
“Is It a Book That You Would Even Wish Your Wife or Your Servants to Read?” Obscenity Law and the Politics of Reading in Modern England

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WHEN A LONDON JURY ACQUITTED Penguin Books of obscenity charges in November of 1960, they made a decision that quickly became part of a larger narrative of liberalization. But in the folklore of the 1960s in Britain, the prosecution’s disastrous question on the first day has become almost as significant as the verdict.¹ The complete text of *Lady Chatterley’s Lover*, D. H. Lawrence’s sexually explicit novel about an affair between an aristocrat and her husband’s gamekeeper, had never been legally available in Britain. Emboldened by the 1959 Obscene Publications Act, which made literary merit a defense, Penguin published an unexpurgated edition the following year. To the surprise of the new law’s backers, the company was charged with publishing an obscene book.² The trial attracted intense interest. The judge, Mr. Justice Byrne, and the prosecuting counsel, Mervyn Griffith-Jones, were held up as

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¹ Geoffrey Robertson, “The Trial of Lady Chatterley’s Lover,” *The Guardian*, October 22, 2010; Steve Hare, “The Tumultuous Trial of ‘Lady Chatterley’s Lover,’” *Daily Telegraph*, November 1, 2010; Peter Hennessy, *Having It So Good: Britain in the Fifties* (London, 2006), 512; Kenneth O. Morgan, *Britain since 1945: The People’s Peace* (Oxford, 2001), 186; Arthur Marwick, *The Sixties: Cultural Revolution in Britain, France, Italy, and the United States, c.1958–c.1974* (Oxford, 1998), 146–147.

² H. Montgomery Hyde, ed., *The Lady Chatterley’s Lover Trial (Regina v. Penguin Books Limited)* (London, 1990), 161. The most thoroughly researched account of the preparations for and aftermath of the trial is Alistair McCleery, “*Lady Chatterley’s Lover* Re-Covered,” *Publishing History* 59 (2006): 61–84. Strangely, McCleery passes over the trial itself, and so neglects some of the most important archival material bearing on the case, such as the lawyer’s brief discussed later in this article. Other detailed accounts include Sean Matthews, “The Trial of *Lady Chatterley’s Lover*: ‘The Most Thorough and Expensive Seminar on Lawrence’s Work Ever Given,’” in Howard J. Booth, ed., *New D. H. Lawrence* (Manchester, 2009), 169–191; Jeremy Lewis, *Penguin Special: The Life and Times of Allen Lane* (London, 2005), chap. 18. On the novel’s publishing history and earlier entanglements with the law, see Michael Squires, introduction to D. H. Lawrence, *Lady Chatterley’s Lover; A Propos of Lady Chatterley’s Lover*, ed. Squires (Cambridge, 1993), xvii–lx, here xxviii–xl; John Worthen, *D. H. Lawrence: The Life of an Outsider* (London, 2005), chaps. 23–25.

uncomprehending representatives of a moral code and an elitism whose time had passed. Griffith-Jones asked the jury whether *Lady Chatterley's Lover* was “a book that you would even wish your wife or your servants to read.”³

A veteran of the International Military Tribunal in Nuremberg, Griffith-Jones was used to cutting an intimidating figure in court. But when he asked this question, some of the jurors laughed.⁴ Three of them were women, and by 1960 very few British families employed live-in servants—certainly not the dock laborer, the teacher, the butcher, the dress machinist, the foreman, the driver, and the several salesmen in the jury pool.⁵ The literary critic Richard Hoggart, one of Penguin's star witnesses, remarked many years later that Griffith-Jones's question “crystallised the gulf between the Britain even of 1960 and the understanding of his time by a man brought up in a closed, archaic world.”⁶ The reference to wives and servants was a blunt reminder that the question of who could be trusted to read what was a question about social difference. And the way the law reproduced social judgments that could appear anachronistic raises the larger problem of the relationship between legal processes and cultural change.⁷

The *Lady Chatterley's Lover* trial was the last sortie of a convention that had held since the nineteenth century: that material the authorities would ban if it were produced for a mass audience did not necessarily warrant prohibition if it was directed toward a privileged readership in whose judgment the courts could have more faith. Ian Hunter, David Saunders, and Dugald Williamson have called this principle “variable obscenity.”⁸ It was licensed, though not prescribed, by the leading English obscenity case. In *The Queen v. Hicklin* (1868), Chief Justice Cockburn declared: “I think the test of obscenity is this, whether the tendency of the matter charged as obscenity is to deprave and corrupt those whose minds are open to such immoral influences, and into whose hands a publication of this sort may fall.”⁹ With its combination of orotundity and elasticity, Cockburn's definition of obscenity rapidly be-

³ The National Archives, Kew [hereafter TNA], Director of Public Prosecutions, DPP 2/3077, pt. 4, “Central Criminal Court. Old Bailey, London, E.C.4, Thursday, 20th October, 1960. Before: Mr Justice Byrne. Regina v Penguin Books Limited . . . Transcript of the Shorthand Notes of George Walpole & Co., Official Shorthand Writers to the Central Criminal Court . . . First Day,” 14; Hyde, *The Lady Chatterley's Lover Trial*, 62. When quoting statements in court, I usually rely on Hyde's edition, which is based on the court stenographers' transcripts. C. H. Rolph, ed., *The Trial of Lady Chatterley: Regina v. Penguin Books Limited—The Transcript of the Trial* (Harmondsworth, 1961), rushed out by Penguin after the trial, is often cited, but it is less comprehensive than Hyde's edition. The Rolph volume was probably based on the partial transcripts produced by the Press Association. The courts could be reluctant to make copies of the official transcripts, in which case journalists fell back on what the Press Association provided. See Ludovic Kennedy, *The Trial of Stephen Ward* (London, 1964), 9–10.

⁴ Hyde, *The Lady Chatterley's Lover Trial*, 17; Rolph, *The Trial of Lady Chatterley*, 17. For examples of Griffith-Jones at his most devastating, see Kennedy, *The Trial of Stephen Ward*, 24, 168–169, 181, 209.

⁵ TNA, DPP 2/3077, pt. 1, “Thursday 20 October 1960 at 10.30 a.m. in Court 1”; Selina Todd, “Domestic Service and Class Relations in Britain, 1900–1950,” *Past and Present*, no. 203 (May 2009): 181–204, here 188.

⁶ Richard Hoggart, *An Imagined Life: Life and Times*, vol. 3: 1959–91 (1992; repr., Oxford, 1993), 55.

⁷ Although it is informed by the wider context of British history, this article focuses on England. The multiple legal systems operating within the United Kingdom mean that the arguments made here do not fully apply to the other constituent countries, especially to Scotland.

⁸ Ian Hunter, David Saunders, and Dugald Williamson, *On Pornography: Literature, Sexuality and Obscenity Law* (Basingstoke, 1993), 10, 73.

⁹ *The Queen v. Hicklin*, 3 Queen's Bench (1867–1868): 360, at 371.

came authoritative in the British Empire.¹⁰ American courts took it up, too. In the United States, the hypothetical reader whose mind was open to immoral influences was nearly always a young person.¹¹ British courts, however, were also exercised by the vulnerability of working-class readers, and the intellectually and morally fragile female reader was a recurrent figure in prosecutors' closing appeals to juries.¹² The categories of age, class, and gender often coalesced. In the *Hicklin* judgment itself, Cockburn's priority was the moral safety of boys and girls, but he also observed that the salacious anti-Catholic pamphlet at issue in the case was "sold at the corners of streets, and in all directions, and of course it falls into the hands of persons of all classes, young and old."¹³ While Griffith-Jones made only the one, fateful, mention of wives and servants, he referred several times to the working-class youths whom a cheap paperback could reach, and the low price of the Penguin edition was central to the prosecution. The final clause of Cockburn's test for obscenity—"and into whose hands a publication of this sort may fall"—was an important qualification. If a book could corrupt some types of vulnerable readers but those readers were unlikely to have access to it, it might be allowed to circulate among a restricted audience, especially if the concerns related to social class. High prices and limited editions could more or less place a volume out of the reach of working-class readers; it was much less feasible for the modern British state to ensure that women would not be exposed to a questionable book while keeping it available to men.

From its mid-nineteenth-century origins to the *Lady Chatterley's Lover* trial, modern English obscenity law was premised on the figure of the self-governing "liberal subject" that informed Victorian arguments about the body politic—and about the advent of mass literacy. In recent years, Patrick Joyce and other historians have stressed the ways in which quotidian forms of governance—in spheres such as urban design as well as in formal political institutions and regulation—presupposed or constructed such self-restraining individuals.¹⁴ This historiography is informed by the writings of Nikolas Rose and Michel Foucault; its implicit point of departure is Foucault's parable of the Panopticon.¹⁵ However, as Peter Mandler has pointed out, other social and cultural historians working independently of Joyce and who in some cases are unmoved by Foucauldian interpretations have demonstrated "how behavioural norms and patterns were established that made conceivable the retraction of the authoritarian State in some of the ways indicated (though not necessarily for the

¹⁰ Hunter, Saunders, and Williamson, *On Pornography*, 66–73; Deana Heath, *Purifying Empire: Obscenity and the Politics of Moral Regulation in Britain, India and Australia* (New York, 2010), 51–52. This was despite the fact that Cockburn's remarks were *obiter dicta*, not a binding precedent. Furthermore, although Cockburn held the title of chief justice, his was not Britain's highest court.

¹¹ Alison M. Parker, *Purifying America: Women, Cultural Reform, and Pro-Censorship Activism, 1873–1933* (Urbana, Ill., 1997), 2; Rochelle Gurstein, *The Repeal of Reticence: A History of America's Cultural and Legal Struggles over Free Speech, Obscenity, Sexual Liberation, and Modern Art* (New York, 1996), 187.

¹² *Minutes of Evidence Taken before the Select Committee on the Obscene Publications Bill, and Appendices, in Session 1956–57* (London, 1958), 109; Lewis, *Penguin Special*, 317.

¹³ *The Queen v. Hicklin*, 3 Queen's Bench (1867–1868): 360, at 372.

¹⁴ Patrick Joyce, *The Rule of Freedom: Liberalism and the Modern City* (London, 2003); Chris Otter, *The Victorian Eye: A Political History of Light and Vision in Britain, 1800–1910* (Chicago, 2008), 10–12; Simon Gunn and James Vernon, eds., *The Peculiarities of Liberal Modernity in Imperial Britain* (Berkeley, Calif., 2011).

¹⁵ Michel Foucault, *Discipline and Punish: The Birth of the Prison*, trans. Alan Sheridan (1975; repr., London, 1991), pt. 3, chap. 3.

reasons indicated) by Foucauldian analysis.”¹⁶ So while the phrase “liberal subject” has a frisson of poststructuralism about it, a wide variety of historians agree that the self-governing individual underwrote many of the social and political changes of the second half of the nineteenth century.

Crucially, not everyone met the conditions for liberal subjecthood. From the middle of the nineteenth century to the 1920s, discussions of the franchise and other entitlements were marked by contrasts and exclusions—men weighed against women, financially secure workers contrasted with the improvident, metropolitan Britons compared with colonial subjects.¹⁷ Jon Lawrence has argued, further, that liberalism’s accomplishments in Britain were always complicated by the continuing strength of corporate and hierarchical thinking, so much so that “it might be more fruitful to think in terms of ‘conservative’ rather than ‘liberal’ modernity in the British case.”¹⁸ Obscenity law at once reflected the qualifications inherent in the idea of the liberal subject and the more hierarchical, Tory social vision that Lawrence sees as defining modern British politics and culture.

That Victorian principles remained current in English obscenity law as long as they did is an instance of the uneven dynamic between law and social change. In the latter half of the nineteenth century, obscenity law was in step with the contemporary ideology of citizenship—indeed, the general idea that some readers were more vulnerable than others was given specificity by that ideology. Variable obscenity was not expressly stated or even strongly hinted at in appellate courts’ statements of the legal position. It was not explained in the summaries of obscenity law in digests prepared for the police and justices of the peace.¹⁹ Yet it was widely taken to be the law, governing the rules of thumb that publishers followed and the working knowledge of the law that police officers acquired from their organizational culture and their dealings with prosecutors and other lawyers. These processes of institutional memory maintained variable obscenity as an informal but potent orthodoxy for lawyers,

¹⁶ Peter Mandler, “Introduction: State and Society in Victorian Britain,” in Mandler, ed., *Liberty and Authority in Victorian Britain* (Oxford, 2006), 1–21, here 13–18, quotation from 13. See, for example, Martin J. Wiener, *Reconstructing the Criminal: Culture, Law, and Policy in England, 1830–1914* (Cambridge, 1990), 7–9, 11–12, 60–61.

¹⁷ Catherine Hall, Keith McClelland, and Jane Rendall, *Defining the Victorian Nation: Class, Race, Gender and the Reform Act of 1867* (Cambridge, 2000); Anna Clark, “Gender, Class, and the Nation: Franchise Reform in England, 1832–1928,” in James Vernon, ed., *Re-reading the Constitution: New Narratives in the Political History of England’s Long Nineteenth Century* (Cambridge, 1996), 230–253; Jennifer Pitts, *A Turn to Empire: The Rise of Imperial Liberalism in Britain and France* (Princeton, N.J., 2005), 249.

¹⁸ Jon Lawrence, “Paternalism, Class, and the British Path to Modernity,” in Gunn and Vernon, *The Peculiarities of Liberal Modernity*, 147–164, here 147. Lawrence discusses the policing of obscenity as one of a number of areas of governance and public life in which such thinking underwrote paternalist practices (155–156). Compare James Vernon, “What Was Liberalism, and Who Was Its Subject? Or, Will the Real Liberal Subject Please Stand Up?,” *Victorian Studies* 53, no. 2 (2011): 303–310, here 307–308.

¹⁹ John Frederick Archbold, *The Justice of the Peace, and Parish Officer: With the Practice of Country Attorneys in Criminal Cases—Comprising the Whole of the Law Respecting Indictable and Summary Offences, Commitments, Convictions, Orders, &c.*, 7th ed., ed. James Paterson, 3 vols. (London, 1875–1878), 2: 983–984; Samuel Stone, *The Justices’ Manual; or, Guide to the Ordinary Duties of a Justice of the Peace: With Table of Cases, Appendix of Forms, and Table of Punishments*, 26th ed., ed. George B. Kennett (London, 1891), 645–646; *The Metropolitan Police Guide: Being a Compendium of the Law Affecting the Metropolitan Police*, 6th ed., ed. James Roberts (London, 1916), 1274; C. E. Howard Vincent, *Vincent’s Police Code and General Manual of the Criminal Law*, 16th ed., rev. by the Commissioner of Police of the Metropolis (London, 1924), 145, 168; Charles Pilley, *Law for Journalists* (London, 1924), 67–68.

law enforcement, and publishers even as its ideological foundations became outdated and untenable in other reaches of British culture, including electoral politics.

The ultimate collapse of variable obscenity was sudden and dramatic. The *Lady Chatterley's Lover* trial *did* reflect the way British culture had become increasingly democratized since World War I, as politicians adjusted to universal suffrage and as modern mass culture and modes of consumption cut across older social distinctions.²⁰ But the trial was able to reflect that social change because of the new procedures introduced by the obscenity legislation of the previous year—and because of Griffith-Jones's overreach. His insinuations of working-class readers' frailty provided an opening for Penguin's counsel, the prominent civil libertarian Gerald Gardiner. Gardiner seized on Griffith-Jones's gaffe and made it the starting point for a plea for a more egalitarian censorship regime—a far more audacious argument than the one his brief asked of him. Gardiner also exploited the new Obscene Publications Act's provisions for calling expert witnesses in order to marshal the authority of liberal members of Britain's elite against the attitudes personified by Griffith-Jones. The trial became one of a series of episodes, running from the disastrous Suez intervention of 1956 to the Profumo sex-and-espionage scandal of 1963, in which the judgment and competence of Britain's leaders came under fire and "patrician authority" was publicly interrogated.²¹ Sensing the wider implications of the case, an American writer watching from the gallery said to the English novelist in the neighboring seat: "This is going to be the upper-middle-class English version of our Tennessee Monkey Trial."²²

The arguments turned on the capacities and entitlements of readers rather than on questions of freedom of expression.²³ For a long time, the regulation of speech or writing did not raise awkward questions of liberty for English lawyers.²⁴ In his *Commentaries on the Laws of England*, the eighteenth-century jurist William Blackstone declared that offenses relating to publications were "offences against the public peace."²⁵ Punishing the publishers of libels, obscenities, and blasphemous and

²⁰ For contrasting accounts of the democratizing qualities of modern cultural forms in Britain after 1918, see D. L. LeMahieu, *A Culture for Democracy: Mass Communication and the Cultivated Mind in Britain between the Wars* (Oxford, 1988); Ross McKibbin, *Classes and Cultures: England, 1918–1951* (Oxford, 1998). A classic contemporary interpretation is J. B. Priestley, *English Journey* (1934; repr., Harmondsworth, 1977), 376. For an international perspective, see Victoria de Grazia, *Irresistible Empire: America's Advance through Twentieth-Century Europe* (Cambridge, Mass., 2005).

²¹ Lawrence, "Paternalism, Class, and the British Path to Modernity," 156–157; Frank Mort, *Capital Affairs: London and the Making of the Permissive Society* (New Haven, Conn., 2010), chap. 7.

²² Sybille Bedford, "The Trial of *Lady Chatterley's Lover*" (1960), in Bedford, *As It Was: Pleasures, Landscapes, and Justice* (London, 1990), 127–170, here 133.

²³ On the absence of a strong doctrine of freedom of expression in English law, see A. V. Dicey, *Introduction to the Study of the Law of the Constitution*, 8th ed. (London, 1915), chap. 6, esp. 235–236, 241–242. Dicey remarks: "When . . . the principles of the common law and the force of the enactments still contained in the statute-book are really appreciated, no one can maintain that the law of England recognises anything like that natural right to the free communication of thoughts and opinions which was proclaimed in France a little over a hundred years ago to be one of the most valuable Rights of Man" (241–242).

²⁴ See, for instance, Thomas Starkie, *A Treatise on the Law of Slander and Libel: And Incidentally of Malicious Prosecutions*, 2nd ed., 2 vols. (London, 1830), 1: vi.

²⁵ William Blackstone, *Commentaries on the Laws of England*, 9th ed., 4 vols. (1783; repr., New York, 1978), 4: 142; see also *The Queen v. Hicklin*, 3 Queen's Bench (1867–1868): 360, at 377 (Blackburn J). Hunter, Saunders, and Williamson argue that there was a cleavage between invocations of the king's peace in eighteenth-century discussions of obscenity and the "medicalised morality and moralised medicine" they discern in the Victorian period; *On Pornography*, 90–91. I think this is to minimize the pow-

sedition texts did not violate “the *liberty of the press*, properly understood.” Freedom of the press, said Blackstone, “consists in laying no *previous* restraints upon publications, and not in freedom from censure for criminal matter when published.”²⁶ Well into the twentieth century, senior legal officials claimed, evidently with pride, that Britain did not have censors because the machinery of the law went to work *after* the offensive material had been published.²⁷

So thin was the discourse of “free speech” in the common-law tradition that British settler colonies dispensed even with the taboo on pre-publication censorship. The Australian government, which tended to prize continuity with British traditions, nevertheless showed little compunction in departing from British practice and establishing a centralized censorship authority.²⁸ Less surprisingly, both the Irish Free State and the apartheid regime in South Africa established agencies to monitor publications as part of their larger projects of cultural independence or purity.²⁹ In contrast, Blackstonian thinking was common in the United States until after World War I. No less a figure than Justice Oliver Wendell Holmes, Jr., endorsed the idea that freedom of expression—and the First Amendment’s protection of it—ruled out prior restraint but permitted post-publication sanctions; so did at least one civil liberties organization.³⁰ There was a “pervasive judicial hostility” to free-speech claims, and a variety of activists and reformers regarded censorship “as a useful tool for social change.”³¹ These understandings of free speech and censorship were challenged as some progressives became civil libertarians in reaction to wartime controls, and then dismantled from the 1930s onward, in part because of the constitutional shift forced by the New Deal.³² The subsequent elaboration of First Amendment doctrines had no close parallel in the United Kingdom. Examining the history of variable obscenity in England opens up a distinctive practice of thinking about, and enforcing, relations between acts of reading and conceptions of the social body.³³

erful continuity over the two centuries of what William J. Novak has called “the common-law vision of a well-regulated society”; Novak, *The People’s Welfare: Law and Regulation in Nineteenth-Century America* (Chapel Hill, N.C., 1996), introduction and chap. 1. The continuing commitment to ideas of the peace in the nineteenth century—and the twentieth—is evident in the fact that obscenity fell within the purview of vagrancy legislation and municipal statutes and regulations.

²⁶ Blackstone, *Commentaries on the Laws of England*, 4: 151–152, emphasis in the original.

²⁷ Edward Tindal Atkinson, *Obscene Literature in Law and Practice* (London, [1936]), 24–25. In a 1954 obscenity case that Griffith-Jones approvingly quoted in the *Lady Chatterley’s Lover* trial, Mr. Justice Devlin directed the jury: “you are not sitting as a board of censors.” Hyde, *The Lady Chatterley’s Lover Trial*, 59–60.

²⁸ Nicole Moore, *The Censor’s Library* (St Lucia, Queensland, 2012).

²⁹ Peter D. McDonald, *The Literature Police: Apartheid Censorship and Its Cultural Consequences* (Oxford, 2009); Senia Pašeta, “Censorship and Its Critics in the Irish Free State, 1922–1932,” *Past and Present*, no. 181 (November 2003): 193–218; Michael Adams, *Censorship: The Irish Experience* (Dublin, 1968), chaps. 1–3. The Irish Free State’s “larger project” was a Catholicizing one, and the restriction of birth-control literature was a major issue in the establishment of the Censorship Board.

³⁰ David M. Rabban, *Free Speech in Its Forgotten Years* (Cambridge, 1997), esp. 2, 14, 15, and chap. 3; *Patterson v. Colorado*, 205 U.S. 454, at 462 (1907); Leigh Ann Wheeler, *Against Obscenity: Reform and the Politics of Womanhood in America, 1873–1935* (Baltimore, 2004), 55–56.

³¹ Rabban, *Free Speech in Its Forgotten Years*, 2, 15; Parker, *Purifying America*, 1. See also Gurstein, *The Repeal of Reticence*, 183–184; Wheeler, *Against Obscenity*.

³² Rabban, *Free Speech in Its Forgotten Years*, chaps. 7–8; David Yassky, “Eras of the First Amendment,” *Columbia Law Review* 91 (November 1991): 1699–1755.

³³ Tracking variable obscenity from nineteenth-century commonplace to 1960s laughingstock means passing over much that is significant in the history of censorship. The principle of variable obscenity

IN MODERN EUROPE, THE THREATS POSED by literacy often overshadowed its promises. Education systems were central to nation-building projects, as Eugen Weber emphasized in his classic study of the Third Republic in France, but the ability to read also exposed peasants and workers to seditious or corrupting messages.³⁴ In industrial Britain, where mass literacy was driven by instruction within family homes and exiguous private day schools well before the establishment of extensive church or state schooling systems, fears of the incendiary potential of the printed word for new readers motivated the newspaper, advertisement, and stamp duties that obstructed the publication of periodicals for working-class readerships.³⁵ After the repeal of these "taxes on knowledge," completed in the early 1860s, popular literacy excited less government concern, but it remained a problem to which the restlessly omnivorous Victorian journals of opinion returned often.³⁶

Some critics worried that the popularity of sports news and other diversions left newly enfranchised working men poorly informed about politics and thus ill-equipped to practice the strenuous judgment of the responsible citizen.³⁷ Many characterized women's reading as an unsettling sort of independence and argued that the romances and melodramas popular among women conduced to a distortingly fantastic view of the way the world worked.³⁸ Observers of industrial workers registered comparable objections to their reading habits.³⁹ The underwhelming quality of popular literacy was in part a consequence of the failure of the state and civil society

applied to "literature" and borderline books, not to the pornography and birth-control guides and catalogues that the relevant authorities spent most of their time dealing with. See Lisa Z. Sigel, "Censorship in Inter-War Britain: Obscenity, Spectacle, and the Workings of the Liberal State," *Journal of Social History* 45, no. 1 (2011): 61–83. This article touches only briefly or not at all on questions that have driven much research in this area, such as the construction of "the obscene" as a regulatory category, the relationship between obscenity and literary modernism, and the ways pornography could function as a quasi-political genre or a sexual imaginary. For a sampling of the literature on these subjects, see Heath, *Purifying Empire*; Celia Marshik, *British Modernism and Censorship* (Cambridge, 2006); Lisa Z. Sigel, *Governing Pleasures: Pornography and Social Change in England, 1815–1914* (New Brunswick, N.J., 2002); Lynn Hunt, ed., *The Invention of Pornography: Obscenity and the Origins of Modernity, 1500–1800* (New York, 1993); Iain McCalman, *Radical Underworld: Prophets, Revolutionaries, and Pornographers in London, 1795–1840* (Cambridge, 1988).

³⁴ Eugen Weber, *Peasants into Frenchmen: The Modernization of Rural France, 1870–1914* (Stanford, Calif., 1976), chap. 18. See also Judith Surkis, *Sexing the Citizen: Morality and Masculinity in France, 1870–1920* (Ithaca, N.Y., 2006), chap. 1.

³⁵ David Vincent, *Literacy and Popular Culture: England, 1750–1914* (Cambridge, 1989), chap. 3; Alec Ellis, *Educating Our Masters: Influences on the Growth of Literacy in Victorian Working Class Children* (Aldershot, 1985); R. K. Webb, *The British Working Class Reader, 1790–1848: Literacy and Social Tension* (London, 1955); Richard D. Altick, *The English Common Reader: A Social History of the Mass Reading Public, 1800–1900* (1957; repr., Columbus, Ohio, 1998), chaps. 2, 15; Mark Hampton, *Visions of the Press in Britain, 1850–1950* (Urbana, Ill., 2004), chap. 2.

³⁶ See Deborah Wynne, "Readers and Reading Practices," in Patrick Parrinder, gen. ed., *The Oxford History of the Novel in English*, vol. 3: *The Nineteenth-Century Novel, 1820–1880*, ed. John Kucich and Jenny Bourne Taylor (Oxford, 2012), 22–36, here 27–29. See also Patrick Brantlinger, *The Reading Lesson: The Threat of Mass Literacy in Nineteenth-Century British Fiction* (Bloomington, Ind., 1998).

³⁷ John Garrett Leigh, "What Do the Masses Read?," *Economic Review* 14, no. 2 (1904): 166–177, here 176.

³⁸ Kate Flint, *The Woman Reader, 1837–1914* (Oxford, 1993), chap. 7.

³⁹ James Haslam, *The Press and the People: An Estimate of Reading in Working-Class Districts—Reprinted from the "Manchester City News"* (Manchester, 1906); Francis Hitchman, "The Penny Press," *Macmillan's Magazine* 43 (1881): 385–398, here 385; Walter Montagu Gattie, "What English People Read," *Fortnightly Review*, new ser., 46 (September 1889): 307–321, here 308; Geo. R. Humphery, "The Reading of the Working Classes," *Nineteenth Century* 33 (April 1893): 690–701, here 692, 694; [B. G. Johns], "The Literature of the Streets," *Edinburgh Review* 165 (January 1887): 40–65, here 65.

to complement elementary education with further opportunities for learning, more public libraries, and so on.⁴⁰ For both sexes, wrote the librarian George R. Humphery in the literary monthly *Nineteenth Century*, the years between leaving school and “taking charge of a household” were the most important phase of life: “It is at this time that the character is moulded.”⁴¹ This time in a person’s life would be a focus of concern in obscenity trials as well.

Press debates about literacy intersected with the efforts of anti-vice campaigners such as the Liberal member of Parliament Samuel Smith. Moving a resolution in the House of Commons in 1888 deploring “the rapid spread of demoralizing literature in this country,” Smith quoted an *Edinburgh Review* article on “The Literature of the Streets” and presented his own initiatives as in dialogue with those exploring the subject of popular reading in the great reviews; in turn, his speech in Parliament prompted an essay in another publication.⁴² A Conservative-leaning newspaper editorialized in 1888: “Until what is called education had become nearly universal, the possibilities of harm which were latent in printed matter had not attracted public attention. The children of the lower classes read with difficulty, and did not read for amusement. That has all been changed . . . We have now to face an agent of moral corruption, no longer confined to persons willing and ready to be corrupted, but obtruding itself on everybody.”⁴³

Such concerns were commonplace in late-nineteenth-century Europe, but there was no common logic to state and private responses. In France, officials monitored peasant reading with an anxious diligence apparently unmatched in Britain, yet from 1881, print censorship was all but abandoned in France.⁴⁴ In Britain, although obscene publications occasionally became the subjects of national debate, as in the 1880s, the suppression of obscenity was handled in a decentralized and reactive manner. As infringements of “the peace,” obscenity offenses could be dealt with by the system of cheap magisterial justice, whose reach was extended dramatically in the Victorian period.⁴⁵ Obscenity cases were conducted before lay justices of the peace and in front of magistrates and juries at the “quarter sessions.” They seldom worked their way up to the superior courts. The most common proceedings involved the mechanisms for the seizure and destruction of books, photographs, postcards, and so on authorized by the Obscene Publications Act of 1857. The act’s “destruction orders” were proceedings *in rem*—that is, they involved the objects rather than their

⁴⁰ Walter Besant, “The Amusements of the People,” *Contemporary Review* 45 (March 1884): 342–353, here 343–344; Johns, “The Literature of the Streets,” 60–61; Gattie, “What English People Read,” 308.

⁴¹ Humphery, “The Reading of the Working Classes,” 692.

⁴² *House of Commons Debates* [hereafter *HC Deb.*], vol. 325, May 8, 1888, cols. 1708, 1711. See also Anthony Cummins, “Émile Zola’s Cheap English Dress: The Vizetelly Translations, Late-Victorian Print Culture, and the Crisis of Literary Value,” *Review of English Studies*, new ser., 60, no. 243 (2009): 108–132, here 119; Samuel Smith, *My Life-Work* (London, 1902), 477.

⁴³ “A Censorship of Morals,” *St James’s Gazette*, November 1, 1888, 3; Stephen Koss, *The Rise and Fall of the Political Press in Britain*, vol. 1: *The Nineteenth Century* (London, 1981), 233–234.

⁴⁴ Martyn Lyons, “What Did the Peasants Read? Written and Printed Culture in Rural France, 1815–1914,” *European History Quarterly* 27, no. 2 (1997): 165–197; Theodore Zeldin, *France, 1848–1945*, vol. 2: *Intellect, Taste, and Anxiety* (Oxford, 1977), 548–551.

⁴⁵ On magisterial justice, see Margot C. Finn, “The Authority of the Law,” in Mandler, *Liberty and Authority in Victorian Britain*, 159–178, here 162–164, 177. On justices of the peace, see Leo Page, *Justice of the Peace* (London, 1936).

owners or handlers.⁴⁶ A hawker whose stock of pornographic postcards was seized and destroyed was not personally charged with a criminal offense. There were, however, a variety of criminal provisions to punish publishers and distributors (more often than authors) of obscene material, ranging from vagrancy laws to the common-law misdemeanor of "uttering an obscene libel," which was punishable by fines or imprisonment or both.⁴⁷

The social and cultural judgments at work in Victorian obscenity proceedings were demonstrated starkly in the case of Henry Vizetelly. Vizetelly was prosecuted twice, in 1888 and 1889, for publishing insufficiently expurgated translations of Émile Zola's novels in cheap editions. His crime was to make the novels available to "the common market," rather than catering to "the select literary class," to quote one of the prosecutors.⁴⁸ There was no parallel effort to restrict access to the French originals.⁴⁹ Several years after the Vizetelly trials, another publisher issued translations of Zola's novels in expensive editions on handmade paper or Japanese vellum. They would be available only by subscription and would not be offered to "the ordinary English public."⁵⁰ These editions did not attract prosecution. The authorities' decision to pursue Vizetelly but not the publishers of the deluxe editions resembled the strategy that had been behind the taxes on knowledge. If dangerous books were expensive, they were less likely to obtrude themselves on everybody. They would circulate among better-off people, who, it was assumed, typically had powers of judgment that would enable them to read such books without being corrupted in the process. Though Zola's novels were widely condemned in Britain, the eminent monthly and quarterly reviews did discuss them calmly and at some length. The understanding that cultivated readers could cope with Zola is reflected in the fact that a good deal of British Zola criticism in the 1880s and 1890s was written by middle-class women.⁵¹

Two assumptions were in play here. The first was that the middle and upper classes could be counted on to exercise the self-government characteristic of the

⁴⁶ William Cornish, J. Stuart Anderson, Ray Cocks, Michael Lobban, Patrick Polden, and Keith Smith, *The Oxford History of the Laws of England*, vol. 13: 1820–1914: *Fields of Development* (Oxford, 2010), 367; TNA, Home Office Papers, HO 302/4, "Confidential: House of Commons: Select Committee on Obscene Publications Bill: Memorandum Submitted on Behalf of the Home Secretary" (May 1957).

⁴⁷ Cornish et al., *1820–1914: Fields of Development*, 364–365; Hunter, Saunders, and Williamson, *On Pornography*, 73–74; Alfred Hughes, *Leaves from the Note-Book of a Chief of Police* (London, n.d. [1864?]), 192–193. On the targeting of publishers and distributors rather than authors, at least before the 1930s, see Colin Manchester, "A History of the Crime of Obscene Libel," *Journal of Legal History* 12, no. 1 (1991): 36–57, here 46.

⁴⁸ Cummins, "Émile Zola's Cheap English Dress," 124; see also 123.

⁴⁹ *Ibid.*, 110, 123; M. J. D. Roberts, "Morals, Art and the Law: The Passing of the Obscene Publications Act, 1857," *Victorian Studies* 28, no. 4 (1985): 609–629, here 628. Compare the opinion of the *Liverpool Mercury*: "If the English versions are offensive to the law, it is hard to understand why the far more revolting French versions are allowed to circulate." National Vigilance Association, *Pernicious Literature: Debate in the House of Commons—Trial and Conviction for Sale of Zola's Novels, with Opinions of the Press* (London, 1889), 22. Samuel Smith was unmoved by the notion that immoral literature could circulate safely in expensive editions; the market was such that it would always be profitable to produce cheap versions for mass circulation. *HC Deb.*, vol. 325, May 8, 1888, col. 1714.

⁵⁰ Cummins, "Émile Zola's Cheap English Dress," 128–129.

⁵¹ Emily Crawford, "Émile Zola," *Contemporary Review* 55 (January 1889): 94–113; Janet E. Hogarth, "Literary Degenerates," *Fortnightly Review*, new ser., 57 (April 1895): 586–592, here 587; Robert Lee Wolff, *Sensational Victorian: The Life and Fiction of Mary Elizabeth Braddon* (New York, 1979), 317–320.

liberal subject. The second was that such self-government could be indexed to social position (the ability to read Zola in French was as much a marker of class as was the disposable income needed to buy lavishly produced books). This second assumption had been central in the calculations made in the debates over the franchise in the 1860s. William Gladstone, the architect of the Liberal electoral reform bill that failed to pass in 1866, declared: "Some classes have more independence; others, unhappily, have less. Some classes have more education; others, unhappily, have less." While this remained the case, it was "right to make some distinction; and not invest all with the title to the political franchise." The most appropriate way of making that distinction was by class: "the condition of a man in life, his presumable character, his presumable amount of education, and his presumable amount of independence, are the criteria which you should employ in order to ascertain who should have the franchise."⁵²

Gladstone's position presupposed that education and other qualities that justified the right to vote could be more or less reliably read off class position. He shared with his Conservative opponent, Benjamin Disraeli, the belief that liability for one kind of taxation or another (including local government rates) was a serviceable guide to a man's independence.⁵³ Despite his differences with both Gladstone and Disraeli, the Radical John Bright agreed, and his argument for yoking suffrage to taxation helped him build "an alliance of working- and middle-class reformers."⁵⁴ "I believe," Bright told the House of Commons in March of 1867, "that the solid and ancient basis of the suffrage is that all persons who are rated to some tax . . . should be admitted to the franchise." The impoverished "residuum" should not be enfranchised, because they had "no independence whatsoever."⁵⁵ The opposite of the residuum, as José Harris writes, was "the regularly employed, rate-paying working man (possessed of a house, a wife, children, furniture, and the habit of obeying the law)."⁵⁶ This image of the respectable working-class patriarch grew out of Chartism's profoundly gendered conceptions of class and the rights of men as workers. The Chartists, as Joan Wallach Scott has written, "developed one aspect of Lockean theory that associated property with the enjoyment of individual political rights, by claiming that the fruit of one's labor or labor power was itself property."⁵⁷ At a practical level, for working-class men as well as landowners, satisfying certain economic and bureaucratic criteria functioned as a proxy for the implicitly and often explicitly masculine quality of "character" deemed a prerequisite for the vote.⁵⁸ This same nexus of assumptions about character and class guided the decisions made in

⁵² *HC Deb.*, vol. 186, March 25, 1867, cols. 485, 487.

⁵³ H. C. G. Matthew, *Gladstone, 1809–1874* (Oxford, 1986), 127–128.

⁵⁴ Hall, McClelland, and Rendall, *Defining the Victorian Nation*, 93.

⁵⁵ *HC Deb.*, vol. 186, March 26, 1867, cols. 636–637.

⁵⁶ José Harris, "Between Civic Virtue and Social Darwinism: The Concept of the Residuum," in David Englander and Rosemary O'Day, eds., *Retrieved Riches: Social Investigation in Britain, 1840–1914* (Aldershot, 1995), 67–87, here 74.

⁵⁷ Joan Wallach Scott, "On Language, Gender, and Working-Class History," in Scott, *Gender and the Politics of History* (New York, 1988), 54–67, here 62–63.

⁵⁸ On the masculinity of "character," see Hall, McClelland, and Rendall, *Defining the Victorian Nation*, chap. 2; Clark, "Gender, Class, and the Nation"; Stefan Collini, "Political Theory and the 'Science of Society' in Victorian Britain," *Historical Journal* 23, no. 1 (1980): 203–231, here 217.

obscenity cases about whether a volume should be proscribed, as twentieth-century cases would show again and again.⁵⁹

THE SOCIAL JUDGMENTS THAT UNDERPINNED English obscenity law were often stated with quotable frankness, but they can also be discerned in the "unspectacular" routines of law enforcement that Lisa Z. Sigel and Deana Heath have urged historians of obscenity to concentrate on.⁶⁰ Consider the case of Harry Sidney Nicholls in London at the turn of the twentieth century. The Metropolitan Police had received sixty-three complaints—"chiefly from solicitors, barristers; justices of the peace &c. & one from a lady"—about Nicholls's prospectuses describing a book titled *Kalogynomia; or, The Laws of Female Beauty*. It purported to be an anatomical textbook "privately printed at the Walpole Press for subscribers only." However, Nicholls was known to the police for selling obscene books when he was in business in Soho Square, and they suspected that the medical trappings of the book were a cover for pornography. Nicholls was duly charged with uttering an obscene libel. The prosecution called a doctor as an expert witness to demolish the book's claims to science. The detective responsible for the case, Inspector Charles Arrow, also took pains to analyze Nicholls's account book to show that *Kalogynomia* had not been printed in a limited edition for subscribers only but had been "broadcast to the public addressed by post irrespective of profession."⁶¹ To prove that the book was not being sold exclusively to doctors, Arrow had only to refer to the names of customers in the ledger. Nevertheless, he went further, calculating, and reporting under oath, the prices that had been paid for them: one guinea per copy in 742 cases, and fourteen shillings in four other instances.⁶² Ostentatiously exclusive books usually cost far more than one guinea, let alone fourteen shillings. Arrow did not make much of the point in his

⁵⁹ There is a parallel with the law relating to personal finance in Victorian England. Paul Johnson has contrasted the strict regulation of working-class financial institutions and personal indebtedness and the more forgiving regime of bankruptcy law and limited liability that governed middle-class finances after the 1860s. The disparity "came to be justified by the alleged difference in the moral characteristics of the rich and the poor." The salience of these class judgments is especially significant in the case of financial arrangements, because "in a genuine contract economy" they would have been "the least subject to any kind of moral imposition." Thus neither freedom of contract nor freedom of speech dislodged formal and informal theories of the order of class and character. Paul Johnson, "Class Law in Victorian England," *Past and Present*, no. 141 (November 1993): 147–169, here 168; Johnson, *Making the Market: Victorian Origins of Corporate Capitalism* (Cambridge, 2010), 59–64. I owe the parallel between obscenity law and Johnson's argument about the regulation of debt and financial institutions to Lawrence, "Paternalism, Class, and the British Path to Modernity," 155–156.

⁶⁰ Sigel, "Censorship in Inter-War Britain," 62; Deana Heath, "Obscenity, Censorship, and Modernity," in Simon Eliot and Jonathan Rose, eds., *A Companion to the History of the Book* (Malden, Mass., 2007), 508–519, here 509, building on David Saunders, "Copyright, Obscenity and Literary History," *ELH: English Literary History* 57, no. 2 (1990): 431–444, here 432.

⁶¹ TNA, Records of the Central Criminal Court, CRIM 1/60/4, Bow Street Police Court, deposition of Charles Arrow, January 10, 1900. Before the advent of radio, the word "broadcast" referred to a way of sowing seeds. The *Oxford English Dictionary* (s.v. "broadcast," v.²) records metaphorical uses, but none connected with selling. Nevertheless, to sell something "broadcast" appears to have been police argot. An officer wrote in 1916 of Boccaccio's *Decameron*: "It would seem that as this work has for many years been sold broadcast, and has been generally accepted as a classic." TNA, Metropolitan Police Office, MEPO 3/2459, report by Inspector J. Lawrence, October 23, 1916.

⁶² TNA, CRIM 1/60/4, Bow Street Police Court, *R. v. Harry Sidney Nicholls and Alice Maud Taylor* depositions file, 13–14 (January 17, 1900). A guinea was a pound plus a shilling (twenty-one shillings in total).

deposition, but he, like Nicholls, clearly knew that the price of a book was a relevant factor in determining whether it was likely to fall into the hands of poorer readers whose minds were open to immoral influences. In court, Nicholls's counsel pressed Arrow to admit that the list of subscribers included "the names of persons of very good social position."⁶³

Limited editions, high prices, and lavish paper and bindings could protect a questionable book in several ways.⁶⁴ An expensive book was less likely to be handled carelessly, and there were fewer copies to fall into the hands of people who might be seen reading them on street corners or in schools, attracting the attention of their teachers, the police, or "justices of the peace &c."—people whose professions or social standing conferred the obligation or entitlement to act as moral guardians.⁶⁵ In this way, publication itself could function as a form of censorship. One inflammatory novel of the 1930s circulated for three years in an expensive limited edition and then in several "trade" editions with some scenes and language toned down. The partially expurgated text was then packaged in a provocative cover as a "cheap" edition, and a small chain of commercial lending libraries based in Lancashire bought multiple copies. Only at this point were the publishers charged with the common-law obscenity offense, when police in Bury heard that the novel was being much discussed in the town.⁶⁶

Publishing in costly limited editions could also be presented as a mark of the publishers' good faith, a sign that they were not trying to reach a popular readership: the steps taken meant that it was not foreseeable that "ordinary" or working-class readers would encounter the book. This was the line a small press took in 1929 when it published a volume of reproductions of D. H. Lawrence's paintings. The publisher prepared a memorandum in anticipation of legal difficulties. The document argued that the book did not satisfy Chief Justice Cockburn's criteria for an obscene publication because it was "issued for subscription only by connoisseurs and collectors," and sold at an extremely high price (ten guineas) that "prevents any possibility of the book ever reaching a wider market." Although the paintings were not indecent, they were "unusual in treatment and subject," and "consequently only persons of intellectual maturity could view them with advantage."⁶⁷ The publisher was not prosecuted.⁶⁸ In the same year, a volume of Lawrence's scatological poems survived be-

⁶³ *Ibid.*, 42 (February 13, 1900).

⁶⁴ On the ways these tactics intersected with enthusiasm for artisanal book production, see Christopher Hilliard, "The Literary Underground of 1920s London," *Social History* 33, no. 2 (2008): 164–182, here 170–179.

⁶⁵ Allison Lorna Elizabeth Wee, "Trials and Eros: The British Home Office v. Indecent Publications, 1857–1932" (Ph.D. diss., University of Minnesota, 2004), chap. 6, provides a well-documented sampling of complaints from the public and the Home Office's responses. See also Judith R. Walkowitz, *City of Dreadful Delight: Narratives of Sexual Danger in Late-Victorian London* (London, 1992), 123–124.

⁶⁶ James Armstrong, "The Publication, Prosecution, and Re-publication of James Hanley's *Boy* (1931)," *Library*, 6th ser., 19, no. 4 (1997): 351–362, here 351–356, 360; Harry Ransom Humanities Research Center, University of Texas at Austin, James Hanley Papers, "Summary—Report of the Police Proceedings against the Directors and the Firm of Boriswood Limited in Regard to the Book Entitled 'Boy' Written by James Hanley," n.d.

⁶⁷ State Library of New South Wales, Sydney, P. R. Stephensen Papers, MLMSS 1284, box 25, "Mandrake Press—Points for Defence," n.d. See also Craig Munro, *Inky Stephensen: Wild Man of Letters* (1984; repr., St Lucia, Queensland, 1992), 85–86.

⁶⁸ The police raided an exhibition of Lawrence's paintings at a London gallery and seized copies of the book as well as some of the original paintings. The copies of the book that had been on sale at

cause it was published for subscribers only. The director of public prosecutions, Sir Archibald Bodkin, explained his decision: "if it be correct that the present edition was for private circulation to subscribers then the case stands differently from a book which is on every bookstall for indiscriminate publication."⁶⁹ As a group of civil servants drily put it in the 1950s, "In practice, the obscenity of a work was considerably affected by the circumstances of its sale."⁷⁰

The circumstances under which the gangster fiction of Hank Janson was sold became an issue in several cases in the 1950s (the importing and mimicking of American pulp fiction and "horror comics" were the subject of considerable cultural unease and legislative and policing activity in that decade).⁷¹ In 1952, police on the Isle of Man charged booksellers for selling obscene books, many of which were by Janson. The Isle of Man was independent of the mainland's law, and the charges were brought under the island's own Obscene Publications and Indecent Advertisements Act of 1907. All the same, the police inspector presenting the case used the language of the *Hicklin* definition as he argued before the high bailiff. For the sake of comparison, the high bailiff asked the officer whether he had read the bestseller of the previous year, Nicholas Monserrat's World War II novel *The Cruel Sea*: "There's a passage in that which could hardly be more obscene." The officer responded that *The Cruel Sea* was not likely to fall into the hands of young people on vacation at the Isle of Man.⁷² The high bailiff decided that he had a point and a week later granted a destruction order. Like late-nineteenth-century commentators on popular literacy, the police officer identified young adulthood as a time when working-class readers were particularly impressionable. The distinction between *The Cruel Sea* and the sort of book that would fall into the hands of young holiday-makers was a judgment about class as well as age: Janson's novels would not be found in respectable bookshops or circulating libraries, but in the cheap newsagents' shops that, in seaside towns, were known for their risqué postcards.⁷³ The previous year, the publisher of Janson's *Milady Took the Rap* had been charged on the mainland, in Blackburn, with publishing an obscene libel. Her barrister asked the court rhetorically: "Is the standard to be different in the case of books printed in stiff covers and in the reach of the pockets of the limited class, and in the case of the working man's literature in a paperback cover?" He got nowhere.⁷⁴

the gallery were destroyed, but the police did not seek to have the edition itself suppressed. Munro, *Inky Stephensen*, 85–86.

⁶⁹ TNA, HO 144/20642, Sir Archibald Bodkin to Sir John Anderson, September 6, 1929. In 1934 a magistrate condemned the distributors of an American book titled *Sane Sex Life and Living* for exercising "no sort of discrimination . . . in the manner in which it was brought to the attention of the public." "Books on Sex Matters: Magistrate and Police Action," *The Times*, March 13, 1935; TNA, MEPO 3/932, F. Sharpe to A. Askew, October 11, 1934, July 18, 1935.

⁷⁰ TNA, HO 302/13, minutes of a meeting of the interdepartmental working party on obscene literature, March 8, 1955.

⁷¹ John Springhall, *Youth, Popular Culture and Moral Panics: Penny Gaffs to Gangsta-Rap, 1830–1996* (Basingstoke, 1998), 141–146; Sue Owen, "The Abuse of Literacy and the Feeling Heart: The Trials of Richard Hoggart," *Cambridge Quarterly* 34, no. 2 (2005): 147–176, here 166–175. Hank Janson was the creation of Stephen Frances, though after about 1953 other authors wrote under the name.

⁷² Steve Holland, *The Trials of Hank Janson* (Tolworth, 2004), 133–135.

⁷³ See George Orwell, "The Art of Donald McGill" (1941), in *The Collected Essays, Journalism and Letters of George Orwell*, ed. Sonia Orwell and Ian Angus, 4 vols. (Boston, 2000), 2: 155–165, here 155.

⁷⁴ Holland, *The Trials of Hank Janson*, 128.

These ideas about governing access to borderline books with reference to class obtruded into arguments in the 1920s about novels whose treatment of femininity was what gave offense. Radclyffe Hall's *The Well of Loneliness*, with its far from explicit representation of a lesbian relationship, was one of the novels in question; the other was Norah C. James's *The Sleeveless Errand*, a story about jaded heterosexual bohemians. The prosecutions of Hall's publisher in 1928 and James's early the following year were a response on the part of the authorities to the perceived gender disruption of the decade. *The Well of Loneliness* was published the same year that young women were enfranchised (most women over the age of thirty had won the vote in 1918), and younger women's sexuality, work, and leisure were the subjects of periodically intense debate throughout the decade.⁷⁵ Women's reading habits formed part of these discussions. The heated coverage of the 1922 trial of Edith Thompson and her lover, Freddy Bywaters, for the murder of Thompson's husband dwelled on the letters she had written to Bywaters in which she reflected on the bestselling novels she read voraciously. As Matt Houlbrook has shown, Thompson's imaginative life was treated as evidence of a feminine failure to function as a liberal subject. Thompson's absorption in fantasy and "melodramatic novels," her critics argued, compromised her reason and self-regulation: she was "the creature and creation of a hectic and hysterical age."⁷⁶

The quoted analyst of Thompson and her age was James Douglas, editor of the mass-circulation *Sunday Express*. Later in the 1920s, he provoked the *Well of Loneliness* prosecution. Hall's novel had been soberly reviewed until Douglas launched a tirade against it on the front page of his newspaper. Douglas said he would rather give "a healthy boy or a healthy girl" poison than let them read *The Well of Loneliness*.⁷⁷ Yet though the ensuing case was unmistakably animated by concerns about youth, sexuality, and femininity, the novel's publisher, Jonathan Cape, was minded to see his troubles in class terms. Cape wrote to the *Express* to complain that the result of the editorial "can only be to nullify our most careful attempts to see that this book reaches the right class of reader. A wide and unnecessary advertisement has been given to the book, and all the curious will now want to read it."⁷⁸ In another context, the phrase "right class of reader" might not have been a reference to social position, but the context of the opposition between the readership of mass-market newspapers and the buyers of hardcover books gave it a social inflection comparable to that of the Vizetelly prosecution's "select literary class."

The director of public prosecutions personally briefed the barrister who was handling the case of *The Sleeveless Errand*. "That a book containing such matter should be written by a woman is startling," Bodkin wrote. "The Director particularly in-

⁷⁵ Adrian Bingham, *Gender, Modernity, and the Popular Press in Inter-War Britain* (Oxford, 2004); Billie Melman, *Women and the Popular Imagination in the Twenties: Flappers and Nymphs* (London, 1988).

⁷⁶ Matt Houlbrook, "'A Pin to See the Peepshow': Culture, Fiction and Selfhood in Edith Thompson's Letters, 1921–1922," *Past and Present*, no. 207 (May 2010): 215–249, here 217, 248.

⁷⁷ Laura Doan, *Fashioning Sapphism: The Origins of a Modern English Lesbian Culture* (New York, 2001), chap. 1; TNA, DPP 1/88, Rubinstein, Nash & Co to Director of Public Prosecutions, October 19, 1928; "A Book That Must Be Suppressed," *Sunday Express*, August 19, 1928.

⁷⁸ Jonathan Cape, letter to the *Daily Express*, August 20, 1928, quoted in Huw F. Clayton, "'A Frisky, Tiresome Colt?' Sir William Joynson-Hicks, the Home Office and the 'Roaring Twenties,' 1924–1929" (Ph.D. diss., University of Wales, Aberystwyth, 2008), 122.

structs Counsel" to "denounce the scandal which the publication of such a book as a piece of literature undoubtedly amounts to. It must not be forgotten that this . . . might lie on anybody's table and be picked up and read by a youth or a girl . . . Imagine a daughter in a respectable English household reading . . . page 227 and coming across the passage 'We're bored with people who aren't bawdy. We call them prigs and prudes if they don't want to talk about copulation at lunch time and buggery at dinner.'" Elsewhere in his brief, however, Bodkin implied that the publication of James's novel would have been less objectionable had it been in the form of a limited edition. He was shocked that the publisher "should without hesitation distribute it through the trade in the ordinary course of business."⁷⁹ Even in the late 1920s, in cases saturated with contemporary concerns about younger women's character and faculties, publishers and lawyers were capable of thinking in terms of nineteenth-century class calculations.

The resilience of this pattern of thought and action was in part a consequence of the importance of precedent in the common-law tradition. The law's teachable precedents and maxims establish circuits of thought that can acquire a degree of self-sufficiency through continuous iteration. Precedents weighed on non-lawyers, too. For police and publishers alike, the lessons of past practice provided the best chance of security. For that reason, variable obscenity was a game that publishers were compelled to play even when it was at odds with their own politics. The publisher of the volume of Lawrence's paintings, for example, was an idiosyncratic member of the Communist Party. The archives of the Metropolitan Police provide glimpses of the force trying to keep up with the rules of a sometimes unpredictable game. Officers secured practical legal advice on obscene publications as they did in other areas of the law with complexities or loopholes, such as liquor licensing.⁸⁰ They worked to make sense of magistrates' thinking and adjust their practice to it. In the file on what an internal Metropolitan Police solicitor described as one of "these troublesome dirty book cases" in 1934, officers questioned why a book that had been circulating undisturbed for five years was confiscated along with others taken from two booksellers on the Buckingham Palace Road.⁸¹ Three years later, a detective sergeant was surprised when the chief magistrate at the Bow Street Police Court in central London ordered a book on sadism and masochism destroyed even though he "was satisfied that the book was a medical work and a serious study." The magistrate held that this particular copy was tainted by association, since it could be "obtained at a shop where other publications which are undoubtedly of an obscene character were kept and a shop to which those who desired to obtain such obscene publications

⁷⁹ TNA, DPP 1/92, "Re 'Sleeveless Errand': Rex v. Eric Honeywood Partridge—Brief to Apply for Order of Destruction," n.d. (ca. March 1929). In this brief, Bodkin said that he had been told by Sir John Anderson, the senior civil servant in the Home Office, that the law should be pressed to the limit against a book of this kind. In the case of Hall's *The Well of Loneliness*, too, Bodkin was actively supported by the Home Office. The cabinet minister responsible was Sir William Joynson-Hicks, a vigorous moral campaigner. On Joynson-Hicks's politics, see James J. Nott, "'The Plague Spots of London': William Joynson-Hicks, the Conservative Party and the Campaign against London's Nightclubs, 1924–29," in Clare V. J. Griffiths, James J. Nott, and William Whyte, eds., *Classes, Cultures, and Politics: Essays on British History for Ross McKibbin* (Oxford, 2011), 227–246.

⁸⁰ Stefan Petrow, *Policing Morals: The Metropolitan Police and the Home Office, 1870–1914* (Oxford, 1994), 39, 195.

⁸¹ TNA, MEPO 3/932.

would go.” The sergeant reported this “particularly interesting judgment” to his chief inspector.⁸² A report of the magistrate’s comments was “made the subject of a general file.” Another official who reviewed the file commented: “Interesting but it fits in with the line we have taken for a long time.”⁸³

Thus, like most legal structures, variable obscenity was to some extent an impersonal machine, and the inhabitants of the “closed, archaic world” of upper-middle-class privilege were not the only ones who kept it operating. That said, there certainly were men among the barristers who represented the state in court, the judges they appeared before, and the civil servants with whom they cooperated, for whom the legal position corresponded with strongly held personal beliefs. The Westminster Police Court magistrate Ronald Powell was one of these men. Powell asked one witness in 1935 whether she considered a quoted passage “fit and decent for people of the working class to read.”⁸⁴

Speaking from the bench gave a magistrate such as Powell license to express opinions that like-minded people in less secure positions would have been more cautious about stating publicly. When the electorate trebled in size after 1918—the vote was extended to the minority of men previously unenfranchised, as well as to most women over the age of thirty—elected politicians were compelled to practice such caution. Stanley Baldwin, the architect of the Conservative Party’s hegemony during the 1920s and 1930s, worked hard in the face of internal resistance to adjust to the new dispensation. The Conservatives needed, Baldwin argued, to become “a democratic and democratised Party,” addressing working-class and female voters and opening local party organizations to people other than the well-off. Little headway was made in the constituency organizations, but Baldwin’s development of a “national” and democratic rhetoric was key to his party’s success in competing against the Labour Party for working-class votes.⁸⁵ For any member of Parliament from the 1920s onward, failure to pay lip service (at the very least) to “the formal political equality of every member of the mass electorate” could have “fatal electoral consequences.”⁸⁶

The fact that Griffith-Jones a generation later thought wives and servants might be especially vulnerable is less significant than his assumption that he could say so, unchallenged, in a courtroom. The increasingly democratic popular culture of interwar and post-World War II Britain coexisted with an enduring deference to pa-

⁸² TNA, MEPO 3/938, William James Skardon to Chief Inspector, August 5, 1937; “Extract from ‘Justice of the Peace’ dated July 31st 1937” (typescript, n.d.); TNA, HO 302/13, working party minutes, March 8, 1955.

⁸³ TNA, MEPO 3/938, notes in the comments pages at the beginning of the file.

⁸⁴ “Woman’s Defence of a Book: ‘Ignorance Leads to Divorce Court’—Magistrate’s View of Verses,” *Daily Telegraph*, October 17, 1935; “Defence of a Book: Evidence for Publishers,” *The Times*, October 17, 1935; Alec Craig, “The *Sexual Impulse* Prosecution,” *Plan*, November 1935, 17–20, here 18, copy in University of London, Senate House Library, Alec Craig Papers, MS1091/2/4.

⁸⁵ Philip Williamson, *Stanley Baldwin: Conservative Leadership and National Values* (Cambridge, 1999), 218–222, quotation from 219; Ross McKibbin, “Class and Conventional Wisdom: The Conservative Party and the ‘Public’ in Inter-War Britain,” in McKibbin, *The Ideologies of Class: Social Relations in Britain, 1880–1950* (Oxford, 1990), 259–293. On the Labour Party’s response, see Jon Lawrence, “Labour and the Politics of Class, 1900–1940,” in David Feldman and Jon Lawrence, eds., *Structures and Transformations in Modern British History* (Cambridge, 2011), 237–260, here 248–251.

⁸⁶ Helen McCarthy, “Whose Democracy? Histories of British Political Culture between the Wars,” *Historical Journal* 55, no. 1 (2012): 221–238, here 237.

trician authority.⁸⁷ The reform of obscenity law that culminated in the *Lady Chatterley's Lover* trial occurred at a critical moment in the reconfiguration of the relationship between elite authority and democratic culture. Social change did not simply overwhelm obscenity law; it was mediated by the particularity of legislative reform.

CIVIL LIBERTARIANS, AUTHORS, AND PUBLISHERS had many complaints about English obscenity law, but its uneven application was not usually one of them. The chief criticisms were the way literature was lumped together with pornography and the arbitrariness and unpredictability of the existing system. Given the variation in standards from place to place and magistrate to magistrate, publishers could not know whether a book would be safe until after they had assumed legal responsibility for it—and spent money on printing, binding, and advertising it.⁸⁸ The cross-party group of members of Parliament working in the 1950s for a new Obscene Publications Act were primarily concerned with making it safe to publish serious and substantial books in Britain.⁸⁹ The Society of Authors drafted the first bill that these MPs brought forward (these were private members' bills, not bills introduced by the government, and private members' bills often fell at procedural hurdles). This first effort was, in the judgment of a committee of civil servants reviewing obscenity law in an effort to preempt or subvert these private members' bills, "very much an *author's* Bill, prepared in their interest and not in that of the general public. It might protect a handful of alleged works of art but only at the expense of making much more difficult the suppression of pornography."⁹⁰ The bill that finally passed in 1959 preserved the emphasis on protecting material that qualified as literature.⁹¹

The question of the system's bias was visible, however, in the case of Vladimir Nabokov's *Lolita*, which was referred to in parliamentary select committee hearings on obscenity law reform. On two occasions in 1956, London distributors of French editions of Nabokov's novel had been convicted of publishing an obscene libel.⁹² The first British edition was published by Weidenfeld & Nicolson, and one of the firm's directors, Nigel Nicolson, used the fact that he was also a Conservative MP to draw

⁸⁷ Lawrence, "Paternalism, Class, and the British Path to Modernity," 155–156; and, on democratizing tendencies in popular culture and their limits, see McCarthy, "Whose Democracy?," esp. 234; LeMahieu, *A Culture for Democracy*; McKibbin, *Classes and Cultures*, 527–528.

⁸⁸ Aldous Huxley, "Lord Campbell and Mr. Charles," *New Statesman and Nation*, November 9, 1938, 673–674; "The Hardship of the Existing Law Relating to 'An Obscene Libel,'" *Publishers' Circular*, March 7, 1936, 323–324; Stanley Unwin, "Introduction: The Book World," in John Hampden, ed., *The Book World* (London, 1935), 1–11, here 5; TNA, HO 302/4, Sir Reginald Manningham-Buller to Sir Frank Newsam, May 1957 (day not specified).

⁸⁹ This is clear from the questions (recorded in the *Minutes of Evidence*) that the House of Commons Select Committee on the 1957 Obscene Publications Bill put to the publishers, officials, and police officers appearing before it.

⁹⁰ TNA, HO 302/13, H. Stotesbury, "Obscene Publications Bill: Note for S. of S's Use at Legislation Committee, Tuesday, November 22nd" (1955), emphasis in the original.

⁹¹ On the legislative maneuvering, see Roy Jenkins, *A Life at the Centre* (London, 1991), 120–124; Mark Jarvis, *Conservative Governments, Morality and Social Change in Affluent Britain, 1957–64* (Manchester, 2005), 114–116.

⁹² TNA, Law Officers' Department, LO 2/146, G. E. Dudman to Manningham-Buller, December 17, 1958; Robert Jenkins to Sir Theobald Mathew, December 18, 1959.

attention to the uncertainty and danger he faced in publishing the novel.⁹³ When the book was published, in 1959, the director of public prosecutions decided not to prosecute Weidenfeld & Nicolson.⁹⁴ A London newspaper reported that a “kindly official” telephoned the company to inform them of this decision shortly before the *Lolita* launch party at the Ritz.⁹⁵ The news did not please Reginald Carter. Carter was one of Hank Janson’s several publishers. The trial in Blackburn in 1952 had involved another publisher of Janson’s books; in 1954, Carter and his business partner Julius Reiter faced an obscenity trial of their own, and went to prison.⁹⁶ Reiter had repeatedly shown manuscripts to detectives, hoping to get a definitive answer on whether or not a work was obscene, but they always refused to give assurances.⁹⁷ Carter now wrote to the director of public prosecutions about the *Lolita* decision: “If this report is factual, please advise us by return of the kindly official concerned in order that we, as publishers, may submit manuscripts for similar vetting.”⁹⁸

While Nicolson’s connections or position doubtless had something to do with the special treatment his company received, it is not certain that *Lolita* was given a pass because it was being published in hardcover for a trustworthy readership. This was nevertheless an interpretation that occurred to some people at the time. A Labour MP speaking at a 1960 conference on popular culture and the mass media declared: “As an Englishman I am opposed to censorship, particularly a censorship which allows ‘Lolita’ to be published because it costs 25/- but has a court case over ‘Lady Chatterley’s Lover’ because it costs 3/6.”⁹⁹ (So *Lolita* cost more than seven times as much as the Penguin *Lady Chatterley’s Lover*.)¹⁰⁰ There was widespread awareness of the contrasting treatment of publications with different markets. The editor of a Church of England magazine regretted that the first unexpurgated edition of Lawrence’s novel would be an affordable paperback, but accepted that the argument “O.K. in vellum and not O.K. in paper” could be “rather easily shot down.”¹⁰¹

In its brief for Griffith-Jones in the *Lady Chatterley’s Lover* case, the director of public prosecutions’ office described the book as being so obscene that “its publication on a 3/6d Penguin [was] unjustifiable”—the implication being that a more expensive edition might have been tolerated.¹⁰² Griffith-Jones floated such a hypothetical in his opening remarks, telling the jury that they had to consider “how freely”

⁹³ *HC Deb.*, vol. 597, December 16, 1958, cols. 1046–1050.

⁹⁴ TNA, LO 2/146, G. E. Dudman, “Note,” November 11, 1959.

⁹⁵ TNA, LO 2/146, R. A. Carter to Sir Theobald Mathew, November 7, 1959, with copy of the report from the *Evening Standard*, November 6, 1959; “Lady Chatterley Challenged,” *New Statesman*, August 20, 1960, 229.

⁹⁶ Holland, *The Trials of Hank Janson*, chaps. 12–13. The prosecutor was Griffith-Jones.

⁹⁷ TNA, DPP 2/2301, “Statement of Reginald Alfred Baldwin,” November 25, 1953; “Statement of Hugh Watson,” November 25, 1953.

⁹⁸ TNA, LO 2/146, Carter to Mathew, November 7, 1959.

⁹⁹ National Union of Teachers, *Popular Culture and Personal Responsibility: A Conference of Those Engaged in Education . . . Verbatim Report* (London, [1960]), 51. The speaker was Horace King, MP for Southampton Itchen.

¹⁰⁰ John Sutherland says that *Lolita* in fact cost twenty-two shillings and sixpence, about six and a half times as much as the Penguin *Lady Chatterley’s Lover*. Sutherland, *Reading the Decades: Fifty Years of the Nation’s Bestselling Books* (London, 2002), 49.

¹⁰¹ Borthwick Institute, University of York, Mirfield Papers, R. T. Davies to Martin Jarrett-Kerr, October 4, 1960, quoted in Mark Roodhouse, “Lady Chatterley and the Monk: Anglican Radicals and the Lady Chatterley Trial of 1960,” *Journal of Ecclesiastical History* 59, no. 3 (2008): 475–500, here 486.

¹⁰² TNA, DPP 2/3077, pt. 1, “The Queen against Penguin Books Limited: Case to Advise,” n.d.

the book would be distributed: "Is it a book that is published at £5 a time as, perhaps, an historical document, being part of the works of a great writer, or is it, on the other hand, a book which is widely distributed at a price that the merest infant can afford?"¹⁰³ Griffith-Jones repeatedly mentioned the price of three shillings and sixpence, driving home the point that anyone might read this book.¹⁰⁴ Mocking one critic's claim that *Lady Chatterley's Lover* treated sex "on a holy basis," Griffith-Jones asked whether it was realistic to think the novel would be read that way by "the young boys and men leaving school, thousands of them, tens of thousands every year, I suppose, leaving school at the age of fifteen, going into their first jobs."¹⁰⁵ Practically everyone leaving school at fifteen to begin paid employment was working-class; again, like George R. Humphery in 1893, Griffith-Jones treated the years immediately after a young person had left the pastoral or disciplinary influence of school as a time when their moral development was a matter of special concern. The judge in his summing-up echoed the prosecutor. If the novel was published, he said, it would not remain confined to "the rarefied atmosphere of some academic institution where the young mind will be perhaps directed to it and shewn how to approach it and have indicated to it the real meaning, and so forth; it finds its way into the bookshops and onto bookstalls, at three-and-sixpence a time, into public libraries, where it is available for all and sundry to read."¹⁰⁶

The defense had prepared for a battle over the cheapness of the book. Penguin's solicitor, Michael Rubinstein, sketched an argument in the brief he wrote for Gerald Gardiner, the barrister who would argue the case in court.¹⁰⁷ It was hypocrisy, Rubinstein wrote, to suggest that a hardback edition "would not have been obscene, while the Penguin edition is obscene, because of a different range of persons likely in all the relevant circumstances to see two such editions—unless it is suggested that . . . the regular or chance purchaser of a paper-back book is more likely to be depraved and corrupted than one who can afford to buy (as very many teenagers can these days) or can borrow from a library or friend a hard-back book in demand because of its ill-deserved notoriety."¹⁰⁸ By suggesting that the distinction between paperback readers and readers of hardcover books no longer corresponded with social differences, Rubinstein was trying to neutralize the issue of class. Griffith-Jones's conduct of the prosecution placed it front and center, and in his closing statement for the defense, Gardiner confronted the politics of variable obscenity directly, making a much bolder argument than Rubinstein had in the brief.

After quoting Griffith-Jones's rhetorical question about wives and servants, Gar-

¹⁰³ Hyde, *The Lady Chatterley's Lover Trial*, 57.

¹⁰⁴ *Ibid.*, 61, 282, 286.

¹⁰⁵ *Ibid.*, 285–286.

¹⁰⁶ *Ibid.*, 303.

¹⁰⁷ In England, barristers constitute a profession distinct from solicitors, who do not argue cases in court. At this time, solicitors were usually apprenticed ("articled") after leaving school, while barristers began their training after graduating from university—nearly always Oxford or Cambridge in the first half of the twentieth century. "The bar," as the fraternity of barristers was known, was much more socially exclusive than the rest of the legal profession. On the social profile of the bar, see Leonard Schwarz, "Professions, Elites, and Universities in England, 1870–1970," *Historical Journal* 47, no. 4 (2004): 941–962, here 952, 953.

¹⁰⁸ University of Bristol Library [hereafter UBL], Penguin Archive, DM1679/9, Michael B. Rubinstein, "Regina v. Penguin Books Limited: re: *Lady Chatterley's Lover*—Draft Brief on Hearing of the Trial at the Old Bailey: Mr Gerald Gardiner Q.C.," October 7, 1960, 12–13.

diner remarked: "I cannot help thinking this was, consciously or unconsciously, an echo from an observation which had fallen from the bench in an earlier case: 'It would never do to let members of the working class read this.'" After teasing Griffith-Jones that "there are a certain number of people nowadays who as a matter of fact do not have servants," Gardiner moved in for the kill: "the whole attitude is one which Penguin Books was formed to fight against . . . this attitude that it is all right to publish a special edition at five or ten guineas, so that people who are less well off cannot read what other people do. Is not everybody, whether they are in effect earning £10 a week or £20 a week, equally interested in the society in which we live, in the problems of human relationship, including sexual relationship? In view of the reference made to wives, are not women equally interested in human relations, including sexual relationships?"¹⁰⁹ Many of the cross-examinations of literary critics had lingered over Lawrence's intense repetition of keywords such as "tenderness." Gardiner had done the same himself with "equal," a central term in Penguin's synthesis of democracy and commerce. In saying that Penguin had been founded to "fight against" attitudes such as Griffith-Jones's, Gardiner was linking the publication of *Lady Chatterley's Lover* to Penguin's mission, from its beginnings in the 1930s, to make classics and "good" contemporary fiction and nonfiction accessible and affordable. In the early days, Penguins could be bought from vending machines in central London, and each volume was to be the same price as a pack of cigarettes: serious reading was to be democratized through commoditization, as smoking had been.¹¹⁰

Yet it would be simplistic to see Penguin's victory as a defeat for "the Establishment," as scholars and media commentators have described it.¹¹¹ Rubinstein sought early on to mobilize formidable supporters, and wrote to hundreds of potential witnesses. At least some of those who agreed sent him draft scripts of their testimony before the trial.¹¹² Rubinstein's efforts ensured that Gardiner could call a succession of distinguished authors such as E. M. Forster and critics from Cambridge, Oxford, and the metropolitan press to attest to the worth of the novel. On the one hand, the members of the jury were being asked to make up their own minds; on the other, they were being invited to defer to expertise.

Before the Obscene Publications Act, practically all the authority in an obscenity trial rested with the prosecution. With the defense able to call expert witnesses, the balance of power shifted significantly. Rubinstein and Gardiner's strategy of enlisting eminent opinion was thus a direct consequence of the 1959 act. In a sense, though, it was an unintended consequence. Roy Jenkins, the Labour MP who shepherded

¹⁰⁹ Hyde, *The Lady Chatterley's Lover Trial*, 268. See also Lewis, *Penguin Special*, 325.

¹¹⁰ On Penguin Books, see Rick Rylance, "Reading with a Mission: The Public Sphere of Penguin Books," *Critical Quarterly* 47, no. 4 (2005): 48–66; Nicholas Joicey, "A Paperback Guide to Progress: Penguin Books, 1935–c. 1951," *Twentieth Century British History* 4, no. 1 (1993): 25–56; Lewis, *Penguin Special*, chaps. 5–6; and the insider's account in Hoggart, *An Imagined Life*, 51. On smoking, see Matthew Hilton, *Smoking in British Popular Culture, 1800–2000: Perfect Pleasures* (Manchester, 2000), 126; and, for a comparison of reading and smoking from a different angle, see George Orwell, "Books v. Cigarettes" (1946), in Orwell, *The Collected Essays, Journalism and Letters*, 4: 92–96.

¹¹¹ See, for example, Tony Judt, *Postwar: A History of Europe since 1945* (London, 2005), 376.

¹¹² Lewis, *Penguin Special*, 323; McCleery, "Lady Chatterley's Lover Re-Covered," 70; Roodhouse, "Lady Chatterley and the Monk," 478, 489, 490; UBL, Penguin Archive, DM1679/9, Rubinstein to Hans Schmoller, August 8, 1960.

the legislation through the House of Commons, expected that strengthening the publishers' hand would mean fewer trials.¹¹³ After they failed to deter a prosecution, the expert-testimony sections of the act set the stage for a highly publicized exchange about issues that were seldom discussed in such frankness and at such length.

In addition to making evidence of literary merit admissible, the act empowered defense lawyers to call witnesses to testify about "other objects of general concern" that could make publication of a book in the public interest.¹¹⁴ Griffith-Jones did not grasp the implications of this change. He had expected Penguin's lawyers to call authors and critics, but he was taken by surprise when they also called bishops and other witnesses to address the ethical and religious value of Lawrence's novel.¹¹⁵ The day after the verdict, *The Times* criticized the prosecution for not calling countervailing witnesses, recognizing that the defense had succeeded in claiming the support of prominent citizens.¹¹⁶ The critic F. R. Leavis, who declined to testify for Penguin, was scathing about the expert witnesses: establishment figures who had not defended Lawrence when it was risky to were now lining up to articulate an emergent "orthodoxy" of permissiveness.¹¹⁷

The fact that these people were rallying around the *defense*, however, indicates that there was no monolithic "Establishment."¹¹⁸ Indeed, since the term had been popularized in the mid-1950s to refer to the "interlocking circles" of Britain's governing classes and its professional and intellectual elites, journalists had questioned whether the Establishment was still coherent and whether it had much hold over newer corporations or educational institutions.¹¹⁹ Noel Annan, an Establishment figure if ever there was one (the provost of King's College, Cambridge, Annan testified for Penguin and was one of Leavis's prime targets), would later write a personal history that presented his generation of his class as a liberalizing elite (at least before

¹¹³ Rolph, *The Trial of Lady Chatterley*, 113–114. Several years later, when the Metropolitan Police proposed to prosecute the publishers of Henry Miller's *Tropic of Cancer* "to avenge the repulse we suffered in the Lady Chatterley case," Griffith-Jones said no: "even if the book should be considered by some to be 'obscene,' I think it extremely doubtful whether a conviction would ever be obtained. In its curious style I find it well written—better written than 'Lady Chatterley's Lover'—and with considerable humour so that the question of its literary merit would present difficulties. The author is apparently well recognized as a writer of distinction. It would appear that in the event of a prosecution there would be no shortage of distinguished 'experts' ready to speak on behalf of the book . . . For these reasons I advise that no criminal proceedings be instituted." TNA, MEPO 2/10400, J. Kennedy to ACC, April 8, 1963; Mervyn Griffith-Jones, "Re: John Calder (Publishers) Limited: Opinion," April 2, 1963.

¹¹⁴ Obscene Publications Act, 1959 (7 & 8 Eliz. 2), s. 4. In the past, such testimony had occasionally been admitted, but usually it was disallowed, and suggestions that there could be public-interest defenses against obscenity charges had lacked the sanction of the superior courts. James Fitzjames Stephen, *A Digest of the Criminal Law (Crimes and Punishments)* (London, 1877), 105; Atkinson, *Obscene Literature in Law and Practice*, 10–11; *Minutes of Evidence*, 3.

¹¹⁵ Hyde, *The Lady Chatterley's Lover Trial*, 125–126.

¹¹⁶ "A Decent Reticence," *The Times*, November 3, 1960; see also G. W. H. Lampe, Donald M. Mackinnon, Hugh Montefiore, Alec R. Vidler, and H. A. Williams, letter to *The Times*, November 10, 1960; Roodhouse, "Lady Chatterley and the Monk," 490.

¹¹⁷ Ian MacKillop, *F. R. Leavis: A Life in Criticism* (London, 1995), 304–309.

¹¹⁸ The opposing barristers both had impeccable elite backgrounds. Where Griffith-Jones was educated at Eton—long a training ground for Britain's rulers—and at Trinity Hall, Cambridge, Gardiner went to the no less exclusive Harrow and then Magdalen College, Oxford. Both men have entries in the online *Oxford Dictionary of National Biography*, as do others connected with the trial, such as Sir Allen Lane, Michael Rubinstein, Sir Theobald Mathew, Roy Jenkins, and C. H. Rolph.

¹¹⁹ Anthony Sampson, *Anatomy of Britain* (London, 1962), chap. 39. See also Hugh Thomas, ed., *The Establishment: A Symposium* (London, 1959); Peter Mandler, *The English National Character: The History of an Idea from Edmund Burke to Tony Blair* (New Haven, Conn., 2006), 216–217.

the 1970s), working to lift restrictions on divorce, homosexuality, and freedom of the press.¹²⁰ People from privileged backgrounds were also largely responsible for the British “satire boom” of the same period associated with the Establishment nightclub in Soho, with revues and television programs such as *Beyond the Fringe* and *That Was the Week That Was*, and with the magazine *Private Eye*, in which young men with Oxbridge educations poked fun at august institutions. The satire boom, as Lawrence Black has observed, was corrosive of politics generally—“as public service, civic duty, ideology, party”—but it did amplify other critiques of traditions especially dear to Conservatives.¹²¹ Gardiner’s conduct of Penguin’s defense was, like many other interventions by Annan’s liberalizing elite, a questioning of assumptions about authority and social hierarchy long held by his own class. And in openly making fun of the idea that barristers or judges knew what was best for other people, he was putting aside traditional class solidarity to make a critique in a spirit consonant with that of the younger satirists.

Not all the defense witnesses had “old school ties” or personal connections with powerbrokers. Two important witnesses were so-called scholarship boys of working-class origin. In 1950s Britain, where social mobility, the future of the working class, and the tendencies of popular culture were much debated, a “special premium was attached to those who embodied as well as analysed” the changes of the postwar period.¹²² In *Culture and Society* (1958), Raymond Williams, a Welsh railway worker’s son who won a scholarship to Cambridge, was able to make arguments about the relationship between “high culture” and the traditions of ordinary people with a force and concreteness that few other cultural critics could have matched.¹²³ Williams was, at this time, an adult education tutor, teaching evening classes to manual workers in the south of England.¹²⁴ Gardiner reminded the jury of Williams’s adult education credentials as he summarized his testimony. “As no one knows better than Penguin Books,” he added, “students of literature come from all classes of the community.”¹²⁵

In *The Uses of Literacy* (1957), Richard Hoggart complemented his analyses of the impact of mass culture and “Americanization” on the English working class with an elegy for community life in the impoverished part of Leeds where he grew up and a highly autobiographical section on the displacement experienced by upwardly mobile scholarship children.¹²⁶ Hoggart’s working-class background equipped him to

¹²⁰ Noel Annan, *Our Age: English Intellectuals between the World Wars—A Group Portrait* (New York, 1990). Annan was one of the few scholars whom the prosecution also tried, unsuccessfully, to recruit. TNA, DPP 2/3077, pt. 1, N. G. Annan to Sir Theobald Mathew, August 24, 1960.

¹²¹ Lawrence Black, *Redefining British Politics: Culture, Consumerism and Participation, 1954–70* (Basingstoke, 2010), 202, 204; Humphrey Carpenter, *That Was Satire That Was: Beyond the Fringe, The Establishment Club, Private Eye and That Was The Week That Was* (London, 2000), pt. 2, chaps. 2–5; pt. 3, chaps. 2–4.

¹²² Stefan Collini, “Critical Minds: Raymond Williams and Richard Hoggart,” in Collini, *English Past: Essays in History and Culture* (Oxford, 1999), 210–230, here 227; Stephen Brooke, “Gender and Working Class Identity in Britain during the 1950s,” *Journal of Social History* 34, no. 4 (2001): 773–795.

¹²³ Raymond Williams, *Culture and Society, 1780–1950* (1958; repr., Harmondsworth, 1963), conclusion.

¹²⁴ Dai Smith, *Raymond Williams: A Warrior’s Tale* (Cardigan, 2008), 301–317, 378–382; John McIlroy and Sallie Westwood, eds., *Border Country: Raymond Williams in Adult Education* (Leicester, 1993).

¹²⁵ Hyde, *The Lady Chatterley’s Lover Trial*, 251.

¹²⁶ Richard Hoggart, *The Uses of Literacy: Aspects of Working-Class Life, with Special References to Publications and Entertainments* (London, 1957), chaps. 1–5, 10.

function as a sort of "native informant" in the *Lady Chatterley's Lover* trial. Gardiner's deputy asked Hoggart about his upbringing as a step toward the question: "What is your view as to the genuineness and necessity in this book for the use of the four-letter words in the mouth of Mellors [the gamekeeper]?" Hoggart replied that although working-class people were hardly the only ones to utter profanities, they certainly did use those words. "If you have worked on a building site, like I have, you will find they recur over and over again."¹²⁷

Hoggart, too, had spent more than a decade as an adult education tutor. In the trial he used his teaching experience to good effect, explaining how Lawrence was trying to redeem profane words and how he was the inheritor of the "puritan" tradition.¹²⁸ (The defense cast Lawrence as a visionary or a preacher, someone with a message to get across. By tying the novel's value as literature to a higher purpose, the defense was able to sidestep complicated questions about literary form and did not have to base its case on the public value of aesthetic experiences.)¹²⁹ Hoggart remained determinedly patient while Griffith-Jones tried to make him look like an obnoxious intellectual: "I am obliged for that lecture"; "the question is quite a simple one to answer without another lecture. You are not at Leicester University at the moment." Sybille Bedford italicized "Leicester" in the account of the trial she wrote for *Esquire* to indicate the "thin distaste" in Griffith-Jones's voice. The way Hoggart remembered it, Griffith-Jones paused slightly before the name of the university, "as if he had to recover the name of so insignificant a place from the depths of his memory . . . He had given himself away. He saw himself as cross-examining someone who taught at a provincial and therefore inconsiderable place, for inconsiderable people."¹³⁰ The contrast between the two men's manner reinforced the impression of more than one observer that Hoggart had won the duel.¹³¹

The trial is remembered as a symbolic threshold to the 1960s, but its politics were very characteristic of the 1950s. The position of the expert witnesses exemplifies that decade's "double helix of democratization and deference."¹³² After World War II, established scholars and men and women of letters addressed much larger and more diverse audiences, as a consequence of changes in the media landscape and perhaps because of educational reforms as well. Younger and self-consciously provincial or

¹²⁷ Hyde, *The Lady Chatterley's Lover Trial*, 144. See also Sean Matthews, "The Uses of D. H. Lawrence," in Sue Owen, ed., *Re-reading Richard Hoggart: Life, Literature, Language, Education* (Newcastle, 2008), 85–101, here 92.

¹²⁸ Hyde, *The Lady Chatterley's Lover Trial*, 144–145, 148–154. The argument about "purifying" profane words was one that the defense solicitors wanted to push. UBL, Penguin Archive, DM1679/9, Rubinstein, "Draft Brief," 8, 14.

¹²⁹ Consequently, the arguments in the *Lady Chatterley's Lover* trial were less complex than those a *Lolita* trial would have generated. Lawrence's narration is third-person, whereas Nabokov's novel is narrated by its "nymphet-loving" protagonist. While *Lady Chatterley's Lover* could be plausibly said to articulate its author's philosophy, the spiraling ambivalence of *Lolita* makes it much harder to discuss in terms of authorial philosophy and authorial responsibility. For some of the problems that indirect modes of narration could give rise to in obscenity trials, see Dominick LaCapra, "*Madame Bovary*" on *Trial* (Ithaca, N.Y., 1982).

¹³⁰ Bedford, "The Trial of *Lady Chatterley's Lover*," 162; Hoggart, *An Imagined Life*, 55–56; Rolph, *The Trial of Lady Chatterley*, 100. The version used by Hyde does not name Hoggart's institution but renders the sentence "You are not addressing the university at the moment" (Hyde, *The Lady Chatterley's Lover Trial*, 149). I think the court stenographer on whom Hyde relied misheard Griffith-Jones.

¹³¹ Annan, *Our Age*, 131; Bedford, "The Trial of *Lady Chatterley's Lover*," 160–163.

¹³² Christopher Hilliard, *English as a Vocation: The "Scrutiny" Movement* (Oxford, 2012), 250.

working-class writers and intellectuals, not least Hoggart, also reached this broad public. Liberal or dissenting voices benefited especially from these developments in Britain's public culture (there had long been ample media opportunities for more populist commentators as well as standard-bearers for tradition). This was a moment of cultural democratization that depended on the persistence of social hierarchy and intellectual authority. The deference was not just to established elites, but also to the value of art and learning. As Michael Bell has observed, the period between the end of World War II and the early 1960s was "one in which the older hierarchical assumptions of social leadership overlapped with a new openness as to who might perform this function."¹³³ Men from modest backgrounds speaking for "culture" assumed the gendered privileges of social leadership. Penguin won the *Lady Chatterley's Lover* case both because it could lay claim to that authority and because it, and most definitely not the prosecution, could claim sympathy with the popular sentiments of the time.

There is, in this combination of deference and democratization, an echo of the uneasy coexistence of the idea of the liberal subject and hierarchical Tory thinking. However, the postwar conjunction of the democratic and the deferential was much shorter-lived. It was undone by the more thoroughgoing cultural transformations of the early and mid-1960s, as those assumptions of social leadership collapsed.¹³⁴ A decade later, the spectacle of middle-aged male academics earnestly explicating Lawrence's treatment of sex would have seemed almost as ridiculous as Griffith-Jones's question about wives and servants.

THE OBSCENE PUBLICATIONS ACT HAD NOT been drafted to put an end to variable obscenity, but its expert-testimony provisions opened a space in which the social assumptions of the law could be exposed to challenge. Now a court confronted the question that had gone begging in the 1952 Hank Janson trial: Were there to be different standards for books priced for "the limited class" and books within reach of factory workers? Even before Gardiner had argued against the unfairness of the distinction, however, Griffith-Jones's reference to wives and servants had made the working assumptions of the prosecution appear absurd and outdated. Variable obscenity was, like the Marseille dockworkers' entitlements that William H. Sewell, Jr., has analyzed so suggestively, a "pattern . . . of social relations" capable of being "reproduced over time even in the context of enviroing social changes."¹³⁵ It had been reproduced not only by the paternalism of senior lawyers but also by the routines of policing and the iterative force of reasoning from precedent, the circularity

¹³³ Michael Bell, "F. R. Leavis," in A. Walton Litz, Louis Menand, and Lawrence Rainey, eds., *The Cambridge History of Literary Criticism*, vol. 7: *Modernism and the New Criticism* (Cambridge, 2000), 389–422, here 392. See also Stefan Collini, *Absent Minds: Intellectuals in Britain* (Oxford, 2006), esp. chaps. 6, 7, 16–18, and p. 421.

¹³⁴ Callum G. Brown, *The Death of Christian Britain: Understanding Secularisation, 1800–2000* (2001; repr., Abingdon, 2009), chap. 8; Mort, *Capital Affairs*, chap. 7; Marcus Collins, ed., *The Permissive Society and Its Enemies: Sixties British Culture* (London, 2007).

¹³⁵ William H. Sewell, Jr., *Logics of History: Social Theory and Social Transformation* (Chicago, 2005), 272.

of which meant that the social judgments of obscenity law did not reflect the "envi-roning social changes" of a democratizing culture.¹³⁶

Griffith-Jones's question and the defense's license to talk about the social and ethical value of making an explicit book freely available disrupted this circuit. Although the lawyers' and witnesses' public "seminar" rapidly established the trial as tellingly representative of a critical moment in the history of modern Britain, it was a highly contingent event.¹³⁷ Yet this is often how major change occurs in a culture-within-a-culture such as the law. Large-scale social transformations can be "envi-roning" without being pervasive. It is frequently via a change in a localized practice or mechanism that they make their impact on law, or literature, or education, or another cultural formation with its own distinctive organization.

After the *Lady Chatterley's Lover* trial, obscenity law in England was democra-tized in the sense that purported differences between types of adult readers were no longer material. When Gardiner made his most expansive democratic claims, he spoke of equality rather than liberty. In this respect, he was working with the tra-dition he had inherited. Since the nineteenth century, the social judgments of English obscenity law had focused on readers' defenses against corruption, their capacity for self-government, rather than on the place of reading and freedom of expression in British culture. Police and prosecutors' reasoning did not move from the premise of a general freedom down into specific exceptions: the operative questions turned on entitlement and qualification to read certain books. The point is not that the reality of state action failed to live up to the rhetoric of "English liberties," but that the rhetoric itself often was absent.

So in K. D. Ewing and C. A. Gearty's scrupulous account of "the struggle for civil liberties" in the era of the two world wars, freedom of expression seldom appears as a consideration that courts and the executive had to work around or make excuses about.¹³⁸ Earlier English jurisprudence has provided little guidance in judgments involving the generally worded guarantee of "freedom of expression" in Article 10 of the European Convention on Human Rights and enshrined in the United King-dom's Human Rights Act of 1998.¹³⁹ Ideas of free expression were muted, or barely registered, even in areas of law that concerned speech acts or writing where there were no countervailing concerns such as public morals (as there were in obscenity cases) or national security (as in sedition cases). Criminal libel provides a good ex-ample. Unlike the corresponding tort, criminal libel did not require publication to a third party and reputational damage: the offense lay in making hurtful statements. As late as the mid-twentieth century, criminal libel was widely used by police and by citizens bringing private prosecutions to punish or restrain people who assailed

¹³⁶ For an acute discussion of the nostrum that "the legal system adapts to changing social needs," see Robert W. Gordon, "Critical Legal Histories," *Stanford Law Review* 36 (1984): 57–125, here 64–65, 68.

¹³⁷ The back cover of Rolph, *The Trial of Lady Chatterley*, described the trial as "probably the most thorough and expensive seminar on Lawrence's work ever given."

¹³⁸ K. D. Ewing and C. A. Gearty, *The Struggle for Civil Liberties: Political Freedom and the Rule of Law in Britain, 1914–1945* (Oxford, 2000), esp. 153–154.

¹³⁹ Jane Wright, *Tort Law and Human Rights* (Oxford, 2001), chap. 6, provides evidence for this contention, though this is not her argument.

others with insulting letters. The propriety of using a law governing expression to deal with personal harassment did not become an issue.¹⁴⁰

With criminal libel and obscene libel alike, the laws relating to expression were treated as components in the machinery of social order. We come back to Blackstone: at stake in the punishment of offensive utterances was “the public peace,” not “the *liberty of the press*, properly understood.” In an age pervaded by rights talk, as our own time is, it is worth exploring the ways in which acts of reading and writing could be conceived quite differently only half a century ago.

¹⁴⁰ Even in a case that was subjected to unusually intense scrutiny by lawyers in the Home Office and the Court of Criminal Appeal, questions of freedom of expression were not raised. This was the “Littlehampton letters case,” an account of which appears in Travers Humphreys, *Criminal Days: Recollections and Reflections* (London, 1946), chap. 7. There are case files in TNA, MEPO 3/380 and HO 144/2452. Other twentieth-century criminal libel cases that support the generalization above include *R. v. Nelson*, 1900 (TNA, CRIM 1/64/10); *R. v. Cheeseman*, 1904 (TNA, CRIM 1/89/2); *R. v. Shepherd*, 1932 (TNA, CRIM 1/593); *R. v. Cooksey*, 1934 (TNA, CRIM 1/723); *R. v. Gray*, 1936 (TNA, CRIM 1/818); *R. v. Abraham*, 1943 (TNA, CRIM 1/1547); *R. v. Elliott*, 1951 (TNA, CRIM 1/2142); *R. v. Leftley*, 1953 (TNA, ASSI 45/163); *R. v. Flynn*, 1962 (TNA, CRIM 1/4009); *R. v. Calthorpe*, 1972 (TNA, J 202/12). Criminal libel cases were usually confined to police or magistrates’ courts and were not reported—hence the archival references. For a detailed survey of reported cases, see G. S. McBain, “Abolishing Criminal Libel,” *Australian Law Journal* 84, no. 7 (2010): 439–504.

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