Cyndia Susan Clegg
Censorship and the Courts of Star Chamber and High Commission in England to 1640

During the nineteenth and most of the twentieth centuries, historians of early modern Britain have based their interpretation of the country’s political culture upon the existence of rigorous press censorship. This interpretative agenda arose from eighteenth-century party politics that responded to Tory efforts to control political opposition by prosecuting authors and printers for the offense of «seditious libel.» In 1712, as one Tory put it, «to plead for the Press is Whigish,» and «Whigs have argued for allowing the Press its full swing.»¹ To the Whig, however, «There was never a good government that stood in fear of Freedom of Speech, which is the natural Liberty of Mankind: Nor was ever any Administration afraid of Satyr but such as deserved it».² The triumph of Enlightenment liberalism in the West privileged the Whig position, but when this position has dictated historiographic principles, historical interpretation has suffered. In particular, the Whig version of British history has produced a teleological interpretation of Tudor-Stuart England that progresses from repression to enlightenment – from censorship to a free press. More recently Revisionist historiography has disputed Whig history – principally in its explanation of the causes of the English Civil War of the mid-seventeenth century. While Revisionism has offered a useful corrective to Whig historiography, neither perspective has provided a satisfactory understanding of the relationship between censorship and the government of Charles I, or, indeed, between censorship and the English Revolution. The goal of this article is to explore how two principal components of censorship – licensing and the prerogative courts said to have enforced licensing – evolved during the reign of Charles I. In doing so, I hope to move toward resolving the irreconcilable differences dominating the study of seventeenth century British history.

² Ibid., 13.
1. Tories, Whigs, and Censorship

The natural rights argument for a free press is often said to begin with John Milton’s *Areopagitica* (1644), which made an eloquent stand against licensing, the form of pre-print censorship that had been controlled by Archbishop of Canterbury, William Laud, during the reign of Charles I. It was, however, more Milton in the hands of eighteenth-century Whigs than Milton himself that turned censorship into a touchstone for measuring political regimes.³ Milton, for the Whigs, became the voice of the English Revolution that countered every abuse of monarchy. The Whigs loathed what the Tories approved. No Whig would have countenanced the views on press controls set forth by Milton’s contemporary, Richard Atkyns, who, in *The Origins and Growth of Printing* (1664), assured Charles II, «That Printing belongs to your Majesty, in Your publique and private Capacity, as Supream Magistrate, and as Proprietor». Atkyns told Charles II he could, «dare positively say, the Liberty of the Press, was the principal furthering Cause of the Confinement of Your most Royal Fathers Person; for, after this Act [ending Star Chamber], every Male-content vented his Passion in Print». Atkyns looks with considerable nostalgia to an earlier era – before the collapse of the Court of Star Chamber – when an ordered kingdom derived from a controlled press.

Printing is like a good Dish of Meat, which moderately eaten of, turns to the Nourishment and health of the Body; but immoderately, to Surfeits and Sicknesses: As the Use is very Necessary, the Abuse is very dangerous [...]. How were the Abuses taken away in Queen Elizabeth, King James, and the beginning of King Charles his time, when few or no Scandals or Libels were stirring? Was it not by Fining, Imprisoning, seizing the Books, and breaking the Presses of the Transgressors, by Order of the Council-Board? Was it not otherwise when the Jurisdiction of that Court was taken away by Act of Parliament, 17 Car. If Princes cannot redress Abuses, can less Men redress them?⁴

Few historians in the post-Enlightenment era would concur with Atkyns’ enthusiasm for press controls, but here Atkyns takes us very close to a history of censorship that Whig historians and their followers have embraced.

This history of censorship, which to some degree has been taken for granted for nearly three hundred years of Tudor and Stuart historiography, is perhaps best summarized by Harold Weber. According to Weber, prior to 1641, when Parliament assumed the power to regulate the press, monarchy had controlled the press: «the royal proclamation and order of the Star Chamber – which began as the

³ For a full discussion of this see, J. Loewenstein, *The Author’s Due* (Cambridge, 2003).


⁵ Ibid., 151.
king’s privy council sitting in a judicial capacity – constituted the primary weapons in the campaign against unlicensed and unlawful printing.» In the hands of different historians, this account has met with refinements – and been put to multiple uses. According to Sheila Lambert, «the notion that there was strict state control of the press continues to win the day, because it is such a useful concept, to be invoked to cover everything from poor standards of printing, to failure to look with sufficient care for evidence of dissent.» One of the most influential accounts belongs to F. S. Siebert, in what Sheila Lambert has called «the standard text for the history of censorship». Siebert proposes a Whig historical progression from repression to enlightenment which locates the height of censorship in Elizabeth’s «whole machinery of control» and traces the successive challenges to that hegemony which led ultimately to «Freedom of the Press». Siebert regards the Star Chamber Decrees of 23 June 1586 as «the most comprehensive regulation of the press of the entire Tudor period», and saw it as Elizabeth’s answer to «insufficient efforts» of «government officials, ecclesiastical licensers, and Stationers’ Company searchers» to suppress opposition literature. Although Siebert wrote his study in the 1950s, his understanding of press control, which essentially uses the history of censorship to argue for a free press, persists even in recent studies of print culture.

Perhaps more influential for historians and literary scholars than Siebert’s free-press-centered discourse has been historian Christopher Hill’s Marxist account of early seventeenth-century censorship, which influenced Annabel Patterson and, through her, a generation of literary scholars. According to Hill, «during the seventeenth century modern English society and a modern state began to take shape, and England’s position in the world was transformed». Central to this transformation was a «revolt of the taxpayers» who «brought down» a tyrannical and repressive government – one that protected itself by «the censorship» – and in its place looked to parliament: «Everything waited on parliament, which by 1640 had become the symbol for the defence of religion, liberty, and property.» Hill, and Patterson after him, assumes the presence in seventeenth-century England of an articulate resistance forced underground by the rigors of licensing, the High Commission, and the court of Star Chamber.

The histories of Siebert and Hill have not gone unnoticed by legal historian, Phillip Hamburger, whose 1985 Stanford Law Review article entitled «The develop-

7 Not 1930 as Lambert maintains in «State Control of the Press», 2.
8 See Loewenstein’s The Author’s Due.
9 A. Patterson, Censorship and Interpretation: the conditions of writing and reading in early modern England (Madison/WI 1984).
11 Ibid., 107.
of the law of seditious libel and the control of the press» has proven influential upon historians and literary scholars seeking to understanding English slander and libel law.12 In seeking to correct the misconceptions about the law of seditious libel advanced by such venerated legal historians as Sir Fitzjames Stephen and Sir William Holdsworth, Hamburger maintains that seventeenth century prosecutions to control the press were for licensing violations rather than for seditious libel, as legal historians have maintained. Before 1586, according to Hamburger, largely ineffective efforts to control the press were derived from treason and scandal statutes, and from felony laws. In 1586 the government through the Star Chamber Decree instituted an effective system of licensing and thereafter «came to rely upon licensing prosecutions alone» to control the press. According to Hamburger, «the efficacy of the licensing laws was closely tied to the enforcement powers of the prerogative courts. Both the Star Chamber and the Court of High Commission had jurisdiction over offences against the licensing laws, and their freedom from the restraints of common law procedures and the excessive bias of the judges [...] made acquittals rare.» 13 The law of seditious libel does not emerge, he maintains, until the eighteenth century, when parliament failed to renew seventeenth century licensing statutes.

Whatever refinements historians have added to the general picture of «the censorship», its central features remain consistent: pre-print approval of printed works by government appointed censors (licensing), restraints on printing through decrees of the monarch’s privy council (Star Chamber decrees), and prosecutions in the prerogative courts of Star Chamber and High Commission for seditious writing – or for violations of licensing as Hamburger would have it – and a certainty that between 1558 and 1640 these mechanisms operated with remarkable regularity and consistency. Yes, there were forays into efforts to control the press through treason laws, or through the statute of Scandalum Magnatum, but for the most part licensing and the prerogative courts participated in an intentional and regular effort to control the printed word.

As persistent and influential as this view of «the censorship» has been, it has had its detractors – among them Kevin Sharpe and Sheila Lambert. Kevin Sharpe’s monumental The Personal Rule of Charles I maintains that Charles and Laud had little interest in censoring anything but the most egregious texts against the government, and that violators were prosecuted with due respect for law.14 Lambert says that she thinks that «it is simplest, and not simplistic, to believe that the governments of Elizabeth, James and Charles did have a concept of censorship and a means of exercising it, and that the machinery did what it was expected to do (that
is so far as any machinery of government functioned efficiently in those days). What it was not expected to do was to suppress all expression of opposition.«

15 Lambert argues that the Crown’s principal concern externally was maintaining the integrity of its foreign policy, and internally, maintaining «the peace» – that is, «being alert to nip sedition in the bud».«

16 While the «prerogative» courts of High Commission and Star Chamber may in part have been used to serve this end, Lambert reminds us that the «vast majority» of cases in these courts – even for libel – «were not brought by the Crown but by private individuals».«

17 Licensing, Lambert rightly explains, derived from Elizabeth’s 1559 Injunctions that «covered the whole government of the church» and required that books, pamphlets, plays and ballads receive approval for print from «the Privy Council, the bishops or the ecclesiastical commissioners».«

18 Any subsequent action by the High Commission or the Star Chamber, according to Lambert, was taken to shore up the Injunctions, and the High Commission was the principal instrument of government that heard disputes related to the press. Star Chamber had virtually nothing to do with monitoring the printed word except to issue decrees to regulate the trade.«

19 Historians of Star Chamber seem to concur with Lambert’s analysis – at least by omission. None of them discusses Star Chamber’s role in controlling the press, and only G. R. Elton mentions the 1586 decrees which Siebert called «the most comprehensive regulation of the press of the entire Tudor period». According to G. R. Elton, the court of Star Chamber, the Privy Council sitting as a court, «was simply one of the courts of the realm, dealing largely with cases between parties […] It was highly regarded and very popular with litigants because it was relatively speedy, flexible and complete in its work.»

20 The court’s procedure was similar to Chancery, commencing with a plaintiff’s bill, the defendant’s answer, and the usual succession of written pleadings and witness examinations. It usually punished with fines or ordered the loser to comply with an earlier decision, frequently, a prior Star Chamber decree.«

21 Some orders, like the 1586 Decrees for Order in Printing, «look like Orders in Council or proclamations. In truth, however, these, (if issued by Star Chamber) were always the outcome of a law-suit involving larger principles and worth embodiment in a formal and public pronouncement because they might affect both policy and other suits.»

22 John Guy’s The court of Star Chamber and its records to the reign of Elizabeth I contains a summary taken from the

15 Lambert, «State Control of the Press,» 7.
16 Ibid., 8.
17 Ibid., 9.
18 Ibid., 10–11.
19 The Star Chamber decree of 1637, which Lambert argues was sought by the London Stationers’ Company, she regards as an effort to protect Company interests by restricting the number of printers, ordering the taking of apprentices, and prohibiting the import of products from foreign presses, particularly in English language books. See Sh. Lambert, «The Printers and the Government, 1604 – 1637», in Aspects of Printing from 1600, ed. R. Myers and M. Harris (Oxford, 1987), 1–29.
21 Ibid., 167–169.
22 Ibid., 170.
papers of Sir Thomas Egerton (Lord Keeper, and subsequently Lord Chancellor from 1596 to 1617) of the kinds of cases that historically came within Star Chamber jurisdiction, and «disorders in printing and uttering of books» did appear there.\textsuperscript{23} Jurisdiction over disorders in printing, however, does not appear as a category in Thomas G. Barnes’ formidable index to the Star Chamber records for the reign of James I (Public Record Office Star Chamber 8), nor does the enforcement of press licensing.\textsuperscript{24} The same is true of the index to the same records for the reign of Elizabeth.\textsuperscript{25} Indeed, Barnes creates a picture of Star Chamber that differs significantly from that drawn by the likes of Siebert, Hill, Hamburger, or Atkyns. Instead of a «despotic prerogative court […] incompatible with the common law’s protection of the rights of Englishmen», Barnes finds an ordinary court that upheld English law and employed traditional procedures: «The law which Star Chamber implemented was the common and statute law of England» and its proceedings «scrupulously» employed «the pleadings (pleas, demurrer, replication, rejoinder) sacred to the common law on its civil side»\textsuperscript{26}.

The apparently irreconcilable nature of these two views of press control and the mechanisms of Tudor-Stuart Star Chamber and High Commission presents a conundrum to anyone studying early modern England. On the one hand, both Lambert and Barnes offer very persuasive evidence to support their arguments. On the other, abuses in the courts of Star Chamber and High Commission were matters of first importance to the Long Parliament – especially when they received the petitions of Susannah Bastwick and Sara Burton for the reprieve of their husbands imprisoned by Star Chamber for their illegal publications and Alexander Jennings, imprisoned for refusing to pay Ship Money.\textsuperscript{27} Indeed so concerned was parliament that it soon dissolved the two courts. Lambert’s effort to reconstruct a history of seventeenth-century press controls outside of the ideologically charged historiography of scholars whose historical interpretations begin with the English Civil War as a part of their hindsight, while useful, perhaps goes too far in administering a corrective. Perhaps nothing as pervasive as «the censorship» seen by Hill

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\item \textsuperscript{23} The Huntington Library, Ellesmere Manuscripts 2652, 2768. According to John Guy, these summaries were prepared by the clerical staff of the court of Star Chamber for the consideration of the chancellor and «were collected as much as anything in the quest for precedents affirming Star Chamber’s jurisdiction, which Egerton was anxious to defend». See J. Guy, The court of Star Chamber and its records to the reign of Elizabeth I (London, 1985), no. 66, 89.
\item \textsuperscript{24} T. G. Barnes, List and Index to the proceedings in the Star Chamber for the Reign of James (1603–1625) (Chicago/Ill., 1975).
\item \textsuperscript{26} T. G. Barnes, «Star Chamber Mythology,» American Journal of Legal History 5 (1961), 4–5.
\item \textsuperscript{27} M. Jansson, ed., Proceedings of the Opening Session of the Long Parliament, vol. 1 (Rochester/N.Y. – Suffolk 2000). Tuesday, 3, Thursday, 5 November began with Kings Speech; and Friday 6 creating Committees, including religion and courts of justice; Saturday, the Petitions of Susannah Bastwick and Sara Burton were read on behalf of their husbands. Also read with the petition of Alexander Jennings, imprisoned for refusing to pay ship money (29).
\end{itemize}
existed, but something impressed itself upon the imagination of parliamentarians in 1640. What this actually was, I suspect, was missed by both Hill and Lambert, because – despite the apparent contradictions in their conclusion – both take a fairly sweeping view of their subject (so do Atkyns, Siebert, Hamburger, et al.). The scholarly tendency has been to look at the mechanisms of press control employed by governments in Tudor and Early-Stuart England as being a piece of whole cloth. I have argued elsewhere with regard to the reigns of Elizabeth and James I that this was certainly not the case. Censorship, rather than being motivated by a pervasive government desire to control a new and unruly technology, was local and ad hoc. The mechanisms employed – with the exception of statutes that remained in force unless repealed – differed in kind and in time. It is reasonable, then, to expect that since press control under Henry VIII, under Mary I, under Elizabeth, and under James sought different ends and assumed different forms, censorship under Charles I might do the same. Constants did exist – High Commission, Star Chamber, licensing, the Stationers’ Company, royal proclamations, scandal and treason statutes – but the economic, religious, and political interests that influenced these institutions were not constant between 1508 and 1641. As a result the institutions operated differently. This was especially true for the «prerogative» courts – High Commission and Star Chamber.

Given the nature of English jurisprudence, courts are an especially fruitful area of investigation to consider nuances of political and social change that might otherwise go unnoticed. Each case brought before a court depends on the precedents of other cases for such things as jurisdiction, causes, pleadings, and so forth, and, in turn, any case creates new precedents for subsequent cases. While ostensibly the government of Charles I may be seen to have been entirely consistent in its control of the press with its predecessors – whether repressively so as Siebert and Hill would have it, or benevolently in the views of Lambert and Sharpe – small refinements in pleadings, an extension of jurisdiction, the denial of a prohibition all could change the law. Thomas Barnes gives a good explanation of how such a system worked:

Although the individual try-on does not have much future, a system of litigation that permits, indeed encourages, a constant refining of pleading by a process of mutation and variation on a theme raises the try-on from the plane of forensic tactics to the realm of judicial strategy. Add to such procedural openness, vitality, and suppleness a considerable inchoateness in substantive law and the try-on become the vehicle for legal change. In the early decades of the seventeenth century, the English legal system of litigation was a system in which the try-on was an accepted and wholly acceptable device.


Before I proceed to look at the «try-ons» that created change in the way the English legal system controlled the press during the reign of Charles I – change that operated so entirely within the system that scholars have overlooked it and been misled to believe that Charles’ principal ministers Stafford and Laud were simply «thorough» – it will be helpful to review the ways in which the courts of High Commission and Star Chamber did and did not participate in controlling the press before 1625.

Any discussion of the mechanisms of press controls, however, requires a few caveats. First, press control during the reigns of Elizabeth I and James I were never so intentional or so efficient that they justly may be called «machinery.» Perhaps the most telling evidence of this is that press control was not created by any act of parliament – outside of the treason statutes. For measures more restrictive on the press than those that would protect the authority and dignity of the crown, parliament was largely uninterested. Even the mechanisms of press control, which were instituted by royal patent and proclamation at the beginning of Elizabeth’s reign and which remained in place for nearly a century, were not focused primarily upon controlling a new and unwieldy technology but appear as a secondary means – indeed almost an afterthought – to effecting the Elizabethan religious settlement. Furthermore, any historiographic effort to describe press controls, even my own, will necessarily impose a kind of order and intentionality that often was not there. Controlling the press during the reigns of Elizabeth and James was not the regular business of parliament or the law courts – including the courts of High Commission and Star Chamber – nor of the London Company of Stationers. Most historians have depended on documents of control to discern the mechanisms for press control, but outside of the records showing Stationers’ efforts to protect members’ rights to their copies, the means of controlling the press – censorship – was usually invoked only in response to particular events. In practice, then, press control was largely reactive rather than proactive, and since the «machinery» of control was not in regular use, it was often ineffectual. This said, I proceed, albeit cautiously, to consider how press controls were instituted.

Libel itself, however, was still a serious matter throughout Elizabeth’s reign. Slander and libel belonged to ecclesiastical moral law and cases in these matters were tried in the church courts. According to M. Ingram in *Church Courts, Sex, and Marriage in England 1570–1640* (Cambridge-New York, 1987), libel was the single most prevalent cause tried in Elizabethan England. These, however, were not cases brought by the church against individuals, but by those libeled against the libellor. Libel cases were also heard in the common law courts, and many of these had to do with «lewd words» against the government or nobility. Between 1558 and 1603, the Privy Council addressed reports of such slander, usually by remanding investigation to local officials with most cases being heard in the common law courts. Press control does not appear to have been the issue in any of these actions. Suppression of rumor and libel, constituting as it does a kind of censorship, requires independent consideration beyond the scope of this project.
2. The Courts of High Commission and Ecclesiastical Licensing before 1625

Frequently when historians of print describe press controls, they look, as I do, to licensing – the official approval of texts for print – as a principal tool of control, and they begin their account with Henry VIII’s 16 November 1538 proclamation that called for official licensing and directed «not to put these words cum privilegio regali, without adding ad imprimendum solum, and that the whole copy».

Although this proclamation’s clear end was to institute pre-print censorship of scripture and other religious texts and to prevent the printing of objectionable texts «set forth with privilege, containing annotations and additions in the margins, prologues, and calendars, imagined and invented as wel by the makers, devisers and printers of the same books, as by sundry strange personals called Anabaptists and Sacramentaries» (concerns that were local and particular within Henry’s reign), the persistence of the words «cum privilegio» in printed books subsequent to Henry VIII has misled historians. Created as it was by royal proclamation, Henrician licensing died with King Henry, but «cum privilegio» remained as an indication that a book was printed with a royal patent. Both Edward VI and Mary I likewise issued proclamations calling for licensing, although with very different intentions, but like Henry’s their programs for licensing died with them. Elizabeth’s provisions for licensing, however, were part of the religious settlement that was accepted by her successors.

Elizabeth’s 1559 religious settlement was instituted by parliament in the Acts of Supremacy and Uniformity, which together gave to the Queen the title of «Supreme Governor of the Church» and articulated the means by which she could assure the reformation of the English Church. The Act of Supremacy lies at the center of press control because it gave to the Queen both the authority to visit and reform the «ecclesiastical state» and the means to execute this authority. The Act authorized the Queen to employ royal letters patent to create an ecclesiastical commission to «visite, reforme, redresse, order, correct and amend all such errors, heresies, schisms, abuses, offences, contempts and enormities whatsoever». Authorized by this 1559 Parliamentary Act, sometime before 19 July 1559, Elizabeth I issued letters patent that created the High Commission and charged it to «inquire touching all heretical opinions, seditious books, contempts, false rumours and the like and hear and determine the same».

32 Ibid., vol. 1, 270. For a discussion of the particular events out of which this proclamation was born, see E. G. Hamann, «The Clarification of Some Obscurities Surrounding the Imprisonment of Richard Grafton in 1541 and 1543», Papers of the Bibliographical Society of America 52 (1958), 262–282.
The 1559 Injunctions have been widely regarded as the central means by which Elizabeth established pervasive press censorship. Siebert suggests that the sole purpose of the 1559 Injunctions was to devise a licensing system for the press: «The year after her accession Elizabeth paused long enough in framing the church settlement to devise a licensing system for the press» (56). Siebert sees the licensing called for in the item 51 of the Injunctions as distinct from the church settlement – indeed, his treatment of licensing suggests that the entire object of the 1559 Injunctions was licensing. As we have seen, the licensing provision is but one of 53 items in a document whose end is the church settlement. See E. K. Chambers, *Elizabethan Stage*, vol. III (Oxford, 1923), 161–164; W. W. Greg, *Some Aspects of London Publishing between 1550–1640* (Oxford, 1956), 5–6; and F. Siebert, *Freedom of the Press in England, 1476–1776: the Rise and Decline of Government Control* (Urbana/Ill., 1965) 56–59. For a further discussion of why the Injunctions have been misunderstood, see my *Elizabethan Press Censorship*, 37–41.

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the Archbishop of Canterbury or the Bishop of London served as a liaison between the government and the Stationers’ Company, which had a monopoly on printing. Furthermore, both prelates served, though not exclusively, as official authorizers. In short, while the High Commission – authorized by statute, created by Elizabeth’s letters patent, and directed by the Elizabeth’s 1559 Injunctions issued by royal proclamation – was entrusted with using press controls, including licensing, to effect the religious settlement, it did so on only a few occasions. During the reign of Elizabeth it never enforced invasive and inclusive licensing of all printed matter.

During the course of Elizabeth’s reign the court of High Commission extended its jurisdiction beyond clerical conformity to become an ecclesiastical court of appeals. The expansion of the High Commission’s jurisdiction should not be seen as an effort to increase ecclesiastical authority but rather as a response to a society that was becoming very litigious. The expansion of litigation in late Elizabethan England put extraordinary pressures on all the law courts and created considerable jurisdictional chaos. As courts expanded to meet the growing demand, they competed with each other for business, and fought to secure jurisdictions. Furthermore, the escalation of litigation at the end of the sixteenth century in all courts occurred at a time when the distinctions between secular and religious society were blurring. Whatever theoretical jurisdictions may have existed among the various law courts, litigants brought cases where they felt they could be best served. Since cases in Star Chamber, for example, proceeded in a more timely fashion than Chancery, litigants and their lawyers stretched the causes in their cases in some way to meet the ancient criterion of «riot» as defining Star Chamber’s jurisdiction. Cross-suiting – entertaining separate or counter-suits in the same or different courts – became such common practice in the sixteenth century that actions confined to a single suit in a single court were exceptions.

During the latter years of Elizabeth’s reign the High Commission drew considerable criticism both for its efforts to procure conformity and the extension of its authority as an ecclesiastical court of appeal into judicial matters that arguably belonged within the jurisdiction of the common law. Attacks on the High Commission came from two sides. The common law judges and lawyers viewed the Commission’s exercise of its authority, loosely defined by its letters patent, as an unrestrained infringement on the customary precedence of parliamentary statute and the common law. The Puritans objected to the High Commission’s procedures, especially its practice of imprisoning perceived offenders until their

36 In 1592 common law judges in Caudry’s case ruled favorably on the High Commission’s legitimacy as a court of law.
trials, its use of the oath *ex officio mero*, and its trial without a jury.\(^{39}\) Beginning in the 1590s, common law judges sought to restrain the High Commission by issuing prohibitions.\(^{40}\) The Puritans waited until James came to the throne and then voiced their concerns about the High Commission at the Hampton Court Conference. While James heard these concerns, he took no immediate action to reform the High Commission, in part because his archbishop of Canterbury, Richard Bancroft, led a campaign of resistance against the practices of the common law judges. Finally, in 1611 James issued new letters patent for the High Commission defining its venue and prescribing its procedures, bringing an end to the common law’s challenge to the High Commission.\(^{41}\)

James’ 1611 letters patent were much more specific than Elizabeth’s had been in matters of theological and political surveillance and control of the print trade. Besides granting full authority to the High Commission to inquire into «apostacies», «heresies», and «great errors» and into books that wrote «against the doctrine of religion, the Book of Common Prayer, or [the] ecclesiastical state», the letters patent called upon the High Commission to «inquire and search for [...] all heretical, schismatical and seditious books, libels and writings», together with their «makers», «devisers», printers and publishers. The Commission was charged to seize the presses and apprehend and imprison the offenders.\(^{42}\)

Newly empowered by the King’s letters patent, and further strengthened by the

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39 Philipp Tyler maintains that the High Commission derived its procedures from older-established ecclesiastical courts: evidence was written; the *ex officio* oath obliged the accused to answer in open court a libel of articles that he had not previously seen; the service of neither advocate nor proctor was necessarily granted; and judgment was summary. See Ph. Tyler, «Introduction», in *The Rise and Fall of the High Commission*, ed. with a new introduction by Ph. Tyler (Oxford, 1968), XXVIII –XXIX.

40 Levack, *Civil Lawyers in England*, 73. Common law judges issued prohibitions, orders from to the judges of the civil law or prerogative courts not to hear a case, when they perceived a violation of common law jurisdiction. Judges from both sides would then confer and determine the jurisdiction.

41 The struggle over the High Commission between the common law lawyers and the King/Church alliance was but one act in the dramatic confrontation between rival authorities that played out during James’s reign. For a more detailed assessment of the rivalries that emerged between the common law lawyers, parliament, and the alliance of Church and Crown, see my *Press Censorship in Jacobean England*, chapter 4.

42 J. Kenyon, *The Stuart Constitution, 1603–1688* (Cambridge, 1966), 181–185, 182–183: «we [...] do by these letters patent under our Great Seal of England give and grant full, free and lawful power and authority unto you [...] to inquire as well by examination of witnesses or presentment as also by examination of the parties accused themselves upon their oath [...] of all and singular apostacies, heresies, great errors in matters of faith the religion [...] and also of all blasphemous and impious acts and speeches, scandalous books, libels and writings against the doctrine of religion, the Book of Common Prayer, or [the] ecclesiastical state». And also owe [...] do give [...] authority unto you [...] to inquire and search for [...] all heretical, schismatical and seditious books, libels and writings, and all makers, devisers, printers and wilful dispersers of any such [...] books [...], and their procurers, counsellors and abettor, and the same books [...] [etc.] and the printing presses themselves likewise to seize, and slow to take, apprehend and imprison [...] the offenders in that behalf.»
abolition in 1610 of the southern diocesan commission, the High Commission under Archbishop of Canterbury George Abbot became a vital institution. According to Kenneth Fincham, Abbot was quick to deprive clergy for corruption or negligence but used the High Commission as a tool of censorship only infrequently.

Between 1611 and 1625 only five percent of its cases were initiated by the High Commission, as would have been required for acts of censorship, while private litigants filed 95 percent of the actions – many seeking to remove immoral or eccentric clergymen. Among the few documented cases of censorship were the High Commission’s effort to suppress John Selden’s *A History of Tithes*; its questioning of the minister, William Whately, for passages favoring divorce in his book *A bride-bush*, and its imprisonment of the printer of *Votivae Angliae*, a 1624 pamphlet appealing to the king to aid his son-in-law Frederick’s effort to regain the Palatinate. The work printed in London but bearing the imprint «Utrecht» clearly was without authorization, license, or entrance. Although James’s letters patent envisioned control of the print trade in terms of censorship, most of the cases involving London printers that came before the High Commission before James’s death in 1625 related to disputes over royal patents, printing by non-Stationers’ Company members, and printing against Stationers’ Company members’ rights to copies. Although the letters patent of both Elizabeth and James had granted the High Commission considerable powers of surveillance over printing, in practice before 1625 these powers were employed infrequently to censor books.

3. The Court of Star Chamber and its Decrees before 1625

Besides High Commission, historians have looked to the court of Star Chamber as a principal instrument of press control. The presence of Elizabethan Star Chamber decrees on printing, which indeed placed constraints on the print trade, have been regarded as tools of censorship rather than the measures to protect the interests of royal patent holders and members of the Stationers’ Company that they were. The appearance of printed versions of a 1566 Star Chamber ordinance, as well as of the 1586 and 1637 decrees regulating printing, has led to the assumption that the Star Chamber, beyond its function as a regularly constituted court of law, could pass

44 The once instance when Abbot ordered a text suppressed reflects Abbot’s personal interest in morality rather than conformity: an entry in the Stationers’ Register for 22 March 1620 indicates that Abbot prevented the publication of Boccaccio’s notoriously bawdy *Decameron*, even though it had received an official license for print. See E. Arber, *A Transcript of the Registers of the Company of Stationers of London*, vol. III (London-Birmingham, 1875–1894), 677.
45 While the High Commission may have been prepared to be lenient with the printer and give him his liberty, King James intervened. Having learned the printer had gained 1000£ by selling the pamphlet, the King demanded the man be returned to prison and pay 1000£ fine.
laws – decrees in Star Chamber somehow being created by the privy council sitting in the Star Chamber in a legislative capacity.\textsuperscript{46} It is clear, however, from as early as William Hudson’s \textit{Treatise on Star Chamber}, written during the mid 1620s and circulated among contemporaries only in manuscript, that the Star Chamber was nothing more than «an ordinary Court of Judicature» with « Judges, ordinary process, officers, a place [and] a continuous Session in the tearme tyme».\textsuperscript{47} Hudson saw criminal causes as the principal business of Star Chamber in his own time, but he recognized its jurisdiction and continuing practice in civil matters. Thomas Barnes observes that during the Jacobean period, when Hudson himself would have practiced, «four-fifths of all 8,228 cases [...] had property at base in the litigation. Criminal cases like forgery, perjury, or fraud still had property at the base of the action.»\textsuperscript{48} According to Barnes, the «extra-legal» regulation that came within Star Chamber venue was the enforcement of royal proclamations. Either an individual or the Crown’s Attorney General could file a bill or information for breach of proclamation. Furthermore, although certainly not an «extra-legal» proceeding, the Star Chamber could be sued to enforce its own judgments or decrees, and it proceeded against non-compliance by imprisonment or additional fines. Although neither Barnes nor Hudson specifically mention jurisdiction over printing, their explanations of court practice suggest not only how the notorious Star Chamber decrees regulating printing came into being, but also how misunderstandings about Star Chamber’s jurisdiction over illegal («seditious») printing may have arisen.

Sedition cases were heard in the court of Star Chamber nearly from its inception in the late middle ages; it would therefore seem logical that cases of «seditious printing» would necessarily be heard in Star Chamber. Only twice during the reign of Elizabeth and once during the reign of James were printers prosecuted in Star Chamber for printing «seditious» works. (No actions were brought against authors.) Star Chamber, however, was the court in which several printers brought actions against other printers who «illegally» printed privileged books, that is, books or classes of books the sole right of which to print was granted by royal letters patent. The status of this legality had been defined in 1566 by Star Chamber «Ordinaunces decreed for reformation of divers disorders in pryntyng and utteryng of Bookes» on 24 June 1566, the first item of which reads:

[…] no person shall prynt, or cause to be imprynted, nor shall bring, or cause, or procure to be brought into this Realme imprynted, any Booke or copye agaynst the fourme and meanyng of any ordinaunce, prohibition, or commaundement,

\textsuperscript{46} While this perspective is widespread, see as an example, W. M. Clyde, \textit{The Struggle for the Freedom of the Press from Caxton to Cromwell} (Oxford, 1934). This idea is also implicit in Siebert’s highly influential \textit{Freedom of the Press}.

\textsuperscript{47} The Huntington Library, Ellesmere Manuscripts 7921, fol. 2.

\textsuperscript{48} Barnes, «Star Chamber Litigants», 11.
These ordinances appeared at a time when Elizabeth’s government expressed concern that fugitives from England living abroad did «practise continually to sende in hither certayn new books bothe slaunderous & seditious and sprede abroad the same contrary to the statutes & lawes of our realme and directly against the pollicie of the same». Neither the 1559 Injunctions nor the Stationers’ Company’s 1557 charter had satisfactorily defined the relationship between printing and English law. These ordinances defined the source of law as «statutes, injunctions, letters patents, and ordinances» (ordinances being orders of courts of law.) This, of course, prevented printing against the Act of Supremacy, the Act of Uniformity, and the treason laws, but it also prevented printing against royal privileges granted to the Stationers’ Company and to patentees. Further, it offered protection to the London Stationers from foreign copyright violations – something their Charter had not done – both by preventing the import and sale of «illegal» works and by extending the Stationers’ right to search to include venues where these works might be kept. Unfortunately, no record exists to indicate what kind of legal action was initiated in the court of Star Chamber that led it to issue these orders. Perhaps an action was initiated against a bookseller, or a patentee brought an action against an illegal printer, but whatever the action, the court used the opportunity to remedy several kinds of abuses. This order itself became a precedent for subsequent actions brought before the same court for violations of printing patents.

In 1577 Christopher Barker, the Queen’s printer, complained to the privy council that other members of the Stationers’ Company were printing against his patent, and the privy council responded by reiterating Barker’s privilege to the masters and wardens of the company. In the early 1580’s several cases of printing privilege violations were brought before the court of Star Chamber. All of these

49 A facsimile is reprinted on Plate XII included in C. Blagden’s «Book Trade Control in 1566», The Library 13 (1958), 287–292. The provisions following prohibit selling or binding prohibited books and extend the Stationers’ Company’s right to search to locations where imported books might be found. Further, these ordinances provided effective means to enforce their provisions by designating penalties for violating the ordinances, (book forfeitures, fines, imprisonment, and exclusion from the trade).

50 The government’s concern about potentially dangerous books in 1566 is made clear in a letter that went out to Lord Treasurer Winchester in January over Elizabeth’s signature. The letter calls upon Winchester to inform the customs and other appropriate persons that the Bishop of London’s appointees will search ships in English ports for books, W. W. Greg, A Companion to Arber: Being a Calendar of Documents in Edward Arber’s Transcript of the Registers of the Company of Stationers of London (Oxford, 1967), 114–115.

cases appeal to the precedent established by the 1566 Star Chamber Ordinances in designating the Court of Star Chamber's venue in matters relating to printing trade regulation and privilege violations. (None of these cases concerns itself with government suppression of religiously or politically unacceptable printed materials – that is, with materials traditionally considered likely candidates for censorship.) Any one of these cases (or all of them) may have led the court to issue its 1586 decrees for order in printing – the instrument so often regarded as the basis for government censorship. Whatever interest Elizabeth's government may have had in preventing seditious printing, the 1586 decrees for order in printing were not the Queen's response to those interests, but rather a legal decision rendered by the court of Star Chamber resolving nine years of conflict in the printing trade over royal privileges and the authority of the Stationers' Company.

As I have argued elsewhere, the 1586 decrees, a genuine triumph for the Stationers' Company and the privileged printers, were extraordinarily conservative. They unequivocally upheld the rights and prerogatives of the Company and the privileged printers in the face of the recent challenges and sought to insure both adequate work and adequate employment within the Company. Measures to restrict the proliferation of presses were expected to provide adequate work for the existing presses while limiting the number of apprentices would restrict future numbers of journeymen printers and create fuller employment. They specified the period of time for registering presses, the means of doing so, the means of being admitted as a printer, and the punishments for violating the Orders. One item reiterated the requirement for official approval of texts before printing «according to th[e] order appoynted by the Queenes maiesties Iniunctyons» and required that nothing be printed that had not accordingly «been first seen and pervsed» by the Archbishop of Canterbury and the Bishop of London.52

Even though the 1586 Star Chamber decrees for order in printing imposed regulation on the printing trade and called for ecclesiastical authorization, Star Chamber was not the usual venue for enforcing the decrees. Most actions were brought in the Stationers Companies' Court of Assistants or when that Court's authority proved insufficient, in the court of High Commission. Moreover, during the reigns of Elizabeth and James most actions for «illegal printing» – or printing against the order in Star Chamber – were brought against printers who operated illegal presses or who printed against another man's right to a copy rather than against printers who printed seditious works. From 1586 until the end of Elizabeth's reign, the Stationers' Court Book 53 records twelve searches for presses that were printing illegally by violating patent or copyright. Action was also taken five times against printers who operated illegal presses. We also find stays issued

52 Arber, Stationers' Register, vol. II, 807.
against printers until they applied to the Archbishop for the right to operate a press, and admissions of printers who had received that right. During the reign of James three «illegal» presses were defaced: one for being above the number of presses the Company allowed, one for printing another Stationer’s copy; one for being a non-Stationer printing a Stationer’s copy. Only once before 1625, during Elizabeth’s reign in the matter of the Martin Marprelate tracts, was a printing case successfully prosecuted in Star Chamber. In 1609 the government filed a bill of information for printing «scandalous, factious, and seditious books and pamphletts,» against the puritan printer, William Jones, who in 1607 had printed *The Argument of master Nicholas Fuller, in the Case of Thomas Lad, and Richard Maunsell, his Clients*, which attacked the legitimacy of the High Commission. This unsuccessful case is the only Star Chamber action brought for seditious printing during the reign of James.

Even though the government of James I did not prosecute many printing cases in the court of Star Chamber, two proclamations issued near the end of his reign reveal his conception of the relationship between the 1584 Star Chamber decree and press control. Although James used neither Star Chamber nor High Commission subsequent to these proclamations to achieve their intentions, these

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54 According to Sheila Lambert, the 1586 Decrees were not altogether effective in regulating labor practices within the Stationers’ Company. Despite the Decrees’ restrictions, the number of presses continued to grow until in 1615 the master printers, this time among themselves, agreed to limit again the number of presses and printing houses. Furthermore, both the number of journeymen and apprentices in the Stationers’ Company increased, leading to widespread dissatisfaction over underemployment. While the Company issued an order in 1613 to restrict the number of apprentices, the apprentices and journeymen persisted in their discontent, until their repeated petitions and complaints led to a new set of orders in 1635 and then to another Decree in Star Chamber in 1637. See Lambert, «The Printers and the Government, 1604–1637», 11–13, 16–17.

55 Although their printer, Robert Waldegrave, was never discovered, Sir Richard Knightly, a Mr. Hales and Sir Wickstone and his wife were prosecuted for allowing the tracts to be printed in their houses, but upon archbishop of Canterbury John Whitgift’s intercession on their behalf, all were set at liberty and their fines were remitted. Sir Richard was fined £2,000 for allowing *The Epitome* to be printed in his house; Mr. Hales was fined 1000 marks for allowing *The Supplication to Parliament and Hay any worke for a Cooper* to be printed in his; Lady Wickstone was fined £1,000 for allowing Martyn Senior and Martyn Junior to be printed in her house, and her husband received a fine of 500 marks for not disclosing the printing. See W. H. Hart, *Index Expurgatorius Anglicanus* (London, 1872–1878), 18–19.

56 Nicholas Fuller procured a writ of *habeas corpus* at the King’s Bench to override the High Commission’s imprisonment of Thomas Ladd and Richard Maunsell for refusing to take the oath ex officio. The merchant, Thomas Ladd, was accused of having participated in a conventicle; Richard Maunsell, a cleric, was «charged to have been a partaker in a Petition exhibited to the Nether house of the parliament». See *The Argument of Master Nicholas Fuller, in the case of Thomas Lad, and Richard Maunsell, his Clients: Wherei it is plainely proved, that the Ecclesiastical Commissioners haue no power, by vertue of thir commission, to imprison, tp put the Oath ex officio, o rto fine any of his Maiesties subiects* (1607). Rather than make an evidentiary argument before the King’s Bench on the insufficiency of proof for the cause of Ladd’s and Maunsell’s commitment (the subject of which would have been their refusal to take the oath), Fuller argued that only the common law courts could fine and imprison, unless parliament provided otherwise.

proclamations provided part of the legal foundation for Caroline press control as we shall see later. On 25 September 1623 James issued a proclamation against «the disorderly Printing, uttering, and dispersing of Bookes, Pamphlets, &Xc.» which, according to James F. Larkin and Paul L. Hughes Larkin, was aimed at current books and pamphlets attacking the proposed marriage of Prince Charles to the Spanish Infanta. The proclamation begins:

Wheras the three and twentieth day of June, in the eight and twentieth yeere of the Reigne of Our late dear Sister, Queene Elizabeth, for the repressing of sundry intolerable offences, troubles, and disturbances, as well in the Church, as in the Civill Government of the State and Commonwealth, occasioned by the disorderly Printing and Selling of Bookes, a Decree was made in the High Court of Starre-chamber [...].

After briefly recounting the provisions of the decree, the proclamation indicates both James’s «espresse Will and Comandement» that the decree «from henceforth» be strictly observed and his understanding of its intention (this in his assessment of it infractions against it):

The true intent and meaning of which said Decree hath beene cautelously abused and eluded, by Printing in the parts beyond the Sea, and elsewhere [...] seditious, schismatical, and scandalous Bookes and Pamphlets.

To assure compliance to the decree, the proclamation states that anyone who imports, sows, stiches, binds, sells or puts to sale, or disperses «any seditious, schismaticall, or other scandalous Bookes, or Pamphlets whatsoever» is subject not only to the «paines, punishments and imprisonments» dictated in the decree, but also to «such further censures, as by Our Court of Star-chamber, and high Commision respectively, shall be thought meet to be inflicted on them.» While this kind of «illegal» printing was only implied by the 1586 decree, James’s proclamation regards the control of seditious and schismatic writing as the decree’s principal end and reinforces the decree’s enforcement power by giving the courts of Star Chamber and High Commission express authority to sanction offenders.

Just as the 1623 proclamation articulates the 1586 Star Chamber decree’s prohibition of seditious and schismatic writings and authorizes the decree’s enforcement in the courts of High Commission and Star Chamber, a proclamation issued 15 August 1624 seeks to strengthen the Star Chamber decree’s provisions for ecclesiastical licensing. Licensing, as we have seen, instituted by Elizabeth’s 1559 Injunctions, was principally concerned with controlling books against the religious settlement. The 1586 Star Chamber decree upheld licensing only by

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59 Ibid.
60 Ibid.
61 Ibid.
requiring that books be «allowed according to the order appointed by the [...] injunctions [...]». James’s proclamation identifies precisely what must be licensed and by whom:

We doe straitly charge and command, That from henceforth no person or persons whatsoever, presume to print any Book or Pamphlet, touching or concerning matters of Religion, Church government or State, within any Our owne Dominions, which shall not first be perused, corrected, and allowed, under the hand of the Lord Archbishop of Canterburie, the Lord Archbishop of Yorke, the Bishop of London, the Vicechancelour of one of the Universities [...] or of some other learned person or persons, to that purpose appointed by them [...].62

It also prohibits the binding and selling of books not properly licensed and promises to violators «severe punishment, as by Our Lawes, or by Our Prerogative Royall, can, or may be inflicted upon them for such their contempt».63 Although James did not live long enough to inflict severe punishment for contempt of this proclamation, immediately following the proclamation an unusually high percentage of entries in the Stationers’ Registers indicating an ecclesiastical license (94 percent of entries) suggests that the proclamation effected a re-conceptualization of licensing.

4. Imprisonment by Order of the Crown

Two practices complicate our understanding of the relationship between censorship and the prerogative courts of Star Chamber: first, authors and printers were imprisoned without trials by the Star Chamber or any other court for works in manuscript and print that the crown found objectionable, usually because they were seen as having political import; second, both state and private cases for slander and libel, including scandalum magnatum (slandering peers of the realm) were prosecuted in High Commission and Star Chamber. One particular example, that of John Hayward in 1600, suggests how historians have confounded the two practices. In 1599 Sir John Hayward’s The first parte of the life and raigne of king Henrie IV was burned by order of the Archbishop of Canterbury in the palace yard of the Bishop of London. Hayward, however, was not questioned about the book until 17 May 1600, when he was called before the privy council. On 11 July 1600, Hayward made a confession before Egerton, Nottingham, Buckhurst and Cecil which responded to interrogatories drawn up by chief justice John Popham that related to a high treason charge, not actually filed in a court of law, but that was being considered against Robert Devereux, the first earl of Essex for his conduct in Ireland the previous year that alleged «that he plotted and practised with the Pope and king of Spain for the deposing and settling to himself as well the Crowne of

62 Ibid., 698–699.
63 Ibid.
England, as of the Kingdom of Ireland.\textsuperscript{64} Hayward’s book was to be part of the proof. Although Hayward did not implicate Essex in his response to the interrogatories, he confessed to inserting material into the Archbishop’s speech «tending to prove» that deposers of kings had some success and to introducing benevolences into the time of Richard II, even though they first appeared later in his sources. Two days later the Privy Council issued a letter to Sir John Peyton, Lieutenant of the Tower, to receive Dr. John Hayward into his custody, «and see him safely kept […] untill you shall receave other dyreccion».\textsuperscript{65} Hayward was not tried in Star Chamber, as is widely believed, for writing his history. Certainly Attorney General Coke entered no indictment as was customary for state initiated actions in Star Chamber. Nor was Hayward tried for treason. The letter to Peyton indicates that Hayward was detained until he might be of further use. Hayward was again interrogated in January 1601, this time before attorney general, Edward Coke, and Peyton. Once again, Coke sought to establish a connection between Essex and Hayward’s history, revealing a continuing effort to find Essex’s behavior treasonous.\textsuperscript{66} Hayward and his history, however, lost their importance when, on 8 February 1601, Essex raised forces and attempted to force his way into the Queen’s presence, an action for which he was actually tried, convicted, and executed for high treason. Following this event, probably, in 1602, Hayward was released from prison and continued writing, often in the government’s employ.

The example of Hayward points to a kind of legal imprisonment, which could be for anything, but was in this case for writing a book that might be useful for proving a case of treason against Essex for his conduct in Ireland – a case that never was prosecuted in the law courts. The English crown or its privy council acting in its behalf could dictate imprisonment for a time «by special command.» According to Mark Kishlansky, «Imprisonment by special command of the king or council had binding precedents going back as at least as far as the reign of Edward III and yet had never been the subject of parliamentary inquiry except once in 1621 when no less an authority than Sir Edward Coke pronounced it not only legal, but necessary for the very safety of the commonwealth.»\textsuperscript{67} This prerogative was generally used as an expedient for a limited amount of time to restrain a subject in a matter of controversy. The imprisoned subject’s recourse was usually submission and petition for grace.

In matters related to writing and printing, Elizabeth imprisoned Thomas Wentworth for writing a tract on the succession, which although not printed, was

\begin{itemize}
\item \textsuperscript{64} Public Record Office, National Archives, London, State Papers (SP) 12/275, 33.
\item \textsuperscript{65} Dasent, ed., Acts of the Privy Council, vol. XXX 499.
\item \textsuperscript{66} That this interrogation took place in January 1601 insists upon the anachronism of efforts to identify Hayward’s book with Essex’s February failed coup d’\textsc{et}at. Hayward’s book could not have been a cause in a trial against Essex for a rebellion he had not yet committed.
\end{itemize}
widely circulated in parliament. James likewise employed this prerogative right on several occasions. In 1614 George Wither spent four months in the Marshalsea prison for writing *Abuses Stript and Whipt*, published in 1613 with ecclesiastical authorization, probably because the book was regarded as attacking the Northampton. The 1621 «unlicensed» publication of George Withers’s *Withers Motto* landed its author in the Marshalsea prison, with, according to Reverend Joseph Mead, «the king threatening to pare his whelp’s claws». The outbreak and prosecution of what would come to be called the Thirty Years War produced a proliferation of pamphlets that James’s government found so objectionable that in 1620 he issued a proclamation that commanded his subjects, «every of them, from the highest to the lowest, to take heeded, how they intermeddle by Penne, or Speech, with causes of State and secrets of Empire, either at home, or abroad». Although James did not direct this 1620 proclamation expressly towards printing, writers and printers of texts on politics seem to have been included among «the multitude and generalities of Offenders». In August 1621 Secretary Calvert ordered the printers Edward Allde and Thomas Archer to prison and their presses destroyed for printing an anti-Spanish pamphlet entitled, *A briefe description of the Ban made against the King of Bohemia*, judged to be «of noe value or worth, and therefore not to be respected». Some time that same year, William Stansby and Nathaniel Butter found themselves in prison and their presses broken for publishing an intemperate pamphlet arguing that Ferdinand’s illegitimate birth barred him from the throne of Bohemia. In May 1622 the Venetian ambassador reported that «A book entitled ‹The French Harald› has been pro-

69 Larkin and Hughes, *Stuart Royal Proclamations*, vol. I, 497.
70 The 1621 proclamation against lascivious speech seems less likely to be related to printed texts. This time the «audacious Tongues» appear to have belonged to members of parliament. The Earl of Southampton and other members of Parliament, Lord Scroop, Sir John Leedes, and Sir Christopher Nevil, had been imprisoned for allegedly holding meetings to develop a plan to divert a subsidy directly to Frederick. The Earl of Oxford was imprisoned for speaking against the Spanish match, and Edwin Sandys was imprisoned for speaking unfavorably about loyalty to the King. Besides the court rivalries that prompted these arrests, the Venetian Ambassador astutely observes that «They happed to be also the supporters of the King of Bohemia and those most zealous for the honour, safety and religion of this kingdom». See *Calendar of State Papers Venetian* (CSPV), vol.XVII (London, 1873), no. 83, 75.
72 The *Calendar of State Papers* assigns the petitions of Butter and Stansby to Secretary Calvert for release from prison to 1622, but in his petition, Stansby indicates that he agreed to print the tract for Butter because «many tractes concerning the affaires of Forraine Princes have byn permitted this last yeare to be publiquely sold without anie contradiction». See *Calendar of State Papers, Domestic Series for the Reign of Charles I, 1623–25*, ed. J. Bruce (London, 1872) 141; full document printed in Greg, *Companion*, 210. Stansby made no entries in the Stationers’ Register between May and September 1621, so he could have been either in prison or without a press at that time. Butter regularly published and entered works in the Register throughout 1622, and there is a hiatus in Register entries with name between May and December 1621.
hibited, dealing with the ascendancy of the house of Austria and bitterly attacking
the king here.»\textsuperscript{73} Its translator, William Phillips, was imprisoned in the Gatehouse
for this offense, although its publisher seems not to have suffered the consequence
for the action even though, according to Phillips, Nathan Newberry «contrarie to
his dutie, and without authoretie, caused the same to be printed and openly
published».\textsuperscript{74} In 1624 John Reynolds was imprisoned for writing \textit{Votivae Angliae}
and \textit{Vox Coeli}, and the printer was summoned before the High Commission.\textsuperscript{75}
These imprisonments of writers, translators, printers, and publishers are entirely
consistent with the 1620 proclamation’s own warning: «And let no man thinke,
after this Our forewarning, to passe away with impunitie, in respect of the
multitude and generalitie of Offenders of this kinde; but knowe, that it will light
upon some of the first, or forwardest of them, to be severely punished, for example
to others.»\textsuperscript{76} Except for this last account, these acts of censorship were performed
outside of the regular venues we associate with sanctioning illegal printing – the
courts of Star Chamber and High Commission.

5. Charles I and the Reactionary Redefinition of Censorship Law

Charles I and his closest advisors repudiated innovation in religion and state and
repeatedly affirmed the King’s conscientious adherence to the laws of the realm. In
1628 responding to objections to the King’s imprisonment of men who refused to
pay the forced loan, Lord Keeper Thomas Coventry, at the King’s command,
assured both houses of Parliament that the King would govern by the laws and
statutes of the realm and that his subjects could find «as much security in his royal
word as in any law».\textsuperscript{77} This speech also made it very clear that the King would allow
no interpretation of law. Despite this stance, Charles’s government of both church
and state engaged in a kind of transformational literalism in their reading of legal
precedents that in effect produced extraordinary innovation. We can see how
consciously this process worked on one occasion in 1629 when William Laud, at
that time Bishop of London, and the King were discussing church matters, and the
proposition of revising Elizabeth’s 1559 Injunctions arose. Laud later wrote to
Secretary of State Viscount Dorchester (Dudley Carleton) to remind the King of
this prospect. A few days later Laud wrote again to Dorchester regarding his
opinion that the Injunctions, although some pertained to particular conditions at
the beginning of Elizabeth’s reign, were effectively regarded by lawyers during the

\textsuperscript{73} CSPV, vol. XVII, no. 454, 319. This would be \textit{The French Herald sent to the Princes of Christen-
dom according to the French copy (1622)}.

\textsuperscript{74} Public Record Office, National Archives, London. SP 14/157, art. 36.

\textsuperscript{75} Public Record Office, National Archives, London. Letter from Thomas Locke, 11 July 1624, SP 14/
159, art. 41.

\textsuperscript{76} Larkin and Hughes, \textit{Stuart Royal Proclamations}, vol. I, 496.

\textsuperscript{77} Calendar of State Papers, Domestic Series for the Reign of Charles I, 1628–29, ed. J. Bruce (London,
1859), 92.
reign of James «as ecclesiastical laws in force, though the Queen were dead», although he has no knowledge of how the lawyers would regard them now.\textsuperscript{78} Nearly a month later Laud reported to Dorchester that he was less certain about using these Injunctions since there were other canons from the time of Elizabeth that needed to be taken into consideration. In the 1630s Laud appealed to Elizabethan canon law to justify liturgical changes.\textsuperscript{79} While we lack this intimate picture of the King conspiring with Laud and the chief secretary to «legally» alter the church, the same kind of transformational literalism drove changes in the principal instruments of press censorship — the courts of High Commission and Star Chamber.

The necessity of strengthening the tools of press control did not become fully apparent to Charles until his religious and political policies produced a flood of oppositional writings in 1627–1628, even though he has issued a royal proclamation in 1626 that sought to put an end to religious faction within the Church of England. Although a majority of the clergy in the Church of England had subscribed to Calvinist doctrine of predestination from late in the reign of Elizabeth — indeed Archbishop of Canterbury George Abbot was a Calvinist — a group of clerics hostile to Calvinism acquired important church offices in the early 1620s through the patronage of Bishop of Durham Richard Neile and George Villiers, the Duke of Buckingham and royal favorite of both James I and Charles. In 1624, encouraged by Neile and his coterie, Richard Montagu published \textit{A gagg for the new gospell? No: a new gagg for an old goose}, which replied to a Catholic treatise that outlined the doctrinal errors of the Church of England by denying the presence of the «pretended errors» in the English Church, and maintaining that only «Puritans» embraced those doctrines. The Calvinist establishment in the English church took considerable offense at Montagu’s \textit{A new gagg for an old goose}, and presented a petition to parliament denouncing Montagu’s book as «full fraught with dangerous Opinions of Arminians quite contrary to the Articles established».\textsuperscript{80} Montagu then published \textit{Appello Caesarem}, a vitriolic attack on «Puritans» in general and in particular on the men he believed to have accused him to the Commons. So provocative were Montagu’s books that the next three parliaments were intent on addressing the dangers Arminian «innovation» posed to Calvinist orthodoxy.

On 14 June 1626, Charles I issued a proclamation that sought to quell controversy by prohibiting «publishing or maintaining any new inventions or opinions concerning Religion than such as were clearly grounded and warranted by the Doctrine and Discipline of the Church of England». While this proclamation ostensibly sought to silence both sides, the control of licensing was such that

church Calvinists found it increasingly more difficult to obtain licenses for their publications, while books from the Durham House coterie were readily licensed for print. To conforming Calvinists the growing restrictions on sermons and printed texts that contained what only a few years before had been orthodoxy was unthinkable – especially when books advancing liturgical ceremonialism appeared in print. English Calvinists defied the effort to silence them not only by writing and printing books without license, but by attacking licensing and the «Arminians» who controlled it. Charles’s government responded by using the court of High Commission to enforce licensing.

As we have seen, from the time of Queen Elizabeth the court of High Commission had adjudicated cases involving licensing violations – that is, cases in which printers printed books that belonged to other Stationers, printers, or authors by virtue of the Stationers’ Company license or a royal patent. This concept of license was upheld by the 1586 decree in Star Chamber for order in printing, which also reiterated that all books should also be licensed by the Archbishop of Canterbury or the Bishop of London «according to her Majesties Injunctions». On 29 October 1628 an article was objected by the Commissioners for Causes Ecclesiastical against Henry Burton, Clerk and Parson of St. Matthew’s Church in Friday Street and the author of an unlicensed anti-Arminian pamphlet. The information made an unprecedented appeal to series of precedents in its accusation of Burton. It stated first,

That by the injunctions made in the reign of Queen Elizabeth, and confirmed by a decree in Star Chamber 28 Elizabeth, now in force, it is ordained that all persons uttering, causing to be imprinted or sold, any book which has not been first viewed or allowed by the Archbishop of Canterbury, the Bishop of London, or some person authorized by them, shall be proceeded against and punished according to that decree, and we do object that you do know or have been informed of its contents.\footnote{Public Record Office, National Archives SP 16/529, art. 30.}

It then referred to James I’s 1624 proclamation, which it maintained «ratified» the 1584 Star Chamber decree and gave the Star Chamber and the High Commission the right to punish violators, and which in turn was ratified by Charles I upon his accession, and then accuses Burton, who knew of all these «acts and decrees», of violating them.

We article and object that notwithstanding you have since 20\textsuperscript{th} December 1623, without license or warrant, caused sundry books of your own making to be imprinted and published before they were viewed or licensed, and that you have given or sold and disposed of 1000, 500, 100, 50, 30, 20, or at least ten several copies contrary to the decree of Star Chamber, and expressly against these proclamations as, viz., a book entitled «Israel’s Fast», «The trial of Private
Burton as a clergyman was already subject to the High Commission’s disciplinary jurisdiction, but that was not the grounds upon which it proceeded in this case. Had it done so, the information and any subsequent trial would have engaged the theological transgression of Burton’s pamphlets. By bringing an action related to licensing the content became moot – the High Commission refusing to engage in any debate about the relative merits of Calvinism and Arminianism – a position that effectively upheld the King’s proclamation for peace in the Church. The precedent for a High Commission case on licensing existed. In 1624 the High Commission had imprisoned the printer of *Votivae Angliae*. In this case, however, the court, as it customarily did, acted against the printer. Applying the precedents of the 1624 proclamation and of the 1586 Star Chamber decree against Burton as the author of unlicensed books was sheer innovation. No wonder Burton made the disingenuous reply that he conceived that the «proclamation and injunction alluded to concern bookseller and printers, not authors», and that he was confident there is nothing in his books «repugnant to the doctrine or discipline of the Church of England».

The High Commission did not concur. Throughout the 1630s, it repeatedly brought actions against authors and printers, always for books the government deemed politically or religiously objectionable. At first High Commission proceeded cautiously by charging that objectionable books violated licensing provisions, but once sedition received definition in the courts, High Commission informations indicated that a book separated the king from his people or the people from the church and then required only the printer or author’s admission that he or she, indeed, had written or printed the specified book. By interpreting the «literal» language and intention of legal precedents, the government of Charles I transformed the manner in which the court of High Commission controlled the press as effectively as if the king had issued new letters patent.

This kind of transformational literalism may likewise be found in the use the government of Charles I made of the court of Star Chamber to prosecute authors for writing books the government deemed «seditious.» The precedents that are relevant here came not from cases where either writers or printers were prosecuted for seditious libels, but from legal actions taken by Charles against members of the House of Commons, whose words and actions at the close of the 1629 Parliament so offended the King that he had them imprisoned. The meetings of the Commons

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82 Ibid.
83 Public Record Office, National Archives, London.
SP 16/119, art. 58.
84 Public Record Office, National Archives, London.
SP 16/161, arts. 176, 181.
in all of Parliaments in the 1620s were contentious. Instead of, or as a condition for, granting the King’s repeated requests for supply to support his war efforts, the Commons insisted on pursuing its own concerns including parliamentary privilege, the growth of Arminianism, what they perceived as the King’s abuse of *Magna Carta* in billeting soldiers in homes of private citizens and in imprisoning men who refused to pay the forced loan, and the censure of the Duke of Buckingham. On 25 February 1629, only a month after another contentious parliament reconvened, the Speaker of the House, John Finch, delivered to the Commons the king’s commandment for adjournment, which met with several members’ objections on the grounds that the Commons should decide adjournment. Sir John Eliot then presented Finch with a remonstrance on the subject of tonnage and poundage, and when Finch refused to read it, Eliot did. When Finch rose to adjourn the debate, aided by Benjamin Valentine, Denzil Holles forced Finch back into his chair and holding him there, proclaimed, «God’s wounds he should sit still till it pleased them to rise».

On 2 March the King issued a proclamation dissolving Parliament because of the «disobedient and seditious carriage of certain ill-affected persons of the House of Commons» and subsequently issued warrants to nine members of the House of Commons, including Eliot, Holles, Valentine, William Stroud, Walter Long, and John Selden, requesting them to submit. They refused to answer «out of Parliament» for what was said and done in parliament, and the King had them committed close prisoners. Shortly thereafter legal maneuvering on both sides began.

According to Conrad Russell, Charles was determined that the prisoners would not gain a release without a submission, and the Star Chamber seemed the likely court in which to proceed. On 25 April the King summoned the judges to Serjeants-Inn to confer on the charges. The King wanted an opinion on whether the members of Commons enjoyed the privilege of free speech on matters debated in parliament, whether a refusal to be examined was «not a high contempt in him, punishable in the Star Chamber, as an offence against the general justice and government of the kingdom», and «if a parliament man raise slanders and rumours against the council and judges, not in a parliamentary way, but to blast them, if punishable in Star Chamber after parliament».

On another day the Attorney General asked the judges if a parliament man being called before the court of Star Chamber *ore tenus* and if he did not submit to examination «for such things as did concern the king and the government of the state», he might not be

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be proceeded against pro confesso.88 The judges advised that ore tenus was not «the justest way» for the king to proceed according to the rules of Star Chamber, and that «it would not be for the honour of the king, nor the safety of the subject, to proceed in that manner».89 On 7 May Attorney General Robert Heath filed charges in the Star Chamber in the hope of resolving the matter of privilege, but the charges were dropped by the end of summer when it became clear that the judges inclined towards the defendants' claims for privilege.90

While the King's lawyers were pursuing the case in Star Chamber, the defendants sued for writs of habeas corpus on the grounds that they were unjustly committed to prison without cause – the same issue that had prompted the petition of right passed in the 1629 parliament. The King's return to the writ was that they had been imprisoned «for notable contempt committed by them against ourself and our government, and for stirring up sedition against us». All of the attorneys on behalf of the imprisoned members of parliament (MPs) maintained that «sedition» did not appear as a chargeable offense in the lawbooks, and that «sedition» was rather the general quality of an offense. According to Mr. Mason, the counsel for MP Walter Long, «sedition is nothing but division».91 According to Edward Littleton, the attorney for John Selden,

For sedition, and the general notion of it, we have not either in the division or explication of offences that occur in our books an express definition, description or declaration of it, though it occurs sometimes as mingled with some other offences [...] Nor hath there been yet found any indictment or proceeding upon the crime of Sedition.92

If sedition appeared at all, it was in conjunction with some other crime as in «seditious words» or «seditious libel», which if the crimes «seditious» described were not capital crimes, release on bail was warranted. The defendants, therefore, should either be bailed or released on the grounds that the charge was insufficient, that is that it was not a crime specified by law, or that if it were to be interpreted as a crime like seditious words or seditious libel, the offense was bailable.

On behalf of the king, the opposing attorneys argued that the king could imprison at will when a case was outside of the issues in the petition of right, and, furthermore, that the words of the return were not general but specific. In explaining precisely how they were specific, the king’s sergeants, Berkely and Davenport, provided a definition of sedition that had been absent from the law books. Berkely argued that, according to Glanvile, «That to do anything in sedition of the kingdom, or of the army is high-treason», and further that «sedition tendeth
to the disinheritance of the king [...] And in this sense sedition is no stranger in our law; and such sedition which severs the people from the king, is treason.”93 Davenport argued that he found the word sedition in the law «and the consequent of it likewise, which is seduction populi». Sedition, he maintained, never appeared in a good sense, but «is always ranked and coupled with treason, rebellion, insurrection, or such like as it appears by all those statutes which have been remembered on the other sides.»94 According to Russell, when Charles learned that the judges in King’s Bench were inclined to bail the prisoners, he moved them from the custody of the marshal of the King’s Bench and had them confined to the Tower by his own warrant, placing them outside the jurisdiction of the court. In October 1629 the king offered the prisoners bail in exchange for their submission to his authority. Most refused and were remanded to prison. In 1630 Eliot, Holles, and Valentine were tried in the King’s Bench and found guilty of sedition.

Although the court never made a decision on the writ of *habeas corpus* for the MPs, the definitions of sedition that both sides employed in their arguments proved invaluable in causes the government brought against its enemies in the 1630s. In 1630 an information was exhibited in the Star Chamber against Alexander Leighton, «a Scotsman born, and a Doctor of Divinity» and author of *An Appeal to the Parliament, or a Plea against the Prelacy*, charging him with «framing, publishing, and dispersing a Scandalous Book against King, Peers, and Prelates, wherein amongst other things he sets forth [...] false and seditious Assertions and Positions».95 In his answer Leighton confessed to writing the books but maintained he had no ill intention. At the hearing the parts of the book the government deemed seditious were read aloud, and since Leighton had confessed to writing the book, the court proceeded to its sentence:

That it evidently appeared upon Proof, that the Defendant had printed five or six hundred of the said Books, and that in their opinions he had committed a most odious and heinous Offence, deserving the severest punishment the Court could inflict, for framing and publishing a Book so full of most pestilent, devilish and dangerous Assertions, to the scandal of the King, Queen and Peers, especially the Bishops.96

Leighton never had the opportunity to argue whether or not his book was «sedition.» A few years later, William Prynne was tried in Star Chamber for writing *Histriomastix*. The information accused him of compiling and putting into print «a libelous volume» against plays, maypoles, people, and kingdom. To assure his conviction, the information cautiously spelled out how this book, granted approval by an ecclesiastical licenser, engaged in sedition: «he hath therin

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93 Ibid., 249.
94 Ibid., 252.
95 J. Rushworth, *Historical Collections of Private Passages of State: Weighty Matters in Law, Re-
markable Proceedings [...],* vol. 8, part 2 (London, 1680), 56.
96 Ibid.
written divers incitement, to stir up the People to discontent, as if there were just cause to lay violent hand on their prince." In barely four years «sedition» went from an act that English law had not defined as a specific crime, or from an adjective defining a specific crime like slander or libel, to the crime of «stirring up the People to discontent». When the MPs’ attorneys in 1629 had referred to sedition in the old statutes, they had acknowledged that sedition, though not itself a crime, was often associated with the crime of treason when it led to actions intended to unseat the king. In the court of Star Chamber in 1633 it was sufficient merely to evoke the possibility of provoking to treason: «as if there were just cause to lay violent hand on their prince» and compound it with stirring up the people with the crime of «sedition.» In 1578 in the matter known as Cromwell’s case, the judges had decided their case based on the principle that «sedition cannot be committed by words but by publick and violent action». In only four years by appealing to the literal language in arguments on both sides of a single case, the government of Charles I abandoned an ancient principle of English law and created a crime by which it could proceed against the authors of books whether or not the books were licensed by the ecclesiastical authorities.

In her essay «State Control of the Press», as we have seen, Sheila Lambert said «that the government of Charles I only engaged in censorship in egregious cases which jeopardized public order or the integrity of his foreign policy, or that libeled the King». Frederick Siebert suggested that censorship actually declined from the onerous system that had been put in place during the reign of Elizabeth I. The evidence presented here reveals that both Lambert and Siebert were mistaken. Rather than enacting censorship against books that were clearly against the law, Charles transformed the law to make many more books illegal. Instead of using the High Commission and the Star Chamber to adjudicate licensing and patent problems among the London Stationers, Charles used the courts to prosecute authors who «stirred up» the people. In the name of resisting innovation, Charles’s attorneys scanned the law for principles that could be asserted adhering to the literal law, while employing his courts to expand that law to effectively create transformation. Censorship became an important tool of the government of Charles I. While James I had engaged in censorship twice as often as Elizabeth I, Charles enacted censorship five times as often as his father – and only Charles

100 Siebert, Freedom of the Press in England, 2.

During the 40 years of Elizabeth’s reign there were 23 actions taken to suppress objectionable books, bring court cases against their authors, or order a search for illegal materials; during the 22 years of James I’s reign, there were 25 instances. During the 15 years between 1625 and 1640, the government engaged in 70 acts of censorship.
was vigilant in the use of the courts of High Commission and Star Chamber to enact censorship.

In certain respects, then, both Whig and Revisionist historians have been right – and wrong. The Whigs were correct in seeing a repressive censorship during the reign of Charles I. And the Revisionists have been technically correct in the position that Charles’s government did not engage in «innovation» – that it did not create licensing, the High Commission, or the court of Star Chamber. The Whigs, however, have erred in their teleology: There was no march towards freedom from the repressive Tudor dark ages. And Revisionists have erred by accepting at face value the claims of Charles and Laud that they honored the law. When the full story of censorship during the reign of Charles I is told, I suspect that we will agree with the Revisionists that censorship during the reign of Charles was not nearly as effective as Whig historians would have us believe, but we will also see that when it did occur, as it did in the transformational literalism that altered the use of the High Commission and the Star Chamber, it took forms so pernicious that we will have to acknowledge that censorship played a significant role in creating the seventeenth-century crisis in monarchical government known as the English Revolution.

Zensur und die Gerichte der Star Chamber und der High Commission in England bis 1640

La censure et les Cours de la Chambre de l’Etoile et de la Haute Commission en Angleterre jusqu’en 1640

Les historiens de l’époque moderne inclinent à tenir pour un ensemble cohérent les mécanismes de contrôle de la presse utilisés par les gouvernements de l’Angleterre des Tudor et du début des Stuart. Cet article explore la manière dont les deux principales composantes de la censure – l’autorisation de publier et les cours de prérogative qui contrôlaient cette autorisation – ont pris un caractère distinctif durant le règne de Charles Ier à travers de petits raffinements dans les plaidoiries et de subtiles extensions de la juridiction des cours. En réinterprétant « littéralement » le langage et l’intention des précédents juridiques, le gouvernement de Charles Ier transforma la manière dont la Cour de la Haute Commission et celle de la Chambre de l’Etoile parvinrent à contrôler aussi effectivement la presse que si ce gouvernement avait passé lui-même une nouvelle législation. Ce littéralisme transformateur a fonctionné si efficacement à l’intérieur du système que les historiens ont manqué de voir le changement et pris au sérieux l’affirmation de Charles Ier selon laquelle il répudiait toute innovation.

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