

The case against *Lady Chatterley's Lover*

The 1959 Obscene Publications Act
as a New Critical subtext

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Through an analysis of the trial and acquittal of D. H. Lawrence's novel, *Lady Chatterley's Lover* (1928; hereafter *LCL*) on charges of obscenity, the present case study adds a further chapter to the comprehensive historical annals recording the struggle against literary censorship. What follows is not a traditional literary analysis of the novel, but a 'reading' of the court proceedings in the Old Bailey in October and November 1960, and the new legislation, the 1959 Obscene Publications Act, under which the novel was tried. For the purposes of the present study, the story of the novel (its composition, printing, publication, trial, and acquittal) counts for more than the story *in* the novel.¹ I recapitulate the circumstances of its publication in 1928, but skip the intervening quarter-century and go straight to a detailed study of the 1959 Act and the trial.

I am committed to a hermeneutic reading and explication of text, but I shall have occasion to glance at the sociological and material aspects of book publishing. As for the historical investigation and contextualization of the trial, I use two sources: John Sutherland's *Offensive Literature* (1983), whose ambition as cultural history is to investigate 'how Britain's "permissive" society has come to terms with "prohibited" books, or "offensive literature"'; and David

Bradshaw and Rachel Potter's volume *Prudes on the Prowl: Fiction and Obscenity in England, 1850 to the Present Day* (2013), which with similar ambitions covers a variety of aspects of literary censorship in the period in question.² As for the trial itself, my study is based on *The Trial of Lady Chatterley: Regina v. Penguin Books Limited*, edited by C. H. Rolph, which first came out in 1961 but was reissued in 1990 with a new foreword.³ As secretary to the Herbert Committee, under whose auspices obscenity law had been reformed, Rolph guides the reader through the trial with shrewd editorial comments, based on the official Old Bailey transcripts of *Regina v. Penguin Books Limited*—so-called because Penguin Books was on trial, not Lawrence's novel. In Rolph's words,

The D.P.P., having seen ... advertisements about the Penguin programme, told the police to buy a copy of *Lady Chatterley's Lover* in the usual way ... However, Rubinstein, Nash & Company, solicitors to Penguin Books Ltd, forestalled this with a reminder to the police that 'publication' (in law) can be a mere giving of the book by one person to another and need entail no bookshop purchasing. Therefore, no innocent bookseller need be brought into it. The police could have what copies they needed, free, if they called round at the Penguin offices in Holborn.⁴

Inspector Monahan called on 16 August 1960 to collect twelve copies. A decision to take legal action and prosecute on suspicion of obscenity was made within days, and a summons was issued on 25 August. Thirty-two years after the novel's first publication, it was time for the British judiciary to make or break the status of Lawrence's last novel in his home country.

I would argue that the modernization of the criminal law on obscenity in Britain, which replaced the 1857 Obscene Publications Act with a synonymous Act in 1959, was not an isolated piece of legislation, nor was the trial just another week at the Old Bailey. Both the Act and the trial have been widely publicized, and should be seen in the context of changes in the conception of literature and its role

vis-à-vis the emerging welfare state in Britain and the Western world, including the spread of a new mode of literary analysis which flourished at British and American universities in the 1940s and 1950s: the New Criticism. In the latter parts of the study, I analyse the *LCL* trial with reference to the New Criticism and its guiding critical tenets.

My research question concerns the extent to which the 1959 Act's New Critical-sounding emphasis on 'the dominant effect of the work', especially as it was applied and interpreted during the trial, could be used to draw failsafe distinctions between pornography and serious literature, which will include weighing its potentialities against its limitations and shortcomings.⁵

Composition and publication history

The novel known as *LCL* (as distinct from earlier drafts) was first published privately in 1928 in 1,000 copies by a friend of Lawrence's, the Florentine bookseller Giuseppe Orioli. Having already completed two drafts of the novel, Lawrence—tuberculosis-ridden—finished a third rewriting in January 1928. The final, authoritative version came into its own as a sexually explicit book—'absolutely improper', as Lawrence said in a letter.⁶ Fearing its reception by publishers and booksellers in Britain and America, Lawrence decided to have it printed and published privately in Florence with Orioli's help to reduce production costs. In the event that publication with his regular publishers might prove possible, Lawrence expurgated two copies, but to no avail.

Indeed, all manner of difficulties beset the process. Typists balked; the Italian typesetters, who understood no English, made every conceivable typographical error; in the summer of 1928, with printing and binding complete, booksellers in Britain refused to accept the copies they had ordered, while those mailed to American subscribers were confiscated by customs officers. While not legally censored or banned by any ruling in any British court, *LCL* was still unpublishable in Lawrence's home country—'suppressed' is a more correct term for the impediments the novel faced in Britain.⁷

Without the protection of international copyright law due to its manner of publication, *LCL* could be pirated, which deprived Lawrence of a sizeable portion of the income from sales. With the help of an American bookseller in Paris, he brought out 3,000 paperbound copies to frustrate the circulation of the pirated versions. In a foreword to the 1929 Paris edition, 'A Propos of *Lady Chatterley's Lover*', Lawrence exposed the pirates' fraud and presented his thoughts on the relationship between the sexes in the modern world, explaining why the novel had to be so explicit. Urged by British booksellers to produce an expurgated version, and tempted by the prospect of large returns, Lawrence stood firm: 'I might as well try to clip my own nose into shape with scissors. The book bleeds. And in spite of all antagonism, I put forth this novel as an honest, healthy book, necessary for us to-day.'⁸ Unexpurgated, Lawrence's healthy novelistic tonic could not be printed and sold in Britain in the 1930s or later without violating current British obscenity law (risking confiscation and destruction). What copies of the novel were available in Britain were therefore purchased abroad and smuggled into the country.

However, moral standards were loosening up in the early decades of the British welfare state, and the times were growing ripe for a revision of existing obscenity laws that dated from mid-Victorian times. While we shall now account for the revision of obscenity law in Britain in the 1950s, resulting in the 1959 Obscene Publications Act, we shall later have occasion to analyse the historical coincidence and thematic overlap of this monumental piece of legislation with a New Critical approach to literature that was emerging at universities in Britain and America in the 1940s and 1950s.

The Obscene Publications Acts

With the introduction of the first Obscene Publications Act in 1857, the publication of an 'obscene libel', which had until then been treated as a common law misdemeanour, was now included in statutory law and thus criminalized.⁹ While the new Act had failed to define

'obscenity', a definition was provided in 1868 by *Regina v. Hicklin*, in which Justice Cockburn formulated the so-called Hicklin test: 'The test of obscenity is this, whether the tendency of the matter ... 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.'¹⁰ Publications of any description might fall prey to this test; obviously pornographic materials as well as works of high literary value. Cockburn's ruling was 'a legal turning-point. Not only did it provide a definition of obscenity, it dismissed the intentions of the distributor as immaterial', thus marking 'the beginning of a legal crusade against the literary "obscene"'.¹¹ The Hicklin test remained the standard approach to literary obscenity cases in British and American courts well into the twentieth century—in fact, 'it was regarded as an inflexible rule of law' until around 1950.¹²

The first signs of a slackening of the inflexible Hicklin ruling came from America, where parts of James Joyce's *Ulysses* were published serially in *The Little Review* between 1918 and 1920, while Joyce was still working on the novel. Legal action was taken against the novel, which in 1921 was declared obscene and thus banned in America. However, in 1933, in a case deliberately set up to test the US ban (*United States v. One Book Called Ulysses*), Judge Woolsey gave his famous ruling that the novel could not be considered obscene when read in its entirety, thus making it available for general publication in America. In 1936, the Attorney General in London, no doubt influenced by Woolsey's ruling, decided that no action should be taken against the British publisher of *Ulysses* on the grounds of the glaring inadequacy of the definition of obscenity in the Hicklin ruling.

Though the de-censoring of *Ulysses* in America and Britain was a turning point because it allowed for the consideration of authorial intention and the dominant effect of the work in obscenity cases, no general loosening of legal strictures followed immediately. In fact, the decade following the end of the Second World War saw a massive last-ditch effort in Britain to suppress novels on grounds of obscenity. The 'Great Purge' of 1954 saw among others the prosecution of Secker & Warburg for the publication of the American

writer Stanley Kaufmann's novel, *The Philanderer*. In his opening instructions, Justice Stable urged the jury to read the novel as a whole rather than just pick out highlights, and in his summation of the case, he gave what has been hailed as 'a classic exposition of the law as it then stood', pointing out that 'although the law was the same as in 1868 the jury had not to consider the effect of publishing the book at that time but its effect on society as it is today'.¹³ The inadequacy and anachronistic nature of existing obscenity law could hardly have been made any clearer.

The largely unsuccessful purge of mainstream writers and publishers in 1954 was a blessing in disguise, since it outraged the cultural elite and led more or less directly to the formation of the Herbert Committee, formed on the initiative of the Society of Authors to reform existing obscenity law. Named for the association's chairman, Alan Herbert, the Herbert Committee consisted of publishers, printers, booksellers and authors, and was representative of many more who dealt professionally with literature and felt that in the increasingly permissive atmosphere of the early 1950s a reform was sorely needed. Long thwarted in their efforts but not discouraged, the Herbert Committee (and the parliamentary select committee which took over in 1958) continued what was to be a five-year struggle for reform, crowning their efforts with success when the resultant bill was given Royal Assent and came into force on 29 August as the 1959 Obscene Publications Act.¹⁴ The success of the compromise between 'reformers' and 'censors' has been ascribed to the Labour MP Roy Jenkins, who in October 1959 gave his version of the legislative process in the article, 'Obscenity, Censorship, and the Law.' Jenkins downplays the importance of the Act:

The extent of the advance should not be exaggerated. Most of those who promoted the bill were highly sceptical of the value of any form of censorship and ... are far from getting everything they wanted. A long process of compromise has taken place, and the result is ... improvements in the position of serious authors and reputable publishers.¹⁵

The new Act was designed to draw a legal distinction between pornography and serious literature, and provide protection for the latter under the law against charges of obscenity—neatly summed up in the full title of the Act as aiming ‘to amend the law relating to the publication of obscene matter; to provide for the protection of literature; and to strengthen the law concerning pornography.’¹⁶

Let us look at the wording of the Act and assess the extent to which it remedied defects in existing law. The new Obscene Publications Act was a brief four-page document, consisting of a mere five sections:

1. Test of obscenity;
2. Prohibition of publication of obscene matter;
3. Powers of search and seizure;
4. Defence of the public good;
5. Citation, commencement and extent.

Of these, only section 1(1) and section 4 need concern us here. Section 1(1) specifies that ‘an article shall be deemed to be obscene if its effect ... is, if taken as a whole, such as to tend to deprave and corrupt persons.’¹⁷ The subordinate, ‘if taken as a whole’, is of the utmost significance here. Hall Williams treats this under his heading, ‘The dominant effect of the work.’¹⁸ As Roy Jenkins explains, ‘there can be no question in future of a jury being encouraged to decide upon the basis of certain isolated titillating passages.’¹⁹ This, as we shall see, was an effective tool in the hands of Penguin Books’ defence.

Of at least equal importance is section 4. Of its two subsections, section 4(1) specifies that a person shall not be convicted of an offence against section 2 ‘if it is proved that publication of the article in question is justified as being for the public good on the ground that it is in the interests of science, literature, art or learning, or other objects of general concern’, while section 4(2) specifies that ‘the opinion of experts as to the literary, artistic, scientific or other merits of an article may be admitted ... to establish or to negative the said ground.’²⁰ These two subsections set the scene for the *LCL*

trial by allowing experts into the witness stand (for which there had been no provision in the 1857 Act) to testify to the literary merits of the publication. Section 4 was thus a decisive factor in both proceedings in court and the not guilty verdict, and indeed for all later legislation concerning obscenity and literary censorship in Britain. Its significance is hard to overestimate.²¹

Possibly without its authors realizing it, the new Act was also a shining example of elementary New Critical pedagogical principles for the technique of 'close reading' of literary texts. Its principles were being propagated by British and American university lecturers in literature: professionalization (lending an air of scientifically objective 'method'); and making the reading and interpretation of difficult, serious works of literature manageable by anyone prepared to devote time to study, now that books were offered by publishers such as Penguin Books in paperback at 3s. 6d. (the price of a packet of cigarettes) and needed no longer be treated as costly, unapproachable icons of high culture.²²

Court No. 1, Old Bailey

If it were not for the provisions of the new Act, Penguin's managers would never have considered publishing an unexpurgated edition of *LCL*. As it was, in anticipation of protection under the law, they planned the edition and warned the authorities ahead.²³ Not wanting to incriminate third parties, they offered twelve copies to the police and 'themselves ... as subjects of a test case', assuring the police that general publication would be put on hold.²⁴ Legal action was taken ('a great surprise to many in the world of publishing—and of the law') and the scene was set for what was to become one of the most publicized court cases in modern British legal history, and of paramount importance for later trials concerning literary censorship.²⁵

The trial lasted from 20 October to 2 November 1960. There was a one-week elapse between the first and second days to allow the jurors to actually read the novel. Mervyn Griffith-Jones and Alastair Morton

prosecuted, Gerald Gardiner was counsel for the defence with Jeremy Hutchinson and Richard Du Cann, and Mr Justice Byrne presided. Once the swearing in of the jury (nine men and three women) was completed on the morning of 20 October, Griffith-Jones gave his opening address, calling for a verdict of guilty on the grounds of the novel's obscenity. He earned himself widespread derision with the most frequently quoted line from the proceedings, which showed just how out of touch he was: 'Is it a book that you would have lying around in your house? Is it a book that you would even wish your wife or your servants to read?'²⁶ Gardiner's opening address followed, pleading that *LCL* was not obscene, with reference to the novel's high seriousness and literary merit and the author's moral integrity. He asked the jury by way of conclusion, 'would you read the whole book? Because, of course, every part of it is relevant to the defence.'²⁷ Following the opening addresses, the judge decided how much time should be allowed for the jurors to read the novel and where they should do so. The court reconvened a week later on 27 October for the first day of evidence.

Rather than summarize the entire trial, a few highlights from the proceedings are enough, chosen for their significance as evidence and hence for their bearing on the verdict: (i) the novel as a whole, (ii) the novel's literary merit and status, considering authorial intention, and (iii) other considerations, viz. the manner of publication and social class. I bring the principles of New Critical analysis into play here, because they intersect with the provisions of the 1959 Act. To avoid the account of New Critical principles becoming a flatly affirmative restatement, I invoke Terry Eagleton's politicized account of the New Criticism in *Literary Theory* (1983) for a necessary critical perspective.

The novel as a whole

While the prosecution called no witnesses, the defence called thirty-five experts to testify to the literary and other merits of *LCL*, including high-profile literary scholars (Vivian de Sola Pinto,

Graham Hough, Helen Gardner, Richard Hoggart, and Raymond Williams), notable men and women of letters (E. M. Forster, C. Day-Lewis, Rebecca West), publishers (Sir Allen Lane, founder of Penguin Books, and Sir Stanley Unwin of Allen & Unwin), clerics, politicians, and many others.²⁸ With few exceptions, the witnesses gave evidence of the novel's supreme literary merit and high moral seriousness *when read as a whole*. In answer to Hutchinson's question whether to see the two main characters as mere bodies indulging in sexual intercourse would be a fair summary of the book, Richard Hoggart, a lecturer at Leicester University, whose exemplary evidence is often singled out in accounts of the trial, answered: 'I should think it was a grossly unfair summary of the book. I should think it was based on a misreading of the book ... I thought, taken as a whole, it was a moral book.'²⁹ During Hoggart's ensuing cross-examination by Griffith-Jones, he was asked whether he regarded the importance of the book as stemming from the part which did not consist of the descriptions of sexual intercourse, to which he answered: 'I regard the importance of the book as not separable from the whole book, including the parts about sexual intercourse.'³⁰ Earlier that day, Hoggart had emphasized that if one read the novel as so many descriptions of acts of sexual intercourse, 'one is doing violence to Lawrence's whole intention, and *not reading what is in the text*.'³¹ Hoggart's testimony may stand as a summary of all the evidence given that when *actually* read, that is, scrutinized in close detail, the overriding effect of *LCL* was that of a virtuous, puritanical (Hoggart's words), and morally serious work.

The author of *The Uses of Literacy* (1957), a work dealing with the contemporary shift in conceptions of culture in Britain, Hoggart was anything but a New Critic. Yet, in insisting on a detailed textual analysis of the book and the integrity of the four-letter words to the novel as a whole, his testimony was clearly aligned with the New Critical technique of close reading as the royal road to recognition that a literary work integrates diverse, even discordant textual elements into a whole, which pervaded literary academies in Britain and America in the early 1950s. The resemblance is plain from an

essay by Cleanth Brooks, a high-ranking American New Critic, 'The Formalist Critics' (1951), which offers some New Critical articles of faith: 'the primary concern of criticism is with the problem of unity—the kind of whole which the literary work forms or fails to form, and the relation of the various parts to each other in building up this'; that 'in a successful work, form and content cannot be separated'; and that 'the purpose of literature is not to point a moral'.³² Hoggart and other literary experts insisted in effect on Brooks' inseparability of form and content and the 'kind of whole' which the work forms (or fails to form), teased out by a close study of the relations of the various parts to each other. The prosecution, on the other hand, tried to separate form from content, and argue that the latter was unworthy of serious consideration—or to argue, which amounted to the same thing, that *LCL* failed to form a whole. Had not the new Act stipulated that to be deemed obscene in its effect, an article must be viewed *in toto*, the prosecution would have had an easier task of proving *LCL*'s obscenity on the strength of isolated 'purple' passages, and the general impression, laboriously painted by Griffith-Jones in his opening address, that 'sex is dragged in at every conceivable opportunity' while 'The story of this book, apart from those episodes ... is little more than padding'.³³ However, under the provisions of the new Act, and with the weight of testimony to the novel's seriousness and literary merit when viewed as a whole—among which we should include Sir Allen Lane's argument against publishing expurgated versions of the novel—the defence had an easy time of it.³⁴

Of course, it is possible to overstate the alignment between the 'novel as a whole' argument and the New Critical principle of close reading. There is the objection that a 'close reading', in Eagleton's words, 'seemed to imply that every previous school of criticism had read only an average of three words per line'.³⁵ No right-minded literary critic would ever prefer a cursory or paraphrasing reading of a literary work to a full reading. On the other hand, Cleanth Brooks coined the 'Heresy of Paraphrase' (another fundamental New Critical principle) for a reason—the temptation among contemporary

critics to reduce literary texts to manageable ideas or statements, and to take remarks *about* texts ('statements about what it says or about what truth it gives or about what formulations it illustrates') as their essence.³⁶ Led by Griffith-Jones, the prosecution could be said to have committed the 'heresy of a paraphrase', reducing *LCL* to so many adulterous sex scenes with the rest as 'mere padding'.

A second and more serious objection is that the New Criticism was geared specifically to the analysis of poetry, its ideal of self-sufficient, autonomous aesthetic objects being short lyric poems—'verbal icons' which, like paintings in a gallery, could be taken in at a single glance.³⁷ As textual objects, novels and plays were considerably more unwieldy and complicated to handle, and far less amenable to that final fusion of contradictory textual elements into a harmonious whole that was the New Criticism's ideal outcome of a close reading. But how would New Criticism cope with an early twentieth-century prose writer who deliberately renounced the comforts of a monological, Olympian perspective in favour of the heteroglossia of narratively experimental probings of individual consciousnesses? How to fuse the cacaphony of diverse voices in a novel like *LCL* into harmony? How to identify the voice carrying the intended 'message' or 'meaning'? Could it be done? Hardly. In any case, to subject a novel as challenging as *LCL* to a New Critical analysis—an analysis predicated on the close reading of lyric poetry—would in the end amount to sealing it off from its historical and cultural contexts, sterilizing and emptying it of identifiable, socially impactful meaning.

The theory of literary meaning was the New Critics' Achilles' heel. If 'being preceded meaning', if close readings were only so many appreciations of harmonious aesthetic form or structure that induces in the reader an attitude of 'contemplative acceptance', did literary works finally mean *anything*, except for 'submission to the political status quo'?³⁸ We must not be blind to the ideological underside of the New Criticism, it being—as many historians of criticism besides Eagleton have hinted at—a politically reactionary movement which sought harmonious form in literature as a pseudo-religious substitute for the disintegration and disbelief

characterizing modern civilization; in Eagleton's words, 'the ideology of an uprooted, defensive intelligentsia who reinvented in literature what they could not locate in reality'.³⁹ In spite of the New Criticism's 'large, democratic objective of improving the close-reading capacity, the critical-reading capacity, of an entire culture', could the analytical techniques proffered by a politically reactionary school of critics be harnessed by Penguin Books' defence lawyers to a culturally progressive, even emancipatory cause?⁴⁰ In the Old Bailey, the techniques certainly seemed to reach the limits of their hermeneutic powers in grappling with a novel as aesthetically and morally complicated as *LCL*. If paraphrasable meaning or extractable content were anathema from a New Critical perspective, and if a novel such as *LCL* could not be trusted to speak its 'meaning' in its own words (as was apparent from the differences of opinion on whether it was obscene or not), what other strategy was available for the defence but to have recourse to supplementary evidence of authorial intention and to recontextualize the novel?

Literary merit and status, considering authorial intention

Those who testified to the novel's literary merits also cited the author's high rank among British authors. This was true of Hough and De Sola Pinto in particular. No doubt from a wish to both establish Lawrence's general reputation as a major British novelist and to argue against *LCL* being an obscene book, Gardiner had insisted in his opening address on the significance of authorial intention for a correct understanding of the novel, in answer to Griffith-Jones's earlier dismissal of it as insignificant. The argument for or against authorial intent reached a head on the third day during the examination of James Hemming, which was interrupted by the judge. A legal argument ensued over 'the admissibility of evidence as to an author's *intention*, and particularly the production of *other books* to show, by way of comparison, both what the intention was and how well it had been carried out'.⁴¹ Gardiner had asked for a ruling on both the calling of witnesses to prove that there was no intent

to deprave or corrupt, and the admissibility of reference to other books (for example, pornographic books for comparative effect), to deflate the suspicion of criminal intent on Lawrence's part. Justice Byrne ruled against the admissibility of authorial intention.

In insisting on the importance of authorial intention, Gardiner had no doubt been driven by an urge to protect Lawrence's reputation as a major British novelist against attempts to belittle his status or argue the indecency of the novel as 'dirt for dirt's sake', written for purely pecuniary reasons. The judge's ruling saved the defence from itself, for it curbed the potentially self-defeating tendency to lavish praise on D. H. Lawrence as a major novelist in the tradition of Fielding, Eliot, and Hardy, which presupposed an intimate knowledge of literary and intellectual history as a 'Great Men, Great Works' canon, which the twelve jurors could not have been supposed to possess. Incidentally, the judge's ruling also spelt out the prosecution's glaring inability to take advantage of its consequences and prove the novel's obscenity when read as a whole and in terms of its dominant effect—without, that is, recourse to materials, assessments, or sentiments extraneous to the work itself.⁴²

Manner of publication and social class

Other considerations and arguments deserve to be analysed more closely, some of them having less to do with traditional literary analysis and appreciation than with the sociological and material aspects of book culture. In brief, the fact is that books are material objects as well as immaterial content, and what was weighed up in the trial was also the publishing industry and the accessibility of literature to readers of all social classes in affordable versions, courtesy of the paperback revolution. Sutherland quotes C. H. Rolph writing in the *New Statesman* on 12 November 1960, saying that

'The Penguin *Lady Chatterley* was prosecuted, one supposes, because the Law Officers, learning that it was to come out at 3s. 6d. instead of about 25s., read it again and decided that it must be

kept from the hoi polloi.' It was a suspicion which was to recur frequently over the subsequent years and trials; the authorities could tolerate obscenity, erotica and even pornography—so long as it was not in paperback.⁴³

Gardiner's closing speech for the defence, which Rolph rightly describes as 'unique in legal and literary history', held a thinly veiled, class-conscious reference to a question put by Griffith-Jones in his opening address:⁴⁴

I do not want to upset the Prosecution by suggesting that there are a certain number of people nowadays who as a matter of fact don't *have* servants. But of course that whole attitude is one which Penguin Books was formed to fight against ... —the 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 read. Isn't everybody, whether earning £10 a week or £20 a week, equally interested in the society in which we live, in the problems of human relationships including sexual relationships? ... You see, there are students of literature in all walks of life, and the sale of 250 million books shows, does it not, that Mr Allen ... was right in thinking that there are. If it is right that this book should be read, it should be available to the man who is working in the factory or to the teacher who is working in the school.⁴⁵

Gardiner's words spoke volumes about the myriad issues besides the purely literary—cultural, social, educational, economic—which converged in the momentous verdict of 'not guilty' on 2 November 1960.⁴⁶

Law, literature, and general education

Of all the legal changes and trials charted in Sutherland's book, he concludes that the most enduring reflection is that 'Parliament—and still more courts—are bad places in which to analyse and evaluate

literature.⁴⁷ I beg to differ. At no other time in legal history have law and literature so converged for their mutual benefit, and probably at no other time has a court room sounded more like a lecture hall in a literary academy, ringing with informed discussion and the rigorous application of the most fundamental principles for the analysis of literature, than during the *LCL* trial.⁴⁸

What was ultimately the significance of the Lady Chatterley trial, over and above the verdict? In the balance hung nothing less than the democratization and full accessibility of literature, for whose promotion the more progressive aspects of the New Criticism played a significant part, specifically as concerned the eminent learnability of the techniques of literary analysis.⁴⁹ The stakes were enormous. The verdict was a test of whether the twelve jurors, representative of an entire nation of readers, could read and understand literature in the manner of New Criticism, even if unaware of the nature of the method by which they proceeded. Their unanimous verdict demonstrated that they could. In giving a verdict of not guilty on 2 November 1960, they allowed *Lady Chatterley's Lover* and other novels of an equally challenging moral nature to be made known and available to all, read in private homes and academic institutions across the nation, so that its reading skills and cultural capital would in time be collectively expanded.

The continued education of readers at all levels of the school system seems both individually and socially beneficial, but apparently to little avail on a larger, evolutionary scale, since morally hypersensitive readers continue to bypass 'what is in the text' and jump to interpretive conclusions. It happened in 1930, when, during a hearing in the US Senate, a senator lashed out at *LCL* as a most damnable book, plainly admitting that he had not read beyond its opening pages—and it happened again in 1989, when religious fanatics set the world alight over the publication of Salman Rushdie's *The Satanic Verses*. As the British journalist Nick Cohen comments in a recent book on censorship and freedom of speech, *You Can't Read This Book* (2012), 'The vast majority of religious fanatics ... did not want to read the book in the round, or to read it at all. Most

would not have understood it if they had tried.⁵⁰ However, that is the opening chapter of a different story, and the subject for future research on censorship and forbidden books.

Notes

- 1 At the heart of *Lady Chatterley's Lover* (*LCL*) is the often graphically described adulterous relationship between Constance Chatterley, a young middle-class woman married to the aristocratic Clifford Chatterley, and the working-class gamekeeper on his estate, Oliver Mellors.
- 2 Sutherland 1983, n.p. preface & acknowledgements.
- 3 Other accounts of the trial are available: *The Trial of Lady Chatterley's Lover* (2016) by Sybille Bedford, and *The Lady Chatterley's Lover Trial. Regina v. Penguin Books Limited* (1990, edited by H. Montgomery Hyde), and I make occasional references to the former. Like Rolph 1990, they belong to the non-academic genre of trial writing to varying degrees.
- 4 Rolph 1990, 1–2.
- 5 See also Lindsköld's contribution in this volume.
- 6 Quoted in Michael Squires's introduction to *LCL* (Lawrence 2000, xiv).
- 7 The situation was different in America, where *LCL* was declared obscene in 1929. For the novel's censorship history, see Sova 2006a, 138–42.
- 8 D. H. Lawrence, 'A Propos of *Lady Chatterley's Lover*', in Lawrence 2000, 307.
- 9 The term 'libel' should be understood here in its original etymological sense (from Latin *libellus*, 'small book, pamphlet') as relating to the *form* and *function* of a publication rather than to any supposedly libelous—in the sense of defamatory or slanderous—content. For the definition of an 'obscene libel', see Hall Williams 1955, 631–2.
- 10 Quoted in *ibid.* 632.
- 11 Mullin 2013, 18.
- 12 Hall Williams 1955, 635.
- 13 Bradshaw 2013, 149, quoting Alec Craig, *Banned Books of England and Other Countries* (1962).
- 14 For the parliamentary technicalities of the Act and the devious ways it came into being, see Jenkins 1959, 62–6; Hall Williams 1960, 286–8; Bradshaw 2013, 153–6. See also Hall Williams 1955, 644–7, published when the Obscene Publications Bill was still under consideration.
- 15 Jenkins 1959, 62.
- 16 Hall Williams 1960, 285.
- 17 Obscene Publications Act 1959, 1.
- 18 Hall Williams 1960, 288.

- 19 Jenkins 1959, 62.
- 20 Obscene Publications Act 1959, 5.
- 21 See Geoffrey Robertson's foreword to Rolph 1990, xviii–xix, on the legal consequences of the Act and the trial.
- 22 See also Rolph 1990, 24–6, 141–3.
- 23 Bedford 2016, 6: '1960 was the year of the seventy-fifth anniversary of D. H. Lawrence's birth and the thirtieth anniversary of his death; it was also the year of Penguin Books' twenty-fifth jubilee. They decided to round off their edition of Lawrence's works by publishing the unexpurgated version of *Lady Chatterley's Lover*'; see also Sutherland 1983, 17–19.
- 24 Bedford 2016, 6.
- 25 Rolph 1990, 2.
- 26 Ibid. 17. As Rolph comments: 'This last question had a visible—and risible—effect on the jury, and may well have been the first nail in the prosecution's coffin.'
- 27 Rolph 1990, 37.
- 28 Sutherland 1983, 20 describes 'a hard-core of ... Eng. Lit. academics.'
- 29 Rolph 1990, 92.
- 30 Ibid. 99.
- 31 Ibid. 95, my italics.
- 32 Brooks 1951, 72.
- 33 Rolph 1990, 19.
- 34 Ibid. 142–3; see also ibid. 108 for Gardiner's questioning of Dr C. V. Wedgwood on the relative merits of the expurgated and unexpurgated versions of *LCL*.
- 35 Eagleton 1996, 38.
- 36 Brooks 1975, 199.
- 37 Cf. Wimsatt 1967.
- 38 Eagleton 1996, 41, 43.
- 39 Ibid. 40.
- 40 Krieger 1994, 7.
- 41 Rolph 1990, 120.
- 42 See also Heede, Arnberg, and Lindsköld respectively in this volume on how the effect of works of art have been discussed in other trials.
- 43 Sutherland 1983, 19.
- 44 Rolph 1990, 175.
- 45 Ibid. 195.
- 46 See the introduction to this volume for the discursive and material conditions governing and regulating modernist literature.
- 47 Sutherland 1983, 9.
- 48 Cf. Mengham 2013, 159–60, on the trial as being 'not only decisive in changing the relationship between literature and the law, it was equally decisive in changing the relationship between the law and literary criticism.'
- 49 I refer to New Criticism as democratic and progressive in a political–ideological

sense. Terry Eagleton's critique of the New Criticism as conservative and reactionary addresses its American, Southern Agrarian manifestation. The British context is different, and the actual practice of reading according to the principles outlined by these conservatives can serve other purposes than those imagined by Brooks and other American new critics.

50 Cohen 2012, 13.