CONTENTS

Introduction

MERVYN GRIFFITH-JONES'S QUESTION in the *Lady Chatterley's Lover* trial is the most famous self-inflicted wound in English legal history. Prosecuting Penguin Books for publishing D. H. Lawrence's novel three decades after the author's death, Griffith-Jones asked the jury how they would feel having the novel lying around at home: "Is it a book that you would even wish your wife or your servants to read?" Griffith-Jones was used to cutting an intimidating figure in court. He had prosecuted Nazis at Nuremburg. But when he asked this question jurors laughed.[1] Griffith-Jones had talked past the three women in the jury box, and by 1960 very few British families employed live-in servants—certainly not the retail and manual workers on the jury.[2] It was a moment whose significance was clear to those who had secured one of the sought-after places in the gallery.[3] An American writer turned to the English novelist next to him and said: "This is going to be the upper-middle-class English version of our Tennessee Monkey Trial."[4]

Griffith-Jones certainly was out of touch, but his argument would have been familiar to anyone who followed obscenity trials. Griffith-Jones repeatedly drew the court's attention to the low price of the paperback edition of *Lady Chatterley's Lover*. He made it clear that a paperback that working-class people could afford was an altogether different proposition from an expensive hardcover for scholars or collectors.[5] This distinction—"O.K. in vellum and not O.K. in paper," as one contemporary summarized it before the trial—had a long pedigree.[6] Publishers knew the score. In the late nineteenth century daring French novels appeared in deluxe editions to show that the publishers were not actively courting working-class readers. This is an instance of what Ian Hunter, David Saunders, and Dugald

Williamson have called "variable obscenity," the idea that a book's acceptability depends on who is reading it as well as the book itself.[7]

English obscenity law bore the imprint of Victorian debates about literacy and citizenship. The leading case on obscenity dated from 1868, months after the Second Reform Act extended the franchise to working-class men who met certain conditions. When Victorian intellectuals considered the implications of mass literacy their thoughts often strayed to the issue of suffrage. The question of how wisely working men used their literacy intertwined with the question of how responsible they would be as voters. One observer called literacy "the literary franchise," playing with the idea that the ability to read and write was itself part of being a full citizen.[8] Successive attempts to widen the electoral franchise wrestled with the question of what level of rent or income tax liability could serve as a proxy for the self-mastery required for the vote. Judges and prosecutors dealing with offensive books made analogous calculations. Obscenity law took income or wealth as an indicator of the responsibility a reader would need in order to avoid being corrupted by sexually frank books. Titles that might be tolerated in expensive limited editions risked confiscation if they were published in mass-market formats easily available to readers supposed to have weaker defenses than middle-class men. Officials, all of them men, worried about female readers too, but while price could divide readers on class lines, there was no equivalent device for keeping a book out of the hands of women while leaving it available to men. Keeping bad books away from women could only be the responsibility of the steady male head of a household. That patriarchal duty carried over from private life to jury service. Jurors' wives and teenage daughters were often invoked in obscenity proceedings as people the law was supposed to protect. While the democratizing currents of the 1920s and 1930s made it dangerous for politicians to utter bald class judgments, and while slurs on women's mental and moral capacity later became risky too, the law remained a safe space for these attitudes for much longer. Griffith-Jones was not simply a throwback; his question was a glaring example of the way the timeframes of cultural change are not always in sync.

The prosecutor's misjudgment created an opportunity to challenge these assumptions and the defense seized it. "The whole attitude is one which Penguin Books was formed to fight against," the defense counsel, Gerald Gardiner, declared, continuing, "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?"[9] The jury acquitted the publishers, whose case was helped greatly by the Obscene Publications Act passed the previous year. The new law enabled defendants to argue that, though it was explicit or offensive, a book had literary merit and publication was for the public good. Gardiner called a procession of literary critics and other eminences to testify about the value of Lawrence's novel. At the same time as he asked the jury to endorse freedom of expression he asked them to defer to experts. The Obscene Publications Act of 1959 was the result of years of lobbying by authors to carve out a protected space for literature. Erotica from Paris and comic books from across the Atlantic were entitled to no such protection. Freedom for what was deemed literature was premised on restrictions on porn and pulp.[10]

The *Lady Chatterley's Lover* trial's synthesis of democratization and deference unwound within a decade. By the end of the sixties, the law was under attack from a new cohort of morals campaigners. And the anticensorship forces were now less likely to accept the distinction between art that deserved protection and trash that didn't. There was a shift from anticensorship arguments based on the special status of literature, or the need to test opinions in a marketplace of ideas, to seeing the freedom to read and write as an end rather than a means. This change was part of a more general move away from deference and conformity—the elaboration, as the historians Deborah Cohen and Jon Lawrence have shown, of traditional norms of privacy into an expansive ethos of personal autonomy and choice.[11] The philosopher Bernard Williams, chairing a committee that reviewed censorship in the seventies, spoke of a society capable of supporting pluralism rather than consensus.[12]

People who wrote to the Williams Committee explaining how they felt about censorship extrapolated from conventions of neighborly conduct—if you "kept yourself to yourself," other people would let you be—to arrive at a homespun version of the liberal principle that consenting adults could do as they wished in private, as long as immorality was not on public display. Others cited John Stuart Mill's precept that people should be free provided their exercise of their freedom did not harm others. Many of those campaigning for personal freedoms in the sixties and seventies saw themselves as engaged in a struggle against the vestiges of Victorian morality, but this was also a struggle that pitted Victorian liberalism against supposedly Victorian morals. The gay-rights campaigners and porn magnates who quoted Mill to the Williams Committee were not necessarily Victorian liberals at heart: rather, the takeaway version of *On Liberty* was supple enough to articulate rights claims in a time of rapidly changing personal

and cultural expectations.[13] If you wanted to engage with authority on its own terms, that is. Feminists tended not to invoke Mill; punks did not make submissions to official inquiries.[14]

Censorship has been an arena where ordinary people and officials alike wrestled with social change—from the growth of literacy and democracy to second-wave feminism and gay rights, multiculturalism, and the impact of the internet. For a long time English obscenity law reflected uncertainties about what could be said—and, crucially, how and to whom—in a changing society. This is as true of the 1860s as the 1960s. The law evolved—and didn't evolve—as modern literature and popular culture took shape. The subjects of cases and controversies included penny dreadfuls, unexpurgated classics, "sex-problem" novels, risqué postcards sold in seaside resorts, modernist fiction, comic books, gangster novels, handwritten erotica, pornographic playing cards, avant-garde plays, television documentaries, pornographic magazines, the underground press, 8 mm films, horror movies, sex education, videocassettes, and online pornography. Many of these cultural forms were imports, the products of an increasingly international culture industry. Obscenity law was, among other things, a membrane through which foreign influences were filtered.

Obscenity was the younger sibling of blasphemy and sedition. To understand these crimes we need to reach back briefly to the seventeenth and eighteenth centuries. During the Restoration, the Court of King's Bench hatched new crimes, "seditious libel" and "blasphemous libel," out of the old crime of libel in the familiar sense, defaming another person in writing.[15] In a country with an established church, blasphemy easily became sedition. A modern judge put it like this: "In the post-Restoration politics of 17th and 18th century England, Church and State were thought to stand or fall together. To cast doubt on the doctrines of the established church or to deny the truth of the Christian faith upon which it was founded was to attack the fabric of society itself; so blasphemous and seditious libel were criminal offences that went hand in hand."[16] In 1727, the Court of King's Bench recognized another kind of dangerous publication. In a sign of things to come, the case that invented the common law of obscenity, *R v. Curll*, involved nuns. A lot of libertine writing in the seventeenth and eighteenth centuries dealt with the imagined secrets of the convent. In an age when religious and political power intertwined, bawdy tended to be irreligious and tracts against religion often took the form of pornography.[17] Publishers such as Edmund Curll exploited the overlap. Curll was brought

before the court for distributing an imagined dialogue between two nuns on sexual topics, translated from the French by one of his employees. He protested that *Venus in the Cloister, or, The Nun in her Smock* was "written in Imitation of the Style and Manner made use of by ERASMUS in his COLLOQUIA, and with the same Design, to lay open the Abuses and Corruptions of the Church of Rome," though at the time as he was selling *Venus in the Cloister* Curll was also stocking *A Treatise on the Use of Flogging in Physical and Venereal Affairs*.[18]

The difficulty of separating the religious from the temporal cut both ways. Curll's counsel argued that morals were a matter for the ecclesiastical courts. The attorney general disagreed. "What I insist upon," declared Sir Philip Yorke, "is, that this is an offence at common law, as it tends to corrupt the morals of the King's subjects, and is against the peace of the King. Peace includes good order and government, and that peace may be broken in many instances without . . . actual force." He elaborated: "As to morality. Destroying that is destroying the peace of the Government, for government is no more than publick order, which is morality." "The peace," which the authorities were tasked with maintaining, was an almost mystical concept. If Yorke was unusually syllogistic, he was not alone in thinking that the peace could be breached without disorder in the streets. The Chief Justice, Lord Raymond, agreed, but his fellow judges were not so sure. Mr. Justice Fortescue stated: "I own this is a great offence, but I know of no law by which we can punish it." Another judge thought immoral writings were punishable only if they led directly to an actual breach of the peace, and the fourth member of the bench thought that Curll's actions should be "punishable at common law, as an offence against the peace, in tending to weaken the bonds of civil society, virtue, and morality," but said consideration of the question should be put off to another day.[19] Curll remained in prison for a time, was released, and then brought back before the court after publishing another book, whereupon the charge relating to *Venus in the Cloister* was revisited. In the meantime, King George II had removed Fortescue from the Court of King's Bench and replaced him with Sir Francis Page, whose reputation as a hanging judge may not have been deserved but was rendered indelible by Pope, Fielding, and Dr Johnson.[20] This time the court "gave it as their unanimous opinion, that this was a temporal offence."[21] Curll was put in the pillory.

The Court of King's Bench thus recognized obscene books as a species of publication that could disturb the peace. The connection with public order, however abstruse, had a special ideological significance: as long as the offense of obscene libel was based on a publication's tendency to disturb public order, the judges claimed, "there was no occasion to talk

of the Court's being censor morum [censor of morals] of the King's subjects."[22] Since the end of formal pre-publication censorship in the wake of the Glorious Revolution in 1688, lawyers and statesmen had congratulated themselves on the freedom of the press that flourished in Britain while kings and bishops on the Continent kept their censorship apparatuses. To reconcile the idea of a free press with the reality of imprisonment and fines for convicted blasphemers and pornographers, jurists had to argue that the various kinds of libel were offenses against public order: words and beliefs in themselves were not being punished. As Sir William Blackstone wrote in his *Commentaries on the Laws of England* (1765–1770):

> The liberty of the press . . . consists in laying no *previous* restraints upon publications, and not in freedom from censure for criminal matter when published. Every freeman has an undoubted right to lay what sentiments he pleases before the public: to forbid this, is to destroy the freedom of the press: but if he publishes what is improper, mischievous, or illegal, he must take the consequence of his own temerity. To subject the press to the restrictive power of a licenser, as was formerly done, both before and since the revolution, is to subject all freedom of sentiment to the prejudices of one man, and make him the arbitrary and infallible judge of all controverted points in learning, religion, and government. But to punish (as the law does at present) any dangerous or offensive writings, which, when published, shall on a fair and impartial trial be adjudged of a pernicious tendency, is necessary for the preservation of peace and good order, of government and religion, the only solid foundations of civil liberty.[23]

Allowing for changes in diction, this passage would have been at home in many pronouncements on censorship made in the first half of the twentieth century. "You are not sitting as a board of censors," judges would intone to juries before they decided whether to send a publisher to prison. Censorship connoted an institution more than a practice. Britons spoke of "a censorship" or "the censorship"; not until after World War II did it become common to use the word as an abstract noun without an article. The claim that only "prior restraint" counted as real censorship was also common in the United States before the thirties. No less a figure than 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.[24] It was different elsewhere in the common-law world. Settler colonies such as Australia and New Zealand, with their enthusiasm

for state intervention, set up censorship boards.[25] British reformers periodically considered Australian and New Zealand solutions as models, but always rejected them.

From the middle of the nineteenth century, the common-law crime of obscene libel was complemented by legislation. The Obscene Publications Act of 1857 gave courts the power to order offensive publications destroyed. The legislation was introduced in response to lobbying by anti-vice campaigners, who wanted the authorities to be able to clear offensive matter off the market without having to go through a costly and time-consuming jury trial first. It is often said that this person or that person was charged under the 1857 act, but no one ever was. If someone was tried for obscenity, they were tried for common-law obscene libel. Court proceedings under the 1857 act were applications for destruction orders, which publishers and retailers, but not authors, could contest. If they failed to persuade the court to keep the books from the incinerator, they did not incur a fine or go to prison: they just lost their wares. Given how many careful scholars get this wrong, it is worth repeating: no one was ever charged under the Obscene Publications Act of 1857.

The fact that a magistrate in one town found a book obscene and ordered it destroyed did not oblige a court in another town to follow suit. The Paris edition of Vladimir Nabokov's *Lolita* lived a dangerous itinerant existence in Britain for several years in the fifties, condemned by benches in some towns and circulating unchallenged elsewhere. Nevertheless, for an established British publisher with capital to lose and directors to answer to, a court order usually meant the withdrawal of the book. It was never strictly true to say that a book was "banned" in Britain. Customs and Excise could ban the import of a book or film: James Joyce's *Ulysses* was the subject of an import ban, and so, fifty years later, was the pornographic movie *Deep Throat*. Customs' writ stopped at the dock or the airport, however. It was not illegal to own a copy of *Ulysses* or *Deep Throat*. If you tried to sell your copy, though, it could be confiscated, and if you tried to send it through the mail you might be charged under the Post Office Act. But again, there was some truth to assertions that Britain did not have "a censorship" in the sense that ancien régime France or modern Australia did.

At least not for print. Play scripts had to be approved by the lord chamberlain before a performance could be licensed. Movies were subject to cuts or outright bans by the British Board of Film Censors (BBFC), an industry body to which municipal governments in effect delegated their cinema-licensing powers.[26] Both theater and film censorship were the subjects of persistent grumbling but roused no seismic controversy until

the second half of the twentieth century. The revolution in British drama in the fifties and sixties led to a renewed push for the abolition of the lord chamberlain's powers, which was achieved in 1968; violent movies, avant-garde films from Italy and France, and changes in cinema-going habits put tremendous pressure on the British Board of Film Censors in the seventies. Concerns about horror and pornography invading the home by videocassette in the following decade unexpectedly shored up its position, with the board assuming responsibility for a new classification system.

The theater censors vetted scripts, so they were able to demand changes to scenes instead of rejecting a play entirely. With British-made films, the censors negotiated with the filmmakers over the script; John Trevelyan, secretary of the BBFC in the fifties and sixties, liked to see himself as a partner in the artistic enterprise.[27] In recent years historians and literary critics have written extraordinary books tracking the thinking of censors in communist East Germany and apartheid South Africa as they worked to shape a literature consonant with the ideal society they were trying to create and defend.[28] There can be no direct equivalent for Britain, as print censorship was post-publication. Nevertheless, officials and lawyers read and thought about and discussed books with each other. They read texts trying to gauge how other people, jurors included, would read them; they considered how words and images affected people. In obscenity trials, the text itself was usually the only evidence the prosecution submitted, so counsel had to model a type of reading that would lead to a conviction. Their way of reading was reminiscent of the "plain man" style that literary journalists used against Joyce, Virginia Woolf, and T. S. Eliot.[29] Rather than take censors seriously as readers and thinkers, most accounts of censorship in Britain treat them as amusingly preposterous monsters. It has to be said that prosecuting counsel, civil servants, and politicians provide plenty of material for that approach. But it badly underestimates the censors. It makes it impossible to see why they were able to wield the power they did. We also should not let the follies of Mervyn Griffith-Jones and other double-barreled bullies obscure the self-deceptions of those on the other side.

All through the nineteenth and twentieth centuries, state action on public morals had no obvious center, and the most powerful politicians and officials were seldom able or eager to take charge. (The main exception was the 1920s, when the Home Office and the director of public prosecutions

made a concerted assault on modernism and the culture the First World War had unleashed.) There were few unambiguous worldly rewards for either liberalizing the law *or* enforcing it: where public morals were concerned it was impossible to please all of the people all of the time.[30] Multiple government agencies had a stake in obscenity regulation—the Home Office, the director of public prosecutions, Customs and Excise, the Post Office, the Metropolitan Police, the attorney general, occasionally the lord chancellor, later on the minister for the arts too. Provincial police forces and magistrates' benches could diverge from those in London. Because the system had so many moving parts, changing the law proved difficult, and the authorities often found themselves backed into legal proceedings by other officials or by vigilantes.

Activists played an outsized part in the politics of censorship. In the early twentieth century antivice groups embraced the opportunities for cooperation across borders provided by international accords on the traffic in obscene publications. Large numbers of women took part. In contrast, the anticensorship cause was male-dominated, and made efforts to change this only in the late sixties and seventies as it tried to compete with Mary Whitehouse's National Viewers' and Listeners' Association. Britain's most influential morals campaigner, Whitehouse had learned a lot from the new consumer rights activists.[31] She and her allies also began to practice another kind of political action appropriate to the new regulatory age: litigation against public bodies such as the commercial television regulator and the London County Council. In the process morals campaigners gave new life to laws that had been dormant or marginal. Whitehouse's prosecution of *Gay News* for eroticizing the Crucifixion revived the old crime of blasphemous libel, which lawyers had for decades thought was a dead letter. At multiple points over the nineteenth and twentieth centuries, English obscenity law was transformed when lawyers and litigants manipulated the rules of the game to turn the system in on itself and when legal reforms changed the relationship between censorship and other processes. Changes in procedure implemented before the *Lady Chatterley's Lover* trial, permitting expert witness testimony, allowed Penguin Books to bring the rhetorical energy of evolving ideas about culture and democracy into a system that had been sufficiently self-contained to to exclude them.

This is a book about how ideas twist across time—beneath the clear-cut date ranges in the chapter titles run longer and overlapping temporal arcs—and through different spheres of human activity. It shows how offensive publications crystallized questions of culture, freedom, and order for censors and their opponents, jurists, artists, and ordinary people. To do

that we need to reconstruct the unostentatious thinking going on in the routines of policing and activism as well as the spectacular cases and set-piece debates.[32] That involves mixing archival research with the kinds of reading characteristic of literary criticism and intellectual history. Reading for patterns of argument and reference across a wide range of material makes it possible to see how the meaning of a maxim or a metaphor changed as it moved between a literary review and a courtroom or from a conversation in the street to a submission to the Home Office.[33] In this history the routine matters as well as the reflective, the lay as well as the learned.

Accordingly, the book draws extensively on a wide range of archives. Saying everything really is the secret of being boring, though, and for detail about some books (like *Fanny Hill*) and some genres (such as birth control literature), the reader will have to go elsewhere.[34] The book looks sideways at broadcasting and the theater, not at all at music, and pays more detailed attention to film censorship at key points (the 1910s and 1920s and the 1970s and 1980s). It ventures into the history of sedition and blasphemy as well as obscenity.[35] It does not deal with political censorship and government secrecy, which raise quite different questions.[36] It merely glances at the two world wars, which were boom times for political (and postal) censorship but much less eventful in the history of obscenity law than the two postwar periods were.[37] And while the larger questions concern the United Kingdom as a whole, and although the coverage of the postwar period touches on the Edinburgh scene and some Scottish cases, the variations in legal systems across the union mean that this book is largely about England.[38]

The eight chapters span the period from 1857 to 1979, from the first Obscene Publications Act to the Williams Report; the Conclusion surveys developments since 1979. The first four chapters trace the persistence of the Victorian twinning of censorship and citizenship through the democratic and artistic experiments of the first half of the twentieth century, and on to the challenge to the culture of conformism, paternalism, and deference mounted in the *Lady Chatterley's Lover* trial. The second half of the book traces the shift towards a more pluralist culture from the sixties onwards. Censorship controversies did more than simply register these changes. Penguin Books called its trial "probably the most thorough and expensive seminar on Lawrence's work ever given."[39] Subsequent obscenity trials likewise turned into public "seminars" interrogating cultural change; and the Williams Committee's call for submissions prompted people to express their feelings about freedom and license or work out what they thought by scribbling essays at their kitchen tables. In modern Britain censorship has both inhibited speech and made people talk.

INDEX

Locators in italics refer to figures.