

Introduction: censorship versus slander

This book advances the argument that slander provides a model crucial for the analysis of power relations between poets and state¹ in early modern England, and by extension that the concept of censorship, currently employed by critics of early modern English literature to discuss these relations, serves rather to limit and distort our understanding. In recent years, critical interest in power in the early modern period has taken up the question of the nature and extent of control the state was able to exercise over literary expression, as well as explored the capacity for resistance or challenge that literature could pose to political authority. These discussions have for the most part assumed or explicitly articulated a paradigm of censorship as the appropriate context for analyzing power relations between the poet and the state. However, the use of censorship, particularly of the drama, as an analytic focus poses a few problems. The term is often employed anachronistically in presupposing a hierarchical exercise of power only possible for a centralized state bureaucracy and thus inapplicable to early modern England. Typically, the narrow focus on regulatory mechanisms and topical content employed by scholars of censorship prevents our understanding how the control of literary production was shaped by, and shaped, larger socio-political concern in the period over the control of language in general. While discussions of censorship in the past decade made some valuable contributions to our understanding of early modern English texts, they virtually ignored the significance of defamation, a critical concern that fueled official attempts in England to control a whole range of discourses from the Reformation forward. That defamation posed a serious problem for the individual at all levels of early modern society suggests that we need to situate our examination of state control of poetry within this larger context of language that transgresses the law.

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The dramatic rise in defamation in sixteenth-century England seems to take the common law establishment by surprise, judging from the inconsistent and sometimes contradictory redresses that develop in response to the phenomenon.² In addition to the definitional problems the law had in responding to slander, there are also linguistic and material obstacles to the effective control of transgressive language. It is impossible to control what people say and how this will be interpreted. The regular and wide-ranging circulation of libels, ballads, epigrams and other forms of defamatory speech or writing in early modern England testifies to the state's impotence in the suppression of criticism. Further, the state's own employment of a range of defamatory practices to control, humiliate or demonize its populace and its enemies implicates it in the very transgressions it ostensibly seeks to silence. By taking defamation as our model, we are able to see the places in which the state was not able to control transgressive language rather than focusing on those moments, as the censorship model does, where it was. While defining a legitimate means of official response to transgressive language, censorship is nevertheless a sub-category of the laws and responses to defamation; as a focus, it assumes a very restricted legal, social and political role for literature. When we understand, as contemporaries did, censorship and literature itself in their larger cultural contexts, we can see their participation in the processes of defamatory discourse. In so doing, we can substitute the repressive model censorship offers with a more complex and contestatory account of the operation of power with regards to language which accords a measure of agency and resistance less available in analyses of censorship.

An examination of the limitations of the censorship model is necessary before we can understand the centrality of defamation for power relations between poets and the state. Annabel Patterson's influential *Censorship and Interpretation* advances an argument for reading relations between rulers and poets within a historical-political framework. However, the lens through which Patterson chooses to view her subject distorts her analysis; while acknowledging that language poses real political problems in sixteenth- and seventeenth-century England, she dilutes the historical specificity of her claims in presenting a transhistorical notion of censorship:

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I hope to show where this study might fit into a much larger investigation, not only of censorship throughout Europe in the early modern period, but also of the cultural impact of censorship since then, in Eastern Europe, for example, or Latin America. In addition, my central thesis, that it is to censorship that we in part owe our very concept of “literature,” as a kind of discourse with rules of its own, is obviously capable, if true, of great extension; not least because its acceptance might require a review of that other set of unexamined assumptions, about the freedom of the literary, or the critical, or the textual from historical concerns. (Patterson 1984: 3–4)

This claim suggests that all authors in all periods in all countries respond to all political control of writing in a similar manner. While this move insists on the political nature of poetry formation, and rightly calls for an exploration of how society understands and shapes the literary, it undermines rather than establishes a connection between poetry and “historical concerns.” Poetry indeed intersects with the political, but this relationship is in flux; while something may be gained by sketching out transhistorical patterns in the poetical–political relationship, its social significance can be better understood by attempting to discern the dynamic as it manifests itself at discrete historical moments.

Patterson’s account of censorship not only assumes that its operation is the same across time but also that it does not require definition. Her real interests lie in the hermeneutics, not the mechanisms, of censorship; by concentrating on what are essentially its literary aspects she replicates the theoretical position her book argues against by ignoring the social and material aspects of the problem.

My own approach to censorship focuses only occasionally on law and the formal institutions and mechanisms whereby the press, or the pulpit, or the theatrical companies were theoretically made subject to state control. The legal history of censorship in relationship to all aspects of the printing trade has been well covered by F. S. Siebert, among others. (Patterson 1984: 10)

While Siebert acknowledges some connection between the regulation of the press and libel law, his narrow handling of the subject distorts legal history and offers an absurdly totalitarian view of Stuart censorship.³ More problematic for Patterson, though, is the suggestion that an examination of censorship does not need to consider seriously the material, legal and social aspects of the process. While she does acknowledge that “there were certain moments in [the history of

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ensorship] when the law was forced to take particular cognizance of problems of interpretation” (Patterson 1984: 10) she intimates that this process is episodic. This assumption prevents her from viewing the issue as part of a continuum in which the control of texts at any given point in history is situated in relation to larger social anxieties about the control of language.

While Patterson’s definition of censorship remains implicit, she is quite explicit in her discussion of its effects on interpretation. She sees the production of literary texts in early modern society as “essentially a joint project, a cultural bargain between writers and political leaders”:

It is a central part of my project to show how the historical condition of an era of censorship united writers and readers in a common interest as to how interpretation in fact worked, how it could be carried out in any given sociopolitical situation, how the interaction between writers and readers could be formulated in ways that were intelligible (in law) and useful (in politics). (Patterson 1984: 7)

According to Patterson, the uncertainty of language created a safety-valve of ambiguity which both sides were usually happy with.

For what we find everywhere apparent and widely understood, from the middle of the sixteenth century in England, is a system of communication in which ambiguity becomes a creative and necessary instrument, a social and cultural force of considerable consequence. (Patterson 1984: 10–11)

While this “joint project” might be imagined as a means of criticizing policies of the state, the argument’s logic suggests that the potential for challenging the status quo is limited, since poets must, in effect, obtain official approval for their words. In spite of what I take to be Patterson’s interest in showing the liberty that ambiguity allowed to authors, the structure of her model suggests that the state defines what can be written or spoken and the poet, more or less, acquiesces.⁴

Unlike Patterson’s *Censorship and Interpretation*, which fully develops a theory of the hermeneutics that evolves out of censorship while ignoring the mechanisms of that control, Janet Clare’s *Art Made Tongue-tied by Authority* attends explicitly to the process of dramatic censorship and rigorously documents specific cases of official alteration of or intervention in the text or performance of plays. However, in spite of the book’s meticulous scholarship, attempts to reconstruct and analyze the logic of the censoring process remain speculative

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because in many cases the evidence, the material cut from a play, is lost. In further contrast to Patterson, Clare's conclusion denies even the measure of theoretical autonomy and self-consciousness that the former accords early modern writers:

It is frequently acknowledged that censorship gives birth to metaphors which thrive on ambiguity . . . Arguably, such ambiguity can enrich a play and censorship can actually mould style and composition to positive effect. Yet in its incursions against freedom of expression and in its distortion of the text, censorship has pernicious results . . . all the plays of our period were written in the shadow of the censor and . . . no dramatist could unchain his thoughts from the agent of that most arbitrary and punitive instrument of state control. (Clare 1990: 214–15)

Clare assumes an all-powerful mechanism of state censorship which succeeds not only in controlling the written products of dramatists, but also their unspoken thoughts.

In *Mastering the Revels*, Richard Dutton makes a valuable contribution to the representations of power relations between poet and the state as sketched out in the two earlier works. He demonstrates convincingly that the conflicting factions at court obviated the application of any consistent principle of censorship to or control of dramatic texts. However, his conclusions are surprisingly reminiscent of Patterson:

The basic contention of this book is that the whole system of a factional court, supported by a complex inter-weaving of patronage, conspired in most circumstances to "allow" a wide range of comment on contemporary affairs, so long as this was properly licensed, suitably veiled and not slanted with offensive particularity at a powerful constituency. (Dutton 1991: 178)

Here too poetic resistance seems to be precluded by the assumption of compliance with the, albeit fragmented, will of the court. While Dutton convincingly demonstrates the permeability and instability of monarchic and aristocratic power, he nevertheless uses censorship, defined as a "form of repression" (Dutton 1991: ix), as the context for his discussion of poet–state relations.

Although Richard Burt's *Licensed by Authority* extends the excellent insights of Dutton's work in demonstrating the fluidity of power relations between poets and censors, he breaks sharply with all previous accounts of censorship which anachronistically situate the censoring function solely within the state. According to his argument,

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Censorship . . . pervaded early Stuart theatrical culture: it was practiced and nurtured not only by the court but also by playwrights, theatrical entrepreneurs, printers, poets, courtiers, and critics. Thus, the broad questions critics have regularly asked about the theater – Who was for or against censorship? Was this text oppositional or orthodox? – simply do not make sense. Though some dramatists defended “liberty of speech,” that liberty always entailed some form of censorship. Dramatists and patrons did not group themselves in opposition to censorship, or in favor of it. Rather, they debated who should censor and who have liberty, for what ends and on what grounds, and their struggle was registered in a contest over the meanings of the words *liberty* and *censorship* themselves. (Burt 1993: x–xi)

Burt argues that the early modern concept of censorship was not understood as the exclusive right of the state, and that the poet-critic, as epitomized by Ben Jonson, while subject to censorship, could also perform the censor’s critical function, or even be in line to serve as Master of the Revels himself.

In spite of the different foci organizing these analyses of censorship, they all share a blind spot. Implicit in each of these works is the understanding that censorship is connected in some way to defamation, but the structure, process and significance of infamy remain unexplored.⁵ Patterson sees William Prynne’s 1633 trial for seditious libel as a “paradigmatic case . . . and extraordinarily relevant to the questions this book poses, about how the state functioned as a ‘reader’ of texts, about the role and status of ambiguity in the reading process” (Patterson 1984: 10). However, Prynne’s case is also atypical, in Patterson’s view, in that in coming to trial it represents “an exceptional failure, a dramatic breakdown of the normal methods of dealing with those problems” (Patterson 1984: 10). In assuming that the legal concerns raised by transgressive discourse are only expressed exceptionally in prosecution, Patterson fails to consider the body of law developed around defamation and its significance for shaping larger cultural expectations about what can and cannot be said or written. While Clare attempts to present a contemporary definition of libel, “the concept of public libel carried the thrust of sedition and destabilisation as well as slander,” she incorrectly suggests that the legal scope of defamation is articulated by royal proclamation (Clare 1990: 61). Although she asserts that “this dual aspect of libel . . . became the focus of censorship, dramatic and non-dramatic,” so that, in effect, defamation is the primary force shaping official regulation of

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texts, she fails to consider the ecclesiastical, statute, criminal, and common law definitions of and redresses for defamation (Clare 1990: 61). Without a fuller account of libel and slander, it is impossible to understand their significance for the process of censorship.

Dutton, on the other hand, does not explicitly acknowledge that censorship is tied to the structure of defamation. However, in the course of his analysis he does repeatedly reveal connections between the two. In a telling example, he cites a 1551 proclamation as “the first definite attempt to institute a formal system of licensing of materials to be performed, which implicitly also meant censorship” (Dutton 1991: 19). Its targeted audience includes “vagabondes, tellers of newes, sowers of sedicious rumours, players, and printers without licence, and divers other disordred persons’ . . . forbidding, on pain of fine and imprisonment, the printing, sale or distribution of anything written in English, without the express permission of the king or the Privy Council” (Dutton 1991: 19). He situates the foundation of censorship within the context of an act concerned with the control of a range of transgressive and unlawful discourse often associated with defamation. For the most part, however, Dutton ignores the contemporary language and thus structure for dealing with the problem of disruptive language, and therefore fails to see how official attempts to identify and marginalize oppositional discourse in dramatic texts connect with larger concerns about infamy.

Burt makes frequent reference to defamation in *Licensed by Authority* and even sketches out its relation to censorship.

I propose . . . that we think of censorship broadly as a mechanism for legitimating and delegitimizing access to discourse. Censorship in its usual sense – the repression of sedition, libel, or blasphemy – was only one mechanism for regulating the circulation of discourses, exchanges of power between institutions, transfers of status markers from one institution to another, and so on which marked the emergence of a licensed and relatively autonomous aesthetic domain. To define literary censorship as an activity that legitimates and delegitimizes discourses and their modes of circulation means broadening the term, so that its negative, repressive function is seen as only one of many regulatory mechanisms. (Burt 1993: 12–13)

However, he never explains or explores the contemporary meaning of “libel,” a term undergoing significant redefinition in the period with which he is concerned. Without a fuller account of defamation and how it might be influenced by or even influence the process of censor-

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ship, the significance of this relationship is largely occluded. While I agree that it is crucial to think of the control of literary production in terms of legitimating and delegitimizing access to discourse, I would differ with Burt's identification of censorship as the primary mechanism for this process. In his account, concerns about libel represent a sub-category within the domain of censorship. What I would like to argue is that the discourses of censorship Burt examines develop out of larger social concerns regarding transgressive language, usually understood as defamation.

Before turning to a fuller account of slander, I would like to suggest some of the inadequacies of censorship as a model for understanding power relations between the poet and the state. Even if one imagines censorship, as Burt does, in terms of an activity that can be performed by poet-critics as well as official censors, the process nevertheless constitutes a "regulatory mechanism" which confers a measure of authority on the censor. Literary criticism, "as a form of regulation . . . was already paradoxically implicated in censorship. Criticism authorized censors to repress or to exercise discursive liberties. Moreover, the critic and the censor were complicit rather than opposed: censors operated as critics, and critics legitimated particular kinds of censorship, demanding that authors submit to critical censure" (Burt 1993: 30). Burt demonstrates Jonson's capacity to appropriate the structure of official censorship in the poet's ability to censure or criticize inferior or unsuitable texts; however, this effectually validates the state's means of control. Although, as Burt argues, Jonson makes distinctions between legitimate and illegitimate censorship (Burt 1993: 28), the model does not really allow a means for contesting the state's capacity to alter or suppress texts or speech. Delegitimizing censorship is here effected by replacing it with another, legitimate criticism. However, the paradigm remains one that only registers repression, hence reproducing and authorizing state control. The critic's censoring function is analogous to, but not reciprocal with, the state's. Both poet-critic and state-censor have the authority to alter texts or speech; but while the censorship model provides the state with a means of controlling poetry, it does not allocate to poets an equivalent means with which they can control, or, more accurately, resist regulation.

Burt ultimately claims that censorship is inescapable, using the metaphor of neurosis to suggest a range of censoring functions

(revision, criticism, censorship); “there is a permanent difficulty in recognizing the difference between the ‘real’ text and its later distortions precisely because there is no original, precensored text to be (dis)-covered” (Burt 1993: 51). While this may be the case, it is not the only way of understanding how a text works. By focusing on what is *done to* the text, we lose sight of what a text can do. While Burt claims that criticism can function transgressively (Burt 1993: 51–2), the overwhelming force of his argument serves to present the text as passively acted upon, rather than itself functioning as an agent.

Censorship offers a model of repression; to say there is no escape from censorship is to suggest that repression always succeeds. Even if you argue, as Burt does, that censorship serves to legitimate as well as delegitimate discourse (Burt 1993: 13), you assume the legitimate authority of the censor. Slander shifts the structure of the paradigm to offer a *response* to censorship which challenges the authority of censors by redefining their criticisms as misunderstandings, or more aggressively, defamations – they make a libel where the poet made a play. Hence, it provides a model of power that is reversible rather than hierarchical. This account understands power as more evenly distributed between poet and state, revealing that their relation is much more contestatory, and the playing field in the struggle to define legitimate language is closer to level. Slander can put you on the offensive; rather than defensively anticipating and perhaps incorporating your opponent’s criticism into your thinking and writing, an accusation of slander enables you to delegitimate an opposing epistemological paradigm. You might not succeed in making your charge stick, but you nevertheless possess grounds to challenge your repressor. Slander offers a model of contestation, rather than repression and regulation, which demonstrates the material consequences linguistic instability has for the social order.

In its most general sense, slander is a false accusation which results in the humiliation of its victims. Slander law attempts to control this language, which is seen to pose various threats to the social order. However, the slander paradigm does not merely replace the censorship model of controlling transgressive language with a more wide-ranging mechanism of repression. For what we discover when we look at slander and slander law is the incredible instability of the categories of legitimate and illegitimate speech. Not only are charges of slander

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reversible, but the very structure of slander law, as I will argue in the next chapter, is itself riven with inconsistencies.

An example of the difficulties of negotiating the complexities of slander counter-accusations can be found in a Star Chamber case of 1604. A suit was brought by one Harris claiming that he had been harassed and defamed by Newcomin, a fellow preacher who wrote a libel against him and the state of the Church of England. The libel, reproduced in the Star Chamber bill, takes the form of a poem protesting popishness. With regard to this failing in the laity, Newcomin exhibits a certain charitableness: “therefore exhorte them patientlie their error for to see / and in love, pittie and comfote their poore distressed estate / for sclanderous raylinge is the way to make them further of [f] then nowe” (PRO, STAC 8 177/05). Patient persuasion motivated by love will convert the straying, while berating them will further alienate them. What is interesting here is that while the speaker rejects slanderous attacks, he seems to do so on pragmatic, not legal or moral, grounds. This is not a surprising attitude given that the speaker has been charged with slander. In attacking Harris, a member of the ecclesiastical hierarchy, with a defamatory poem, Newcomin would appear to endorse slander of Anglican clerics:

You shall finde [the laity] certainly neerer god then a covetous
prelate exacting mightilie,
Uppon honest men cruellie as hath been manifestlie seene

But when he lookes to please the Devill and himself by raylinge,
Then shall you hear him stronglie sounding speeches shrille and odde

Nor christian man of faithe and knowledge founde that ever I did
heare

But thought him like Kayne or Saul for malice, like Haman for pride
Like Balaam for covetousnes, like Ahitophell for counsell it is cleere
And like Naballe for churlyshenes, yea he hath a slanderous tonge be
side.

Strikingly, though, Newcomin paradoxically defames his victim by accusing him of railing and slander. Relying on scriptural evidence for support, he literally demonizes his opponent to justify his position. The slipperiness of slander, both in identifying and prosecuting it, shows the real difficulty in policing transgressive speech on all social levels in early modern England.