

Legal and Linguistic Coercion of Recusant Women in Early Modern England

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Legal records have preserved the names and statements of women who were recusants, Catholics and other nonconformists who did not attend Book of Common Prayer services as statutes required in Tudor and Stuart England.¹ In these records, the recusants' names do not function as authors' names as defined by Michel Foucault. He analyzes an author as a part of a system of procedures used in every society to organize the production and distribution of discourse.² An author's name is a means of designating the status of a particular discourse considered worthy of preservation. During recusancy proceedings, the law acted to efface recusants' statements by classifying their speech as illegal and transgressive. Because the recusants were threatened by penalties of fines, imprisonment, and death, it has been assumed that the discourse produced during their prosecutions is a monological expression of juridical and political authority.

The dissociation of the Foucauldian author-function from records of speech that occurred during a presentment or felony trial of a recusant should not turn our attention away from the relation of such an individual to the production and functions of speech in a judicial proceeding. I will argue that, despite the coercion effected by statutes and the protocols of judicial prosecutions, recusants participated in the authoring of dialogic utterances as the practice is understood by Mikhail Bakhtin. In

1. The term recusant referred to a person who did not attend the services of the Church of England as required by the Act of Uniformity. In 1593 (35 Eliz. I, c. 1 & 2) the phrase "popish recusant" differentiated Catholic absentees from others. The first and second Acts of Uniformity (2 & 3 Ed. VI, c. 1) were preceded by an Henrician statute (31 Henry VIII, c. 14) abolishing diversity of opinions. The latter made provisions to eliminate discord and dissent caused "by occasion of variable and sundry opinions and judgments" about the doctrine of the Church of England. All statutes and citations in the text are from J. R. Tanner, ed., *Tudor Constitutional Documents* (Cambridge: Cambridge University Press, 1930) and *Constitutional Documents of the Reign of James I, 1603-1625* (Cambridge: Cambridge University Press, 1961).

2. Other written judicial texts such as law reports of the early modern period have an author in the sense defined by Foucault in his articles, "What is an Author?" in *Language, Counter-Memory, Practice*, trans. Donald F. Bouchard and Sherry Simon (Ithaca, N. Y.: Cornell University Press, 1977), 113-38; and "The Discourse on Language," trans. Rupert Swyer, in *The Archaeology of Knowledge*, ed. A. M. Sheridan Smith (New York: Harper and Row, 1972), 215-37.

order to study the production of speech as a social phenomenon, Bakhtin evaluates the utterance, the speech act of particular speakers in a specific situation, as the basic unit of a generative process. His concept of the utterance as dialogic acknowledges the relation between self (the speaker) and other (the addressee) in the production or authoring of speech.

The speech of jurists and recusant women in specific legal proceedings suggests that speakers, both jurists and the accused, simultaneously authored the meaning of utterances.³ Three juridical genres that I will discuss, oaths of allegiance, presentments, and evidence spoken at felony trials, reveal different effects of coercion upon the speech of both jurists and recusants. Whereas an oath merely allows a speaker to recite it, to affirm an authoritative discourse, a presentment facilitates the disruption of the boundary demarcating jurists' utterances that enforce statutes from an accused individual's assertions that refute evidence. During presentments, recusants articulate their disagreement with religious doctrine and statute law by means of compulsory speech. The coercion enforced by a judicial proceeding does not displace productivity from one speaker (the accused) to invest it wholly in another (the jurist). Even during a felony trial for harboring a priest, the accused may use coerced speech as a means not only to question institutional authority but also to compel speech from jurists.

Tudor and Stuart laws required civil and church authorities to secure the religious conformity of subjects by means of oaths and fines. The possibility of compelling subjects to acknowledge the head of church and state governed the stipulation, set forth in 3 & 4 Jac. I, c. 4 (1606) and required by 7 & 8 Jac. I, c. 6 (1610), that subjects take an oath similar to that included in 1 Eliz. I, c. 1 (1558), the Elizabethan statute "restoring to the Crown the ancient jurisdiction over the state ecclesiastical and spiritual, and abolishing all foreign power repugnant to the same." Whereas the Elizabethan oath was to be taken only by men who held ecclesiastical or civic offices within England, the statute of 1610 specifically required married women who were recusants to swear to the oath. The 1610 statute collapsed the dichotomies based upon sex difference that customarily defined a woman's legal status in terms "of contraries (married/unmarried) or opposites of privation (able to succeed to a title/unable to succeed) . . ."⁴ in the early modern period. Prior to 1610, recusancy legislation made specific provisions to acknowledge marital status which differentiated women's relation to property. Because a married woman, who was defined as a *femme covert* by law, had no property

3. See Robin Clifton, "Fear of Popery," *The Origins of the English Civil War*, ed. Conrad Russell (1973; reprint. London: The Macmillan Press, 1981), 144-67; and A. O. Meyer, *England and the Catholic Church under Queen Elizabeth*, trans. J. R. McKee (London: Kegan Paul, 1916).

4. Ian Maclean, *The Renaissance Notion of Woman* (Cambridge: Cambridge University Press, 1980). Cf. Marie B. Rowlands, "Recusant Women 1560-1640," in *Women in English Society 1500-1800*, ed. Mary Prior (London: Methuen, 1985), 149-80.

of her own, provisions had been made to account for the circumstances that she could not pay her own fines, and levies and distraints could only be made against her husband's property. The provisions differentiating the punishment of a married woman from a spinster and a widow, who were liable for their own fines, protected only a husband's possession of property. When widowed, a recusant woman lost two parts of her jointure and dower, and forfeited any right to a share of her husband's goods. During her husband's lifetime, however, a married woman possessed some degree of immunity from financial penalties affecting other recusants. "An Act for administering the Oath of Allegiance, and reformation of Married Women Recusants" (1610) altered preceding provisions in order to compel husbands to encourage their wives to conform.

The oath of allegiance required of recusants by the 1610 statute revealed that the facts to which they attested, religious uniformity and political obedience, were matters of contention and untruth.⁵ With penalties of imprisonment and fines, the statute coerced recusants to repeat a ritualistic utterance confirming (among other statements):

I A. B. do truly and sincerely acknowledge, profess, testify, and declare in my conscience before God and the world, That our Sovereign Lord King James is lawful and rightful King of this Realm and of all other his Majesty's dominions and countries; and that the Pope, neither of himself, nor by any authority of the Church or See of Rome, or by any other means with any other, hath any power or authority to depose the King, or to dispose any of his Majesty's kingdoms or dominions, or to authorise any foreign prince to invade or annoy him or his countries, or to discharge any of his subjects of their allegiance and obedience to his Majesty, or to give licence or leave to any of them to bear arms, raise tumult, or to offer any violence or hurt to his Majesty's Royal Person, State, or Government, or to any of his Majesty's subjects within his Majesty's dominions. . . . And all these things I do plainly and sincerely acknowledge and swear, according to these express words by me spoken, and according to the plain and common sense and understanding of the same words, without any equivocation or mental evasion or secret reservation whatsoever: And I do make this recognition and acknowledgment heartily, willingly, and truly, upon the true faith of a Christian, So help me God.⁶

The need to attest by this compulsory oath demonstrated dissent and conflicting beliefs rather than social unity. By opposing the King of England and the Pope, the oath of allegiance required of recusants articu-

5. Cass Sunstein, "Unity and Plurality: The Case of Compulsory Oaths," *Yale Journal of Law & the Humanities* 2 (1990): 101-11.

6. "An Act for administering the Oath of Allegiance, and reformation of Married Women Recusants" (7 & 8 Jac. I, c. 6) stipulated that the oath set forth in "An Act for the better discovering and repressing of Popish Recusants" (3 & 4 Jac. I, c. 4) was to be repealed.

lated the contending sources of political and religious authority respected by members of English society.

An anonymous Catholic writer astutely questioned the meaning and validity of the oath by identifying the contradiction of it: "beinge tendred under great penaltie to the refuser, how can anie man truelie sweare that he doeth take yt hartelie and willinglie?"⁷ An oath of allegiance is a response determined by an external source of compulsion. By affirming, repeating, or swearing an oath, a speaker does not become the author of a discourse but instead subordinates herself to another's discourse and authority, such as those of Parliament and the king in the instance of statutes concerning recusancy. An oath exemplifies Bakhtin's definition of authoritative discourse, privileged language that permits no play with its framing context.⁸ The utterance produced when a speaker repeats an oath is predicted and fixed by constraints external to the speaker who cannot alter its words. Whenever recited, the oath of allegiance retains a prescribed and invariable linguistic form and meaning determined by political and juridical authorities.

A presentment, in contrast to an oath, enabled recusants who refused to obey statutes concerning religious conformity to state their beliefs. Statutes designated magistrates, such as a mayor or Justice of the Peace, as persons having "power and authority . . . to enquire, hear, and determine" an individual's reasons for being absent from religious services performed according to the rites of the Church of England. Edwardian legislation (2 & 3 Ed. VI, c. 1) explicitly established "common" prayer as a service of the church set forth "in a book entitled The Book of Common Prayer and Administration of the Sacraments and other Rites and Ceremonies of the Church" in order to secure a uniform order throughout England. The Edwardian legislation requiring attendance at the common prayer service was instituted again in 1559 (1 Eliz. I, c. 2) and in subsequent Jacobean statutes. Aware that personal sympathy could prevent local officials from diligently investigating recusants, the Bench specified questions in order to regulate and to coerce the speech of a Justice of the Peace presiding at a presentment in some jurisdictions such as the North Riding of Yorkshire.⁹ The speech of Catholic recusants summoned to explain their absence from church could not be restricted in the same manner.

Presentments to the Lord Mayor and Alderman of York in 1576 recorded utterances of recusants whose words clearly disputed the ortho-

7. "6 Reasons for refusing the oath, 1607-8 (EL 2189)," in *Recusant Documents from the Ellesmere Manuscripts*, ed. Anthony G. Petti (St. Albans: Catholic Record Society, 1981), 161.

8. Bakhtin suggests that authoritative discourse "cannot enter into hybrid constructions." See "Discourse in the Novel," *Dialogic Imagination*, trans. Caryl Emerson and Michael Holquist (Austin, Texas: University of Texas Press, 1981), 344.

9. See Hugh Aveling, *Northern Catholics: The Catholic Recusants of the North Riding of Yorkshire 1558-1790* (London: Geoffrey Chapman, 1966), 214.

doxy of the doctrine of Elizabethan Calvinism. The civic records of York report the recusants' words as indirect speech:

Elizabeth Wilkynson, wif of William Wilkynson, mylner, sayeth she cometh not to the churche, bycause ther is nithere priest, aultar nor sacrifice. . . . Elizabeth Portar, widowe, sayeth she cometh not to the churche, by cause the service there is not as it ought to be, nor as it hath bene heretofore. . . . Jane West, syngle woman, servant to George Hall, draper, sayeth she cometh not to the churche, for she thynketh it is not the right churche, and that if she shoulde come there it wolde dampne hir soule. . . . Janett Stryckett, widow, sayeth she cometh not to the churche bicause hir conscyens will not serve hir; for the bread and wyne is not consecrate, as it hath bene in tyme paste. . . . Alice Lobley, wif of Richard Lobley, tannar, sayeth hir conscyens will not serve hir; for she sayeth she thinketh the baptisme is not as it hath bene; and sayeth she will not receyve so longe as she lyveth.¹⁰

The recusants' statements specify and dispute matters of doctrine and ceremony that differentiate Protestant and Catholic practices of celebrating the sacraments. The utterances are not solely a product of recusants' personal subjectivism, their will or intentions, nor of coercion, but rather a product of the conflict between speakers and utterances in a particular situation. Within judicial speech, Bakhtin explains, "an intense conflict between one's own and another's word is being fought out. . . ."¹¹ The formulaic aspects of legal discourse such as protocols and judicial lexis interact with individuals' statements concerning doctrinal issues that differentiate Catholicism and Elizabethan Calvinism. The procedures and utterances of presentments provided a forum for doctrinal dispute.

I will use a text of which there are few extant examples (although it belongs to a genre common in the seventeenth century) in order to illustrate the play between the seemingly authoritative discourse of statute law and a coerced speaker's utterances. It is a written statement of advice by a legal counsellor instructing his client about how to plead her case. The text provides a possible script to be performed during the trial of Jane Vaughan (1641) for harboring a priest, John Broughton. By means of the sale of her personal property (jewelry and other belongings) prior to the trial, she obtained both legal counsel and a stay of execution from King Charles I. While the lawyer is the author of the written text, its purpose is to allow the accused in the situation of a felony trial to author spoken utterances which define not only herself but also others, including her judges.

10. *York Civic Records*, ed. Angelo Raine (York, England: Yorkshire Archaeological Society, 1950), 7: 130-35.

11. V. N. Volosinov [Mikhail Bakhtin], *Marxism and the Philosophy of Language*, trans. Ladislav Matejka and I. R. Titunik (Cambridge: Harvard University Press, 1986), 86.

The manuscript text begins with a clearly stated opposition of self and others indicated by the pronouns used in the statements:

They [the jurists] must Proue Broughton to be a Priest. If they shall sweare they knowe him to be a Priest, quest: Howe: If they answeare, he is outlawd, and soe Conuicted, and shewe not the Recorde, it is noethinge. If they shewe the Recorde, Answ: I [Jane Vaughan] hope under ffauor my Lord, they must nowe via voce, prooue him to be a Priest; for his nowe Conuiction is only for wante of appearance, and not by Euydence at tryall, and thus anie man may be Conuicted, and yett be noe Priest; and therefore excepte they fuly prooue him nowe to be a prieste, I hope it shall not Preiudice me.¹²

Her response establishes the fact that she cannot be accused of harboring a priest because Broughton has been convicted for failing to appear before the court and not for transgressing statutes which prohibit Jesuit and seminary priests from residing in England. In her statements and questions, the pronoun "they" consistently refers to the jurists whose anticipated utterances, statements of evidence, are reported as indirect speech. The pronoun "I" identifies the accused, Jane Vaughan, whose words are presented as direct speech. During the trial, Jane Vaughan must sustain a dialogue which contextualizes statements of law and evidence as indirect discourse within her own utterances, in order to prevent the silencing of her own voice. This silencing is the inevitable result of conviction as a felon, who by custom was denied the right to speak on her own behalf. The pronoun "you", referring to Jane Vaughan, occurs only at the conclusion of the text, where she is advised that if she is convicted, she should produce the reprieve or stay of execution after sentencing. The reprieve, already secured from King Charles I, "will Saue your Lyfe, and doubtless we shall afterwards procure a Pardon to haue your Estate."¹³ The conclusion represents the effect of the collapse of the opposition between the pronouns "I" and "they" sustained only by a dialogic contextualization of the jurists' discourse within Jane Vaughan's own statements. If she is convicted as a felon, and thereby denied the right to speak on her behalf, her counsellor will speak for her which will create a different opposition between speakers and utterances indicated by the changed pronouns, "we" and "you."

In the written text, rules separating one voice from another are manipulated in a manner that reveals how the accused can negate authoritative discourse. When enclosed by Vaughan's speech, the authoritative discourse of evidence and statutes becomes subject to

12. The manuscript text is transcribed by John Hobson Matthews in *Catholic Record Society Miscellanea* 8 (1913): 154-55.

13. *Ibid.*, 155.

semantic change. The effect of her utterances within the trial is represented in the statements:

They must Proue that I wittingly, and willingly Receaued him, knowinge him to be such a Priest; and that I knewe him to be at Lybertie, borne in the Kings dominions, and out of howlde when I soe Receaued him. Md [sic] if they shall proue I knewe him to be a Priest, and harboured him, yett if they doe not Proue I harburd him, knowinge him to be Such a Priest as aboue, they Proue noethinge; this the uery words of the Statute makes good.¹⁴

In this example, contextualization, a kind of verbal play that disrupts the fixed meaning of a statute or evidence, has important consequences; for example, authoritative discourse loses its meaning, becoming, as Vaughan's counsellor states, "nothing." The written text repeatedly asserts this effect of contextualization:

If they shall sweare they fownde his orders aboute him, Quest: wheather those they call his orders weare not in Lattine, if yea, if they Can Reade, and understand latine, if no, howe can they tell those weare his orders. If they Answere they tooke them a way and an other Read them, to them, and by that they knew they weare his orders, Answ: that he that Read them, must vyue voce, testifie this, or ells it is noethinge.¹⁵

Each statement advises Jane Vaughan to question the authority and meaning of statements used to coerce and to demand her own speech. Her replies indirectly report the words of those prosecuting her and question whether their linguistic evidence constitutes meaningful utterances in terms of the law. The "script" for the accused's speech instructs her to incorporate the words used by her accusers within her own in order to reduce their words to "nothing"; that is, to deny not their accuracy but their function as evidence and statements of fact for the charges made. The written text recommending Jane Vaughan's responses to evidence and accusations illustrates how speakers can merge the boundaries of their utterances with authoritative discourse. The counsellor's written instructions contextualize statute laws and evidence within a dialogue similar to that which occurs during a trial. Bakhtin's analysis of discourse clarifies how a theme, relevant to a particular speaker within the context of a trial, challenges the statute's meaning, that is, the fixed repeatable aspect customary to legal discourse concerning recusants.¹⁶

The trial of Jane Vaughan attempted to punish her for supporting a priest whose theological discourse could dispute the truth of the doctrine

14. Ibid., 154.

15. Ibid.

16. See Volosinov [Bakhtin], *Marxism and the Philosophy of Language*, 99-100; and Katerina Clark and Michael Holquist, *Mikhail Bakhtin* (Cambridge: Belknap Press, 1984), 231.

of the Church of England. A prosecution engaging in dialogue with those accused of recusancy or of crimes such as harboring a priest sought to produce religious uniformity by reducing their political and social influence. Presentments and trials are exercises in the "governance" of discourse in which one attempts to determine another's response, its linguistic form and significance, by means of one's own statements.¹⁷ Specific examples of judicial proceedings reveal the impossibility of controlling discourse simply by coercing speech.

In order to study the dialogue of a recusancy presentment or a felony trial, one must take into consideration non-linguistic factors, such as their production as a coerced response, that affect the meaning of words. Speech, including the questions and replies made by participants in a judicial proceeding, are in some degree formulaic. The speaker's evaluation of what she is talking about and her judgment about whom she is addressing determine her choice of language. A trial may seem to allow little choice of language and genre to a speaker, however, she can exploit the "addressivity of speech."¹⁸ By taking into consideration the factors governing the practice of speakers in a presentment or a trial, an analysis using Bakhtin's dialogic theory reveals the importance of both speaker and addressee, an accused and a jurist, to the authoring of an utterance.

17. Clark and Holquist, *Mikhail Bakhtin*, 236.

18. See Mikhail Bakhtin, "The Problem of Speech Genres," *Speech Genres and Other Late Essays*, ed. Caryl Emerson and Michael Holquist (Austin, Texas: University of Texas Press, 1986), 95-99; and Michael Holquist, *Dialogism: Bakhtin and his World* (London: Routledge, 1990), 48-49.