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# Equivocation and the Legal Conflict Over Religious Identity In Early Modern England

Janet E. Halley\*

“[I]t was tyme to hide when Mr. Topclyfe came[.]”<sup>1</sup>

— Robert Southwell, S.J.

During the trial of the so-called Powder Men—Guy Fawkes and his co-conspirators in the Gunpowder Plot to blow up Parliament with the King, Queen, and heir apparent all in attendance—the King’s Attorney General Sir Edward Coke presented into evidence a curious manuscript with two titles. The text’s original name was *A Treatise of Equivocation*, but that had been scratched out and replaced with a new title, *A Treatise Against Lying and Fraudulent Dissimulation*. It had been discovered in the rooms which one of the conspirators had used in the Inner Temple, and mere possession of this book, Coke clearly thought, spoke loudly of all the defendants’ guilt.<sup>2</sup> By delaying the trial long enough to secure this

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1. Pierre Janelle, *Robert Southwell the Writer: A Study in Religious Inspiration* (London: Sheed & Ward, 1935), 83 (quoting manuscript notes of an anonymous Catholic who attended Southwell’s trial). According to Janelle and his source, Southwell made this remark to the court after his conviction on a charge of being a Catholic priest within England, made treasonous by 27 Eliz. cap. 2 (1585) (see note 5 below). Topcliffe, the notorious pursuivant entitled by Elizabethan authorities to maintain a private torture chamber for the Catholics he apprehended, had captured Southwell and subjected him to repeated tortures preparatory to his indictment and trial. The epigraph to this essay is Southwell’s response to Topcliffe’s “ralinge” accusation that he had captured the Jesuit “hidden in the tyles of the house [a hiding hole], amongst his Goddes, (meaninge Puctores [Pictures]), and in the same, Parsons cypher.” *Id.* Topcliffe’s representation of Southwell as engaged in a triple seeming — hiding in a priest hole not only his person but also idolatrous images and a cypher enclosed among those images — aptly encapsulates the official portraiture of Jesuit equivocators.

2. “The Trial of Robert Winter, Thomas Winter, Guy Fawkes, John Grant, Ambrose Rookwood, Rob. Keyes, Thomas Bates, and Sir Everard Digby, at Westminster, for High Treason, being Conspirators in the Gunpowder-Plot,” January 27, 1606, in T.B. Howell, ed., *State Trials*, vol. II (London: Longman, 1816), 180. Subsequent references will be to “The Gunpowder Trial.” The controversy that raged over the book Coke presented has been capably reviewed by Frank L. Huntley, “*Macbeth* and the Background of Jesuitical Equivocation,” *PMLA* 79 (1964): 390-400.

manuscript, Coke ensured that he would be able to continue in a prosecutorial tradition he had established in the trial of the Jesuit Robert Southwell—a tradition of proving treason against English Catholics by representing them as ready equivocators.

The *Treatise of Equivocation*<sup>3</sup> was written to instruct priests sent on a “mission” established by the Society of Jesus, whose aim was to preserve the Catholic Church in the newest heathen territory, England. The *Treatise* prepared priests to face the perilous questions asked of them by official interrogators, who as enforcers of the Anglican settlement had devised a series of interrogatories widely known as the “bloody questions” because they could force a Catholic priest to elect between the Queen and the Pope.<sup>4</sup> The stakes were high: the penalty for being a priest in England, an act of treason, was death by public torture.<sup>5</sup>

Catholic priests in England thus bore an interdicted identity. Though Jesuit priests came to England prepared for martyrdom, the Order also prepared them to disguise themselves, particularly to engage in the practice of equivocation so reviled by Coke. According to the *Treatise of Equivocation*, a Catholic priest in England was entitled, under appropriate circumstances, to resort to any one of four methods of baffling his audience. First, he could use words having more than one common meaning—for example, declaring that a priest “lyeth not in my house,” and meaning that he does not tell lies there. Second, he could give only one of several possible answers to a question—for instance, declaring that he came to a friend’s house to have dinner and omitting to mention a purpose to celebrate mass as well. Third, he might exploit the ambigui-

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3. Internal evidence demonstrates that this manuscript was completed after the execution of Robert Southwell in 1595. The manuscript, bearing the imprimatur of George Blackwell, the Archpriest of England, has been lightly edited in a hand which can be identified as that of Father Garnet, then head of the Jesuits’ English mission, and bears several notations by Sir Edward Coke. If printed at all in the sixteenth century, the text survives to us only in manuscript form and in the 1851 edition printed by David Jardine. The latter is relied upon here and will be referred to as *Treatise of Equivocation* in subsequent notes. David Jardine, ed., *A Treatise of Equivocation* (London: Longman, 1851). On the provenance of the manuscript, see A.E. Malloch, “Father Henry Garnet’s *Treatise of Equivocation*,” *Recusant History* 15(6) (1981): 387-395.

4. According to P.J. Holmes, the so-called “bloody questions” were set forth among a collection of cases of conscience written at Rheims in 1578-79 for use by seminary priests preparing to join the English mission. These questions were: “When did you say or heare mass last?”; “Whether is the quene ane hereticke or schismaticke[?]”; “Whether is the Quene stille notwithstandinge the popes Excommunicatione?”; and “Whether may the quene be deposed for any facte by any authority hereafter?” P.J. Holmes, ed., *Elizabethan Casuistry*, Catholic Record Society, Records Series, vol. 67 (1981), 5, 52-53. Another commentator reports a more elaborate double bind: “What would you do if the Pope were to send over an army and declare that his only object was to bring the kingdom back to its Catholic allegiance? And if he stated at the same time that there was no other way of re-establishing the Catholic faith; and commanded everyone by his apostolic authority to support him? Whose side would you be on then—the Pope’s or the Queen’s?” Graham Green, intro., *John Gerard: The Autobiography of an Elizabethan*, trans. Philip Caraman (New York: Longman, 1951), 98.

5. By 27 Eliz. I, cap. 2 (1585), the state made it treason for a priest ordained after June 24, 1559 to be present in England, and made it a felony for a lay person to harbor such a priest. For a complete summary of anti-Catholic statutes adopted under Elizabeth and James I, see J.A. Williams, “English Catholicism Under Charles II: The Legal Position,” *Recusant History* 7 (1963): 123-43.

ties of hidden gestures, unclear pronoun reference, altered pronunciation—any addition to standard usage that would create an ambiguity. This is what St. Francis was about when, asked whether he had seen an escaping thief, he protected the fugitive by answering (with his pointing hand hidden in his robe), “He came not this way.”

Official anxiety about all of these forms of expression ran pretty high, but it was the fourth method of equivocation, mental reservation, that stimulated the really sensational scare.<sup>6</sup> For the Jesuits endorsed a form of response which gave the interpreter no indication of its possible ambiguities: a Catholic in England was allowed by this doctrine to make an audible statement that would mislead the hearer, and to add to it, silently, a modification (or *mental reservation*) that rendered the entire sentence true. For instance: “I did not see Father Gerard [*ut tibi dicam*] [*i.e.*, in order to tell you about him].”<sup>7</sup>

Mental reservation was a key strategy in preserving secret identity, and it was objectionable in direct proportion to its tendency to undermine a state program increasingly committed to policing personal identity on the basis of religious affiliation. As one court observed, the first three practices—“equivocation” proper—posed no danger if identities were already fixed, whereas mental reservation represented a special threat. The first three were “easily discovered if the imposter bee suspected, but hee which useth mentall reservacion cannot possibly bee detected . . . .”<sup>8</sup> Officials perceived accurate detection of identities to be crucial to the state’s continued stability: “the commonwealth cannot possibly stand if this wicked doctrine bee not beaten downe and suppressed, for if it once take roote in the hartes of the people, in a short time there wilbee no faithe, no troth, no trust, and consequently, all commercing and all contracting will cease, and all civill societies will breake and bee dissolved.” Civil order came to be equated with transparent expression, committing the state to policing referentiality: “[E]very man’s estate in particuler, and the state of the realme in generall, doth depend upon the truthe and sincerity of men’s oathes . . . .”<sup>9</sup>

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6. For a register of this alarm, see “The Case of Concealment or Mental Reservation, April 1613,” Ellesmere MS 2191, printed in Anthony G. Petti, ed., *Recusant Documents from the Ellesmere Manuscripts*, Catholic Record Society Publications, vol. 60 (1968), 345-56 (cited hereafter as “Castle Chamber Case of Concealment”). And for studies of the degree to which English loyalists were prone to fright, see Carol Z. Weiner, “The Beleagured Isle: A Study of Elizabethan and Early Jacobean Anti-Catholicism,” *Past and Present* 51 (1971): 27-62, and Lacey Baldwin Smith, *Treason in Tudor England: Politics and Paranoia* (Princeton: Princeton University Press, 1986).

7. *Treatise of Equivocation*, 48-52.

8. “Castle Chamber Case of Concealment,” 251. The court was that of Castle Chamber, the Irish equivalent of Star Chamber; the case was that of certain Catholic grand jurors convicted of perjury when they failed to indict recusants and defended their action by claiming that they had been under no obligation to present a true bill because of a mental reservation they had made when they swore the oath of their office. (For an analysis of this episode, see footnotes 34-37 and accompanying text below.) Petti prints the manuscript report of these Catholics’ trial and conviction, composed and annotated by Sir John Davies, Attorney General for Ireland.

9. “Castle Chamber Case of Concealment,” 250, 254.

Catholic priests and their official pursuivants thus took up apparently diametrically opposed ideological stances. The Jesuits expressly claimed an entitlement to secret identity protected by ambiguous and even silent speech. They constructed a privacy which aimed to pass undetected into and through the public domain of the state, detaching from the body politic the selves hidden from it. In service of this goal they conceptualized language as multivalent, unstable, and conventional; and recognized a complex dialogue occurring within the Catholic mind, in which thought itself took on the representational qualities of speech and writing.

The official English stance was, on every point, the complementary opposite. The social order itself was understood to rest on the transparency of religious identity and the language in which it was claimed and ascribed. Though official apologists acknowledged a private zone beyond the reach of state regulation, they insisted that the discourse of religious identity be pervasively public, univocal and clear, and even claimed that these characteristics were natural. They scorned the Jesuits' notion of the discursively constituted self, insisting that the mind originates thoughts as things in themselves which then become available for representation in language.

The complementarity of these positions is susceptible of at least two sorts of explanations. One is, I think, clearly inadequate. According to it, Anglican and Catholic discourses encounter one another with a hostility derived from sources internal to each, and external to the encounter itself, in a confrontation of ideology with textuality, of oppression with resistance, of clarity and univocality with linguistic mischief. Thus it would be tempting to invoke a Derridean explanation of the resulting conflict, for it seems likely that textuality subverts ideology here. That is, if dominant ideology in the Western tradition has posited "metaphysics"—essentialist thought or a philosophy of presence that founds a stable hierarchy of signs and meanings and forces transparency on words by fiercely controlling and limiting their meanings—official control of the interpretation of equivocal speech could be regarded as ideological. On the other hand, if "textuality," as the sheer uncontrolled activity of language, proliferates meanings and thus demonstrates how ideology is always being deconstructed by the multivalence, redundancy, and opacity of its own language, Jesuitical equivocation could be said to be subversive in the ways that textuality is subversive.

But a model according to which ideology and textuality are incommensurate and opposed ill suits the relations between the English state and its Catholics: it seems more likely that the two entities defined themselves and each other in the context of one another and of their shared conflict. According to this more adequate explanation, the discursive programs of Jesuits and their Anglican opponents were mutually consti-

tuted in the diacritics of a high-stakes ideological war. Heresy and orthodoxy brought one another into existence, each being necessary to the formation of the other.

Orthodoxy, like heresy, occurred in a process of separating itself from and incorporating its opposition. Terry Eagleton suggests that dominant and oppressed ideologies exist and are mutually constitutive—a notion that is useful for English religious discourse. According to him, the dominant ideology “incorporates within itself (not without ceaseless struggle) the codes and forms whereby subordinate classes ‘practice’ their relations to the social formation as a whole.” And the strategies of textuality are available to both. The analogy tying ideology to *langue* or the fixed structure of language, and textuality to *parole* or the unfixed, arbitrary speech act is thus broken down: we are free to observe the reciprocal relations that occur between these elements in specific ideological “conjunctures.” Eagleton argues that “conjunctural meaning”—meaning *in situ*, whether in dominant or subordinate ideologies—“constantly is trying to captivate *langue*-meaning and constantly is being captivated by it.”<sup>10</sup> Polar positions developed in a diacritical process of this sort will be rifted by contradictions arising precisely from the constitutive activity of incorporation that each side engages in and yet repudiates.

As I attempt to show below, the discursive consequence of these internal contradictions emerges twice—once within the equivocation controversy, and again in the paradigm incorporated group, the “church papists.” In the equivocation controversy, as it played itself out in courts of law and in polemical encounters, the consequences of the diacritics I am describing emerge in the form of an uncanny mirroring, each side reproducing (though without acknowledgement) the discourse of the self that was heatedly propounded by its opponent. Thus Jesuits, though willing to play at *parole*—the unfixed, arbitrary speech act—for the purposes of the English mission, insisted that conventional meanings, once constructed by historical polemics, imposed absolute limits on faithful confession of Catholic identity. Though they recognized the fluidity of the self and of identifying language, they insisted that both harden into fixity in the service of God. Official Anglicans, on the other hand, propounded an inviolate, even natural and prediscursive personal self only to extend the state’s coercive power into the secret recesses of identity formation; with this contradiction the Anglicans disrupted their foundational premise and placed it within the range of historical mutability.

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10. Terry Eagleton, “Text, Ideology, Realism,” in Edward W. Said, ed., *Literature and Society: Selected Papers from the English Institute*, n.s. 3 (Baltimore: Johns Hopkins University Press, 1978), 152-57. Portions of the prior three paragraphs appeared in substantially similar form in my article on another diacritics of heresy and orthodoxy in early modern England. See Janet E. Halley, “Heresy, Orthodoxy, and the Politics of Religious Discourse: The Case of the English Family of Love,” *Representations* 15 (1986): 98, 101-102, rpt. in Stephen Greenblatt, ed., *Representing the English Renaissance* (Berkeley: University of California Press, 1988), 303.

The echoes in this system arise from the fact that both Jesuits and Anglicans sought group-based control over individual identity formation. For Jesuits, this meant using the English mission to police the religious identity of English Catholics, insisting that the native Catholic population undertake public acknowledgments of Catholic identity designed to preserve the distinctiveness of the Catholic community even at the cost of life and property.<sup>11</sup> For the Anglican state, it meant imposing church membership on a population that was, at least in devotional matters, increasingly polymorphous, heterogeneous and unstable.<sup>12</sup>

The dialectics of equivocation thus *leave out* a social reality which neither side could completely capture: the vast proportion of native English Catholics who declined to assume the rigid identity urged upon them by the Jesuits, and who peopled the Anglican church with members willing to signify loyalty to the state and yet unwilling to engage in Anglican communion. These “church papists”—so called because they maintained a Catholic devotional life and yet cooperated with state demands by certain outward shows of conformity—subverted the programs imposed by both sides of the equivocation controversy, but did so in the service of a quietistic, conservative devotional life that posed no substantial threat to the almost imperial forces bearing down upon them from either side. Occupying the conjunctural territory between Jesuit and Anglican programs for their religious identity, church papists constituted a radically unstable discourse of identity, alternately captured by and capturing the discourses of self formulated by those who warred to define their historical meaning.

#### THE TEXT OF STATE

In the trials arising from the Gunpowder Plot, Attorney General Sir Edward Coke asserted a state policy that insisted upon referential clarity, and that branded all deviations from clarity as subversive. In the trial of Henry Garnet, the Superior of the Jesuits in England, Coke promoted equivocation to the first rank of the Order’s crimes, calling Garnet “a doctor of Jesuits, that is, a doctor of five DD’s, as dissimulation, deposing of princes, disposing of kingdoms, daunting and deterring of subjects, and destruction.”<sup>13</sup> And in the great trial of the Powder Men, where

11. John Bossy, *The English Catholic Community, 1570-1850* (New York: Oxford University Press, 1976), 108-130, provides a detailed history of this conflict between Jesuit missionaries and the Catholic gentry of England, and examines its effects on devotional practices, including going to church.

12. See Patrick Collinson, *The Elizabethan Puritan Movement* (Berkeley: University of California Press, 1967), esp. 14 and part 1, chapter 1, “The Church of England and the English Church,” 22-28; and “Towards a Broader Understanding of the Early Dissenting Tradition,” in C. Robert Cole and Michael E. Moody, eds., *The Dissenting Tradition: Essays for Leland H. Carlson* (Athens, Ohio: Ohio University Press, 1975), 3-38.

13. “The Trial of Henry Garnet, Superior of the Jesuits in England, at the Guildhall of London, for a High Treason, being a Conspirator in the Gunpowder Plot,” 28 March 1606, in T.B. Howell,



substantive issues of equivocation did not even arise, Coke repeatedly expressed the state's relationship to English Catholics in terms of a struggle to control discourse. The offenses he must prosecute, Coke declared, were "*sine nomine*," "without name": the highest treason was *crimen laesae majestatis*, but the accused aimed to destroy not only the King but the entire state, "even the *deletion* of our whole name and nation."<sup>14</sup> Coke implies in these passages that the state is a text, and that the great question is whether Catholic traitors will be allowed to erase it or the forces of justice will be able to continue composing it.

Coke's repeated prosecutorial encounters with the Jesuits thus appear to be an historical instance of dominant "ideology" insisting on closure and punitive constraint of meanings, opposed by a subversive "textuality," a force of linguistic mischief that constantly undoes the neat lexical controls of its oppressors. But by figuring the state as a text confronted with a linguistic menace, Coke suggests the paradox that renders this interaction a dynamic of mutually constitutive counterforces, for Coke's metaphor acknowledges that the state and its opponents are made of the same stuff.

The resulting dangers to the state program were apparent from the very outset of Coke's speech at the trial of Guy Fawkes and his accomplices, when he declared that he would make an unusually copious exposition of the case because the facts were so enormous as to escape language. He needs to talk for a long time because, he says, he must anticipate the court's inevitable question once he is done: "Quis haec posteris sic narrare poterit, ut facta non ficta esse videantur?" "Who will be able to narrate these things to posterity so that they will appear to be fact, not fiction?"<sup>15</sup>

Coke has set in motion a dangerous paradox. His Catholic opponents have so exceeded the limits of language that the state, which must ally itself with the abused medium, runs the risk that its proliferating speech will appear to be mere fiction, a tissue of language. Coke excoriates the offenders as the enemies of language but is unable to guarantee that the correcting linguistic practices of the state will remain purely reliable. Indeed, in expressing his hopes for the legibility of the text of state, Coke points to its dubious construction, for he desires only that the events of the Powder Treason will *appear to be fact* ("videantur"). The veracity of the text of state may be nothing more than an accomplishment of art, a trick of seeming, a successful fiction.

These dangers were graphically displayed at the treason trial of the

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ed., *State Trials*, vol. II (London: Longman, 1816), 234. Cited hereafter as "The Trial of Henry Garnet."

14. "The Gunpowder Trial," 167; emphasis mine.

15. "The Gunpowder Trial," 166. The translation is mine. Coke's own translation slightly obscures the crux of his Latin question: "That, when these things shall be related to posterity, they will be reputed matters feigned, not done."

Jesuit Robert Southwell. After repeated tortures at the hands of Topcliffe and prolonged imprisonment in the Tower, Southwell was finally brought to the bench as an accused traitor in 1595. He was charged with being an ordained priest within her Majesty's realm, an act which parliamentary statute 27 Eliz. I, cap. 2 had made treasonous. Southwell admitted all the facts alleged in his indictment, but asserted that the law was invalid as contrary to the law of God. One would expect this claim to precipitate the great conflict of the trial, but it did not. The jurisdictional question that was tearing Europe apart, the relative authority of crown and mitre, was displaced onto a passionate conflict over Southwell's powers of equivocation.

Topcliffe had finally managed to capture Southwell through the aid of Anne Belamy, a young woman of Catholic family whom he had arrested, raped, demoralized, and married off to one of his assistants. She not only informed this legendary pursuivant of Southwell's residence in her father's house, but also related that the Jesuit had told her that if she were ever asked, even under oath, "whether she hade seene a Priste or not, she might lawfully say not, though she had seen one, keepinge this meaning in her mynde, that she did not see any, with intent to bewray him."<sup>16</sup> After she had testified to this exchange Southwell was allowed his first opportunity to make an uninterrupted answer to his accusers. He made a lengthy and eloquent defense of equivocation, closing with a challenge to Coke to say that he would not adopt the practice himself if it were his only means of saving the Queen.

Although Southwell was required to remain silent throughout most of his trial, it is remarkable that the court finally permitted him to speak when he offered to defend the conditions under which his own speech could bear meaning. But what followed is even more striking. Coke was "moved in choler" and repeatedly called Southwell "boy-priest"; Lord Chief Justice Popham interrupted to declare that Southwell's doctrine would "supplant all Justice"; and Southwell finally responded that the doctrine supported justice by denying cooperation with unjust interlocutors:

. . . and as he was goinge forward to explaine his meanyge, he was continually interrupted, so as they would by no meanes permytte him to say any more. Then he desired them to beare with him, seyinge they would not suffer him to prove what he had sayde, allwayes denyinge that ever he hade sayd anie suche thinge, in such sorte, as they objected. Heare againe Topclyffe begaine to be earneste in most ralinge maner, as is alwayes usuall with him. . . . But he was some [soon] willed to surcease. And some thing concerninge the inditment only beinge said to the Jurye, they were sent into a house

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16. Janelle, *Robert Southwell the Writer*, 81.

aparte, to consulte of their verdicte.<sup>17</sup>

Southwell's will to defend the doctrine of equivocation set off a raucous shouting match. None of the key participants could restrain himself from interjecting, and yet no one saw to it that Southwell was kept to the painfully abbreviated speech he had been allowed theretofore. Both Southwell and Coke permitted the topic of equivocation to provoke an explosion of talking, each man vying for the chance to "explaine his meanyge." The Jesuit was not allowed to speak publicly at any length again: soon the jury returned with a verdict of guilty, and Southwell was relegated to the theatre of martyrdom and his brilliant management of the spectacle of a godly death.

The officials in this scene had several reasons for finding equivocation particularly threatening. Topcliffe rejoiced to expose a practice which undermined his crude but effective intelligence-gathering; Popham expressed his alarm that the doctrine would disable the courts by rendering oaths inscrutable; and Coke undertook to resist the doctrine's denial of the sovereignty, religious and temporal, of the English Crown. Despite their unity in alarm, however, these three officials urged dissimilar responses to Southwell, interrupted each other as well as their defendant, and momentarily lost control over the orderly exposition of the text of state. Their unseemly scramble with Southwell and one another for the floor suggests that underlying the challenge to the political structure brought by the Jesuits' doctrine was a bid for the control of language and the social production of meaning—a bid which Topcliffe, Popham and Coke intended to defeat. But the mere presence of a Jesuit reserving the power to equivocate, even as it precipitated the oppositional strategy of state insistence on univocal expression, seems to have subverted the very clarity and order which Coke would attribute to orthodox discourse.

#### THE DIACRITICS OF THE POLEMICAL ENCOUNTER

The chief pugilists in the polemical controversy over equivocation were Thomas Morton, who served the English Church and Crown first as Dean of Gloucester and then as Bishop of Durham, and Robert Parsons, an English Jesuit who worked largely from the continent as a mastermind and controversialist for the English mission. Their polemics represent an implacable disagreement about what language is, about what constitutes an audience, and about what kind of self is created in the activity of discourse. It deceptively suggests that their models of discourse are mutually exclusive.

Parsons insisted that internal speech was not only possible but legally permissible. Morton insisted that speech always occurred in the public

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17. *Ibid.*, 82. Brackets and ellipses are retained from Janelle's text; italics indicating expanded contractions are not.

arena governed by law, and for that reason, it must be plainly referential. Within these apparently coherent linguistic and political programs appear a number of striking contradictions which suggest that referentiality and identity were, in fact, more problematic than either side could afford to admit.

### *The Jesuits*

In establishing the moral justification for all four sorts of equivocation, the Jesuit propounders of this theory relied on the argument that part of a true statement could be made, silently, by a speaker to him- or herself.<sup>18</sup> Following Aristotle, they divided propositions into four kinds—vocal, written, mental, and mixed—each of which could be true or false. Anyone with a truth to express could express it in any of these modes: he could speak it, write it, frame it in a mental proposition, or mix any of these three. A statement was no less a statement if half of it was spoken and half written—or if half was spoken aloud and half spoken silently. And so a mental reservation did not entail an untruth. It merely complicated the manner in which the truth was expressed.<sup>19</sup>

The whole defense of mental reservation therefore rests on the assertion that a mental statement could be logically equivalent to a vocal one which it completes. That assertion, in turn, depends on a representational theory described by Parsons:

[A]ccording to *Aristotle*, as the externall writing representeth vnto vs a mans speach, so the externall speach representeth vnto vs the internall speach, affection, or asseueration of the mind. Wherefore of this there can be no controuersy but that there is a true internall speach of the mind . . . .<sup>20</sup>

For Parsons, writing represents speech just as speech represents the mental proposition. Internal speech is absorbed into the scheme of referents, becoming a signifier and so introducing the complexity of representation into the mind.

Parsons' notion of internal speech appears to open up a space for private discourse that Morton would firmly close.<sup>21</sup> Parsons asserts that the

18. Though Anne Belamy was doubtless not the only woman who was expected to protect the Catholic community by equivocal speech, the texts examined in this section occlude the participation of women in the struggle to define orthodoxy and heresy. This absence should not be taken to be referential. Indeed, the roles of Catholic women were so complex and crucial that, according to Bossy, the Catholic community owed its persistence to what he terms a matriarchy. Bossy, *The English Catholic Community*, 150-60.

19. *Treatise of Equivocation*, 12-13.

20. Robert Parsons, *A Treatise tending to mitigation towardes Catholicke-Subiectes in England* (1607), 325-26 (cited hereafter as *Mitigation*). Parsons' text answers an attack on equivocation made by Thomas Morton in his lengthy *A fyll satisfaction concerning a dooble romish iniquitie; hainous rebellion, and more then heathenish aequivocation* (London, 1606). Morton, in his turn, was responding to the manuscript *Treatise of Equivocation*.

21. The discussion of privacy that follows draws on the argument that underlies Barrington

Aristotelian term “enunciative” describes not statements which may be heard by an audience but rather statements which affirm or deny. “Hence then appeareth,” he concludes, “that it dependeth not of the hearer to make the speech *enuntiativae*, or not, but it is sufficient that it be so of it selfe, and of his own nature.”<sup>22</sup> The Jesuit theory of equivocation constructs the self as a discursive world sufficient unto itself, encompassing both sign and signified within the mind and flatly excluding any necessity for social intercourse.

Jesuit proponents of equivocation defended the realm of discursive privacy which they created by invoking a Catholic’s personal right and capacity to determine the jurisdictional validity of any question put to him or her. The manuscript *Treatise of Equivocation* observes that the “order of law” requires that one must “answer directly” only when the inquisitor exhibits every condition of legitimate authority. To summarize, those conditions require that the inquisitor:

- 1) be a lawful superior, whose authority rests on a valid commission of power from the monarch or the commonwealth (a notion of the legally constrained devolution of legal authority);
- 2) have “authority over the p[er]son whome he examineth” (a notion of personal jurisdiction);
- 3) restrain his inquiries to matters within his competence (a notion of subject matter jurisdiction);
- 4) proceed according to a just law, because “a judge in the execution of an vniust law is no judge” (a notion of natural law limits to the legitimacy of positive law); and
- 5) proceed only “in cases which are publicke and manifest, or whan great suspitions and p[re]sumptions, or commoun reportes, do seeme to condemne the partye, or sufficient testimony to convince hym” (a notion of probable cause).<sup>23</sup>

Only when these conditions are not met is the respondent free to equivocate. Particularly if the form of equivocation he chooses is mental reservation, his course of action seems to suggest that he assumes a mantle of inviolable privacy and withdraws briefly from the social interaction. Thus Parsons instructs that, when these conditions are not met, “then [the Catholic] may answere, as though he were alone, and no man by[.]”<sup>24</sup>

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Moore, Jr., *Privacy: Studies in Social and Cultural History* (Armonk, New York: M.E. Sharpe, 1984). Moore contends that the contours of personal privacy drawn by any culture are coterminous with the contours of the personal right to freedom from legal interference and thus outline the structure of the legal system. The present study differs in methodology and subject from Moore’s, focusing on a conflict over privacy and the reach of the law, and suggesting that, wherever such conflict exists, it may be impossible to extract a single structure of privacy or of the personal identity that depends on it.

22. *Mitigation*, 330.

23. *Treatise of Equivocation*, 68-69.

24. *Mitigation*, 342.

But a case of conscience composed to train priests preparing for the English mission demonstrates that an equivocator's reply does not merely construct a shell of privacy, but rather constitutes privacy as *a social and legal relationship between the Catholic and his inquisitor*. The case involves a priest with the given name of Peter, confronted with a judge without legitimate jurisdiction who nevertheless demanded to know whether he were named Peter. In this circumstance the priest was free to answer "No":

The interrogation of a judge, by its very nature, means this: "According to the power I have and the jurisdiction I have in this case, I ask you to confess to me as your superior whether you are Peter." Wherefore, if he is not a legitimate judge, my reply is to a man, not a judge; and so, by denying that I was ever called by that name, I do not simply deny that I was ever called by that name, but *I deny that I am " . . . Peter who is bound to reply to you as to a judge endowed with the sort of power and jurisdiction which you have."*<sup>25</sup>

This answer defines speaker and audience diacritically. The inquisitor ceases to be a judge when he assumes a legally deficient relationship vis à vis the speaker, though he remains a present, public audience throughout the interaction. The justification of equivocation therefore turns on the shifting, socially contingent identity of the speaker. The priest, who might in another social setting "be" Peter, is not Peter when claiming that name would render him "Peter-who-owes-a-duty-of-responding-to-this-judge." Even when he frames a large chunk of his answer as a silent self-address, the priest defines himself in terms of the legal relationship he bears to his interlocutor.

The representation admitted into Parsons' scheme of the self is, as he himself acknowledged elsewhere, a highly unstable thing. Several years before the equivocation controversy, Parsons argued to English Catholics that they must violate the English law requiring their attendance at Anglican church services.<sup>26</sup> The fact that Catholics had been jailed for refusing to go to church, Parsons argued,

doth make this abstaining from Church, to be a proper & peculiar signe of a true Catholike, now, if it were not before; and the yeelding in the same (especially if a man be called to publicke triall about it) to be a flatte and eident denying of God, and of his faith. For what doth make a thing to bee a proper and peculiar signe, but the iudgement and opinion of men? The bush of the Tauerne, is a signe of

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25. In P.J. Holmes, ed., *Elizabethan Casuistry*, Catholic Record Society, Records Series, vol. 67 (1981), 64 (emphasis added). Holmes has translated from the Latin all material except that in quotations, which the manuscript gives in English.

26. 23 Eliz. I, cap. 1 (1559). Subsequent enactments imposed increasingly harsh penalties and defined additional substantive offenses. See Williams, "English Catholicism under Charles II: the Legal Position," 125-27.

wine, because men commonly take it so.<sup>27</sup>

The meaning of a sign, Parsons recognizes, is an historically contingent product of social interaction. If no Catholics had refused to go to church, or if the state had failed to adopt a statute requiring their presence there, then refusing to go to church would not have become a sign of Catholic identity.

This passage is useful not only because it suggests the continuity of a Jesuit understanding that language is conventional, but also because it reminds us that the priest named Peter is engaged not merely in a self-protective ruse but in a struggle for the authority to adjudicate the proper relations of crown and mitre. Parsons' volley in the controversy was part of a Jesuit insistence that English Catholics acquire a fixed public identity as Catholics by their refusal to go to church—by their “recusance” from the Anglican church.

When Parsons opined that language was purely conventional, he was arguing not that Catholics could make the act of going to church mean whatever they liked, but that historical conditions had made the act of going to church “mean” the actor's Protestantism and thus, for a Catholic, his apostasy. What is not apparent from Parsons' exposition of this dialectic is his own role, as polemicist, in hardening it, in attempting to fix the boundaries of Catholic identity and to impose those boundaries on English Catholics. Parsons' argument represents precisely what lay Catholics most resented about the Jesuits—their effort to dictate terms of martyrdom to devout believers who wished to find a middle way. In this propaganda effort, as again later in the dispute over the Oath of Allegiance, Parsons and his fellow Jesuits exhibit a highly acute awareness of meaning as an everchanging product of cultural interactions, and thus seem to justify Morton's attacks on them as subverters of the natural and stable reference of signs in the political sphere. But at the same time the Jesuits display a willingness to constrain Catholics to the single meaning which their semiology inflexibly assigns to the act in question. And they establish a kinship with Morton and Coke not only in this method, but also in their enforcement of a meaning created by the state.

### *The Anglican State*

The Anglican state established an ideology of truth, sincerity and personal identity that differs, apparently diametrically, from that of the Jesuits. But the ideological simplicity of the official program is undercut by contradictions that reveal it to be a constitutive move in a struggle for control over the definition of religious identity.

Morton established the official attack on Parsons' assertion that

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27. Robert Parsons, *A briefe discovrse containing certaine reasons, why Catholikes refuse to goe to church*, sig. C9v-C10r. (Douai, 1601). The first edition of this tract was published in 1580.

thoughts are signifiers: "But no mentall or inward conceit of the minde is ordeined of God as a signe to expresse or signifie (as words and writings doe) but as a *thing signified* hath need to be expressed and expounded."<sup>28</sup> Morton insists that mental propositions are simple *things in themselves*, to be distinguished from the speech and writing that represent them, either faithfully or falsely. To represent faithfully is to rely on the intrinsic and immutable signification of linguistic signs, what Morton in another place calls "the naturall propertie of the words themselues."<sup>29</sup>

Morton's image of the speaking and self-describing self is equally unitary. Underlying the self is a stable, constant conscience against which the truth and falsehood of self-referential speech and writing can be tested. "*Mens non potest non intelligere quod intelligit*: The mind cannot possibly but thinke that which it thinketh," and it cannot think both that one is and that one is not a priest. "[T]ruth and falsity doth consist only in the conformity or contrareity of the signification of the words, and direct intention of the mind . . . ."<sup>30</sup>

Unlike Parsons, whose theory of the equivocating self expressly recognizes privacy to be a public construct, Morton's attack on the concept of internal speech is predicated on the illusion that personal privacy is inviolable.

Now because there is no man of sound braines, but he knoweth before he speake, what his tongue vttereth, there can be no neede that by speech he should interpret his owne meaning to himselfe, no more then a man may be properly said to steale his owne goods, or commit adultery with his owne wife: because both these are actions *ad extra*, that is, without a man, and haue relation to others then to our selues.<sup>31</sup>

This assertion delineates the two familiar spheres of private and of public life: the former is the equivalent of a man's "self," while the latter places him in relation to others. Within the private sphere—that is, within the boundaries of the self—Morton includes a man's wife, his possessions, and his own meanings. Whatever goes on there, Morton claims, escapes legal control. In the public sphere occur legally cognizable actions: adultery (with another man's wife), theft (of another man's goods), and speech (to another man as audience).

Representing the self as a bounded, coherent internal space auto-

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28. Thomas Morton, *A fyll satisfaction concerning a dooble romish iniquitie; hainous rebellion, and more then heathenish aequiucation* (London, 1606), 56; emphasis mine (cited hereafter as *A fyll satisfaction*). In the copy I consulted of this work, at the Henry E. Huntington Library in Pasadena, California, pagination commences at page 1 three times. All page cites are from the first sequence except those marked with an asterisk, which are from the third sequence.

29. Thomas Morton, *The encovnter against M. Parsons, by a review of his last Sober Reckoning, and his exceptions vrged in the Treatise of Mitigation* (London, 1610), 128.

30. Morton, *A fyll satisfaction*, 52-53\*.

31. *Ibid.*, 69\*.



mous of legal sanction, Morton wittily argues that any person who could silently address himself would also be able thereby to deceive himself: "This were to distract a man from himself. Therefore this *naturall reason* taken from the *speech of man with himselfe*, might best befit a pure naturall, or some person distracted; namely, such a one as being beside himselfe can best talke with himselfe."<sup>32</sup> Rejecting the doubling and representational slippage that he finds in the Jesuit model of the self, Morton proposes a form of personal identity that is neatly unitary.

As against this encapsulated self, Morton posits speech as an activity always undertaken within a public realm explicitly governed by law and by the sovereign's power to interdict. All representation, whether by spoken or written signs, is thrown into an arena that lies within the legitimate power of the sovereign and her agents. It was as one such agent that Morton beckoned: "*Loquere . . . vt te videam*: Speake . . . my friend that I may see thee."<sup>33</sup> The distribution of action in this sentence is highly instructive. The speaker's role is simply to speak; it remains for the listener to determine, on the basis of what he hears, *who* has spoken. Particularly in a political struggle that turns on personal identity, the listener's ability to transform *language heard* into a *person seen* tips a discursive balance of power strongly in favor of the interpreter.

In the audience relation which Morton seeks to establish, an epistemological increment, from aural to ocular proof, accrues to an interpreter who aims not to comprehend some external referent of the speaker's works, but rather to know the speaker's personal identity. For all its appealing familiarity ("Speake, friend . . ."), Morton's voice commands open and public speech, requires its own pivotal role as audience, and insists that the purpose of this social discourse is the listener's power to fix promptly and accurately the speaker's identity in all its unitary neatness. In opposition to the discursive privacy apparently advanced by the Jesuits, Morton constructs a thoroughly political world of speech.

We might call this invention a theory of jurisdiction, and note that it allows the exercise of state power to coerce speech, to create the lexicons according to which it will be interpreted, and to privilege or punish speakers on the basis of their utterances as interpreted by the state. Morton's argument would leave to the private discretion of English citizens, however, the cultivation of their own thoughts. Like the statutes themselves, his formulation draws a boundary to the state's jurisdictional reach at the perimeter of the private self.

It is precisely here, however, that the analogy Morton offers—between the private worlds of marriage, personal possession of property, and private thought—returns and ominously suggests its closure. For it sug-

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32. *Ibid.*

33. *Ibid.*

gests not merely that the contours of personal devotional privacy are drawn by the state as it withholds its powers from that domain, but more strikingly that the state creates the legal content of a privacy that is only ostensibly autonomous of it. The self that Morton constructs, after all, is no intrapsychic isolate. It comprises all persons (e.g., wives) and things (e.g., personal property) with which the law itself endows individuals, whether through the legal status of marriage or the legal recognition of property rights. For all its apparent simplicity and coherence, it is an exceedingly complex set of intrapersonal and material relationships, all of which take the shape they do through the action of legal enforcement.

Perhaps the crudest example of this creation-as-invasion of personal privacy appears in the record of a 1613 proceeding against Catholic grand jurors in Castle Chamber, Dublin. The defendants had refused to pronounce a true bill against certain recusants. When questioned about their grand jury service, they related that "when they tooke that generall oathe [to fulfill the duties of grand jurors], they had a speciall reservacion or exception in their mindes of all such thinges as should touch their conscience or religion."<sup>34</sup> Charged with perjury, they placed in issue the state's power to construct their private intentions by denying that they bore any intention to deceive. In this they followed Parsons, who gave as the equivocator's reasoning:

. . . it is euident that my intention is not to deceaue in this proposi-  
tio[n], but to defend my selfe against the captious, and iniurious  
demandes of an vnlawfull Iudge, I speaking a truth in it selfe  
according to my meaning, though he taking it otherwise is deceaued  
therby, but without any fault of mine.<sup>35</sup>

Against this private assertion of privately held meaning, the Dublin court exercised a power not merely to infer from the facts as shown an intention to deceive, but to hold that such an intention is an inescapable element of any act of mental reservation.

And this secrett addicion and reservacion, say they, doth clearly  
acquitt him that useth it from liing and falshoode, though that  
which is expressed bee mearely false, and that which is concealed  
bee reserved in his minde with a purpose to deceave him to whome  
hee speaketh.

But the contrary was clearely resolved: *videlicet*, that an untruthe  
uttered with a purpose to deceave is a lie, notwithstanding any  
secret reservation or limitacion in the mind of him which doth utter  
it.<sup>36</sup>

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34. "Castle Chamber Case of Concealment," 246.

35. *Mitigation*, 346.

36. "Castle Chamber Case of Concealment," 252. This passage appears in Davies' marginal annotations. *Id.*, 255 n.1.

The official interpreter induces from his own deception the fact that the Catholic speakers have lied: he then deduces, from the principle that all lies involve an intention to deceive, the fact that the speakers harbored such an intention. The grand jurors' private understanding of the particular intention in question, or of the structure of the privacy in which that act of intention took place, finds no place in the official analysis. The totality with which this program appropriates the very sphere of private meaning which it has created is indicated in a prescription adopted both by Morton and by the court of Castle Chamber:

To know in what sense of words we must *take* any oath, the doctrine of Isidore is infallible: *Though man vse neuer so great art and cunning in swearing, yet God doth value the oath according to the sense of him, to whom the oath is made.*<sup>37</sup>

Divine omniscience is understood to take the side of the audience, rendering its interpretation definitive, and obliterating the very privacy upon which the Anglican discursive program rests.

#### THE CHURCH PAPISTS

As the Jesuits and the Anglican state battled to control the discourse of religious identity, the very population whose identity was most at stake fell silent. Lay Catholics in England recused themselves from attendance at Anglican services with great reluctance; as the historian Caroline M. Hibbard has noted, "[w]e know from numerous studies that the decision to cease attending parish services came painfully to many laymen, and might be reached only after years, even decades, of wavering."<sup>38</sup> Until a crisis in which a church papist either abandoned his or her Catholic identity or was forced by the state into flagrant disobedience of anti-Catholic statutes, he or she strategized persistently to remain incorporated within Catholic *and* Anglican discourses of religious identity. Though the crises of apostasy and of persecuted resistance have an inevitable glamor, church papists made their discursive contribution to the dialectics of religious identity by their wavering.

As the Anglican discursive program grappled with the one developed in response to it by the Jesuits, each side displayed the contradictions of its opponent, a process that Eagleton describes as incorporation.<sup>39</sup> But because they played a deeply equivocal role in these diacritics, the church papists require us to take Eagleton's concept of incorporation still further. Lay Catholics in England persisted in attending church despite Jesuit insistence that they refrain, and persisted in using Catholic rites at

37. Morton, *A full satisfaction*, 86-87 (quoting Isidore, *De summo bono*, Book 2). See also "Castle Chamber Case of Concealment," 253 (also quoting this passage of Isidore).

38. Caroline M. Hibbard, "Early Stuart Catholicism: Revisions and Re-Revisions," *Journal of Modern History* 52(1) (1980): 17.

39. See footnote 10 and accompanying text above.

home despite the difficulties in finding a priest and keeping him safe. They baptised their children twice, accepted marriage at church, and strategized for burial in the hallowed ground of local churchyards even if they could have it only by force or stealth.<sup>40</sup>

However, it would be a mistake to think that the church papists' exploitation of the instability of these cultural practices justifies a conclusion that they were embarked upon a program of subversion. Their very ability to pursue a wavering course probably rested on their firm embeddedness in local power arrangements. Unless a lay Catholic had the bad luck to live in a county alight with anti-Catholic enthusiasm or to become caught up in the identity wars, he or she most likely engaged in "a long tradition of civility and tacit understanding between Protestant and Catholic," often marked by "private arrangements" and broken only occasionally by incidents of enforcement which, upon investigation, "usually turn up the familiar motives for local feuding—personality, property, and prestige."<sup>41</sup> And, as Bossy recognizes, attendance at church may not always have been an unwilling act of compliance with the penal law:

[Catholic gentry] felt in their bones that differences of religious practice were extremely bad for the social order and political stability; that since at least the middle of the [sixteenth] century forces had been at work towards the lower end of the English social scale which were threatening to bring in an anarchic congregationalism. . . . In these circumstances, to cease to attend one's parish church must appear, to oneself and to neighbours whose opinions one respected, a grave dereliction of social duty and a shocking example to sectaries and separatists.<sup>42</sup>

On the one hand, therefore, the church papists' discourses of religious identity are rifted with practices of textuality that, notwithstanding any facile equation of textuality with subversion, are bare of deconstructive power. But in their daily life church papists simultaneously challenged the key assumption of both Anglican and Jesuit participants in the equivocation controversy: that they had the power to define what and who a Catholic was.

The historiographical difficulties posed by this challenge make the most concise description of it. The assimilation of the church papists within the Anglican nation convinced one historian, John Bossy, that the state succeeded in extinguishing the Catholic community;<sup>43</sup> he con-

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40. Hibbard, "Early Stuart Catholicism," 18.

41. *Ibid.*, 4; see also Elliot Rose, *Cases of Conscience: Alternatives Open to Recusants and Puritans under Elizabeth I and James I* (London and New York: Cambridge University Press, 1975), 11-113.

42. Bossy, *The English Catholic Community*, 124.

43. *Ibid.*, 108-130.

cluded, “[t]he history of Elizabethan Catholicism is a progress from inertia to inertia in three generations.”<sup>44</sup> But J.C.H. Aveling drew the opposite conclusion, noting instead the covert survival of church papist families: “It was the Church-papists who saved the Catholic community.”<sup>45</sup> Bossy’s and Aveling’s divergent assessments reproduce in historiography precisely the struggle to define *what a Catholic was* that preoccupied Morton and Parsons, and call for an awareness of the discursive constitution of the very group identities upon which historical conclusions might be based: “The problem,” Hibbard demonstrates, “is whether to accept the Roman definition of ‘Catholic’ . . . or to admit some validity to the English community’s self-definition, which drew the line not at [church] attendance, but at communion.”<sup>46</sup>

Under these circumstances the historiographical practice of quantifying those bearing an English Catholic identity signals the resurgence of precisely the moral debate that split Jesuits and lay Catholics: whether Catholics were obligated to dismantle, or merely to survive, the Anglican Settlement. Most English Catholics—unless and until they found themselves forced to take a rigid position resisting the state—engaged in a constantly adaptive and even opportunistic strategy of passive resistance. So engaged, they belied both Morton and Parsons; their adventitious combination of signifying practices defeated Morton’s insistence on a univocal discourse of religious identity even as it complied with the letter of the law; and their diffident response to Jesuit pressure to assume a rigid and transparent Catholic identity decentered the mission and established a set of practices even more complexly internal than those underpinning the practices of equivocation and mental reservation.

Clearly the cost of this strategy was that lay Catholics lost access to the public discourse about their own identity, instead becoming the bearers of others’ meanings. To this extent, they were complicitous with the discourse that oppressed them. But they did not and indeed could not retreat into a privacy remote from that public discourse. Their very refusal to disobey English statutes requiring their attendance at church disauthorized Jesuit efforts to control the definition of an English Catholic at the same time that it destabilized the claimed univocality of the Anglican communion. Both conservative and highly opportunistic in their signifying practices, both concessive and resistant in their engage-

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44. Bossy, “The Character of Elizabethan Catholicism,” *Past and Present* 21 (1962): 39-57.

45. J.C.H. Aveling, *The Handle and the Axe: The Catholic Recusants in England from Reformation to Emancipation* (London: Blond and Briggs, 1976), 162.

46. Hibbard, “Early Stuart Catholicism,” 17 n.45; see also *id.*, 15-17. See also A.D. Wright, “Catholic History, North and South,” *Northern History* 14 (1978): 126, 127 (“The fluctuations not only in the application of the penal laws but in the tests by which those laws defined recusancy are surely the reason why confirmedly conscious Catholics cannot be separated . . . from the penumbra of recusants. The only distinction which can be made, arguably, is from case to case, from time to time, from area to area, depending on the terms of proscription in force as much as on the level of application or efficiency of detection in the enforcement of the penal laws.”).

ment with the problems of Catholic identity, the so-called church papists incorporated the contradictions of a diacritical discourse of the self within their own silent opacity.