous matter" about the Earl. The Court, ruling in favor of the Earl, sentenced those who had participated in the play to be imprisoned, pilloried, fined, and whipped; they were also required to "acknowledge their offences, and ask God and the Earl forgiveness." Sir Edward Dymock, "who was privy and consenting to the offences," was himself imprisoned and fined 1000l.⁵⁰

Cases such as the ones just cited involving the Earl of Lincoln illustrate a paradox which was becoming more and more pronounced in English society in the late sixteenth and early seventeenth centuries.

⁴⁸Earl of Lincoln v. Roughton, Cro. Jac. 196, 79 Eng. Rep. 171. The definition of the offence given here remained the accepted definition throughout the seventeenth century and into the eighteenth century: cf. March, Actions for Slauder, 135; Sheppard, Action Upon the Case, 17; and William Blackstone, Commentaries on the Laws of England (Oxford, 1768; reprint ed., New York, 1966), III, 123.

⁴⁹G. E. Cokayne, The Complete Peerage, new ed., rev., enl. (London, 1929), VII, 694. These references are to Henry Fiennes, Second Earl of Lincoln. For further examples of his behavior, see Stone, Crisis, 224-225.

⁵⁰Ibid.; Historical Manuscripts Commission, Third Report, Alnwick MSS., 57. Hudson, Treatise, Collectanea Juridica, II, 101.

Henry Peacham might well have compared the nobleman to the lion, king of beasts, or to the "noble orbs of greatest influence . . . raised aloft" among the heavenly bodies,⁵¹ but to those beneath him in the social hierarchy, the nobleman was often regarded in just the opposite terms: he was the "base earl" or "paltry lord" who provided suitable subject matter for scurrilous plays staged by local buffoons. Abusing noblemen had become something of a pastime for many Englishmen; one is reminded of Sir John Harington, casually resolving one day to write "a damnable story and put it in goodlie verse aboute Lord A--," explaining that "he hath done me some ill turnes;"⁵² or of John Manningham's tailor, who, upon being rebuked by the Lord Chamberlain for cursing the Earl of Leicester, told his Lordship "yf he should committ every one to prison that spake evil of Leister or himselfe, he should make as many prisons in London as there be dwelling places."⁵³ Noblemen were frequent targets for verbal abuse, and, now unable to respond with a show of force, their only effective recourse was to the law.

Not all civil actions of scandalum magnatum, however, were the result of mere personal insults. Some of the earliest cases, for instance, arose in response to words regarding the political or religious activities of noblemen. In 1578, Henry, Baron Cromwell brought an action of scandalum magnatum against Edward Denny, the Vicar of Northlingham in the county of Norfolk, for accusing him of liking people "that maintain sedition against

⁵¹Henry Peacham, The Complete Gentleman (1634), ed. V. B. Heltzel (Ithaca, N.Y., 1962), 11.

⁵²John Harington, "Breefe Notes and Remembraunces," Nugae Antiquae, I, 167. "Lord A--" was probably a reference to Lord Arundel. The entry was dated 14 June 1594.

⁵³John Manningham, Diary, ed. John Bruce (London, 1868), 136-137.

the Queen's proceedings." These words came in a lively dispute between Lord Cromwell and the vicar over two preachers whom Cromwell had invited to preach in the church at Northlingham. In their sermons, these preachers, who were obviously Puritans, "inveighed against the Book of Common Prayer . . . and affirmed it to be superstitious and impious." Denny, a good Anglican, was enraged by this attack and attempted forcibly to prevent them from continuing, insisting that they had no licence and were not authorized to preach in his church. Lord Cromwell, in return, encouraged the two to go on, dismissing Denny's protests and saying to him, "Thou art a false varlet, and I like not of thee." This remark provoked the words for which the vicar was charged in court: "It is no marvel you like not of me," he said, "for you like these that maintain sedition against the Queen's proceedings," referring to the two preachers who had attacked that "which was established by the Queen and the whole Parliament in the first year of her reign."⁵⁴

It was Edward Denny's good fortune that a young lawyer from the Inner Temple named Edward Coke agreed to represent him in the Court of King's Bench. Coke, who recorded the case years later, noted in his Reports that "this was the first cause that the author of this book . . . moved in the King's Bench."⁵⁵ After bringing a series of legal technicalities to the attention of the Court--including the familiar "misrecital of statute"--Coke succeeded first in having the case thrown out of court, and again, after Lord Cromwell had brought another action, in winning a

⁵⁴Lord Cromwell's Case, 4 Co. Rep. 13b, 76 Eng. Rep. 881 (1578); see March, Actions for Slauder, 17.

⁵⁵Lord Cromwell's Case, 4 Co. Rep. 14a, 76 Eng. Rep. 883 (1578); see also, C. W. Johnson, The Life of Sir Edward Coke (London, 1845), I, 29; and Catherine D. Bowen, The Lion and the Throne (Boston, 1956), 69-71.

decision for the defendant, this time on the grounds that he was justified in speaking the words alleged against him. In a self-congratulatory tone, Coke explained how he managed so difficult a manoeuvre; he had persuaded the Court to consider the context of the words:

. . .the defendant's counsel have well done to shew the special matter by which the sense of this word "sedition" appears upon the coherence of all the words, that it was in the defendant's meaning, the said seditious doctrine against the Queen's proceedings, scil. the said Act of Parliament de anno primo, by which the Book of Common Prayer was established, and that he did not mean any such public or violent sedition as has been described (by the plaintiff), and as ex vi termini per se the word itself imports.⁵⁶

Coke was arguing against what he considered to be the strict grammatical construction placed on words which had been "taken by parcels against the manifest intent" of the defendant (a similar line of argument to that which saved Sir Thomas Stanhope from having to pay 20,000^l to the Earl of Shrewsbury in 1595). Unfortunately for future defendants in cases of scandalum magnatum, Coke's successful defense did not set a precedent. Very few examples survive of a court accepting any attempt to justify words by the context in which they were spoken. Perhaps ironically, in light of his successful role as counsel for the defense in Lord Cromwell's case, Coke was in some ways responsible for the increasing number of actions of scandalum magnatum brought in the early years of the seventeenth century, over two decades after his first experience in the Court of King's Bench. William Hudson directly attributed the frequency of these cases in the Court of Star Chamber around 1600 to the fact that Coke was then the Queen's Attorney General.⁵⁷ Also, as described above, he played a

⁵⁶Lord Cromwell's Case, 4 Co. Rep. 14a, 76 Eng. Rep. 883 (1578); cf. March, Actions for Slauder, 109-110.

⁵⁷Hudson, Treatise, Collectanea Juridica, II, 100.

prominent role in the prosecution of Lewes Pickeringe in the case De Libellis Famosis (1605), and it was he who unearthed dubious medieval precedents for extracting a civil remedy from the statutes of scandalum magnatum in 1613.⁵⁸

As Lord Cromwell's case amply demonstrated, religion could be a touchy subject, especially when it carried political implications as it often did. Not surprisingly, Bishops as well as noblemen availed themselves of the remedy provided by the civil interpretation of the statutes of scandalum magnatum. In 1562, for instance, the Bishop of Winchester brought an action for words implying that he was "a covetous and malicious bishop."⁵⁹ In 1582, the Bishop of Norwich brought an action against a man named Pricket for claiming to have in his possession a letter written by the Bishop which was "against the word of God, against the Queen's authority, and to the maintenance of superstition." In this case, the Court ruled that to charge a Bishop with heterodoxy in religion was actionable and awarded him 500 marks in damages.⁶⁰ Along similar lines, peers whose religious leanings aroused criticism could make use of the statutes of scandalum magnatum, as did the Earl of Northampton, a member of the Catholic Howard family, in 1613. The Earl, who

⁵⁸ Earl of Northampton's Case, 12 Co. Rep. 134, 77 Eng. Rep. 1410 (1613). The accuracy of this report was doubted in the case of *M'Pherson v. Daniels*, 10 B. & C. 271, 109 Eng. Rep. 451ff (1829).

⁵⁹ In reporting this case, Sir Francis Moore wrote that "l'opinion des Justices en Bank le Roy fuit que les parols ne fuer sufficient pur maintenir l'accon," Moore 38, 72 Eng. Rep. 425. Thomas Hetley, in 1628, included an almost identical case, *Bishop of Winchester v. Markham*, in his collection of cases in *Common Pleas*, noting that there the words "covetous and malicious Bishop" were held to be "sufficient to maintain the action," Hetley 55, 124 Eng. Rep. 338-339 (1628).

⁶⁰ *The Bishop of Norwich v. Pricket*, Cro. Eliz. 2, 78 Eng. Rep. 268 (1582).

held among other high positions that of Lord Guardian of the Cinque Ports, found himself the object of "divers false and horrible scandals," to the effect that "more Jesuits, Papists, &c. have come into England since the Earl of Northampton was Guardian of the Cinque-Ports, than before." An action was brought in the Court of Star Chamber for these words where those responsible for them were fined and imprisoned.⁶¹

Each of the cases cited above, whether brought before the Court of Star Chamber or before a common law court, illustrated the political and social importance placed by the law on words which in any way "touched the highest blood in the kingdome," as the Bishop of Winchester described those spoken against the Earl of Suffolk in 1631.⁶² The interpretation of the offence of scandalum magnatum, both criminal and civil, which evolved over the fifty years from Queen Mary's reenforcement of the original statutes to the case De Libellis Famosis, proved to be an important part of the foundation of the modern law of defamation. The severity of this interpretation, evidenced by the courts' adherence to a number of harsh rules, lent special force to the Earl of Northampton's contention that "dishonorable sclaundering of great personages . . . was a verye greate offence and worthye of great punishmente."⁶³ It was a part of that trend taking place in English society in late Tudor and early Stuart times which saw noblemen, now deprived of their former military capacity and rapidly losing the respect of their social inferiors, taking their battles to court. There they conducted their feuds with the gentry and defended their reputations from the disrespectful; and there they joined

⁶¹Earl of Northampton's Case, 12 Co. Rep. 132-134, 77 Eng. Rep. 1407 (1613); see also, T. Payne Collier, ed., The Egerton Papers (London, 1840), 456-457. The offenders were later discharged.

⁶²Gardiner, ed., Reports, 108.

⁶³Hawarde, Reportes, 208.

with Church and Crown to defend the entire hierarchy, of which they were so prominent a part, from verbal abuse.

It is well-known that verbal abuse often provoked challenges to duels in Tudor and Stuart times. Where noblemen were involved, the law of scandalum magnatum therefore assumed yet another function, as a legal alternative to the duel. The decline in aristocratic violence during the sixteenth century, while it signalled an end to large-scale private warfare among the nobility and gentry, did not mean the end of duelling as an accepted method of settling disputes and avenging verbal assaults upon a man's honor. The first two decades of the seventeenth century witnessed an increase in duelling which alarmed many contemporaries. "Though there be in shew a settled peace in these parts of the world," wrote John Chamberlain in 1613, "yet many private quarrels among great men prognosticate troubled humours, which may breed dangerous diseases, if they be not purged and prevented."⁶⁴ King James I, who shared Chamberlain's fears, took a personal interest in the prevention of duels and in 1614 issued two proclamations for that purpose.⁶⁵ It is not surprising to find the King, in his determination to be Rex pacificus, personally attending the Court of Star Chamber "to give sentence himself" against two gentlemen convicted there for duelling in 1617.⁶⁶

The success of the King's policy against duelling, however, would depend on more than grandly worded proclamations and royal visits

⁶⁴ John Chamberlain to Sir Dudley Carleton, 9 September 1613, quoted in Bacon, Works, XI, 396.

⁶⁵ A Proclamation against Private Challenges and Combats (London, 1614); His Majesty's Edict Against Private Combats (London, 1614), cited by G. P. Akrigg, Jacobean Pageant (Cambridge, Mass., 1962), 257.

⁶⁶ Calendar of State Papers, Domestic, 1611-1618, 436.

to the Star Chamber. Ultimately, it would depend on the government's ability to persuade injured parties to adopt "some other course rather than a duel for the satisfaction of honour."⁶⁷ In an age when men professed to value their honor higher than their lives, no law would likely stand in the way of duelling as long as that practice remained the accepted means of avenging an assault upon one's honor. Thomas Hobbes stated the problem concisely when he wrote that "private duels are, and always will be honourable, though unlawful, till such time as there shall be honour ordained for them that refuse, and ignominy for them that make the challenge."⁶⁸ Sir Francis Bacon, who, as the King's Attorney General, led the campaign against duelling in the Court of Star Chamber, also recognized the dilemma the government faced in dealing with this "mischief that groweth every day." Since he felt that the offence "hath vogue only amongst noble persons, or persons of quality," he argued that "men of birth and quality will leave the practice, when it begins to be vilified, and come so low as to barbers surgeons and butchers, and such base mechanical persons."⁶⁹

In Bacon's mind, much of the problem was the result of a widely-held misconception "that the law hath not provided sufficient punishment and reparation for contumely of words, as the Lie, and the like."⁷⁰ In 1616, he attempted to correct this misconception during the prosecution

⁶⁷ Calendar of State Papers, Domestic, 1619-1623, 436.

⁶⁸ Thomas Hobbes, Leviathan (London, 1651) in Hobbes, English Works, ed. William Molesworth (London, 1839), III, 81.

⁶⁹ The Charge of Sir Francis Bacon, Knight, his Majesties Attourney Generall, touching Duells . . . (London, 1614), reprinted in Bacon, Works, XI, 399.

⁷⁰ Ibid., 403.



of the case of Lord Darcy against Gervase Markham in the Court of Star Chamber. Markham was charged with a "libel, slanderous and defamatory to my Lord Darcy," which allegedly amounted to a challenge to a duel or at least strong provocation.⁷¹ Rather than accepting this challenge, however, Lord Darcy brought the matter before the Court of Star Chamber where he received the Attorney General's praise "for taking the right course."⁷² Noting that Darcy was a peer of the realm, Bacon expressed his pleasure "that they that are highest in place are first in obedience to the law," though, from his legal experience, he must have known this was not always the case. Bacon took this opportunity to describe the course of legal action open to a peer of the realm in cases of words injurious to his honor, namely that "he may bring his scandalum magnatum and may justify."⁷³

The extent to which noblemen were inclined to follow Bacon's advice was limited, judging from the number of duels which were still being fought in defiance of the King's proclamations and the Privy Council's admonition to noblemen "to try out theyre controversies by warres in Westminster Hall."⁷⁴ Nevertheless, some progress was made during the early decades of the seventeenth century, and, in the words of Professor Stone, "the worst evils of the duel were effectively contained in England

⁷¹Lord Darcy of the North v. Gervase Markham, Hobart 121, 80 Eng. Rep. 270 (1616).

⁷²Notes of the Lord Darcy's Case of Duells against Mr. Gervice Markham (In Camera Stellata, 27 November 1616), reprinted in Bacon, Works, XIII, 108.

⁷³Ibid., 111.

⁷⁴Quoted by Stone, Crisis, 248. For examples of duels involving noblemen in the first two decades of the seventeenth century, see Chamberlain's letter to Carleton, op. cit. See also The Egerton Papers, 463.

and never reached the proportions they achieved in France."⁷⁵ This containment was effected through the government's determined policy of intervention in disputes whenever possible, a policy illustrated by an order of the council in 1623 to prevent the Earl of Warwick and Lord Cavendish from leaving England to fight a duel,⁷⁶ or the order sent to Lord Mordaunt in 1626 commanding him not to accept a challenge from Sir Edward Stradling.⁷⁷

Though not all noblemen injured in their honor followed Bacon's advise to bring their actions of scandalum magnatum, many did turn to the available legal channels to defend their honor as alternatives to duelling. The Court of Star Chamber, for one, dealt harshly with those responsible for challenging a nobleman to a duel, as in 1634 when Peter Apsley was fined 5000^l for "high insolency in challenging the Earl of Northumberland."⁷⁸ Likewise, the Earl Marshal's Court, a "court of honour" revived in the reign of James I, dealt frequently with "scandalous words provocative of a duel."⁷⁹ The surviving records of the Earl Marshal's Court suggest that the bulk of the cases brought before it involved duelling, though all types of insulting words and breaches of honor were dealt with there as well.⁸⁰ The Earl Marshal's Court, a prerogative court like the Star Chamber, came under severe criticism, especially from common lawyers, for having extended its jurisdiction beyond

⁷⁵Stone, Crisis, 249.

⁷⁶Calendar of State Papers, Domestic, 1623-1625, 21, 23.

⁷⁷*Ibid.*, 1625-1626, 366.

⁷⁸*Ibid.*, 1633-1634, 442; Stone, Crisis, 249.

⁷⁹G. D. Squibb, The High Court of Chivalry (Oxford, 1959), 57.

⁸⁰*Ibid.*, 37, 57.

the bounds of the common law.⁸¹ Edward Hyde, who was largely responsible for the suppression of this court, described it as being "without colour or shadow of law, which took upon it to fine and imprison the king's subjects, and to give great damages for matters which the law gave no damages." In essence, this "upstart court," as Hyde contemptuously called it, created a double standard--one of honor as opposed to one of law.⁸²

It was to the Earl Marshal's Court that noblemen could bring their complaints of scandalous words, though as in the Star Chamber, statutory authority for such action did not need to be invoked. In 1640, when Parliament was considering the suppression of the Earl Marshal's Court, Hyde observed that in two days, more damages had been awarded there "for contumelious and reproachful words, of which the law took no notice . . . than had been given by all the juries, in all the courts in Westminster Hall, in the whole term. . ." ⁸³ He cited an amusing, if inaccurate, example of how the court had misused its jurisdiction: a "citizen" had mistaken the swan depicted on the crest of an earl for a goose, and had told a servant wearing the earl's crest to "be gone with his goose," for which words this "citizen" was hauled before the Earl Marshal's Court, and after a "long and chargeable attendance," was "for the opprobrious dishonouring the earl's crest, by calling the swan a

⁸¹Calendar of State Papers, Domestic, 1619-1623, 321.

⁸²Edward Hyde, The Life of Edward Earl of Clarendon (Oxford, 1827), I, 81, 85; cited by Squibb, High Court, 63; see also Stone, Crisis, 249.

⁸³Hyde, Life, I, 85. Hyde's contention that the law took no notice of such "contumelious and reproachful words" was to ignore the civil interpretation of the statutes of scandalum magnatum which had evolved in the common law courts during the late sixteenth century, though in the 1630's and 1640's, the statutes themselves were seldom if ever invoked in a civil action.

goose, fined and imprisoned, till he had paid considerable damages to the lord . . .⁸⁴

Throughout the 1620's and 1630's, English noblemen resorted to special legal avenues such as that provided by the Earl Marshal's Court, not only for words provocative of a duel but for any scandalous words which reflected upon their honor. The House of Lords, in its judicial capacity, was the forum for some of these actions. In 1626, three men were brought before the House for arresting a servant of Lord Mordaunt and for "giving contemptible speeches of the said Lord Mordaunt . . . in derogation of the privileges of parliament."⁸⁵ In 1628, the Earl of Huntingdon complained to the Lords that Sir Henry Sherley had raised a scandal against him, for which Sherley was ordered to appear at the bar of the House, "to give the Earl of Huntingdon . . . satisfaction for his reparation in honour," and later was censured and committed to the Fleet.⁸⁶ Similar examples exist in the Lord's journals dating from the year 1628, the last full year before the eleven-year period of personal rule: one Nicholas Bowyer, for instance, was ordered to be brought to the bar "to answer his scandal of the Earl of North[amp]ton." Appearing

⁸⁴Hyde, Life, I, 81. Squibb identifies this case as that of the Earl of Dover v. Fox (1638) and cites circumstances which cast a different light on the proceedings: the "citizen" had allegedly said to the earl's servant, "Thou fellowe with the goose on thy sleeve, whose foole's coate doest thou wear?" When the servant replied it was the Earl of Dover's, the citizen said it was a fool's coat and a knave's coat, which were reflections on the earl, not simply his crest, as Hyde had contended. Squibb, High Court, 64. This offence as it is described in the records of the Earl Marshal's Court would have matched the civil definition of scandalum magnatum accepted in the courts during the seventeenth century.

⁸⁵Journals of the House of Lords, III, 535.

⁸⁶Ibid., 822-823; 842; 849. Sherley had allegedly said that the Earl "had oppressed the country, by levying of 11001 or more under colour of his Majesty's service," and "many other words of asperity and scandal."

shortly thereafter, Bowyer acknowledged his "hearty sorrow for this great offence," and asked the "forgiveness of the Lords in general for scandalizing a Noble Peer of this Realm."⁸⁷ Later that year, Viscount Saye and Sele complained to the Lords of the "insolent and opprobrious speeches" of one Henry Reynd, and later, after the Lords had taken action against Reynd, he gave thanks to the Lords "for the sense they had of his honour, and their noble zeal in the preservation of it."⁸⁸

Once Parliament had been dissolved, the Lords took their cases to other courts. In 1629, Viscount Saye and Sele, well-known for his Puritan leanings and his role in the country opposition,⁸⁹ brought an action of scandalum magnatum in the Court of King's Bench against a man named Stephens who had called him a traitor.⁹⁰ The words were spoken by Stephens to a servant of the Viscount, "in the presence and hearing of divers of the King's subjects," and were held actionable despite a plea of not guilty and motions to arrest judgment, first on the grounds of misrecital (for which Lord Cromwell's case of 1578 was cited), and again on the grounds that the title of Viscount did not exist at the time of the enactments of the statutes of scandalum magnatum. The court dismissed both objections, observing with respect to the latter that as long as the plaintiff was a Viscount at the time the words were spoken,

⁸⁷ Ibid., 827, 830.

⁸⁸ Ibid., 836, 845, 851, 855. Reynd was sentenced for this offence in the Court of Star Chamber.

⁸⁹ Dictionary of National Biography, s.v. Fiennes, William, Viscount Saye and Sele; see also, Perez Zagorin, The Court and the Country (London, 1969), 93.

⁹⁰ William Viscount Say and Seal v. Stephens, Cro. Car. 135, 79 Eng. Rep. 719; Ley 82, 80 Eng. Rep. 646; Palmer 565, 81 Eng. Rep. 1222 (1629).

they were to be held actionable under the statutes.⁹¹ In giving judgment for the plaintiff, the Court awarded him 2000l in damages.

Similar actions were brought in the Court of Star Chamber, as in 1637, when the Earl of Marlborough sued Thomas Bennet for claiming to be as good a gentlemen as the Earl and for insisting that the Bennets were as good as the Leys (the Marlborough family) and for having "taxed the Earl with baseness and base dealing."⁹² In 1638, Lord Sherard brought an action in the Court of Star Chamber against Sir Henry Mynne for calling him a "base lord" and a "base fellow" and for saying he would "pluck the feathers off the proud peacock's tail," referring to the crest of the recently-created (1627) Sherard barony. For these insulting remarks, Sir Henry was fined 1500l.⁹³

The cases cited above provide ample support for Bacon's contention that there existed among English noblemen a "false and erroneous imagination of honour and credit a kind of satanical illusion and apparition of honour."⁹⁴ Professor Akrigg observes of the Jacobean period that "concern for honour was obsessive and irrational." The classical notion of honor as a product of virtue and virtue alone was far overshadowed by family pride, by the "fiction of noble blood." Citing the example of Viscount Montague, who ordered his Clerk of the Kitchen to see that no servant "insulted his lordship by turning his back upon

⁹¹Ibid., Cro. Car. 136, 79 Eng. Rep. 719-720 (1629); cf. Bacon, Maxims of the Law (1630), regula viii, reprinted in Works, VII, 349.

⁹²Calendar of State Papers, Domestic, 1637, 472.

⁹³Ibid., 1637-1638, 241; G. E. Cokayne, Complete Peerage, XI, 673; J. Bernard Burke, The General Armory of England, Scotland, Ireland and Wales (London, 1884), 921.

⁹⁴Bacon, Charge . . . touching Duells, in Works, XI, 401.

the joint being roasted for his table," Professor Akrigg states that "Beneath the gleaming cloak of 'Honour' lay the naked realities of ego-tism, irrational and provocative, anti-social and corrosive."⁹⁵ This judgment is well supported by the evidence which exists in court records involving legal actions taken by noblemen for allegedly scandalous words, whether provocative of a duel or merely derogatory of their honor. As Hobbes observed of his contemporaries, "most men would rather lose their lives . . . than suffer slander."⁹⁶

The pre-occupation with honor and reputation which characterized the behavior of many noblemen in the years preceding the Civil War would continue to be justified in the eyes of the law throughout the seventeenth century. Even during the interregnum, after the House of Lords itself had been abolished along with the various privileges attending membership in that body,⁹⁷ noblemen could still invoke special legal protection from scandalous words. In 1657, for instance, Robert (Sydney) Earl of Leicester brought a successful action of scandalum magnatum against a parson named Mandy who had denounced him from the pulpit as "a wicked and cruel man and an enemy to the Reformation in England."⁹⁸ The counsel for the plaintiff argued that "my Lord of Leister as he is a noble man of this realm is . . . capable of enjoying the benefit of

⁹⁵ Akrigg, Jacobean Pageant, 248-250.

⁹⁶ Hobbes, Philosophical Elements of a True Citizen, in English Works, II, 38, cited by Keith Thomas, "The Social Origins of Hobbes's Political Thought," in Hobbes Studies, ed. K. C. Brown (Cambridge, Mass., 1965), 190.

⁹⁷ An Act for Abolishing the House of Peers (1649), reprinted in Baxter, Basic Documents, 132,

⁹⁸ Lord of Leicester v. Mandy, 2 Sid. 21, 82 Eng. Rep. 1234 (1657).

the statute of 2 R. 2. notwithstanding the late Act against the House of Lords." In giving judgment for the plaitiff, the Court affirmed this argument and awarded the Earl 500^l. This figure prompted the counsel for the defense to wonder aloud "how it is that noble men are so greedy of damages degenerating so much from the excellencies of their ancestors, whose aim have been only by way of indictment to repair their honours, not to improve their purses."⁹⁹ This observation anticipated the reaction which would be generated over the next thirty years by the increasing tendency of the courts to award enormous sums in damages to noblemen whose honor and dignity had allegedly been traduced by scandalous words. The restoration of the House of Lords in 1660 signalled the beginning of a period during which the English peerage could count statutory protection from scandalum magnatum among its greatest privileges and most destructive political weapons.

⁹⁹Ibid., 2 Sid. 30-32, 82 Eng. Rep. 1239 (1657).

CHAPTER III

SCANDALUM MAGNATUM "IN THE TIME OF OUR GREAT HEAT"

The restoration of the House of Lords in 1660 was, by all appearances, an unchallenged return to the old social and political hierarchy which accepted the privileged status of the peerage as a fundamental part of the natural order of things. The mainstream of political thought still assigned the nobility a legally elevated position in society, "to enjoy certain Priviledges, Titles, Dignities, Honours, &c. above the common people, to be placed in a higher orb, and to be a Skreen between the King and the Inferiour Subjects. . ."¹ It was held as a basic assumption that "English nobles, being adorned with their own virtues as well as those of their ancestors, merit esteem, preferment, trust, honour, and fame above all others that would stand in competition with them."² The reality which faced the peers as they returned in 1660 to their traditional places of power, however, was decidedly less exalted than the picture painted by their apologists in their own and later generations. The revolutionary experiences of the preceding decades had seriously undermined Englishmen's habits of obedience, acceptance, and

¹Edward Chamberlayne, Angliae Notitia; or, the Present State of England Compleat, 17th ed. (London, 1692), 216.

²A Vindication of the Rights and Prerogatives of the House of Lords (1701), quoted in A. S. Turberville, The House of Lords in the Reign of William III (Oxford, 1913; reprint ed., Westport, Conn., 1970), 231.

respect which had for so long sustained the nobility in its "higher orb." The behavior of noblemen, still characterized after 1660 as before by pride and arrogance, was now accepted less and criticized more by their social inferiors.³ Almost from the moment of their return to power, the peers were on the defensive.

Evidence of this defensive posture was the increasing punctiliousness of the restored peerage, their overbearing concern for the formal signs of respect, and their insistence on fully exercising their privileges.⁴ In 1666, Lord Clarendon warned his fellow peers against "over-captious insisting upon privilege . . . either when in truth there was not a just ground for it, or when they would extend it further than it would regularly reach;" likewise, he spoke against "all unjust or unnecessary pretences to privileges which were not their due,"⁵ but it was all to no avail. The restored peers were determined to defend their traditional place in the hierarchy, and to use every available weapon to carry out that defense.

One of the most conspicuous examples of the defensive temperament of the restored lords was their sensitivity to insulting or "scandalous" words and the courses which were adopted to deal with the individuals responsible for speaking or writing them. The journals of the House of Lords provide numerous examples resembling the actions of their pre-civil war ancestors. For instance, on 30 June 1660, little more than a month after Charles II's triumphant return to England, an attorney named

³M. P. Schoenfeld, The Restored House of Lords (The Hague, 1967), 90.

⁴A. S. Turberville, "The House of Lords Under Charles II," English Historical Review, 45 (1930), 75.

⁵Hyde, Life, III, 168-169.

Alexander Peper was attached "as a delinquent" for speaking scandalous words of the Earl of Suffolk. Peper had allegedly referred to the Earl as a "fool and a knave" and a "base stinking fellow," and to add to the insult, when he was brought before the House to answer the charge against him, he told the Lords that "the Earl of Suffolke shewed himself so." Fortunately for Peper, the Act of Oblivion secured his pardon, but nevertheless, he was solemnly condemned for his scandalous speeches and threatened with a civil suit, the Lords having "left the Earl of Suffolke at liberty to take his course at law against him."⁶

Similar examples dating from the early years of the reign of Charles II include the Earl of Oxford's complaint in 1663 that one of his servants had been arrested by an under-sheriff of Nottingham, who upon learning the identity of the man in his custody, allegedly declared that he "valued the Lord of Oxon's Protection no more than the straw at his feet," along with other "audacious expressions contrary to the Privilege of Peerage."⁷ The Lords' Committee of Privileges often dealt with scandalous words against peers, such as those contained in a petition said to be "much derogatory to the honour of Lord Gerard,"⁸ or those allegedly spoken by a French merchant in 1664, claiming the Earl of Berkshire had received stolen goods of his.⁹ In 1666, Lord Morley complained of being assaulted in the street and insulted with "base and reviling language;"¹⁰ that same year, the Earl of St. Albans complained of "unbe-

⁶Journals of the House of Lords, XI, 79, 198-199, 202-203, 211-212. This case was cited by Schoenfeld, Restored House of Lords, 129-130. For the Act of Oblivion (12 Car. II, c. 11), see J. P. Kenyon, ed., The Stuart Constitution (Cambridge, 1966), 365-370.

⁷Journals of the House of Lords, XI, 540.

⁸Ibid., XI, 542, 545, 558. ⁹Ibid., XI, 652. ¹⁰Ibid., XII, 8.

coming language" directed against him after the arrest of one of his servants;¹¹ and in 1667, the Earl of Denbigh complained of "scandalous and saucy expressions" directed against him in a petition.¹² The sensitivity to insulting language displayed in these examples illustrates the concern, if not the alarm, with which the nobility reacted to signs of disrespect.

This reaction to disrespect found expression not only in the House of Lords but also in the courts, where peers enjoyed a highly privileged legal status.¹³ Among their legal privileges was the right to bring actions of scandalum magnatum, "so tender" was the law of England to the "honour, credit, reputation and persons of noblemen."¹⁴ It was the sixteenth-century civil interpretation of this medieval law which best served the interests of noblemen, as it enabled them to sue for damages in cases of scandalous words. The disposition of the judiciary in the reign of Charles II, committed as the judges were to upholding the royal prerogative and supporting the new regime in general,¹⁵ encouraged peers to avail themselves of the special remedy offered by the law in defense of their reputations. Having inherited much of the criminal jurisdiction formerly exercised by the Court of Star Chamber in

¹¹Ibid., XII, 85.

¹²Ibid., XII, 129, 131.

¹³For a description of the legal privileges of the peerage, see Schoenfeld, Restored House of Lords, 127-137.

¹⁴Chamberlayne, Angliae Notitia, 223; cf. John Brydall, Privilegia Magnatum apud Anglos (London, 1704; microfilm reprint, New Haven, Conn., 1974), 15.

¹⁵For the later Stuart judiciary, see Edward Foss's biographical accounts, The Judges of England (London, 1864), Vol. VII; Kenyon, Stuart Constitution, Ch. 12; A. F. Havighurst, "The Judiciary and Politics in the Reign of Charles II," Law Quarterly Review, 66 (1950), 62, 229; and G. W. Keeton, Lord Chancellor Jeffreys and the Stuart Cause (London, 1965), especially Ch. 5.

cases of defamation,¹⁶ the common law courts, especially King's Bench, observed a number of rules which made it easy for noblemen to win favorable decisions. Words spoken against a peer, for instance, were to be taken "in the worst sense against the speaker"--rather than in mitiori sensu, as would have been the case with words spoken against a commoner--"that the honour of such great persons may be preserved," as Chief Justice Kelyng explained in 1670.¹⁷ This rule enabled noblemen to bring suits and win large sums in damages for the slightest remarks, such as those spoken against Lord Townsend--"He is an unworthy man and acts against law and reason"--for which he was awarded 4000l in damages.¹⁸

Despite occasional protests from men like Justice Atkyns, who insisted in 1677, that "every unmannerly word is not actionable though it be spoken to a lord,"¹⁹ the post-Restoration courts almost without exception ruled in favor of insulted noblemen and awarded them sizeable sums in damages. Most of the words held actionable in cases of scandalum magnatum during the first half of the reign of Charles II were little more than words which imputed baseness to a nobleman. In 1664, for instance, the Marquis of Dorchester brought a successful action of scandalum magnatum against a man named Proby for saying "I value my Lord

¹⁶See Plucknett, Concise History, 440. Edmund Hickerlingill, himself the victim of an action of scandalum magnatum in 1682, once referred to the Court of King's Bench as the "new Star Chamber." See his The Ceremony Monger (London, 1689; microfilm reprint, Ann Arbor, Mich., 1970), 5.

¹⁷Earl of Peterborough v. Sir John Mordant, 1 Ventris 60, 86 Eng. Rep. 42 (1670); cf. Brydall, Privilegia Magnatum, 15.

¹⁸Lord Townsend v. Dr. Hughes, 2 Mod. 150, 86 Eng. Rep. 994 (1677). For the origins of this case, see the Journals of the House of Lords, XIII, 23, 30.

¹⁹Lord Townsend v. Dr. Hughes, 1 Freeman 223, 89 Eng. Rep. 159 (1677).

Marquis of Dorchester no more than I value the dog at my foot."²⁰ In 1672, these words were held actionable: "The Earl of Pembroke is of so little esteem in the country, that no man of reputation hath any esteem for him; he is a pitiful fellow, and no man will take his word for two-pence; and no man of reputation values him more than I value the dirt under my feet."²¹ In 1675, the Earl of Salisbury obtained a favorable verdict for the words "My Lord S. may kiss my a--, I care not a t-- for him, he keeps none but a company of rogues about him."²² Englishmen frequently showed they were not lacking in vocabulary when it came to abusing their betters.

The arguments employed during the post-1660 period in defense of the civil interpretation of scandalum magnatum closely resembled those employed by Sir Edward Coke in the Star Chamber case De Libellis Famosis in 1605, in defense of the criminal interpretation of libel against a magistrate.²³ In 1669, it was argued that "such great men being publick make words actionable which otherwise are not."²⁴ In keeping with this line of reasoning, civil actions of scandalum magnatum

²⁰Proby v. The Marquis of Dorchester (in error of judgment), 1 Levinz 148, 83 Eng. Rep. 342 (1664); 1 Siderfin 233, 82 Eng. Rep. 1077 (1664). Thomas Siderfin reported that Proby "fuit tue in un duell en Covent Garden," and Creswell Levinz had it personally from the Marquis that after Proby's death his executors paid the damages.

²¹Earl of Pembroke v. Staniel, 1 Freeman 49, 89 Eng. Rep. 38 (1672).

²²Lord Salisbury v. Charles Arthur (Pasch. 27 Car. II in B. R.), cited by Matthew Bacon, A New Abridgment of the Law (Philadelphia, 1856), VIII, 595.

²³De Libellis Famosis, 5 Co. Rep. 125-126a, 77 Eng. Rep. 250-252 (1605). See above, pages 32-36.

²⁴Lord Peterborough v. Mordant, 2 Keble 559, 84 Eng. Rep. 351 (1669); cf. De Libellis Famosis, 5 Co. Rep. 125a, 77 Eng. Rep. 251; and March, Actions for Slauder, 136.

were frequently brought tam pro domino rege quam pro se ipso, "as well on behalf of our lord the king as the plaintiff himself" (though the plaintiff still recovered all the damages).²⁵ Peers of the realm were "look'd on as the King's Hereditary Constant Councillors;"²⁶ thus, to speak "rude, uncivil, and ill-natured words" of them was interpreted as a reflection "upon the King who is the fountain of honour, that gives it to such persons who are (in his judgment) deserving by which they are made capable of advising him in Parliament . . ." ²⁷ As with nearly all the important privileges of the English peerage, this one was held, theoretically at least, by virtue of membership in Parliament, and not merely by virtue of membership in an aristocratic class.²⁸

In the 1670's, actions of scandalum magnatum were becoming more numerous, as Justice Atkyns impatiently observed in 1677.²⁹ Charles Hatton, writing to his brother in 1676, described several such actions, which, he noted, "are very numerous." Among them was one brought by Lord Mohun against a man for saying "he wase good for nothing but to sit in ladyes chambers and thred their needles," and a double action brought by Lord Petre against two men, one for saying "he wase a pimpeing Ld and no gentleman," the other for saying "if he wou'd leave out the latter

²⁵Count of Standford [Stamford] v. Nedham, 1 Lev. 56, 83 Eng. Rep. 295 (1662); Earl Thanet v. Graham, 3 Keble 39, 84 Eng. Rep. 582 (1672); Lord Townsend v. Dr. Hughes, 2 Mod. 167, 86 Eng. Rep. 1003 (1677); Earl of Macclesfield v. Starkey (1684), 10 State Trials 1329; Bacon, New Abridgment, VIII, 596.

²⁶Chamberlayne, Angliae Notitia, 220.

²⁷Lord Townsend v. Dr. Hughes, 2 Mod. 157, 86 Eng. Rep. 998 (1677).

²⁸See Turberville, House of Lords in the Reign of William III, 63; cf. Justice Scroggs' opinion in Lord Townsend v. Dr. Hughes, 2 Mod. 159, 86 Eng. Rep. 999.

²⁹Lord Townsend v. Dr. Hughes, 2 Mod. 154, 86 Eng. Rep. 997 (1677).

words he would prove the former."³⁰ Increasingly, however, actions of scandalum magnatum reflected more than simply the reactions of noblemen to signs of disrespect from their social inferiors; by the late 1670's, as they became more numerous, these actions began to reflect the growing divisions within English politics. Noblemen, though still zealous in the preservation of their honor, status, and reputation, were now discovering in their old protective weapon of scandalum magnatum a very useful political weapon, one which possessed the potential for great destruction.

The political crisis which dominated the last decade of the reign of Charles II saw England divided into parties, primarily over the issue of the exclusion of the Duke of York from the succession. During these years, politics became a dangerous game, the object of which was to destroy one's enemies, or, barring immediate success in that goal, at least to discredit them, to ruin them financially, or to put them behind bars for a while. The Earl of Shaftesbury, famed for his leadership in the Country (Whig) party, was one of the first political contestants to appreciate the value of scandalum magnatum as a means for achieving these destructive goals. His earlier legal training had more than likely acquainted him with the statutes, thus preparing him in 1676 to invoke them in an action against Lord Digby for words provoked by a political dispute.³¹ Shaftesbury, in a letter to his secretary, described the

³⁰ Charles Hatton to Viscount Hatton, 11 May 1676, Correspondence of the Family of Hatton, ed. E. M. Thompson (London, 1878), I, 124. This reference was cited by A. S. Turberville, "House of Lords under Charles II," English Historical Review, 45 (1930), 75n.

³¹ So contends Shaftesbury's most recent biographer, K. H. D. Haley, The First Earl of Shaftesbury (Oxford, 1968), 407. Though citing no source, Haley attributes Shaftesbury's recourse to an action of scandalum magnatum in 1676 to his days at Lincoln's Inn where he would have

circumstances out of which the quarrel and the subsequent legal action arose. In brief, the death of Colonel Strangeways had left vacant a seat in Parliament for which Lord Digby, son of the (still-living) Earl of Bristol, stood unopposed in 1675. At first, Shaftesbury supported Digby, but soon learned "from a very good hand" that Digby "would not prove as some of us expected." He began to have doubts about the role of Lord Digby in "the designs of some of our great men above," and so persuaded a gentleman named Moore to challenge Digby in the election. Of course, having counted on standing for the seat unopposed and with Shaftesbury's support, Digby was naturally angered by this move. Shaftesbury's personal explanation to Digby that "the reason I was not for him was that I was assured he was not for us" did not heal the breach, and when the two met by accident one day, "before a good deal of company and ladies," Digby denounced the Earl for being against him, contending that he was "for the King and his country," while Shaftesbury was "against the King and for a commonwealth," adding that he would have Shaftesbury's head at the next Parliament.³²

It was for these words that Shaftesbury brought his action of scandalum magnatum, and he had some twenty witnesses to prove that they were indeed the words of Lord Digby. The case came to trial in the spring of 1676 with Shaftesbury alleging damages in the sum of 20,000^l, and on April 26, verdict was given for the plaintiff, though he was

heard "the stories of Sir Edward Coke's first case . . ." (Lord Cromwell's case, 1578), as if to suggest there were no recent precedents for such an action. A more likely explanation might simply be that Shaftesbury was familiar with cases which had been decided in recent years or those currently pending in the courts.

³²Shaftesbury to Mr. Bennet, 28 August 1675, in W. D. Christie, A Life of Anthony Ashley Cooper, First Earl of Shaftesbury (London, 1871), II, 216-218.

awarded only 1000l in damages.³³ The case was far from over, however, as a week later, on May 3, Digby's counsel moved in arrest of judgment because of Shaftesbury's alleged misrecital of the statute on which the action was brought (2 Richard II, c. 5).³⁴ The matter remained undecided for several weeks while the judges debated whether the misrecital was material or not, naturally to the displeasure not only of Shaftesbury, but also of "severall other Lords, who will find it more difficult to recover great fines upon actions of scandalum magnatum," as Charles Hatton noted in his letter of May 11.³⁵ Finally, however, on June 3, Chief Justice Rainsford delivered the opinion of the court, "that the plaintiff ought to have his judgment," that the misrecital had been immaterial, Shaftesbury having "recited as much as is sufficient for an earl."³⁶

Shaftesbury's servant Stringer reported the success to John Locke (who was then abroad), declaring the final outcome of the trial to be "the greatest vindication of my Lord in that concern of the election that could be imagined." The relatively small sum of 1000l awarded in damages (small when compared to that originally alleged by Shaftesbury) had been decided upon because "Digby had but a small estate in hand," and because the jury "were not willing to perpetuate a feud between two

³³Earl of Shaftesbury v. Lord Digby, 3 Keble 631, 84 Eng. Rep. 920 (1676).

³⁴Ibid., 3 Keble 641, 84 Eng. Rep. 927 (1676); cf. Lord Cromwell's case, 4 Co. Rep. 12b, 76 Eng. Rep. 879 (1578); and Viscount Say and Seal v. Stephens, Cro. Car. 135, 79 Eng. Rep. 719 (1629).

³⁵Charles Hatton to Viscount Hatton, 11 May 1676, Hatton Correspondence, I, 126.

³⁶Earl of Shaftesbury v. Lord Digby, 3 Keble 661, 84 Eng. Rep. 938 (1676).

noble families;" otherwise, contended Stringer, "they would have given much greater damages."³⁷ Digby should have had little problem paying the damages, however, as the "gentlemen of Dorsetshire, to expresse how much they disliked the verdict for the Lord Shaftesbury, . . . subscribed to present my Lord Digby with 3000l."³⁸ And far from ending what was essentially a political feud between Shaftesbury and the Earl of Bristol, the case only aggravated the bad relations between them.³⁹

The ultimate success of the action of scandalum magnatum brought in 1676 by Shaftesbury against Digby proved the usefulness of what course of law not only as a defense of honor but also as a political weapon. In so proving, it foreshadowed the course which would be taken by many noblemen on both sides of the political arena in the coming years. What initiated most actions of scandalum magnatum in the following decade was, of course, the Exclusion crisis, which by 1681 had come dangerously close to dividing England once again into two armed camps. Perhaps ironically, in December 1680, before any major actions were brought, a clause calling for "repeal of the Laws de Scandalis Magnatum" was added in the House of Commons to a bill "for the better regulating the Tryal of the Peers of England." In attaching this amendment, however, the Commons, dominated by the Whigs, had acted "not out of any expectation that the Lords would pass it," as Anchitell Grey observed, but rather simply to kill the bill altogether, an example of the Whigs' refusal to see any

³⁷T. Stringer to J. Locke, 5 June 1676, in Christie, Shaftesbury, II, 222-223.

³⁸Charles Hatton to Viscount Hatton, 18 May 1676, Hatton Correspondence, I, 126.

³⁹The two earls were enemies in Parliament, often involved in heated debate. For examples, see Christie, Shaftesbury, II, 219.

constructive legislation enacted while the Lords stood in the way of Exclusion. Thus, the privilege allowed by the laws of scandalum magnatum remained untouched, leaving the way open for noblemen to bring destruction upon their adversaries in the years immediately following.⁴⁰

In the History of His Own Time, Bishop Burnet recalled how various peers "brought actions of scandalum magnatum against those who in the time of our great heat had spoke foul things of them," observing that "great damages were given by obsequious and zealous juries."⁴¹ The accuracy of Burnet's recollection is borne out by a large number of sources, most of them dating from 1681-1686, ranging from detailed court records and government documents to the casual observations of contemporaries. Narcissus Luttrell's Brief Relation of State Affairs, supplemented by relevant legal materials, provides probably the most complete picture. Nearly all of the best known participants in the political warfare arising out of attempts to exclude the Duke of York from the throne became involved either as plaintiffs or defendants in actions of scandalum magnatum.

On June 3, 1681, Luttrell recorded that the Earl of Danby brought actions of scandalum magnatum "against certain booksellers, for printing the evidence against him as to sir Edmondbury Godfrey's death." Danby had been a prisoner in the Tower of London since his impeachment by the House of Commons in 1678, a fact which prompted Luttrell to write: "it will be worth considering what damages a man impeacht of treason, and

⁴⁰ Journals of the House of Commons, IX, 681; Anchtell Grey, Debates of the House of Commons (London, 1763), VIII, 175; Journals of the House of Lords, XIII, 719, 721. For a general account of the politics of the Exclusion crisis, see J. R. Jones, The First Whigs (London, 1961).

⁴¹ Gilbert Burnet, Bishop Burnet's History of His Own Time (Oxford, 1832), II, 430; see also 10 State Trials 1331.

against whom a bill for the said murder is found, is likely to obtain."⁴² On December 7, 1681, Luttrell observed that the Earl of Shaftesbury, himself recently a prisoner, "since his releasement, hath been advising with council how he may right himself against those who have scandalously traduced him: against some he intends to bring actions of scandalum magnatum, and against others writs of conspiracy."⁴³ By December 10, writs were issued on his behalf against at least four men for scandalum magnatum: Edmund Warcup, a Justice of the Peace; Richard Graham, a solicitor; John Booth, a man of "mean condition;" and a Mr. Cradock, a mercer in Paternoster Row.⁴⁴

The cases against Graham and Cradock became highly publicized, providing Tory lampoon artists with ample subject matter for their attacks on Shaftesbury. "Potapski," as he was derisively labelled, was depicted as possessed "with large hopes of Damages," while Graham and Cradock were depicted as heroes:

And from the careless, honest, Loyal Rout,
Two grand Offenders soon were singled out,
For tainting Peerage with a Traitor's Name,
And mudding the clear fountain of his Fame;⁴⁵

The charges against Graham and Cradock had indeed resulted from their calling the Earl a traitor, which under ordinary circumstances would have been ample grounds for a decision in favor of the plaintiff,⁴⁶ but when

⁴²Narcissus Luttrell, A Brief Relation of State Affairs (Oxford, 1857), I, 93-94.

⁴³Ibid., I, 150.

⁴⁴Ibid.; Calendar of State Papers, Domestic, 1680-1681, 612-613.

⁴⁵Scandalum Magnatum: or, Potapski's Case. A Satyr Against Polish Oppression (London, 1682), 9-10.

⁴⁶As in the case of *Viscount Say and Seal v. Stephens*, Cro. Car. 135, 79 Eng. Rep. 719. See above, pages 56 and 57.

Craddock's case came to trial in 1682, the defendant moved "that by reason of the great interest of my Lord in London, he could not have an indifferent trial."⁴⁷ Craddock was requesting a change in venue, normally not granted in cases of scandalum magnatum, when it was assumed that the plaintiff, being a peer in Parliament, could choose "to lay his action where it is most convenient for himself."⁴⁸ In this case, however, the court claimed the power to alter the venue, and did so on the basis of affidavits from seven "substantial citizens" stating in effect that the Earl had close connections with Thomas Pilkington, a Whig sheriff of London, who would have had a hand in the selection of a jury.⁴⁹ Faced with this ruling, Shaftesbury decided to let his actions against both Craddock and Graham drop, seriously damaging his chances of righting himself against any of those who had "scandalously traduced" him.

Shaftesbury's enemies, however, met with greater success than he did in their actions of scandalum magnatum, and though they never sued him for the offence, they wasted no time in attacking his associates. In 1681, for instance, William Hetherington, one of Shaftesbury's agents, was arrested in an action of scandalum magnatum brought by the Duke of Ormonde.⁵⁰ On May 3, 1683, the case was brought to trial in Surrey, with

⁴⁷Lord Shaftesbury v. Craddock, Skinner 40, 90 Eng. Rep. 20 (1682).

⁴⁸Count of Stamford v. Nedham, 1 Lev. 56, 83 Eng. Rep. 295 (1662).

⁴⁹Earl of Shaftesbury v. Craddocke, Jones 192, 84 Eng. Rep. 1212 (1682). It was well known that both grand juries and trial juries in London were controlled by the Whigs at this time. The sheriffs and under-sheriffs who prepared lists of jurymen were Whigs and made certain that none but Whigs appeared on them. See Keeton, Jeffreys, 97.

⁵⁰Earl of Longford to Ormonde, 8 November 1681, Historical Manuscripts Commission, Calendar of the Manuscripts of the Marquess of Ormonde (London, 1911), n.s., VI, 219-220. Longford wrote in cipher "Shaftesbury's friends clamour much against you for this." See also Calendar of State Papers, Domestic, 1680-1681, 554.

Edmund Warcup as a witness for Ormonde; and, as Luttrell recorded, "the defendant making little defense, the jury without goeing from the barr, found for the plaintiff and gave him 10,000^l damages; upon which Hetherington rendered himself into custody in discharge of his bail."⁵¹ Other actions of scandalum magnatum brought by noblemen against those "who in the time of our great heat had spoke foul things of them" included that brought in 1682 by Lord Lovelace, a "violent Whig," in which he recovered 2000^l in damages.⁵² That same year, the Earl of Clarendon, a supporter of the Duke of York, brought an action against "one Mr. Thomas Hooper, for words spoke at the late election of parliament men for the town of Christchurch in Hampshire." Hooper had allegedly called Clarendon "a papist, a maintainer and upholder of popery, and an enemy to the King and kingdom," for which words the Earl was awarded 100 marks in damages and 40s. in costs, despite the defendant's contention that the words were provoked by the Earl's calling him a rascal and offering to "fillip him on the nose."⁵³

Since prelates enjoyed the same protection from scandalous words offered by the law to noblemen, it is not suprising to find Henry Compton, Bishop of London, bringing an action of scandalum magnatum against Edmund Hickeringill, vicar of All Saints, Colchester. Hickeringill was an ecclesiastical eccentric, described by Luttrell in 1684 as having "for two or three years past been very abusive to the archbishop of

⁵¹Luttrell, Brief Relation, I, 256-257.

⁵²Ibid., I, 171; for Lord Lovelace, see Cokayne, The Complete Peerage, VIII, 232.

⁵³Luttrell, Brief Relation, I, 188, 198; for the Earl of Clarendon (son of Edward Hyde, First Earl of Clarendon), see Cokayne, The Complete Peerage, III, 266.

Canterbury, the bishop of London, and the clergy in general."⁵⁴ At a vestry meeting in April 1681, he had reportedly attacked Compton as "a bold, daring, and impudent man," and claimed he could "prove his Lordship to be concerned in the damnable Popish plot." For these words, the Bishop brought an action of scandalum magnatum, and when the case was brought before the Chelmsford Assizes on March 8, 1682, he was awarded 2000*l* in damages. Two years later, Hickeringill made a complete public apology for his "heinous crimes and offences," and Compton was persuaded to remit the damages.⁵⁵ It was perhaps fitting that a prelate should remit his damages; few noblemen ever proved so generous, though there were exceptions such as Lord North, who in 1683 withdrew his action of scandalum magnatum against a parson named Elliot after the parson "submitted himself to his lordship and beg'd his pardon in open court, so that his lordship very generously forgave him."⁵⁶

Most of the cases of scandalum magnatum described thus far illustrate the reactionary nature of the period following 1681. The furor of the Popish plot had subsided and the King had remained firm in his opposition to Exclusion. The result was the disintegration of the Whig cause and the onset of a period of royalist reaction, culminating in the aftermath of the abortive Rye House plot in 1683. As a rule, with the

⁵⁴Luttrell, Brief Relation, I, 312. Hickeringill's views on the subject of scandalum magnatum are set out in The Ceremony Monger, 5-8.

⁵⁵Luttrell, Brief Relation, I, 170, 186, 192-193; Scandalum Magnatum: or, the Great Trial at Chelmsford Assizes (London, 1682), cited by Edward Carpenter, The Protestant Bishop (London, 1956), 234-235.

⁵⁶Luttrell, Brief Relation, I, 249; cf. Lord Townsend v. Dr. Hughes, 2 Mod. 150, 86 Eng. Rep. 994 (1677), where one of the jurors confessed the jury "gave such great damages to the plaintiff (not that he was damnified so much) but that he might have the greater opportunity to show himself noble in the remitting of them." Any expectations the jury might have had about Lord Townsend proved to be unfounded.

judiciary under their control, the Tories benefited most from the law of scandalum magnatum in the last two years of the reign of Charles II and during the reign of James II. Their success is illustrated by the actions brought by the Duke of Beaufort in 1683 against Sir Trevor Williams and John Arnold, both for 10,000^l,⁵⁷ and those brought by the Earl of Peterborough in 1686 against Sir William Williams, Speaker of the House of Commons in 1680, and several others for the publication of Dangerfield's Narrative, for which the Earl not only was awarded but actually recovered in payment over 6700^l in damages.⁵⁸ The Whigs however, were not without some success in their recourse to the law during this reactionary period, as the Earl of Macclesfield demonstrated in 1684 when he brought actions of scandalum magnatum against John Starkey, Sir Thomas Grosvenor, and other members of a Cheshire grand jury which, after the Rye House plot, had presented the Earl as "being a confederate with those concerned in the late conspiracy, . . . a seditious addressor to the knights of the shire, . . . a riotous, tumultuous receiver and entertainer of the duke of Monmouth, . . . a frequenter of conventicles, and a harbinger of non-conformists." Denying these charges, the Earl claimed to be "much wounded in his honour," and in his action against John Starkey, he was awarded 10,000^l in damages.⁵⁹

⁵⁷Luttrell, Brief Relation, I, 291; Burnet, History, I, 430; 10 State Trials 1332. For the conflict between Beaufort and John Arnold, see John Miller, Popery and Politics in England (London, 1973), 61, 152.

⁵⁸Luttrell, Brief Relation, I, 338; 13 State Trials 1437-1442; Earl of Peterborough v. Williams, Comb. 42, 90 Eng. Rep. 332 (1687).

⁵⁹Earl of Macclesfield v. Starkey (1684), 10 State Trials 1333, 1343; Earl of Macclesfield's Case (v. Sir Thomas Grosvenor), 3 Mod. 41, 87 Eng. Rep. 25-26 (1684); Luttrell, Brief Relation, I, 305; Historical Manuscripts Commission, Portland Manuscripts (London, 1893), II, 156; Dictionary of National Biography, s.v. Gerard, Charles, Earl of Macclesfield.

The largest number and most destructive of the actions of scandalum magnatum brought during the last four years of the reign of Charles II, however, were those brought by the King's brother, James Duke of York. For the years 1682-1684, Luttrell recorded no less than ten different cases of scandalum magnatum in which the Duke of York was plaintiff, and in half of them, damages were alleged in the sum of 100,000l, an unprecedented figure.⁶⁰ So destructive were these actions that in 1684, when Sir Francis Drake learned that His Royal Highness had commenced one against him "for words spoken by him of the Duke about four years since," he "thought fitt to abscond," and, according to Luttrell, "is since gone beyond sea, and has . . . dispos'd of his estate, thinking it better to have his liberty in a foreign country than be laid up in his own for 100,000l."⁶¹

As early as 1670, the Duke of York had availed himself of the remedy offered by the statutes of scandalum magnatum, bringing an action then "for words touching popery."⁶² The actions he brought in the 1680's, however, were not only for words touching his religion, but also for words touching "that which is much dearer to him than his life, his honour, by charging him with the foulest of crimes, treason, and breach of his allegiance," as Lord Chief Justice Jeffreys described those spoken against him by Titus Oates in 1684.⁶³ The verbal abuse heaped upon the Duke of York during the years of the Popish plot and Exclusion

⁶⁰Burnet, History, I, 536. "The most excessive that had ever been given."

⁶¹Luttrell, Brief Relation, I, 307.

⁶²Thomas Jones to Dr. Turner (Chaplain to the Duke of York), 18 June 1681, Calendar of State Papers, Domestic, 1680-1681, 319.

⁶³10 State Trials 142.

crisis was enormous. The worst of it came from the infamous Dr. Oates who considered the Duke to be no less a villain than the Devil, and who on one occasion was reported to have said, "he is a Rascal, a Papist and a Traitor, and I hope to live to see him hanged."⁶⁴ Oates paid dearly for these and other words, as did Thomas Pilkington, the Whig sheriff of London, who once remarked at a meeting of the Court of Aldermen at the Guildhall that the Duke of York "had burnt the city and was now come to cut the citizens' throats." When Pilkington was brought to trial for these words in 1682, he made "little defense" and the Duke was awarded 100,000 in damages.⁶⁵ The same fate awaited a Mr. Speak (probably Hugh Speke) in 1683, John Dutton Colt, a member of Parliament, in 1684, and of course Titus Oates.⁶⁶

When Oates' case came to trial in June 1684, he made no defense and so "lett judgment passe by default."⁶⁷ A writ of inquiry was then issued to the sheriff of Middlesex "to enquire by a jury of that county what damages the plaintiff had sustained." After a reading of the King's writ--a lengthy document declaring that "the said James duke of York and Albany, our only brother, in his reputation, honour and dignity is very much hurt and scandalized"--a number of witnesses were paraded before the jury to testify to the seriousness of the injuries suffered by the plaintiff. Following their testimony, Chief Justice Jeffreys turned to the jury and delivered a long oration denouncing Oates and

⁶⁴Ibid., 138.

⁶⁵Luttrell, Brief Relation, I, 240; *The Duke of York v. Pilkington*, Skinner 71, 90 Eng. Rep. 34 (1682).

⁶⁶Luttrell, Brief Relation, I, 287, 307, 310.

⁶⁷Ibid., 310.

lamenting "this corrupt age, this profligate age, wherein we live, and wherein common ordinary fellows, the mere scum and scoundrels of the factious party, have taken the liberty to reproach and calumniate magistracy and government, and the greatest personages concerned in it, not sparing even majesty itself, nor him, who is next in degree to his sacred person, his only dear and royal brother." Awed by the Chief Justice's rhetoric, the jury, without leaving the bar, dutifully awarded the plaintiff full damages, 100,000^l, and 20s. costs.⁶⁸ As for Oates, as Bishop Burnet observed, this action "shut him up in a perpetual imprisonment,"⁶⁹ that essentially being the purpose of such action.

The magnitude of these actions of scandalum magnatum and the frequency with which they were brought, not only by the Duke of York, but by other peers as well, were bound to create an unfavorable reaction among those who experienced or witnessed their effect.⁷⁰ This reaction was most vocally expressed in the House of Commons after 1689 when several attempts were made there to reverse judgments in cases of scandalum magnatum. Soon after the Revolution, in July 1689, a bill was introduced to reverse the judgment given by the Court of King's Bench against Sir William Williams who, as speaker of the House of Commons in 1680, had licensed Dangerfield's Narrative for publication, only to be sued in 1686 by the Earl of Peterborough for scandalum magnatum on account of certain reflections against him contained in the Narrative. The bill, however, failed to pass in 1689 and met the same fate twice again, in 1690 and in 1695, despite the House of Commons' having declared the judgment

⁶⁸¹⁰ State Trials 125-148.

⁶⁹ Burnet, History, I, 591.

⁷⁰ Hickersingill, The Ceremony Monger, 5-8.

to be illegal and subsversive of the freedom of parliament.⁷¹ Likewise, in 1690, an attempt was made to reverse the judgment against John Arnold, who had been sued in 1683 for scandalum magnatum by the Duke of Beaufort. The bill for reversal, sent to the Lords in December 1690, read as follows:

Whereas this kingdom has of late years been most unhappily divided into parties and factions through men's different apprehensions of the public interest, and the prevailing passions and prejudices did so far bias and corrupt the Courts of Justice that the public administration thereof was become partial, and thereby divers persons, upon mistakes and small offences (wrested by innuendoes) were ruined, both them and their families, some by excessive fines imposed by the Court, and others by exorbitant damages given by juries; and Whereas a verdict was given against John Arnold . . . for the sum of 10,000^l . . . in an action brought against him by Henry Duke of Beaufort in the Court of King's Bench at Westminster; and Whereas Judgment and Execution was sued out thereupon, and the said John Arnold continued a Prisoner thereupon for several years in the prison of the King's Bench, whereby he hath severely suffered both in his person and estate for words from which (suppose they had been spoken) the Duke of Beaufort did not suffer any real damage; therefore, be it enacted by the King and Queen's most Excellent Majesties, by and with the advice and consent of the Lords Spiritual and Temporal and Commons in this present Parliament assembled, and by the authority of the same, that the said Verdict and Judgment given in the said action brought against the said John Arnold, and all executions and proceedings upon the same, shall be reversed, annulled and made void, and are hereby Declared and Adjudged to be reversed, annulled and made void to all intents and purposes whatsoever.⁷²

Despite its eloquent statement of principle, this bill was also rejected, predictably, by the Lords, who still valued their old legal weapon though they were now less inclined to use it.

Actions of scandalum magnatum declined sharply in number and in

⁷¹Journals of the House of Commons, X, 215; Dictionary of National Biography, s.v. "Williams, Sir William;" 13 State Trials 1438-1439; Luttrell, Brief Relation, I, 558; Burnet, History, II, 430-431.

⁷²Manuscripts of the House of Lords, III, 1690/91, 208; see also Journals of the House of Lords, XIV, 579.

magnitude after the 1680's, partially as a result of the hostile reaction created by those brought by the Duke of York, the Earl of Peterborough, the Duke of Beaufort, and others during the 1680's. Also, the courts freed from the likes of Pemberton, Scroggs, and Jeffreys, were now less willing to award large sums in damages to noblemen whose honor had allegedly been insulted, nor were they as willing to commit offenders to "perpetual imprisonment" of the sort which had removed Titus Oates, John Arnold, and a good many others from the scene during the 1680's. For instance, when an unfortunate fellow named Murrey was convicted in 1700 for calling the Duke of Schomberg a cheat, Chief Justice Holt, in marked contrast to his predecessors, denied the plaintiff's request for special bail on the grounds that "this being a poor man, to charge him thus will be a perpetual imprisonment to him." Instead, two men were called upon to "swear themselves worth twenty-five pounds each," and Murrey himself was bound over in the relatively small sum of 100l.⁷³

Also, by virtue of a ruling in 1687, noblemen were no longer awarded court costs along with damages in actions of scandalum magnatum,⁷⁴ serving in many cases to discourage them from becoming engaged in lengthy litigation. When the defendant made no defense and let judgment pass by default, as Hetherington did in 1683 or as Oates did in 1684, costs were nominal, usually no more than 20 or 40 shillings. But when the defendant made an elaborate defense and prolonged his trial, as Lord Digby did in 1676 by alleging misrecital, costs could build up; in that

⁷³Duke of Schomberg v. Murrey, Holt, K. B. 640, 90 Eng. Rep. 1254 (1700); 12 Mod. 420, 88 Eng. Rep. 1423 (1700).

⁷⁴Earl of Peterborough v. Williams, 2 Shower 505-506, 89 Eng. Rep. 1068 (1687); 13 State Trials 1437; W. B. Odgers, Libel and Slander (Philadelphia, 1887), 105.

particular instance, Stringer reported to Locke that he had "taxed 1521 for costs (besides the damages) on my Lord Digby."⁷⁵ A sum of that size, though small when compared to the amount awarded in damages, might come as an unwanted financial burden, especially when the defendant proved unable to pay the damages in the first place, going instead to jail. It is not surprising to find, therefore, in the relatively few cases of scandalum magnatum tried in the last two decades of the seventeenth century and in the eighteenth century, attempts being made by defendants to prolong or complicate the proceedings, usually by requesting changes in venue or making technical objections,⁷⁶ no doubt in hopes of getting the plaintiff to drop charges (as Shaftesbury did in 1682) rather than face costs.

With the courts no longer awarding thousands of pounds in damages and with costs no longer included even with a favorable verdict, the protection offered by the law from scandalum magnatum often seemed hardly worth invoking when the words alleged were no more than inconsequential aspersions upon one's honor or merely derogatory remarks. Viscount Falkland found this to be the case in 1734 when he brought an action of scandalum magnatum against one Nathaniel Phipps for calling him a "villainous rogue," a "scrub," and a "scoundrel," for which he alleged 50001 in damages, only to be awarded a mere 501 and this after lengthy proceedings during which he was ludicrously required to "prove himself a peer."⁷⁷

⁷⁵Stringer to Locke, 5 June 1676, in Chrisite, Shaftesbury, II, 226. See above, pages 69-70.

⁷⁶See, for example, Duke of Norfolk v. Alderton, 12 Mod. 121, 88 Eng. Rep. 1207 (1697); Duke of Richmond v. Costelow, 11 Mod. 234-235, 88 Eng. Rep. 1010 (1710).

⁷⁷Lord Viscount Falkland v. Phipps, 2 Comyns 439-440, 92 Eng. Rep. 1149-1150 (1734).

Despite such results as those encountered by Viscount Falkland, the statutes of scandalum magnatum were still counted among the privileges of the peerage during the early eighteenth century and even as late as 1765 when Blackstone included them in his Commentaries.⁷⁸ The majority of the House of Lords, however, ceased to be very enthusiastic about preserving this privilege, agreeing, in fact, to part with it in 1719 as an inducement to the Commons to accept the Peerage Bill.⁷⁹ Of course, with the failure of the Peerage Bill to pass the Commons, the statutes of scandalum magnatum survived untouched, as in 1680, and actually remained on the statute books until 1887 when they were finally repealed, as having "by lapse of time . . . become unnecessary."⁸⁰

It can be argued that the statutes had become unnecessary as early as 1700, though a thin stream of cases can be traced through the eighteenth century,⁸¹ ending, it seems, in 1773 when the Earl of Sandwich brought an action of scandalum magnatum against the publisher of the London Evening Post for charging him in his capacity as First Lord

⁷⁸William Blackstone, Commentaries on the Laws of England (Oxford, 1765-1768; reprint ed., New York, 1965), I, 390; III, 123-124. See also The Laws of Honor (London, 1714), 217.

⁷⁹See Lord Middleton's Memorandum ("Conversation between lord Sunderland and me about the peerage bill"), reprinted in John Naylor, ed., The British Aristocracy and the Peerage Bill of 1719 (New York, 1968), 170; and William Coxe, Memoirs of the Life and Administration of Sir Robert Walpole (London, 1800), I, 207; and A. S. Turberville, The House of Lords in the XVIIIth Century (Oxford, 1927; reprint ed., Westport, Conn., 1970), 180.

⁸⁰50 and 51 Victoria, c. 59 (Statute Law Revision Act, 1887).

⁸¹The statement by a number of legal historians that the last action of scandalum magnatum came in 1710 is of course incorrect. This error found its way into several respected legal works: Bacon, New Abridgment, VIII, 597; Odgers, Libel and Slander, 105; Frank Carr, "The English Law of Defamation," Law Quarterly Review, 18 (1902), 263; and Van Vechten Veeder, "The History of the Law of Defamation," Select Essays in Anglo-American Legal History (Boston, 1909), 454.

of the Admiralty with having sold certain naval offices.⁸² This offence was more in the nature of a libel, however, since the words written against the Earl of Sandwich would have been held actionable under the law of libel, just as those which appeared in 1786 in the Morning Herald charging William Pitt with gambling in government funds were held actionable, not as scandalum magnatum, since Pitt was a commoner, but simply as libel.⁸³ The part of the law which had long since fallen into disuse was that which had held words abusive of a nobleman to be actionable when in the case of a common person they would not have been so held. The trend in English law which in effect was bringing all Englishmen under the same legal standard had reached a crucial stage by the beginning of the eighteenth century. It is no coincidence, for instance, that in 1702, the jurisdiction of the Earl Marshal's Court in cases of scandalous words was ended by a ruling of the Court of King's Bench. No longer could a man, simply by claiming a certain social status, avail himself of that court or the legal standard it observed with respect to words of mere abuse.⁸⁴

The degree to which noblemen accepted this trend away from at least one support of their privileged legal status is debatable. William Oldnoll Russell, writing in the early nineteenth century, attributed the obsolescence of the law of scandalum magnatum to "the nobility preferring to waive their privileges in any action of slander, and to stand upon the

⁸²Francis L. Holt, The Law of Libel, 167; Earl of Sandwich v. Miller, Lofft, 210-211, 98 Eng. Rep. 614-615 (1773).

⁸³State (of Missouri) v. Shepherd, 76 Southwestern Reporter, 83 (1903).

⁸⁴Jennings v. Chambers (1702), cited by G. D. Squibb, The High Court of Chivalry (Oxford, 1959), 101-102. The Earl Marshal's Court had been revived in the reign of James II.

same footing . . . as their fellow subjects."⁸⁵ Whether the nobility actually preferred to waive their privileges is doubtful, their thinking having rarely been so egalitarian as to prefer to stand upon the same footing with their fellow subjects under any circumstances. The best explanation of why the nobility allowed this privilege to fall into disuse seems to be simply that by the eighteenth century, it no longer satisfactorily served either its social function, as a defense of honor, reputation, and status, or its political function as a weapon for stifling opposition and silencing criticism.

It may be further argued that noblemen no longer even required such a privilege to defend their social and political positions, because by the eighteenth century, they were, for the first time since the sixteenth century, secure once again in their roles in society. With the achievement of political stability by the end of the first quarter of the eighteenth century,⁸⁶ the "temporary incapacity of the magnates" of which Professor Hexter writes, ended, the nobility having at last adapted to their new vocation "for commanding solid phalanxes of borough members sitting in Parliament . . ."⁸⁷ Acceptance of this thesis would rightly imply that the nobility's reliance on the law of scandalum magnatum during the seventeenth century, however irregular and for whatever reasons, was essentially a function of their "temporary incapacity," a consequence of the crisis of confidence they experienced, and a symptom of the acute

⁸⁵William O. Russell, A Treatise on Crimes and Misdemeanours, 5th American ed. (Philadelphia, 1845), 238n; cited by Odgers, Libel and Slander, 105.

⁸⁶See J. H. Plumb, The Growth of Political Stability in England, 1675-1725 (Harmondsworth, Middlesex, 1973), esp. 9-14, 116, 185-188.

⁸⁷Hexter, Reappraisals in History, 148.

political instability which plagued England continually. Noblemen, though still zealous in maintaining their reputations and positions of respect, were, by the eighteenth century, secure enough to relinquish that special legal protection still offered by the law which was formerly so often invoked "that the honour of such great persons may be preserved." Whatever the cause, by the nineteenth century, the law of scandalum magnatum, out of disuse, had been reduced to little more than the object of "curiosity,"⁸⁸ and so joined other legal remnants of the middle ages, "now in a manner forgotten."⁸⁹

⁸⁸Giles Jacob, Law Dictionary (Philadelphia, 1811), VI, 12.

⁸⁹Henry J. Stephen, New Commentaries on the Laws of England (New York, 1845), III, 474.

CONCLUSION

Where legal historians of the last century have taken the liberty to pronounce historical judgment on the law of scandalum magnatum, it has almost always been in the negative. W. Blake Odgers, for one, wrote that "such a distinction between nobles and commoners appears to me alien to the spirit of our common law."¹ He was echoed by Frank Carr who stated that the "remedy given by these statutes was foreign to the spirit of the English law."²

The urge to denounce the law of scandalum magnatum as undemocratic or contrary to the spirit of a great legal tradition is undeniably strong, especially in an age when criticism of those in places of power is protected rather than forbidden by the law. Yet to do so would be a serious error, for it would be to ignore the conditions that dictated the need for such a law in the first place and the standards that determined its application in the years following its enactment.

It is essential that the law be viewed in the context of its own time, or, more specifically, in the different contexts of the various periods of its development. The statutes of scandalum magnatum were enacted and first enforced at a time when there was a genuine need to put an end to the circulation of "false news or tales," for the safety of the

¹Odgers, Libel and Slander, 105.

²Carr, "The English Law of Defamation," Law Quarterly Review, 18 (1902), 263.

realm. They came to be applied, centuries later, in harmony with a hierarchical concept of society which accorded the nobility a privileged status in keeping with what men saw as the natural order of things. The same frame of mind which accepted the execution of a dog for barking at a lion as a vindication of the Great Chain of Being,³ also accepted the punishment of a man for speaking disrespectfully of a nobleman. Significantly, this frame of mind remained embodied in the law long after it began to be challenged and even after it had been reduced to little more than a reminder of how men once viewed their society.

So it was that as the English nobility experienced their "crisis" --first, the gradual loss of their military capacity and later the loss of their prestige--they could turn to the statutes of scandalum magnatum in defense of their threatened place in society. As has been illustrated in the preceding pages, the first civil actions of scandalum magnatum were brought by noblemen at a time when they were being denied their former military role by a regime whose success depended in large measure on curtailing the power of its nobility, on converting habits of violence into habits of non-violence, of which litigation was only one example. Likewise, it has been shown that actions of scandalum magnatum increased as the nobility suffered the loss of respect and prestige which put them in a defensive posture over the course of the sixteenth and seventeenth centuries; and as long as they remained on the defensive, they relied on the remedy allowed by the statutes. Finally, for a short period, they even introduced their legal weapon into the political warfare which denied stability to English politics in the second half of the seventeenth

³E. M. W. Tillyard, The Elizabethan World Picture (New York, n.d.), 80-82.

century. The pattern of development discernable in the evolution of the law of scandalum magnatum points to the conclusion that only until the nobility recovered their prestige and adapted to new and stable political and social roles, did they cease to rely on the statutes of scandalum magnatum. That the statutes remained on the books as long as they did, was, as Sir Edward Parry has observed, in deference to the maxim "nolumus leges Angliae Mutari."⁴

⁴Edward Parry, The Bloody Assize (London, 1929), 111.

APPENDIX

STATUTES OF SCANDALUM MAGNATUM

A.D. 1275. Anno tertio Edwardi I. Cap. XXIV.

Forasmuch as there have been oftentimes found in the country devisors of tales, whereby discord, or occasion of discord, hath many times arisen between the King and his people, or great men of this realm; for the damage that hath and may thereof ensue, it is commanded, that from henceforth none be so hardy to tell or publish any false news or tales, whereby discord, or occasion of discord or slander may grow between the King and his people, or the great men of the realm; and he that doth so, shall be taken and kept in prison, until he hath brought him into the court, which was the first author of the tale.

Statutes at Large, I, 53.

A.D. 1378. Anno secundo Richardi II. Stat. 1. Cap. V.

Item, of devisors of false news and of horrible and false lyes, of prelates, dukes, earls, barons, and other nobles and great men of the realm, and also of the Chancellor, Treasurer, Clerk of the Privy Seal, Steward of the King's House, Justices of the one bench or of the other, and of other great officers of the realm, of things which by the said prelates, lords, nobles, and officers aforesaid, were never spoken, done, nor thought, in great slander of the said prelates, lords, nobles, and officers, whereby debates and discords might arise betwixt the said lords, or between the lords and the commons (which God forbid) and whereof great peril and mischief might come to all the realm, and quick subversion and destruction of the said realm, if due remedy be not provided: It is straitly defended upon grievous pain, for to eschew the said damages and perils, that from henceforth none be so hardy to devise, speak, or to tell any false news, lyes, or other such false things, of prelates, lords, and of other aforesaid, whereof discord or any slander might rise within the same realm; and he that doth the same shall incur and have the pain another time ordained thereof by the Statute of Westminster the First, which will, that he be taken and imprisoned till he have found him of whom the word was moved.

Statutes at Large, I, 343-343.

A.D. 1388. Anno duodecimo Richard II, Cap. XI

Item, whereas it is contained, as well in the Statute of Westminster the first, as in the Statute made at Gloucester, the second year of the reign of our Lord the King that now is, that none be so hardy to invent, to say, or to tell any false news, lies, or such other false things, of the prelates, dukes, earls, barons, and other nobles and great men of the realm, and also of the Chancellor, Treasurer, Clerk of the Privy Seal, the Steward of the King's House, the Justice of the one bench or of the other, and other great officers of the realm, and he that doth so shall be taken and imprisoned, till he hath found him of whom the speech shall be moved: it is accorded and agreed in this Parliament, that when any such is taken and imprisoned, and cannot find him by whom the speech be moved as before is said, that he be punished by the advice of the council, notwithstanding the said statutes.

Statutes at Large, I, 381.

A.D. 1554. Anno primo & secundo Philippi & Mariae. Cap. III.

A confirmation of the Stat. of 3 Ed. 1. c. 34. and 2 R. 2. Stat. 1. c. 5. touching telling of news. Justices of Peace in every shire, city, &c. shall have authority to hear and determine the said offences, and to put the said two statutes in execution. If any person shall be convicted or attainted for speaking maliciously of his own imagination, any false, seditious and slanderous news, saying, or tales, of the King or Queen, then he shall for his first offence be set on the pillory in some market-place near where the words were spoken, and have both his ears cut off, unless he pay to the Queen an hundred pound within one month after judgment given, and also shall be three months imprisoned: and if he shall speak any such slanderous and seditious news or tales of the speaking or report of any other, then he shall be set on the pillory and have one of his ears cut off, unless he pay an hundred marks to the Queen's use within one month after, and shall be one month imprisoned: and if he shall do it by book, rhyme, ballad, letter or writing, he shall have his right hand stricken off. And if any person being once convicted of any of the offences aforesaid, do afterward offend, he shall be imprisoned during his life, and forfeit all his good and chattels.

Statutes at Large, II, 469.

LAW REPORT ABBREVIATIONS

The abbreviations listed on the following pages are those used in standard legal citation. They refer to specific reports, which, as a rule, were first published under the name of the author or editor, but which were later compiled in The English Reports (see the bibliographical essay, pages 96 and 97). This list is simply to identify the original edition of each report cited in the footnotes to this paper.

As an example, a footnote written according to the standard method of legal citation would read as follows:

¹Earl of Shaftesbury v. Cradock, 1 Ventris 363, 86 Eng. Rep. 234 (1682).

This reference is to the case of the Earl of Shaftesbury against Cradock, reported on page 363 of Part I of Ventris's Reports, reprinted on page 234 of Volume 86 of The English Reports. The date of the case is usually given in the original report by term (Hilary, Easter, Trinity, or Michaelmas) and by regnal year; the date of the example cited above is given in the report as "Termino Paschae, Anno 34 Car. II in Banco Regis;" that is, Easter term (April 15 through May 8), 1682, in the Court of King's Bench. It should be noted in this instance that the reign of Charles II was dated from the year of his father's death (1649), though he was in exile until 1660.

For each report, the place of publication is London. The number of the volume of The English Reports in which the report is reprinted is given in parenthesis.

- Barnard. Thomas Barnardiston, Reports of Cases Determined in the Court of King's Bench . . . from Trin. 12 Geo. I to Trin. 12 Geo. II., 1744 (94 Eng. Rep.).
- Barnes Henry Barnes, Notes of Cases in Points of Practice, taken in the Court of Common Pleas at Westminster, from . . . 1732 to . . . 1754, 3d ed., 1790 (94 Eng. Rep.).
- Carthew Thomas Carthew, Reports of Cases Adjudged in the Court of King's Bench, from the Third Year of King James the Second to the Twelfth Year of King William the Third, 2d ed., corrected, 1741 (90 Eng. Rep.).
- Co. Rep. Edward Coke, The Reports of Sir Edward Coke, Knt., new ed., 1826 (76 and 77 Eng. Rep.).
- Comb. Roger Comberbach, The Report of Several Cases Argued and Adjudged in the Court of King's Bench at Westminster; From the First Year of King James the Second to the Tenth Year of King William the Third, 1724 (90 Eng. Rep.).
- Comyns John Comyns, Reports of Cases Argued and Adjudged in the Courts of King's Bench, Common Pleas and Exchequer, 2d ed., corrected, 1792 (92 Eng. Rep.).
- Cro. Car. George Croke, Reports of . . . Select Cases . . . Adjudged . . . During the Reign of Charles the First, 4th ed., rev., 1792 (79 Eng. Rep.).
- Cro. Eliz. George Croke, Reports of . . . Select Cases . . . Adjudged . . . During the Reign of Queen Elizabeth, 4th ed., rev., 1790 (78 Eng. Rep.).
- Cro. Jac. George Croke, Reports of . . . Select Cases . . . Adjudged . . . During the Reign of James the First, 4th ed., rev., 1791 (79 Eng. Rep.).
- Dyer James Dyer, Reports of Cases in the Reigns of Henry VIII, Edward VI, Q. Mary, and Q. Eliz. . . ., trans., enl., John Vaillant, 1794 (73 Eng. Rep.).
- Freeman Richard Freeman, Reports of Cases Argued and Determined in the Courts of King's Bench and Common Pleas, from 1670 to 1704, 2d ed., 1826 (89 Eng. Rep.).
- Goulds J. Gouldsborough, Reports . . . of Choice Cases and Matters Agitated in All the Courts at Westminster, in the Later Years of Queen Elizabeth, 2d ed., corrected, 1682 (75 Eng. Rep.).

- Hetley Thomas Hetley, Reports and Cases taken in the Third, Fourth, Fifth, Sixth, and Seventh Years of the late King Charles, trans., 1657 (124 Eng. Rep.).
- Hobart Henry Hobart, The Reports of . . . Sir Henry Hobart, 5th ed., corrected by Edward Chilton, 1724 (80 Eng. Rep.).
- Holt, K. B. John Holt, A Report of all the Cases Determined by Sir John Holt from 1688 to 1710 during the time he was Lord Chief Justice of England, 1738 (90 Eng. Rep.).
- Jones William Jones, Les Reports de Sir William Jones . . . en le darreign Temps del' Reign de Roy Jaques, come en l'anns de Roy Charles I, 1675 (82 Eng. Rep.).
- Keble Joseph Keble, Reports in the Court of King's Bench at Westminster, from the xii to the xxx year of the Reign of . . . King Charles II, 1685 (83 Eng. Rep.).
- Keilwey Robert Keilwey, Reports d'ascuns Cases . . . aux temps du Roy Henry le Septieme . . . & Henry le Huitiesme, 1688 (72 Eng. Rep.).
- Leonard William Leonard, Reports and Cases of Law Argued and Adjudged in the Courts at Westminster in the times of the late Queen Elizabeth and King James, 1687 (74 Eng. Rep.).
- Levinz Creswell Levinz, The Reports of Sir Creswell Levinz, Knt. . . . Containing cases heard and determined during the time that Sir Matthew Hale, Sir Richard Rainsford, and Sir William Scroggs were Chief Justices, trans. Mr. Serjeant Salkeld, 3d ed., 1793 (83 Eng. Rep.).
- Ley James Ley (Earl of Marlborough), Reports of Divers Resolutions in Law arising upon Cases . . . in the reigns of the Late Kings, King James and King Charles, 1659 (80 Eng. Rep.).
- Lofft Capel Lofft, Reports of Cases Adjudged in the Court of King's Bench from . . . 12 Geo. III to . . . 14 Geo. III, 1790 (98 Eng. Rep.).
- Mod. Modern Reports; or, Select Cases Adjudged in the Courts of King's Bench, Chancery, Common Pleas, and Exchequer from the Restoration of Charles the Second to the twenty-eighth year of George the Second, 5th ed., edited by Thomas Leach, 1796 (86, 87, and 88 Eng. Rep.).

- Moore Francis Moore, Cases Collect and Report per Sir. Fra. Moore, Chevalier, Serjeant del Ley, 2d ed., 1688 (72 Eng. Rep.).
- Palmer Jeffery Palmer, The Reports of Sir Jeffery Palmer . . . Attorney General to . . . Charles the Second, 2d ed., 1721 (81 Eng. Rep.).
- Popham John Popham, Reports and Cases Collected by Sir John Popham, Kt., Late Lord Chief Justice of England, enl., 1682 (79 Eng. Rep.).
- Salkeld William Salkeld, Reports of Cases Adjudged in the Court of King's Bench . . . from the First year of King William and Queen Mary, to the Tenth Year of Queen Anne, 1795 (91 Eng. Rep.).
- Siderfin Thomas Siderfin, Les Reports des divers Special Cases Argue and Adjudge en le Court del Bank le Roy . . . en les premier dix and apres le Restuaration de . . . Charles le II., 2 ed., 1714 (82 Eng. Rep.).
- Shower Bartholomew Shower, Reports of Cases Adjudged in the Court of King's Bench, during the reigns of Charles the Second, James the Second, and William the Third, 2d ed., corrected by Thomas Leach, 1794 (89 Eng. Rep.).
- Skinner Robert Skinner, Reports of Cases Adjudged in the Court of King's Bench from the Thirty-third year of King Charles the Second to the Ninth Year of King William the Third, 1728 (90 Eng. Rep.).
- Strange John Strange, Reports of Adjudged Cases in the Courts of Chancery, King's Bench, Common Pleas, and Exchequer, from . . . the Second Year of King George I to . . . the Twenty-first Year of King George II, 3d ed., enl. by Michael Nolan, 1795 (93 Eng. Rep.).
- Ventris Peyton Ventris, The Reports of Sir Peyton Ventris, Kt., 4th ed., corrected, 1726 (86 Eng. Rep.).

BIBLIOGRAPHICAL ESSAY

Legal Sources

A large number of the sources consulted in preparation for this paper and cited in the footnotes are best classified simply as "legal sources," rather than the customary "primary" or "secondary" sources. This is done in view of the fact that while many legal materials were published contemporaneously with the events being described, they were not necessarily first-hand accounts nor were they original statements of legal principles. The difficulty encountered in tracing the origin of a particular citation or point of law is well known to those who have worked with legal sources dating from the sixteenth, seventeenth, and eighteenth centuries, a time when legal writers did not always feel obliged to identify the original source of their information.

Statutes: All statutory citations, with the exception of the Statute Law Revision Act of 1887, are to the first two volumes of The Statutes at Large (45 vols., London, 1763-1866). The Statute Law Revision Act is found in The Law Reports. The Public General Statutes, Passed in . . . the Reign of Her Majesty Queen Victoria (28 vols., London, 1866-1900).

Law Reports: Probably the most valuable legal sources are the law reports, which provide records of trials and judicial decisions. The largest single published collection of law reports is The English Reports (176 vols., Edinburgh and London, 1900-1930). Most of the

reports collected in these volumes for the sixteenth, seventeenth, and eighteenth centuries are simply reprints of the notes made during judicial proceedings by judges and lawyers for their own personal use. There was no official court reporting until 1865, and, as a rule, these early reports were never intended for publication, hence they tend to be jumbled, unsystematic and often positively unintelligible. Though unreliable in many instances, they can be extremely valuable when verified by other sources. In this paper, every effort has been made to cite reports in pairs where two (or more) accounts of the same case survive and to verify them with other sources where possible. For bibliographical information on each report cited in the footnotes of this paper, see pages 92-95.

Another major source of legal records is T. B. Howell, ed., Cobbett's Complete Collection of State Trials and Proceedings for High Treason and Other Crimes and Misdemeanors (33 vols., London, 1809-1826). The material included in these volumes is gathered from a large variety of legal and non-legal sources, sometimes appearing in published form for the first time. Extensive notes are provided to supplement the legal records.

Smaller collections of law reports have also been published, most notably by the Selden Society. Local court records dating from the thirteenth and fourteenth centuries are found in F. W. Maitland, ed., Select Pleas in Manorial and Other Seignorial Courts (Selden Society, Vol. 2, London, 1889), and in F. W. Maitland and W. P. Baildon, eds., The Court Baron (Selden Society, Vol. 4, London, 1891). Records of the Court of King's Bench dating from the late thirteenth century to the fifteenth century are found in G. O. Sayles, ed., Select Cases in the

Court of King's Bench Under Edward I, Vol. I (Selden Society, Vol. 55, London, 1936); Select Cases in the Court of King's Bench Under Edward III (Selden Society, Vol. 82, London, 1965); and Select Cases in the Court of King's Bench Under Richard II, Henry IV and Henry V (Selden Society, Vol. 88, London, 1971).

Reports of cases brought in the Star Chamber include I. S. Leadam, ed., Select Cases Before the King's Council in the Star Chamber, Commonly Called the Court of Star Chamber, A.D. 1477-1509 (Selden Society, Vol. 16, London, 1903), described by G. R. Elton, however, as being "so riddled with misinterpretations and outright mistakes, that his valuable work can be used only with the utmost care."¹ A more reliable collection of Star Chamber reports is John Hawarde, Les Reportes del Cases in Camera Stellata, 1593 to 1609, ed. W. P. Baildon (London, 1894); this volume proved to be the most valuable collection of Star Chamber cases used in this investigation. Most of the cases date from the period when Sir Edward Coke was Attorney General and they include a large number of interesting cases for "sclaunderous words" against noblemen. The edition, privately printed in 1894, is carefully edited, providing identification of most of the names which appear in the text and necessary background information about the cases reported. Another collection of Star Chamber reports, though less useful than Hawarde, is Samuel R. Gardiner, ed., Reports of Cases in the Courts of Star Chamber and High Commission (Camden Society, n.s., Vol. 39, London, 1886); the cases reported in this slim volume date only from the years 1631 and 1632, though according to Davies, they illustrate the "ordinary course of business in these courts."²

¹Elton, ed., Tudor Constitution, 158n.

²Godfrey Davies, ed., Bibliography of British History. Stuart Period (Oxford, 1928), 106.

Commentaries, etc.: Another category of legal sources are the innumerable commentaries, abridgments, digests, treatises and dictionaries which were published with the intent of rendering the laws of England intelligible in a relatively concise form, though some of them fall short of this goal. Many of these works are quite well-known, such as Henry de Bracton, De Legibus et Consuetudinibus Angliae, ed. George E. Woodbine, trans. Samuel E. Thorne (Cambridge, Mass., 1968), reputed to be the earliest comprehensive treatise on English law (written c. 1250-1260); Edward Coke, Institutes of the Laws of England (London, 1797), of which the second part (first published in 1642) and the third part (first published in 1644) proved most useful for the purposes of this paper; and William Blackstone, Commentaries on the Laws of England (4 vols., Oxford, 1765-1769; reprint ed., London, 1966). Later editions of Blackstone, with notes and additions, also proved useful, such as that edited by Edward Christian (Boston, 1818). A number of commentaries have been based on Blackstone, such as Henry J. Stephen, New Commentaries on the Laws of England (4 vols., New York, 1845).

Perhaps less well-known but as valuable as the commentaries listed above is Richard Crompton, L'authoritie et Iurisdiction des Courts de la Maiestie de la Roygne (London, 1637). First published in 1594, this work became a standard source for seventeenth-century legal writers; it is written in law-French and contains the earliest available published account of the Duke of Buckingham's action of scandalum magnatum (1512), as well as accounts of a number of undated cases. Based on this book is Crompton, Star-Chamber Cases. Shewing What Causes Properly Belong to the Cognizance of that Court (London, 1630; reprint ed., Boston, 1881). Another useful work on the Star Chamber is William Hudson, A

Treatise of the Court of Star Chamber, ed. F. Hargrave, in Collectanea Juridica (2 vols., London, 1792), II, 1-240. Written around 1620, this work is a lengthy commentary on the Star Chamber, though with a mere five pages devoted to "Libelling and Scandalous words against Nobles." Hudson was particularly concerned with "libels which touch the alteration of government."

Later legal commentaries include Matthew Bacon, A New Abridgment of the Law (8 vols., Philadelphia, 1856), a work which was originally published from 1736 to 1766; it is based on William Sheppard, Grand Abridgment (London, 1675).³ Volume VIII of Bacon's Abridgment includes seven pages on scandalum magnatum with numerous notes and references. John Comyns, A Digest of the Laws of England (8 vols., New York, 1824), which was originally published from 1762 to 1767, also contains a useful account of the statutes of scandalum magnatum and a listing of many of the cases brought on the statutes, giving the words which were held actionable in each case. As with many such digests, however, dating and chronology were for the most part ignored.

A number of legal dictionaries are available to provide definitions for legal terms which would have been accepted at a given period. The earliest dictionary consulted in the research for this paper was Thomas Blount, A Law Dictionary (London, 1670, 1691); also consulted were John Cowell, The Interpreter of Words and Terms Used Either in the Common or Statute Laws of This Realm (London, 1701); Giles Jacob, The Law Dictionary: Explaining the Rise, Progress, and Present State of the English Law (6 vols., Philadelphia, 1811); and Henry Campbell Black, A Law Dictionary

³Clyde L. Grose, ed., A Select Bibliography of British History, 1660-1760 (New York, 1967), 41.

(St. Paul, Minn., 1910).

A final category of legal sources consulted for this paper consists of those books devoted specifically to the law of defamation. "The first formal treatise on the common law of defamation," according to Professor W. R. Jones,⁴ was John March, Actions for Slaunder; or, A Methodicall Collection Under Certain Grounds and Heads, of What Words Are Actionable in the Law and What Are Not? (London, 1647). March wrote his treatise "to deterre men from words, which are but winde . . . which subject men to actions in which damages and costs are to be recovered, which usually trench to the great hindrance and impoverishment of the speakers." Apparently patterned after March's work was William Sheppard, Action Upon the Case for Slander. Or A Methodical Collection under certain Heads, of Thousands of Cases Dispersed in the many Great Volumes of the Law, of what words are Actionable, and what not . . . (London, 1662). More recent treatises on the law of defamation include Francis L. Holt, The Law of Libel: In which Is Contained a General History of This Law in the Ancient Codes, and of Its Introduction and Successive Alterations in the Law of England (London, 1816); Thomas Starkie, A Treatise on the Law of Slander, Libel, Scandalum Magnatum, and False Rumours, 1st American ed. (New York, 1826); and W. Blake Odgers, Libel and Slander (Philadelphia, 1887).

General legal histories, biographical studies of legal figures, articles from law journals, and other more recent legal writings are included below under "secondary sources."

⁴W. R. Jones, "'Actions for Slaunder'--Defamation in English Law, Language, and History," Quarterly Journal of Speech, 57 (1971), 279.

Other Primary Sources

Parliamentary Sources: Many of the standard Parliamentary sources were consulted in preparation for this paper. Cobbett's Parliamentary History of England from the Norman Conquest in 1066 to the Year 1803 (36 vols., London, 1806-1820) proved useful for the account it provided of the enactment of the 1378 Statute of Gloucester. The journals of both the House of Lords and the House of Commons provided the bulk of the Parliamentary material cited in the footnotes regarding complaints of the Lords for allegedly "scandalous" words, attempts to repeal the statutes of scandalum magnatum, and attempts to reverse the judgments in cases of scandalum magnatum. Likewise, Anchitell Grey, Debates of the House of Commons, 1667-1694 (10 vols., London, 1763) was of some value in its account of the debate in 1680 over the bill "for the better regulating the Tryal of the Peers of England," in which an attempt to repeal the statutes was involved. The Historical Manuscripts Commission, The Manuscripts of the House of Lords (4 vols., London, 1887-1894), and the new series of The Manuscripts of the House of Lords (11 vols., London, 1900-1962), published in continuation of the volumes issued under the authority of the Historical Manuscripts Commission, provided some useful references concerning attempts to reverse judgments.

Government record and manuscript publications: The calendars of state papers and manuscript collections published by the Public Record Office and the Historical Manuscripts Commission contain a large amount of useful material. The volumes of the Calendar of State Papers, Domestic Series covering the reigns of Edward VI, Mary, Elizabeth and James I (12 vols., London, 1856-1872; reprint ed., Nendeln, Liechtenstein, 1967);

of Charles I (23 vols., London, 1856-1872; reprint ed., Nendeln, Liechtenstein, 1967); and of Charles II (28 Vols., London, 1860-1947; reprint ed., Nendeln, Liechtenstein, 1968) provided many valuable illustrations of government concern for words reflecting on the "great men of the realm," and for the legal proceedings arising from them. The manuscript collections published or calendared by the Historical Manuscripts Commission were also of great value, especially the Calendar of the Manuscripts of the Marquess of Ormonde (15th Report, n.s., 8 vols., London, 1902-1920); the Calendar of the Manuscripts of the Most Hon. the Marquis of Salisbury (9th Report, 19 vols., London, 1889-1965); The Manuscripts of His Grace the Duke of Northumberland (3rd Report, London, 1872); and The Manuscripts of His Grace the Duke of Portland (13th, 14th and 15th Reports, 10 vols., London, 1892-1931).

Memoirs, diaries, papers, letters, etc.: Publications of personal observations and recollections, whether in memoir, diary or simply letter form, were among the most valuable sources employed in the writing of this paper. Covering the Elizabethan and Jacobean periods are J. Payne Collier, ed., The Egerton Papers. A Collection of Public and Private Documents Chiefly Illustrative of the Times of Elizabeth and James I (Camden Society, o.s., Vol. 12, London, 1840); John Harington, Nugae Antiquae; Being a Miscellaneous Collection of Original Papers in Prose and Verse, Written During the Reigns of Henry VIII, Edward VI, Queen Mary, Elizabeth, and King James (2 vols., London, 1804); Edmund Lodge, Illustrations of British History, Biography and Manners in the Reigns of Henry VIII, Mary, Elizabeth, and James I . . . Original Papers, Selected from the Manuscripts of the Noble Families of Howard, Talbot and Cecil (3 vols., London, 1791); Henry Machyn, The Diary of Henry Machyn, 1550-1563, ed. John G. Nichols (Camden Society, o.s., Vol. 42, London, 1848;

reprint ed., New York, 1968); and John Manningham, Diary of John Manningham, of the Middle Temple . . . Barrister at Law, 1602-1603 (Camden Society, o.s., Vol. 99, London, 1868). Spanning the seventeenth century, and particularly useful for the late 1670's, is Edward M. Thompson, ed., Correspondence of the Family of Hatton (2 vols., Camden Society, n.s., Vols. 22-23, London, 1878-1879).

A number of more well-known memoirs dating from the later seventeenth century were also of great value, most notably Edward Hyde, The Life of Edward Earl of Clarendon (3 vols., Oxford, 1827); Gilbert Burnet, Bishop Burnet's History of His Own Time (6 vols., Oxford, 1823); and Narcissus Luttrell, A Brief Relation of State Affairs (6 vols., Oxford, 1857). Of particular importance for the decade 1680 to 1690 is the last named work, Luttrell's Brief Relation, a chronicle of contemporary events which remained in manuscript form until the nineteenth century when Lord Macaulay's reliance on it as a source for his History of England brought about its hurried publication in six poorly indexed volumes (without preface or notes).⁵ Luttrell extracted the entires in his Brief Relation from newsletters and newspapers, and, though not always accurate, the work is "valuable as a guide to what the public of the day knew."⁶

General works: A large number of primary sources, especially the collected works of one author or treatises on various subjects, are best classified simply as "general works," a designation intended to prevent unnecessary bibliographical confusion as to the nature of the works. Containing several different valuable works is Francis Bacon, The Works of Francis Bacon, ed. James Spedding, R. L. Ellis, and D. D. Heath (14

⁵Dictionary of National Biography, s.v. "Luttrell, Narcissus."

⁶Davies, ed., Bibliography, 42.

vols., London, 1870-1874; reprint ed., New York, 1968). Included in these volumes are Bacon's Proposition for the Suppression of Duels (1613); The Charge of Sir Francis Bacon, Knight, his Majesties Attourney General, touching Duells . . . (1614); his Notes of the Lord Darcy's Case of Duells against Mr. Gervice Markham (1616); his Historie of the Raigne of King Henry the Seventh (1622); and his Maxims of the Law (1630). Likewise, Thomas Hobbes, The English Works of Thomas Hobbes of Malmesbury, ed. William Molesworth (11 vols., London, 1839-1845) includes Leviathan (1651) and The Philosophical Elements of a True Citizen, both of which provided useful commentary on seventeenth-century attitudes towards honor and duelling.

Of the numerous treatises consulted in preparation for this paper, the most valuable were: John Brydall, Privilegia Magnatum apud Anglos: or, a Declaration of the Divers and Sundry Preheminencies, or Privileges, Allowed by the Laws and Customs of England, unto the first-born among Her Majesty's Subjects, The Temporal Lords of Parliament (London, 1704; microfilm reprint, New Haven, Conn., 1974), a treatise which seems to be based on parts of Edward Chamberlayne, Angliae Notitia: or, the Present State of England Compleat. Together with Divers Reflections upon the Ancient State thereof, 17th ed. (London, 1692), an annual publication which first appeared in 1669, and which includes an indispensable enumeration of the privileges of the peerage; and The Laws of Honour: or, a Compendious Account of the Ancient Derivation of All Titles, Dignities, Offices, &c. as well Spiritual as Temporal, Civil or Military. Shewing the Prerogative of the Crown, Privileges of Peerage, and of Parliament . . . (London, 1714), a work which includes an interesting discussion of "Injuries done to the Name and Honour of a Nobleman."

Edmund Hicckeringill, The Ceremony Monger, His Character (London, 1689; microfilm reprint, Ann Arbor, Mich., 1970) contains remarks "upon the New Star Chamber, or a late course of the Court of King's Bench, of the Nature of a Libel and Scandalum Magnatum." Scandalum Magnatum: or Potapski's Case. A Satyr Against Polish Oppression (London, 1682) is a satire in verse by an anonymous Tory poet, possibly Thomas D'Urfey,⁷ on the Earl of Shaftesbury, "occasioned by his action of scandalum magnatum against Cradock and Graham." Scandalum Magnatum; or the Great Trial at Chelmsford Assizes (London, 1682) is a detailed account of the action brought by Henry Compton, Bishop of London, against Edmund Hicckeringill. It is biased in favor of the defendant and contains a number of satirical observations on the nature of the proceedings.

Edited documents collections: A final category of primary sources consists of the many edited documents collections, of which the following proved most valuable for their commentary as well as their presentation of useful documents: Stephen B. Baxter, ed., Basic Documents of English History (Boston, 1968); G. R. Elton, ed., The Tudor Constitution: Documents and Commentary (Cambridge, 1962); P. L. Hughes and J. F. Larkin, eds., Tudor Royal Proclamations (3 vols., New Haven, Conn., 1964); J. P. Kenyon, ed., The Stuart Constitution: Documents and Commentary (Cambridge, 1966); and John F. Naylor, ed., The British Aristocracy and the Peerage Bill of 1719 (New York, 1968).

⁷According to the Folger Shakespeare Library general catalogue, this work is sometimes attributed to D'Urfey. It is not included, however, in the collection of Poems on State Affairs: Augustan Satirical Verse, 1660-1714, ed. George de F. Lord (New Haven, Conn., 1963).

Secondary Sources

Those books and articles which are the products of research done over the last hundred years or so comprise the final category of sources consulted in preparation for this paper. The label "secondary sources" applies both to legal and non-legal works.

General legal and constitutional secondary sources: Long considered the most complete and definitive history of English law is William Holdsworth, A History of English Law (13 vols., Boston, 1922). By far the most useful legal history for the purposes of this paper, however, was T. F. T. Plucknett, A Concise History of the Common Law, 2d ed., enl. (Rochester, N. Y., 1936). Of some additional value were James F. Stephen, A History of the Criminal Law of England (3 vols., London, 1883); Alan Harding, A Social History of English Law (Baltimore, 1966); and S. F. C. Milsom, Historical Foundations of the Common Law (London, 1969). A good survey is available in Colin R. Lovell, English Constitutional and Legal History (New York, 1962).

Defamation: Though no definitive historical study of the English law of defamation has appeared in book form, a number of valuable articles have been written on the subject. They include Frank Carr, "The English Law of Defamation," Law Quarterly Review, 18 (1902), 255-273; 388-399; Van Vechten Veeder, "The History of the Law of Defamation," in Select Essays in Anglo-American Legal History (Boston, 1909); W. S. Holdsworth, "Defamation in the Sixteenth and Seventeenth Centuries," Law Quarterly Review, 40 (1924), 302-315; 397-412; 41 (1925), 13-31; and W. R. Jones, "'Actions for Slander'--Defamation in English Law, Language, and History," Quarterly Journal of Speech, 57 (1971), 274-283.

Medieval Studies: A number of the books consulted, especially

in preparation for Chapter I of this paper, were those dealing with various aspects of the middle ages, particularly the legal aspects. An important work for understanding the limited jurisdiction of medieval courts is F. Pollock and F. W. Maitland, The History of English Law Before the Time of Edward I, (2 vols., Cambridge, 1911). J. G. Bellamy, The Law of Treason in England in the Later Middle Ages (Cambridge, 1970) is useful for its discussion of the concept of treason for words. An imaginative, though apparently well researched account of the governmental motivations behind the enactment of the statutes of scandalum magnatum is in J. J. Jusserand, English Wayfaring Life in the Middle Ages, trans. L. T. Smith (New York, 1929). For a good survey of medieval constitutional foundations, see Bryce Lyon, A Constitutional History of Medieval England (New York, 1960).

Tudor-Stuart studies: The majority of the non-legal secondary sources consulted for this paper were books and articles dealing with sixteenth- and seventeenth-century England, most of them focusing on political and social developments of the period. Many valuable facts and ideas were contributed by Lawrence Stone, The Crisis of the Aristocracy, 1558-1641 (Oxford, 1965), a carefully documented account of the loss of power and prestige suffered by the English aristocracy in the century preceding the outbreak of the Civil War. This book was reviewed in J. H. Hexter, "The English Aristocracy, Its Crises," Journal of British Studies, 7 (1968), 22-78, an article which also contributed to some of the ideas presented in this paper. More commentary on the social position of the aristocracy is found in J. H. Hexter, "Storm Over the Gentry," in Reappraisals in History: New Views on History and Society (New York, 1961). G. P. Akrigg, Jacobean Pageant (Cambridge,

Mass., 1962) provides a useful analysis of the social forces at work behind the concept of honor and the practice of duelling in the early seventeenth century.

Particularly valuable for anyone engaged in seventeenth-century legal studies is G. D. Squibb, The High Court of Chivalry (Oxford, 1959), a history of the Earl Marshal's Court which provides a look at proceedings in cases of "scandalous words provocative of a duel." For the later Stuart period, much can be learned from A. F. Havighurst, "The Judiciary and Politics in the Reign of Charles II," Law Quarterly Review, 66 (1950), 62, 229; and A. L. Cross, "The English Law Courts at the Close of the Revolution of 1688," Michigan Law Review, 15 (1917), 529-551.

For the political developments of the later Stuart period which so strongly influenced the nature of the legal proceedings under discussion in this paper, J. R. Jones, The First Whigs (London, 1961) proved to be the most useful for its account of the politics of the Exclusion crisis. An important study of late seventeenth- and early eighteenth-century political trends, and the source of some of the ideas presented in the concluding pages of this paper, is J. H. Plumb, The Growth of Political Stability in England, 1675-1725 (Harmondsworth, Middlesex, 1973).

The House of Lords: The House of Lords, which figures prominently in any study of the English nobility, has been the subject of several books and articles. L. O. Pike, A Constitutional History of the House of Lords (London, 1894) is a useful survey. More recent and more limited in scope is M. P. Schoenfeld, The Restored House of Lords (The Hague, 1967), a detailed analysis of the House of Lords in 1660, including a concise enumeration of the legal privileges of the peerage (including scandalum magnatum). Perhaps the definitive study of the House of Lords

is the work of A. S. Turberville, "The House of Lords Under Charles II," English Historical Review, 44 (1929), 400-417, 45 (1930), 58-77; The House of Lords in the Reign of William III (Oxford, 1913; reprint ed., Westport, Conn., 1970); and The House of Lords in the XVIIIth Century (Oxford, 1927; reprint ed., Westport, Conn., 1970). Turberville's achievement in the two books just listed is summarized and discussed in W. S. Holdsworth, "The House of Lords, 1689-1783," Law Quarterly Review, 45 (1929), 307-342; 432-458.

Biographies: A final category of secondary sources consists of biographical studies. Of course, The Dictionary of National Biography (63 vols., London, 1885-1900) is indispensable, as is G. E. Cokayne, The Complete Peerage, new ed., rev. (13 vols., London, 1910-1959). Biographical sketches of judicial figures are found in Edward Foss, The Judges of England (9 vols., London, 1864). Individual biographies of judges include Catherine D. Bowen, The Lion and the Throne: The Life and Times of Sir Edward Coke (Boston, 1956), a popularized, romanticized presentation of the man often considered to have been England's greatest judge; and G. W. Keeton, Lord Chancellor Jeffreys and the Stuart Cause (London, 1965), an extremely sympathetic view of the man often considered to have been England's worst judge. To conclude, two biographies of the first Earl of Shaftesbury are worth citing: W. D. Christie, A Life of Anthony Ashley Cooper, First Earl of Shaftesbury (2 vols., London, 1871), useful for its publication of some of Shaftesbury's letters and those of his associates; and K. H. D. Haley, The First Earl of Shaftesbury (Oxford, 1968), a lengthy, sympathetic treatment of Shaftesbury and his role in the politics of the day.

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