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The 1857 Obscene Publications Act: Debate, Definition and Dissemination, 1857-1868

by

Natalie Pryor

Thesis for the degree of Master of Philosophy

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ABSTRACT

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by Natalie Pryor

The 1857 Obscene Publications Act was designed to herald a new era of literary censorship within British publishing, addressing an increasing tension between widening access to literature and moral quality control. Yet despite the initial rush of prosecutions in the first eleven years of the Act's passing, it never quite achieved the success that its supporters had originally predicted. While the Act was successful in targeting and prosecuting publishers of pornography, it wasn't until after 1868, when the Act was amended following the *Regina v. Hicklin* case and a legal definition of obscenity was officially decided upon, that the Obscene Publications Act could reach its full potential.

Drawing on archive material from the law courts, the Houses of Parliament, and sources detailing public reaction, this thesis aims to investigate the debates caused by the Obscene Publications Act surrounding the nature of obscenity, and thus to explore the evolving relationship between the law and morality in mid-nineteenth-century England. By examining the first eleven years following the passing of the Act in 1857 until its amendment in 1868, this thesis analyses the debates surrounding the passing of the legislation and how the initial prosecutions of publishers highlighted its inherent flaws. It will specifically focus on the complex problems which developed in defining obscenity within literature and the arts, issues which were not initially the Act's main focus. This thesis also considers how the lack of clear definition within the Act led to the legislation being appropriated for various different social, legal, religious and political agendas during this period, eventually resulting in its amendment in 1868 and a clearer definition of obscenity which was to have far-reaching consequences for literature for the next century.

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Academic Thesis: Declaration Of Authorship

I, NATALIE PRYOR

declare that this thesis and the work presented in it are my own and has been generated by me as the result of my own original research.

[title of thesis] THE 1857 OBSCENE PUBLICATIONS ACT: DEBATE, DEFINITION AND DISSEMINATION, 1857-1868

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The 1857 Obscene Publications Act: Debate, Definition and Dissemination, 1857-1868

Introduction

> [...] it occurred to [Mr. Justice Coleridge] to say a few words with regard to an offence to which public attention had been recently drawn – an offence, to his mind, of great magnitude, and producing mischievous consequences – he meant the publication of obscene books, prints, and pictures, which every one must be aware tended very much to the corruption of minds, especially of young persons.[1]

In November 1857, Mr. Justice Coleridge addressed members of the grand jury in the Court of Queen's Bench on the subject of the Obscene Publications Act, also known as Campbell's Bill, which had passed into legislation two months earlier, following nearly half a year of negotiations and amendments in the House of Lords. Although in this address, from which the extract above was taken, he urged the gathered jury members to be cautious when deliberating whether a work of art or literature should be considered to be obscene, he still felt that such legislation was needed beyond doubt. His emphasis on the 'great magnitude' of the problem and its 'mischievous consequences' demonstrates the gravity with which he felt such an issue should be dealt. Coleridge's attitude also shows that he believed there was an intent in this obscene material to harm its reader; his use of the word 'corruption' indicates that he believed that there was a force behind the obscene publications that wanted to damage, perhaps irreparably, the

[1] 'Science and Art: Mr. Justice Coleridge on Obscene Publications and Objects of High Art', *Hampshire Advertiser and Salisbury Guardian*, 14 November 1857, p. 2.

reader and that the corrupting influence came directly from the publishers, printers, authors, illustrators and distributors of this material. In instances where a reader had been adversely affected by a text, Coleridge was of the school that believed the text was to blame, and if the text was to blame, then censorship legislation was the force by which its immorality could be stamped out.

In this thesis I aim to investigate the passing of the 1857 Obscene Publications Act and how this piece of legislation sparked debates over the effective regulation of the nineteenth-century publishing industry, the true nature of obscenity and the evolving relationship between the law and morality.[2] I also aim to examine how public opinion and social and legal change affected the way the legislation was interpreted and utilised. While the 1857 version of the Obscene Publications Act has previously been acknowledged as an integral part of the history of modern censorship and obscenity legislation, albeit one that is oft ignored in favour of the more well-recognized Obscenity Acts of 1959 and 1964, this thesis aims to show that not only did this Act affect how obscenity within the arts was perceived during the mid-nineteenth century, it also had a profound effect on public consciousness and thus on future legislation during the course of the next 50 years. In addition, it will be shown that the Obscene Publications Act also had an impact on how varied issues such as medicine, divorce, policing, libel and English-Irish tensions were viewed and debated during this period.

The nineteenth century in Britain saw huge changes both economically and socially. The turmoil of the long eighteenth century with its revolutions and dissent in Europe was coming to a close and a new age of Empire was emerging. The relative social calm of the 1850s has often been contrasted with the upheaval of the 'hungry 40s'.[3] The authorities, alarmed at the extent of social and political unrest across the United Kingdom and anxious that revolution might spread from Europe, reacted to violent protest, real and potential, with considerable force and other repressive measures. Chartism was defeated but its ideas continued to

[2] By 'publishing industry' I am referring to anyone involved within the creation, production and distribution of print culture including authors, illustrators, editors, publishers, printers and booksellers. This study will build upon previous research I have completed entitled, 'How Did the Obscene Publications Act (1857) Affect the Policing of Literature for Victorian Women Readers?' (unpublished master's dissertation, University of Southampton, 2008).

[3] See 'The Mid-Victorian Years: An Age of Equipoise?', p.153-155, in Donald M. MacRaild and David E. Martin, *Labour in British Society, 1830-1914* (Basingstoke: Macmillan, 2000).

influence politics and individual Chartists continued as public speakers admired by many (including Liberals as well members of the Independent Labour Party, the Fabian Society, and the Marxist Social Democratic Federation) into the early twentieth century.[4] Nevertheless, the 1850s was in social terms a relatively calm decade. There were still riots, often over religious issues, and violence was still present in some political and industrial disputes; but in 1858 Engels complained to Marx that the English proletariat was becoming more and more bourgeois, working for reform within the capitalist state.[5]

More and more of the upper and emerging middle classes became concerned with the issue of removing dirt from the streets of the country's cities, especially London. In 1848, the government set up the General Board of Health and passed the Public Health Act, in its efforts to control the spread of disease in towns and cities.[6] It was not just physical dirt that was a cause for concern for these social reformers, but the metaphorical uncleanliness that ostensibly marred the populace's minds. A spreading evangelicalism was on a mission to banish sin and provide guidance to the people on how to live good, clean lives. Campaigns against alcohol and venereal diseases spread by prostitution were instigated in many of the industrialised cities in the country, and one of the key moral issues that was taken up was that of social guidance through receiving a moral education. In particular, there was concern with how what people read affected their behaviour, and thus the importance of making good, wholesome literature available to all.[7]

As the Victorian technological age developed, with advances such as the establishment of a rail network, so too there were advances and changes in the

[4] See Malcolm Chase, *Chartism: A New History* (Manchester: Manchester University Press, 2007), p. 358-360, or Richard Brown, *Chartism* (Cambridge: Cambridge University Press, 1998), p. 117-129.
[5] See E.P. Thompson, *The Poverty of Theory and Other Essays* (London: Merlin Press,1978), p. 35-91.
[6] See Stephen Halliday, *The Great Filth: The War Against Disease in Victorian England* (Stroud: Sutton Publishing, 2007), p. 23-25, or Anne Hardy, 'Urban famine or urban crisis? Typhus in the Victorian city' in *The Victorian City: A Reader in British Urban History, 1820-1914*, ed. by R. J. Morris and Richard Rodger (London & New York: Longman, 1993), pp. 209-240.
[7] See 'The Contagious Diseases Acts and mid-Victorian social reform', p. 54-59, in Frank Mort, *Dangerous Sexualities: Medico-Moral Politics in England since 1830* (London & New York: Routledge, 2000); see also 'Drink, destitution and disease', p. 136-163, in Frances Finnegan, *Poverty and Prostitution: A Study of Victorian Prostitutes in York* (Cambridge: Cambridge University Press, 1979).

production of literature, such as another steam-powered invention – the powered printing press. According to Alexis Weedon, 'rapid developments in printing and paper technology [...] led to this unprecedented growth in output.'[8] These new changes in the expanding publishing industry led to concerns about what was being produced. A greater increase in the amount of literature led to more titles on the shelves, making what was circulated harder to regulate. Novels, newspapers and religious tracts were now joined by a widening produce of journals, chapbooks, children's literature, pamphlets and pornography all of which were cheaper to purchase and more readily available than they previously had been.

Weedon notes that 'in the reigns of King William IV (1830-37) and Queen Victoria (1837-1901) the potential market for print in England and Wales alone quadrupled.'[9] The increase of readers also presented a problem to the self-appointed guardians of morality and peace, the politicians, churches and family elders. Between 1800 and 1841, Simon Eliot estimates that the number of male readers across the population had risen from 60 percent to 67 percent (indicating a growth in literacy of 7 percent), with an increase in female readership from 45 percent to 51 percent in the same time period (indicating a growth of 6 percent).[10] By 1871 the literacy rates had risen to 81 and 73 percent for males and females respectively, and by 1891, twenty-one years after the 1870 Education Reform Act, those percentages of male and female readers Eliot estimates to be at 94 and 93 percent of the population respectively.[11] According to these statistics, over the course of the nineteenth century the numbers of literate readers in England and Wales had risen sharply, with the percentage of female readers having more than doubled. The increase in readers gave a wider audience to political and social messages which could be imparted through print, and could potentially lead to civil unrest.

Dangerous political and social ideas in print were not the only concern of these guardians of public order, although they were a large part of their anxiety

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[8] Alexis Weedon, *Victorian Publishing: The Economics of Book Production for a Mass Market 1836-1916* (Aldershot: Ashgate, 2003), p. 31.
[9] Weedon, p. 34.
[10] Simon Eliot, 'From Few and Expensive to Many and Cheap: The British Book Market 1800-1890', in *A Companion to the History of the Book*, ed. by Simon Eliot and Jonathan Rose (Oxford: Blackwell, 2006), pp. 291-302 (p. 293).
[11] Eliot, p. 293.

when dealing with the increasing proliferation of literature. Although in the later parliamentary proceedings of 1857, Lord Campbell, the conservative Whig and Lord Chief Justice during the debates and passing of the Obscene Publications Act, and perhaps its most fervent supporter in the House of Lords, claimed that his fight was against 'obscene prints and publications', it can generally be assumed that any text which subverted the accepted norms of patriarchal society could be considered dangerous or harmful to the populace. While political propaganda, such as the inflammatory pamphlets and other material produced during the French Revolution, illustrated the extreme consequences with which un-policed texts could dramatically alter public perception of the social hierarchy, other inflammatory subjects, such as sexual intercourse, pregnancy, blasphemous liturgy and mental illness, threatened the public perceptions of morality on which social patriarchal hierarchy was based. Thus, while dangerous political literature could be considered obscene by conservatives, other issues caused equal concern. This was something which later caused problems with defining 'obscenity' both in the debates surrounding the Act and in the decade afterwards. This thesis will examine this issue further, suggesting that the problem of definition not only stalked the judicial system, but also created a culture of anxiety in the publishing industry itself and in a wider social context.

In order to be assured that this new reading public were imbibing the 'right' kind of material much guidance was given from various sources. This advice, which became especially prevalent throughout the first half of the nineteenth century, was dedicated to upholding morality and it bombarded the young reader with advice as to what to read in order to become a valuable member of their family and society. Along with guidance as to what it was appropriate to read, also came advice as to what was inappropriate for the uninformed reader, and with it came censorship, both formal and informal.

Prior to the passing of the 1857 Act, methods of literary censorship were as varied as its implementers. Official censorship was usually directed through the law courts with the publisher, writer or seller of the text receiving the punishment. The books were often removed from sale, although to completely remove any literary work was extremely difficult due to the circulation of black market editions. Publishers such as William Dugdale, who later fell foul of the

Obscene Publications Act and was described by Henry Ashbee as "one of the most prolific publishers of filthy books,"[12] worked outside of the law, using several different locations from which to do business and, according to Steven Marcus, he 'worked under the cover of such names as Turner, Smith, Young and Brown.'[13] Writers, their publishers, and the booksellers who distributed their work could not be prosecuted for merely possessing an obscene text. Private ownership was acceptable, as will be discussed in Chapter One. The illegality of the text came from its trade, meaning that it was only once a book had begun to be distributed that its publisher could be prosecuted. This indicates that copies of the text could have already been sold to the public before the authorities were made aware of its existence. Therefore, it is reasonable to assume that black market editions of the text would continue to be in existence in the possession of those who had purchased them prior to any prosecution.

Thus, unofficial censorship did not guarantee that impressionable readers would never obtain the books or periodicals in question. Often banning a specific text would provoke curiosity about the text's content, or the readers would learn to engage in private reading away from others, either because they did not wish the text to be removed from them or because they recognized that what they were reading would not be condoned by the 'authorities'. Unless a book was completely banned or destroyed outright there was no guaranteed way to keep it away from the reader, and so it was believed that the 1857 Act was necessary, rather than just relying upon the earlier common law legislation.

The influence of this legislation has been felt in the publishing industry for the last century and a half and its importance has been woefully neglected by past scholarship, in favour of the more recent revision to the legislation that followed the infamous *Lady Chatterley's Lover* court case of 1959. Yet the earlier legislation, which is the focus of this thesis, and the prosecutions made under it appear to have almost slipped into obscurity, and modern scholars have underestimated just how much impact this Act has had upon how literary censorship is viewed and how obscenity within literature is identified and dealt with. For example, in *Obscenity: An Account of Censorship Laws and their*

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[12] Steven Marcus, *The Other Victorians: A Study of Sexuality and Pornography in Mid-Nineteenth-Century England* (New Brunswick: Transaction Publishers, 2009), p. 74.
[13] Marcus, p. 74.

Enforcement in England and Wales by Geoffrey Robertson there is an extensive well-rounded discussion on the 1959 revision of the Obscene Publications Act, while the 1857 version which preceded it is briefly mentioned but virtually ignored in favour of twentieth-century cases of obscenity legislation being implemented. [14]

It is important to consider the already established body of work that informs my topic. I have come across many areas of research in the fields of Victorian print culture which, whilst not directly relevant to this thesis, do investigate other areas of the censorship of literature, as well as providing information regarding the social history of literature.[15] Numerous studies focus on social life and expectations during the Victorian period, including works on acceptable social norms and conservative public reactions to sex, violence and religion. Much is made of current notions of Victorian prudery and evidence concerning Victorian attitudes towards sex, and particularly those attitudes surrounding female acquisition of worldly knowledge. For example, Jill L. Matus' *Unstable Bodies: Victorian Representations of Sexuality and Maternity* investigates how literature could portray a representation of female sexuality which would be socially acceptable for the strict rules of conduct within Victorian society. [16] This thesis will draw upon Matus' research in Chapter Three when examining the legal position of medical publications within obscenity trials. Scholars such as Kate Flint and Pamela K. Gilbert, among others, have already extensively investigated the reading practices of women and what impact this was considered to have upon them, while work by Judith Rowbotham has investigated how reading for women was monitored and guided due to women's perceived intellectual and moral inferiority.[17] Such scholarship provides a social grounding for this research, helping to determine what was considered acceptable, and what was considered obscene.

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[14] Geoffrey Robertson, *Obscenity: An Account of Censorship Laws and their Enforcement in England and Wales* (London: Weidenfeld and Nicolson, 1979).

[15] See Richard D. Altick's *The English Common Reader: A Social History of the Mass Reading Public, 1800-1900* (Columbus: Ohio State University Press, 1957).

[16] Jill L. Matus, *Unstable Bodies: Victorian Representations of Sexuality and Maternity* (Manchester: Manchester University Press, 1995).

[17] Kate Flint, *The Woman Reader 1837-1914* (Oxford: Oxford University Press, 2002); Pamela K. Gilbert, *Disease, Desire and the Body in Victorian Women's Popular Novels* (Cambridge: Cambridge University Press, 1997). See also Judith Rowbotham, *Good Girls Make Good Wives: Guidance for Girls in Victorian Fiction* (Oxford: Basil Blackwell, 1989).

What has not been covered in such extensive detail is the concept that young men were thought to be just as susceptible to the content of improper literature as young women. Christian societies such as the Pure Literature Society, which promoted the circulation of pure and moral literature, selected and sold texts to public libraries – a male-dominated public space in this period - and young men's associations. While women were traditionally seen as the more vulnerable and impressionable sex when it came to corrupt influences, something emphasized in scholarship from the last twenty years, such as Amanda Anderson's *Tainted Souls and Painted Faces: The Rhetoric of Fallenness in Victorian Culture* and Judith R. Walkowitz's *City of Dreadful Delight: Narratives of Sexual Danger in Late Victorian London*, young men and boys were also identified to be at risk by the moral guardians of the Victorian era.[18] This critically neglected aspect of the morality debate made an important appearance in the arguments surrounding the passing of the Act, and it is a critical oversight which this thesis will attempt to address.

Study of the nature of obscenity legislation has been relatively well covered by researchers such as Lord Birkett and David Saunders, although as previously mentioned, most of the focus is on later obscenity legislation and so neglects the importance of the earlier Victorian legislation.[19] Some further research has been undertaken to identify how authors operated within the confines of the Obscene Publications Act, although hardly any recent scholarship has concerned itself with how censorship functioned at an authoritative level underneath that of legal censorship, such as within publishing, and with the work of the church and other societies to suppress the spread of vice amongst the public. Jeanne Rosenmayer Fahnestock's research on Geraldine Jewsbury, a reader for the publishing companies Hurst and Blackett and Bentley and Son, illustrates that publishers were aware of the potential moral controversies of printing some kinds of literature, particularly sensation fiction, and were eager to

[18] Amanda Anderson, *Tainted Souls and Painted Faces: The Rhetoric of Fallenness in Victorian Culture* (Ithaca: Cornell University Press, 1993); Judith R. Walkowitz, *City of Dreadful Delight: Narratives of Sexual Danger in Late Victorian London* (London: Virago, 1992).
[19] Lord Birkett, 'The Changing Law', in *'To Deprave and Corrupt…': Original Studies in the Nature and Definition of 'Obscenity'*, ed. by John Chandos (London: Souvenir Press, 1962), pp. 71-88; David Saunders, 'Copyright, Obscenity and Literary History', *ELH*, 57.2 (1990), 431-44 ;Robertson, 1979.

remain on the safe, conservative side of public opinion.[20] While this thesis does not focus on fiction, this article does give a sense of how important public opinion was to publishers and how these companies were trying to enforce informal censorship on their own work. Fahnestock's work also demonstrates the power of public opinion when it came to governing morality in literature as will be discussed in the final chapter of this work.

Studies such as this of how publishers worked to defeat censorship are few and far between, mainly due to the records of smaller publishing houses being lost, but some mid-Victorian publishers have received attention, such as Simon Eliot's work on John Hotton.[21] Slightly more research has been done on the role that Christian societies undertook to promote 'pure' literature and to censor immoral literature. Scholars such as M.J.D. Roberts have produced research on specific organisations, such as the Society for the Suppression of Vice, and its role in tackling social and literary obscenity. This work is in the minority, however, as much of the scholarship on these organisations has been included within studies of the Victorian middle classes, rather than as part of discussions about censorship and legislation.[22]

When determining the impact of the Obscene Publications Act upon the production and circulation of books, we can usefully look to Robert Darnton's Communications Network to see how legislation fits into the book trade cycle.[23] The Communications Network was composed by Darnton as a method of illustrating how the book trade is disseminated from author to reader and then back to author again, whilst allowing for 'outside influences at every stage.'[24] Darnton theorises that, 'Authors, publishers, printers, booksellers, librarians, and readers constantly modified their behaviour in response to pressure from the state, the Church, the economy, and various social groups.'[25]

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[20] Jeanne Rosenmayer Fahnestock, 'Geraldine Jewsbury: The Power of the Publisher's Reader', *Nineteenth-Century Fiction*, 28.3 (1973), 253-72.
[21] Simon Eliot, 'Hotten: Rotten: Forgotten? An Apologia for a General Publisher', *Book History 3* (2000) 61-93.
[22] M.J.D. Roberts, 'The Society for the Suppression of Vice and Its Early Critics, 1802-1812', *The Historical Journal*, 26.1 (1983), 159-76.
[23] See Appendix 1 for a copy of Darnton's Communications Circuit.
[24] Robert Darnton, *The Forbidden Bestsellers of Pre-Revolutionary France* (New York and London: W.W. Norton & Company, 1995), p. 184.
[25] Darnton, p. 184.

One of these outside pressures upon the circuit, according to Darnton, comes from the area he calls 'Political and Legal Sanctions' which forms part of the body of 'Economic and Social Conjecture' that he argues influences every aspect of the book trade. This model can be used to demonstrate that the ramifications of the Obscene Publications Act would be felt across five areas of literary publication: the authors, the publishers, the printers, the shippers, and the booksellers. However, using Darnton's Network as a guide, it is important to consider the one area of the Communications Network which Darnton does not immediately link to the 'Political and Legal Sanctions', and that is the 'Readers.'[26] It is through the 'Intellectual Influences and Publicity' – opinions, reporting and dissemination – that it can be considered how the Obscene Publications Act impacted upon public opinion and how, in turn, public opinion began to impact upon how the Obscene Publications Act was utilised.

As part of his discourse on communication networks, Darnton also makes the point that, 'reception remains crucial [...] to a fuller understanding of literary experience.'[27] In order to address this key issue, something which will have a profound bearing upon this thesis, he makes two suggestions. First, he states that, 'One could begin by taking the best-seller list as an adequate index to the preferences of [...] readers.'[28] Whilst this suggestion has its merits, it does not allow for the inclusion of popular texts such as pornography which resided outside the boundaries of accepted and recorded bestseller lists. Darnton's second suggestion is that by '[identifying] the entire corpus of literature that circulated outside the law, we should be able to make reasonable inferences about what contemporaries saw as threatening to the regime.'[29] In the spirit of this second suggestion, this study will aim to collate all the prosecutions under the Obscene Publications Act from its inception to the immediate aftermath of the Act's amended definition in 1868, in order to investigate how what was prosecuted evolved over time and why the ideas within some literature were considered dangerous for public consumption. This record of prosecutions under the 1857 Obscene Publications Act can be found in Appendix 2. It is important to recognise that this is not a definitive record of all prosecutions, as incomplete or unfound

[26] Darnton, p. 183.
[27] Darnton, p. 184.
[28] Darnton, p. 185.
[29] Darnton, p. 185.

records from this period make it difficult to determine the true extent of prosecutions under the legislation.

When analysing the Obscene Publications Act, it is important to understand the effect that the wider historical, social and political context had in shaping the legislation. In order to gain a clearer image of the context of these incidents and how they evolved it is sensible to not only focus on the actual date of this occurrence, 1857, but to also consider several years previous to this as many of the changes in Victorian society post the 1832 Reform Act had bearings on the issues which led to the construction of the Act as evidenced in the *Hansard* debates discussed in the first chapter. This study will draw to its conclusion circa-1868 with the trial of Henry Scott and the emergence of the Hicklin definition for literary obscenity. This period of eleven years marks an evolution in obscenity legislation from the idealised concept, born in Parliament, of what would be prosecuted to protect the vulnerable audience – pornography and novels – through the complicated and often contradictory struggle to define what exactly 'obscenity' meant and how changing social circumstances forced the courts to amend the legislation to include a formal legal definition of what constituted an obscene text.

The geographical focus of this study will be England and Wales with the predominant focus for the first two chapters of this thesis being on prosecutions which took place within the city of Greater London. This early focus on the city of London is primarily for three reasons. Firstly, London was considered to be the heart of the British Empire, both in terms of reforms which aimed to improve the standards of living for the populace, the volume of people who lived, worked and read there, and because of its importance as one of the great centres of the publishing world. Lynda Nead describes the city as 'the centre of a global commerce that was subjugating the rest of the world; it was the seat of an empire that was defining contemporary history.'[30] As the administrative hub of the Empire, what happened in London specifically was expected to reverberate upon other areas of the world, both at home and abroad. London was also seen by many, particularly the guardians of morality and order, to be the nucleus of

[30] Lynda Nead, *Victorian Babylon: People, Streets and Images in Nineteenth-Century London* (New Haven: Yale University Press, 2000), p. 3.

immorality and filth during this period, due both to the general condition of a crowded city and because of the 'entertainment' that could be found there.

The second factor in determining this geographical focus is that London was a giant publishing city, producing masses of literature that was then distributed out of the city and around the country. Many publishers worked out of London and relied upon the new transport system to distribute their wares across the country and, subsequently, across the reaches of the Victorian Empire. London had entire streets devoted to the publishing industry and in Britain it was only challenged by Edinburgh in terms of its literary output. Scotland, however, will not form part of this study, as the passing of the 1857 Obscene Publications Act was not voted into law in that country. During the third reading of the Act in Parliament there was much debate on whether Scotland should be included within the remit of the Act. Campbell eventually agreed that within 'the common law of Scotland they had powers more stringent for putting down nuisances of the kind in question than it was proposed to confer by this Bill, and those powers, he was informed, were exercised.'[31] Scotland can therefore be reasonably excluded from this thesis.

The third reason behind the geographical focus on London in the first two chapters of this thesis is related to the method by which the Obscene Publications Act was to be enforced through the use of detectives, an issue which provided some controversy when it was first proposed in the House of Lords and an issue that will be covered in Chapter One. The problem was that until 1842, London did not have its own detective division, and it was not until 1856, one year before the Act was passed, that all towns in England and Wales were required by law to have their own police force. This meant that when the Act came into being at the end of 1857, London was the only city capable of enforcing the legislation. This was reflected in the newspapers of the time, with reports of prosecutions under the Act being printed in Greater London regional and national newspapers, only then to appear several days later, copied verbatim, in newspapers local to other towns and cities within the country.

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[31] *Hansard's Parliamentary Debates*, III (London: Cornelius Buck, 1857), CXLVII (1857), c. 1949.

While this strongly suggests that London was the primary location to enforce this Act, as will be seen in the second half of this thesis, other cities and towns did eventually enforce this legislation later on in the century, although as examples from this study will show, it was with varying degrees of success. Despite this, the publishing and distribution of obscene texts and prints can still be viewed very much as an urban crime, with the majority of prosecutions which did take place outside of London located in cities and larger towns. As with the London cases, this could be a result of the extra policing resources in these locations, as rural areas even by the end of this period would not have had the capability to enforce the Obscene Publications Act.

During this study, the primary focus of the prosecution cases will be on factual and pornographic works of literature, including medical texts, periodicals, religious pamphlets and erotic and classical literature and prints. While the prosecution of named fictional texts hardly occurs during this period, novels and poetry were prosecuted later in the century, and this thesis will demonstrate their importance, particularly in shaping the future of obscenity legislation as the censorship of novels was a tricky and inconclusive business. This study, particularly Chapters Two and Three, aims to investigate why it was that far fewer novels were prosecuted than initially anticipated and how this raised the issue of how obscenity can be determined, despite these types of publications being specifically targeted in the House of Lords debates. It is the indeterminacy of the presence of obscenity within fiction that makes it such a complicated but crucial issue. Immorality within non-fiction was easier to identify given that it depended on fact, which is why non-fiction features so heavily in the investigation of the prosecution cases during the eleven years covered by this study, but in fiction obscenity is a question of suggestion and language use, making immorality infinitely more difficult to identify, and therefore more difficult to prosecute. The question of how to define and identify obscenity within literature, both fictional and factual is one of the key arguments that this thesis is interested in.

This thesis will be divided into four chapters covering the period from the Act's conception in 1857 to its amendment in 1868. The first chapter includes a critical assessment of the debates in the House of Lords that surrounded the passing of the Obscene Publications Act. It is important to understand these

debates as they will provide insight into what were the initial expectations of the Act and this will be used as a basis from which to track changes in the legislation and the response of publishers, legislators and the public throughout this period of study. The second chapter focuses on the prosecutions that occurred in the first six months following the passing of the Obscene Publications Act. These prosecutions were the first chance for the new legislation to be put through its paces and show the reaction of the first publishers prosecuted under the Act. By applying critical thinking towards these case studies, particularly the way the courts sentenced William Dugdale, John Thornhill and Mary Elliott, all repeat offenders, this thesis will analyse where the new legislation succeeded and failed in addressing the issue of dangerous literature and pornography.

The third chapter analyses why the number of prosecutions under the Obscene Publications Act decreased during the first half of the 1860s, charting the new issues that took precedence both in Parliament and in the law courts, and how obscenity legislation took on new social meaning beyond the suppression of immoral literature. The final chapter covers the latter half of the 1860s, examining how increasing confusion over the true, legal definition of obscenity led to a number of publishers of religious texts being prosecuted, and investigating the uproar that this caused. This chapter will also examine how this religious and legal controversy led to Chief Justice Cockburn creating the Hicklin definition for obscenity which was to influence the prosecution of obscenity for the next century. Although the issues examined are by no means exclusive to the period of time which each chapter covers, this method retains much of the chronology of events, thus making it easier to track the changes to the legislation and the publishing industry over time.

Chapter One

'A poison more deadly than prussic acid, strichnine, or arsenic': The Formation of the Obscene Publications Act

Before the Obscene Publications Act of 1857, formal censorship of literature was inefficient and contradictory; literature, if brought to trial, was only charged under common law. There were several attempts to change this, the first of these being drafted in 1580 by the lawyer William Lambard. His proposed legislation aimed to 'restrain the licentious printing, selling and uttering of unprofitable and hurtful English books.'[32] Although drafted, this Bill was never presented to Parliament and so never came to fruition.[33] Before the 1830s - and even afterwards to some extent - prosecutions of non-violent crimes were predominantly undertaken by private individuals rather than by an official governmental body such as the police force. This was mainly due to financial constraints, and in many cases these individual complainants would guide the direction of the investigation themselves, with the police merely acting as official supporting players in the case. This will be discussed in more detail in the next chapter.

In *Copyright, Obscenity and Literary History*, David Saunders explains that in order to be prosecuted under common law, literature of an inappropriate nature had to be considered 'immoral, obscene, blasphemous, libellous or seditious, and as such contrary to law' as ruled by Lord Chancellor Eldon in the 1802 case of Walcot v. Walker, and this was rare.[34] One of the most prominent examples of this type of prosecution came in 1825 when the courtesan Harriette Wilson published her memoirs naming her previous lovers, which included King George IV and the Duke of Wellington. During the serial publication of her

[32] Robertson, p. 17.
[33] Robertson offers a more detailed history of these previous attempts at passing obscenity legislation, although his history merely recounts instances in which new legislation was proposed and failed, and not any account of earlier prosecutions.
[34] Saunders, p.432.

memoirs, Wilson and her publisher, Stockdale, attempted to blackmail her former lovers for monetary gain:

> At the end of each instalment was an advertisement giving the names of the people to be mentioned in the next number, thus giving them the chance to buy themselves out – if they had not already done so on receipt of one of Harriette's special blackmailing letters.[35]

Some, like George IV, were alleged to have paid to be omitted from these memoirs, while others, such as the Duke of Wellington, infamously – although he is thought to have been misquoted - challenged Wilson to '"publish and be damned."'[36] Others took the legal approach and sued Wilson and Stockdale for libel and damages. In the context of preceding the Obscene Publications Act, this was particularly significant. In her essay 'The Memoirs of Harriette Wilson' (2004), Frances Wilson notes that when it came to assigning culpability in these cases 'it was Wilson's publisher [Stockdale] rather than [Wilson] herself who was liable for prosecution'.[37] This was clearly a warning as to who could be expected to face prosecution if controversial texts were published – it was the publisher of this literature who felt the force of the law, not the author, something that would become central to the Act's first legal appearance.

As mentioned in the introduction to this thesis, there were many unofficial forms of censoring literature and many concerned individuals – other than politicians – who sought to protect the vulnerable reader. The Church was highly influential in establishing what constituted the 'right' kind of literature, using its role as a moral guardian and guide. Most of the Church's official censorship of literature was implemented through societies such as the Society for the Suppression of Vice (founded in 1802) and, according to Norman St John-Stevas, it was 'through the medium of such organizations that the growing Church through the nineteenth century tried to influence publishing in England.'[38] The rise and strength of Evangelicalism led to the middle-class formation of such

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[35] Katie Hickman, *Courtesans* (London: Harper Perennial, 2003), p. 209.
[36] Hickman, p. 211.
[37] Frances Wilson, *The Memoirs of Harriette Wilson: The Impossibility of Biography* (2004) <http://www.thejohnsonsociety.org.uk>, [13 March 2012].
[38] Norman St. John-Stevas, 'The Church and Censorship', in *'To Deprave and Corrupt': Original Studies in the Nature and Definition of 'Obscenity'*, ed. by John Chandos (London: Souvenir Press, 1962), pp. 89-107 (p. 104-05).

societies which, according to R.J. Morris, 'were the basis for orderly social and cultural bargaining.'[39] These societies, dedicated to public order and morality, laid down the foundations for a hierarchy within middle-class society dedicated to establishing everyone's place, including keeping the working class in theirs, and part of this commitment meant that 'the voluntary societies themselves with their proto-bureaucratic forms, their rules, committees, reports and meetings were an aspect of this order.'[40]

The Society for the Suppression of Vice was instrumental in both officially and unofficially targeting what they considered to be obscene publications, and was one of a number of bodies founded in the half century immediately prior to the passing of the 1857 Act concerned with influencing social change and action in the interest of public decency. The Society saw literature as just another means by which public order and the decency of the common man could be disturbed, hence its desire to regulate literary output and availability. In his article 'Lord Campbell's Act: England's First Obscenity Statute', Colin Manchester sets out how the Society for the Suppression of Vice and the Proclamation Society operated in the first half of the century before official censorship legislation was passed. Manchester draws attention to their relationship with the Church, and exposes how they utilised legislation such as the 1824 Vagrancy Act to target pornography above and beyond the contemporary libel laws that were in place; however, Manchester also draws attention to the fact that the Society of the Suppression of Vice rarely prosecuted cases where there was doubt over the outcome, leading to questions over the accomplishments the Society credited itself with.[41] The advent and passing of the Obscene Publications Act did not limit their influence or desire to be involved in literary prosecutions. Instead, the Society appeared to be ahead of the legislators, recognising that it was the publication of literature that needed to be its focus, going straight to the source of the problem by focusing its efforts on the distribution, and, later on, the reading of such texts.[42]

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[39] R.J. Morris, 'The Making of the British Middle Class: An Elite-Led Class', in *Class*, ed. By Patrick Joyce (Oxford: Oxford University Press, 1995), pp. 316-322 (p. 320).
[40] Morris, p. 320. In order to draw this conclusion, Morris based his findings on the idea of an elite middle-class existing within the northern industrial towns of the UK.
[41] Colin Manchester, 'Lord Campbell's Act: England's First Obscenity Statute', *The Journal of Legal History*, 9.2 (1988), pp. 223-41.
[42] St John-Stevas, p.104-05.

When the legislation came into effect, the Society took on a different role. In the two cases of Adolphus Henry Judge and Dr. John Galt in the 1860s, the Society for the Suppression of Vice itself prosecuted these alleged distributors of obscene and pornographic work on behalf of the Crown, due to a lack of public funds, using their own solicitors, Messrs. Pritchard and Ollette.[43] According to the society's official advertisements, one of which appeared in an 1872 volume of *The Leisure Hour*, they took on the responsibility of prosecuting obscene works as 'there are no funds at the disposal of Government and the police applicable to such purposes, and the country does not in these prosecutions allow any part of the expenses.'[44] The Society for the Suppression of Vice mainly gained its funding through private donations and subscriptions of primarily middle-class gentlemen who found themselves concerned about the moral wellbeing of the public. Interestingly, they also received funding for their prosecutions against obscene literature from authors, such as the Reverend Charles L. Dodgson, better known as Lewis Carroll, the author of *Alice's Adventures in Wonderland*. Carroll made regular annual payments to the Society to support their cause, as recorded in the ledgers that he kept of his financial accounts.[45]

The Church also implemented unofficial policing of literature through its ministers. Priests and bishops of various denominations could reach huge numbers of the public in their congregations and influence their reading through religious teaching. Indeed, despite not being associated with Church of England practises, this became the case with Elizabeth Gaskell's Unitarian congregation upon the publication of her novel *Ruth* (1853). Her church denounced her writing and members of her congregation even burned copies of the book in protest at its

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[43] 'Middlesex Sessions', *Daily News*, 4 April 1866, p. 6, and, 'Middlesex Sessions', *Daily News,* 27 September 1867, p. 3.
[44] *The Leisure Hour*, 13 January 1872, <http://www.victorianlondon.org/crime/suppression.htm>, [accessed 9 January 2011]. This particular advert is of significance as it was placed in *The Leisure Hour*, published by the Religious Tract Society – which was established in Manchester in 1809 for the purpose of distributing amongst the poor, small cheap tracts, inculcating moral conduct upon Christian principles. See *From the Dairyman's Daughter to Worrals of the Waaf: The Religious Tract Society, Lutterworth Press and Children's Literature*, ed. by Dennis Butts and Pat Garrett (Cambridge: The Lutterworth Press, 2006) for more details on the Religious Tract Society.
[45] Jenny Woolf, *Lewis Carroll in his Own Account*, <http://www.jabberwock.co.uk>, [accessed 6 April 2010]. Dodgson also donated money to the Pure Literature Society and the Society for the Promotion of Christian Knowledge, both of which were concerned with guiding the working classes and young to appropriately moral literature.

immoral nature. In a letter to Eliza Fox in February 1853 Gaskell writes, 'Now should you have burnt the 1st volume of Ruth as so very bad? even if you had been a very anxious father of a family? [...] Yet two men have; and a third has forbidden his wife to read it; they sit next to us in Chapel and you can't think how 'improper' I feel under their eyes.'[46] The purpose of the burning of the novel was presumably to make a symbolic point, that the congregation was prepared to purchase and burn all of the books they could in order to protect those innocents who had not yet been corrupted. It was a dramatic and powerful display of moral disapproval, and despite her outward confidence, Gaskell appears to have been taken aback by the display. Priests were looked upon as pillars of the community, able to give advice on various matters including what was morally appropriate to read, and Gaskell had clearly fallen foul of their exacting standards.[47]

As *Ruth's* history demonstrates, the distribution of novels as visible and popular marketable products when there was minimal regulation was rapidly becoming a concern as publishing reached the mid-1850s. Towards the end of this decade several social and economic factors affected the distribution of literature creating concern amongst those who sought to influence and control moral

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[46] Elizabeth Gaskell, *The Letters of Mrs Gaskell*, ed. By J.A.V. Chapple and Arthur Pollard (Manchester: Manchester University Press, 1966), p.223.

[47] While Gaskell was not the only author whose novels were exposed to church censorship, she is, however, a rare example of a case where religious censorship was brought directly to the author of the text. Before the Obscene Publications Act when evangelical societies operated literary censorship, it was acknowledged that it was the publishers and printers that must be targeted (as discussed earlier in this chapter). After the 1857 Act, there are examples of similar acts of burning texts or forbidding particular novels, but these are smaller in scale than the Gaskell case. During the 1890s, Harriet Shaw Weaver was caught reading *Adam Bede*, a novel by George Eliot published two years after the Act in 1859 which had similar themes to Gaskell's *Ruth*. In order to deal with this controversial text, Weaver's mother called the family's local vicar over to explain to the young girl why such a text was immoral and not what she should be reading (Jane Lidderdale & Mary Nicholson, *Dear Miss Weaver: Harriet Shaw Weaver 1876-1961* (London: Faber and Faber, 1970), p. 33). In this case the church was seen as the voice of moral reason when it came to judging literature, but was a much more personal kind of censorship than that experienced by Gaskell in which the whole congregation was involved in displaying disapproval. Another later case of church literary censorship was experienced by Thomas Hardy's *Jude the Obscure* when it was published in 1895. In this case the Bishop of Wakefield publicly announced that he had burned a copy of the novel; however, given the overwhelming disapproval towards the novel, it is unknown whether this particular show of religious censure, had more of an impact upon Hardy's confidence in his work than the rest of the surrounding furore. The public disapproval towards the novel certainly affected his future attitude to writing, but the censorship was again less personal towards the author and more disapproving of the text than in Gaskell's case (Robert C. Slack, 'The Text of Hardy's *Jude the Obscure*', *Nineteenth Century Fiction*, 11.4 (1957), 261-75 (p. 261-62)).

standards. The first of these changing social factors was the advancement of printing technology followed by the repealing of the so-called Taxes on Knowledge – the newspaper tax was finally abolished in 1855, while the paper duty was rescinded in 1861 – which had controlled the price of literature and limited its availability since Queen Anne's Act of 1712, making incendiary materials more difficult to get hold of.[48] Literacy rates were rising as more and more people received some form of education, mainly from institutes such as Sunday schools, and would continue to do so following the implementation of several education bills, the first of which was passed in 1870. During the 1850s, new attitudes towards the education of children, particularly those of the working classes, were a precursor to these later changes in education legislation. These changing attitudes towards education and children, regardless of social class, potentially established a wider audience for literature than there had ever been before.[49]

The law had also gained a new force in the form of the establishment of the position of detectives - men who were hired to investigate police matters more thoroughly and with more liberty than had previously been given to the Metropolitan police force, established three decades earlier in 1829 following a campaign by Robert Peel. Peel's reforms led to the official Metropolitan Police Act being passed, but the men employed within it were not entirely trusted by the public. Initially the police force was remarkably small and localised, with the formal organisation being limited to London and the number of recruits within the force being limited to less than 1100 men in total.[50] However, within the first six months of the Metropolitan Police Force's formation, 3427 men had been recruited for the job of policing the city, only for 1644 of those new recruits to be dismissed very quickly after, due to bad behaviour and drunkenness.[51] This quick turnover in recruitment made the police force in London vulnerable, and the force's evident lack of discipline would not have created a good impression on the general public.

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[48] Eliot, p. 294-95; see also H. Dagnell, 'The Taxes on Knowledge: Excise Duty on Paper', *The Library*, s6-xx (1998) <http://library.oxfordjournals.org/content/s6-XX/4/347.full.pdf > [accessed 2 October 2012].
[49] Eliot, p. 293
[50] *Metropolitan Police Force*, < http://www.met.police.uk/history/175yearsago.htm>, [accessed 14 August 2011].
[51] <http://www.met.police.uk/history/175yearsago.htm>

Prior to the Metropolitan Police's formation, local authorities were reliant upon individual constables, the local watch and ward, spies and the local militia to keep order, and even when more formal crime prevention was put in place, it was not initially welcomed.[52] The History of the Metropolitan Police recounts that one congregation in Soho, upon being told that their parish would be expected to contribute towards the upkeep of the area's police force were so horrified by the announcement that 'this "prevented any thing like religious feelings to pervade for the rest of the service."'[53] People were clearly troubled by the idea of placing their safety and trust in this new organization, no doubt fuelled by their concerns over the moral fortitude of the men expected to police the city. The relationship between the police in London and the public was so bad initially that when PC Joseph Grantham and PC Robert Culley were the first policemen killed in the line of duty, the jury at their inquests on both occasions found that the men were killed due to "justifiable homicide."[54]

It was not until ten years after Peel's reforms that the Rural Constabularies Act was passed in 1839, requiring counties outside London to establish their own police forces, and despite this nationwide roll-out of the Act, it was a further seventeen years, in 1856, before provincial police forces became mandatory – a single year before the passing of the Obscene Publications Act. The detective division responsible for policing the Act when it was passed was first approved by the Home Office in June 1842, although the primary argument for its formation was that commissioners needed 'a centralised, elite force to coordinate murder hunts [...] and other serious crimes that crossed different police districts.'[55] Detectives, along with the regular police divisions, were still perceived as figures of mistrust in the early 1850s, so when they were presented as a key component of prosecuting obscenity the reaction towards them was not enthusiastic.

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[52] See Robert D. Storch, 'The policeman as domestic missionary: urban discipline and popular culture in northern England' in *The Victorian City: A Reader in British Urban History, 1820-1914*, ed. by R. J. Morris and Richard Rodger (London & New York: Longman, 1993), pp. 281-306.

[53] <http://www.met.police.uk/history/175yearsago.htm>

[54] <http://www.met.police.uk/history/175yearsago.htm>

[55] Kate Summerscale, *The Suspicions of Mr. Whicher, or the Murder at Road Hill House* (London: Bloomsbury, 2009), p. 51.

The Formation of the Obscene Publications Act

One of the individuals concerned with this new availability of unregulated literature and the possibilities of utilising detectives was a member of the House of Lords, Lord Campbell, the conservative Whig and Lord Chancellor. In 1857, Campbell sought to put legislation in place, called the Sale of Obscene Books, &c., Prevention Bill, to control what literature was now made available to the public and 'prevent the spread of those obscene prints and publications which had become of late most alarming'.[56] Salacious material had always been around in one form or another and it can be assumed that it was the increased cheapness and easy availability of such works that brought them to his attention. Lord Campbell recognised that the 'spread' and distribution of this material was now widening across Britain thanks to technological advancements, and this increased availability and production of obscene literature was the cause of his increased alarm. This is especially relevant considering that when this Bill first made its appearance as a form of legislation, the wheels were already turning to repeal the duty on paper, which eventually occurred a mere four years after the initial presentation of the Obscene Publications legislation in parliament, and the tax on newspapers had only been abolished the year before. Publications were now being produced on a scale never seen before, and it was this mass production which made such texts, and the perceived obscenity within them, more accessible to the wider public. The formation of Lord Campbell's bill, which became the Obscene Publications Act, aimed to halt this penetration of the household sphere and the minds of readers in its early stages: its production and distribution.

Campbell first brought the spread of obscene publications to the attention of the House of Lords on the 11th May 1857, during a sitting where the legislation for the Sale of Poisons and Poisonous Publications was being discussed. He began by asking the Lord Chancellor 'whether the Government intended to introduce any measure to pre-vent the indiscriminate sale of poisons?'[57] Upon the Secretary of State, the Whig politician William Monsell, confirming that measures were indeed being put in place, Campbell then proceeded to refer to a court case

[56] *Hansard's Parliamentary Debates*, III, (London: Cornelius Buck, 1857), CXLVI (1857), c. 327.
[57] *Hansard's Parliamentary Debates*, III, (London: Cornelius Buck, 1857), CXLV (1857), c. 102-3.

that he had presided over the previous weekend in which 'he had learned with horror and alarm that a sale of poison more deadly than prussic acid, strichnine, or arsenic – the sale of obscene publications and indecent books was openly going on.'[58] That Campbell could refer to obscene publications in the same vein as poisonous chemicals such as arsenic and prussic acid demonstrates just how much of a danger obscene literature was thought to pose to the human body and mind.[59] He then went on to further explain that:

> It was not alone indecent books of a high price, which was a sort of check, that were sold, but periodical papers of the most licentious and disgusting description were coming out week by week, and sold to any person who asked for them and in any numbers [...] He trusted that immediate steps would be taken for stopping the sale of publications of so pestilential a character.[60]

This statement demonstrates the two factors that were to shape the future debates over how to prosecute obscene literature. The first was the assumption that price played a part in censorship, illustrating the issue that it was the working classes, and the poorer of the middle classes, who were seen to require the most protection when it came to immorality; a higher price ensured that most of the populace would be safe from such material. The second was Campbell's determination to push some form of extensive legislation through – something which became increasingly apparent throughout the Act's readings later in the year. In this instance though, determination was not enough to force the issue and the Lord Chancellor informed Campbell that 'he was sure his noble and learned Friend would agree with him that no legislation was necessary, as the law as it stood was quite sufficient to put down publications of that nature; and it was for the Attorney General to enforce that law as he thought fit.'[61]

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[58] *Hansard*, III, CXLV, c 103.

[59] The female body in particular was seen as being particularly vulnerable to outside influences such as literature, images and the stage. In *Unstable Bodies,* Jill L. Matus offers a more in depth analysis of this concern that the female body could be corrupted and induced into hysteria by particular texts, symptoms of which included convulsions, paralysis and blindness – similar symptoms as experienced by those exposed to toxins and poisons; see also Carol Groneman's 'Nymphomania: The Historical Construction of Female Sexuality', *Signs*, 19.2 (1994), 337-67.

[60] *Hansard*, III, CXLV, c. 103.

[61] *Hansard*, III, CXLV, c. 103.

Throughout much of the second reading of the Bill, when Campbell spoke of the need for containing these obscene publications, much of the perceived problem lay in the lack of regulations regarding their distribution. Far from the initial approach to the Bill being overly concerned with the protection of people's morals, instead Campbell focused on how the unregulated publications managed to make it to shops and sellers in the first place without any authority being aware of it: 'he was led to believe that a considerable capital was engaged in the trade; that there were warehouses where those abominations were stored; that there were persons actually employed to travel about the country for the purpose of distributing circulars of the most exciting description.'[62] Much of Campbell's shock appears to be not from the content of such literature, but that its publication and distribution as a marketable product is so widespread and that it is treated as a business.

When speaking of 'commodification', Peter Jackson suggests that it refers to 'the extension of the commodity form to goods and services that were not previously commodified,'[63] a practice he particularly links to the second half of the nineteenth century. If this 'commodification' of obscenity had never been seen before, one can understand Campbell's anxiety. As stated in the introduction, when speaking of the approach that was taken toward this new spread of questionable literature, Lynda Nead stresses that obscenity was a 'brash, new product,'[64] emphasizing the idea that there was a monetary trade in immorality. This indicates that although pornography and other 'immoral' material were not particularly new, their appearance as a new extensive 'product' made them unable to be ignored anymore. The increase in the 'commodification' of products was seen by many contemporary critics as a bad thing, as it 'reduc[ed] human relations to an economic logic where everything has its price.'[65] Obscenity was now becoming something to be explicitly traded upon and it was now using something that should theoretically be as innocent and beneficial as reading to permeate respectable society. Although Jackson's argument implies that 'commodification' was feared to lead to a breakdown of human relations and

[62] *Hansard*, III, CXLVI, c. 327.
[63] Peter Jackson, 'Commodity Cultures: The Traffic in Things', *Transactions of the Institute of British Geographers*, 24.1 (1999), 95-108 (p. 96).
[64] Nead, p. 149.
[65] Jackson, p. 97.

society's laws, Campbell appears less concerned by these moral implications than by his realisation that indecent publications were a traded product. This led to his insistence that these publications should be treated 'in the way they treated commercial goods that had not paid the duty.'[66] With the impending rescinding of the paper duty, obscenity would now be free of any taxation or financial restraint that might have otherwise controlled its availability. One is left to wonder whether the instigation for the bill's proposal had economics or morality at its heart.

The Problems with Passing the Obscene Publications Act

Campbell's initial proposals for the bill involved cutting off obscene publications from the public at a root level by focusing attention on the publishers and distributors of the material before it ever reached the hands of its intended audience. His initial proposal, later altered after protestations, involved giving magistrates 'the power of issuing their warrants upon affidavits being made of the existence of those indecent publications in certain places, and that the police should have the power of entering those places and seizing upon all such property as they found there.'[67] This broad sweeping statement of intent met opposition from several quarters within the House of Lords, and several key problems with the legislation were identified. Campbell's bill presented three problematic factors: firstly, the nature of obscenity was yet to be clearly defined; secondly, much harmless literary material could and would face censure if it was defined under this unknown and unclear notion of obscenity; and thirdly, Campbell's suggestions relied heavily upon the gift of greater powers to police, magistrates and 'a class of men that could not be looked on with much respect – that class known as spies and informers.'[68] Campbell's spies and informers are not the kind of people that we would associate with espionage today. Instead, he is referring to the men involved in a new organisation, the detectives, the distrust of whom was widespread.

The police force, particularly the detectives who would be relied upon to enforce Campbell's bill, were still a remarkably new concept in mid-Victorian

[66] *Hansard*, III, CXLVI, c. 328-9.
[67] *Hansard*, III, CXLVI, c. 329.
[68] *Hansard*, III, CXLVI, c. 327-8.

London as has been discussed earlier in the chapter. It is possible to understand, therefore, why some Members of Parliament might hesitate before agreeing to allow these newly-formed police forces the type of power that the implementation of the Obscene Publications Act would demand. It was feared that allowing these men so much leeway under the Obscene Publications Act could lead to the abuse of power regarding who and what was prosecuted.

This issue was met with some concern by the House of Commons as well, when it met in August 1857 between the second and third readings of the Bill in the House of Lords. One Member of Parliament, John Roebuck, whose constituency was in Sheffield, felt that 'there was great danger of making mischief by an undue interference with the affairs of private life, and by encouraging an abuse of power.'[69] With regards to the abuse of power, Roebuck especially felt that this would be the case in the country with the rural authorities, as he believed that in London and the larger cities of the country, more public scrutiny of the affairs of magistrates and police would prevent an abuse of power. In order to illustrate some of the abuses which he felt Campbell's Bill would bring to the country, Roebuck concocted a scenario which he felt would demonstrate how the purpose of the Obscene Publications Act could be twisted to suit private grudges:

> Suppose a country magistrate had a feeling of enmity against a poacher, whom he could not reach as such. The poacher, might, however, sell books, and some one [*sic*] came forward to complain that he had got obscene publications in his house. A warrant could be issued to search his house, and in the course of the search poaching materials might be found. The magistrate would thus gain his object, which otherwise he could not have done.[70]

What is interesting in this example of misuse of the Act, is that Roebuck has created a scenario in which a magistrate abuses the powers that Campbell's Bill invests him with, but only upon a 'victim' who is already guilty of wrongdoing (the illegal act of poaching). So while the magistrate is guilty of bearing a grudge against the poacher and wanting an opportunity to search the poacher's house, at the same time, Roebuck has distanced the magistrate from the misuse of power itself. It is almost as if Roebuck is fully aware that if the Obscene Publication Act

[69] *Hansard*, III, CXLVII, c. 1475.
[70] *Hansard*, III, CXLVII, c.1475-6.

was passed then some in a position of authority might well abuse its powers, but at the same time, he does not want to admit explicitly that those in a position of power are easily corrupted. In his tale of the magistrate and the poacher, it is demonstrated that if the Act's powers are misused, the spread of obscene publications is not really affected, thus making the legislation pointless.

As has been previously stated, trust in the integrity of the police force was already so shaky that to outwardly state that corruption was possible, especially within legislation that heavily relied upon the police to enforce it, would have been damaging to the passing of the Act as a whole, particularly with regards to public support. Roebuck's example of a corrupt magistrate may be presented tamely, but his rebuttal of the Act as it stood was more severe: 'He [Roebuck] objected to any measure that would in reality create an inquisition, and operate despotically towards the people. Such consequences might flow from this Bill, and therefore he objected to it as it now stood.'[71] Despite his careful phraseology, Roebuck came under fire in the Commons later in the reading. While many of the Members agreed that due care should be taken when issuing warrants for private properties, they strongly rebuked his concern that the police and magistrates could behave in a corrupt manner. William Seymour Fitzgerald, the Member representing Horsham, made a point of standing up to state that, '[he] still retained the opinion that the speech of the honourable and learned Member for Sheffield was a libel upon the magistracy of England.'[72] Others must have held the same opinion, as Roebuck's impassioned stance against corrupt legislators was thereafter ignored and his warnings of caution with regards to the Act were disregarded within the rest of the Commons discussion.

Roebuck was supported within the debate in the House of Commons by one Member of Parliament. Richard Monckton Milnes agreed that the policing method proposed for use in the Obscene Publications Act was not ideal and described it as, 'a clumsy method of meeting the evil, one totally alien to the habits of this country, and certain, in the end, to be disgustful to the English people.'[73] Milnes felt that if the Act had been given more care and consideration, perhaps allowing the Commons to have more time to debate it, then such pitfalls as this could be avoided: 'He believed, in truth, that the Bill would never have

[71] *Hansard*, III, CXLVII, c. 1476.
[72] *Hansard*, III, CXLVII, c. 1483.
[73] *Hansard*, III, CXLVII, c. 1479-80.

reached its present shape if hon. Members had had the manliness to state what were their real opinions on the subject.'[74]

Monckton Milnes' political stance with regards to his personal views on this subject adds an interesting twist to the debates. In one instance during the Bill's reading he describes the problem of obscene literature as being 'evil' and 'disgustful' – strong language which suggests his own dismay at the content of contemporary literature. He also states that the Bill should never have been submitted to Parliament as it was, an apparent acknowledgement of the intricacies of determining obscenity within texts. From these two quotes one can surmise that while Monckton Milnes was supportive of tighter legislation, he also did not want to see the Act passed without further due consideration. This moderate view appears perfectly practical until his private life is exposed. Monckton Milnes was in fact an avid collector of pornography, and was credited by the controversial poet Swinburne with having introduced him to the work of the Marquis de Sade.[75] In addition to his friendship with Swinburne, Monckton Milnes was also closely acquainted with Richard Burton, a writer and translator of erotic works, several of which he was thought to be closely involved in producing.[76] This moderate man of the debates is a vastly different creature from the collector of erotica who once jokingly referred to his library as "Aphrodisiopolis."[77] Unfortunately for this study, Monckton Milnes' objection to Campbell's Bill cannot be viewed as a straightforward objection on principle, thus leaving his position in the debates unclear. This is especially true if one takes into account that following the passing of the Act, Milnes possessed an agent in Paris, Frederick Hankey, who purchased erotic texts for him, thus circumventing the English customs system, something immoral if not strictly illegal.[78]

Lord Lyndhurst, an opponent of the Bill's second reading, and a long-standing Tory rival of Campbell, who was a conservative member of the Whig party, was also particularly concerned with whether or not the Obscene Publications Act would infringe upon privacy concerning private houses and

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[74] *Hansard*, III, CXLVII, c. 1480.
[75] Mark Bostridge, *Florence Nightingale: The Woman and Her Legend* (London: Penguin/Viking, 2008), p.129.
[76] Collette Colligan's article '"A Race of Born Pederasts": Sir Richard Burton, Homosexuality, and the Arabs', *Nineteenth-Century Contexts*, 25.1 (2003), pp. 1-20, explores this relationship between the two men in more detail.
[77] Bostridge, p. 129.
[78] Colligan, p. 13.

collections. The fear was that the boundary between the private and the public would be breached by the search warrants that Campbell wished to implement, thus destroying the self-contained private domestic space that Summerscale suggests was so important to the middle-class family. Lyndhurst was another opponent to the Bill who may not have been acting altogether altruistically when he challenged Campbell. According to the *Oxford Dictionary of National Biography*, 'Lyndhurst [was] much cleverer and quicker witted than Campbell, and delighted to play on his weaknesses and render him ludicrous' (*The Athenaeum*, 30 Jan 1869, 66),'[79] indicating that he may not have merely been concerned with addressing the inherent problems in the initial reading of the Bill presented, but also with antagonising his political opponent. Lyndhurst, however, describes his role in the House of Lords quite differently:

> […] it is also a most important part of our duty to check against the rash, inconsiderate, hasty, and undigested legislation of the other House, to give time for consideration and for consulting and perhaps modifying the opinions of the constituencies.[80]

This view may also explain why the first opposition to the Bill came in the House of Lords and not the House of Commons (the opposition and principal debates surrounding the Act only occurred there post the second reading in the House of Lords) – the other Lords perhaps saw it as their public duty to quell any rash judgements made by Parliament. Lyndhurst argued that the Bill was aimed at publications that were 'small in bulk, they may be kept in a retired part of the shop, and only be produced when a customer comes in for them, so that, in fact, you will not always be able to lay your hands upon them.'[81] If the publications were only suspected, and not known, to be on the property in question, then it could be that someone unconnected to the production or sale of obscene publications could find their homes invaded by the police.

The Bill was eventually amended so that a warrant to search premises would only be issued if the complainant made a sworn statement of his/her belief of obscene publications being upon the property, and that this statement satisfied the justice that the publications in question 'would constitute a misdemeanour by

[79] 'Campbell, John', *Oxford Dictionary of National Biography* <http://www.oxforddnb.com/view/article/4521?docPos=8>, [accessed 23 September 2012].
[80] *Hansard*, III, CXLVI, c. 1754-6.
[81] *Hansard*, III, CXLVI, c. 33.

the common law.'[82] This measure was also put in place to stop any personal grudges escalating and resulting in unnecessary search warrants being issued. The wording of this ruling deserves some investigation as the possession of obscene publications is only said to be a 'misdemeanour' which implies a less serious transgression than if it were a 'crime'. This wording was part of an amendment to Campbell's initial proposal, which perhaps reflects that the other members of Parliament did not take the Act as seriously as Campbell did.

The nature of obscenity was the issue most highly discussed, with definitions of the word being vague and entirely subjective. In the parliamentary debates surrounding this Bill, Campbell's fiercest opponent, Lyndhurst, brought the Johnson's dictionary definition of the word into the debate in an attempt to demonstrate how difficult it is to pin 'obscenity' to anything definitively: 'I find that he says it is something "immodest; not agreeable to chastity of mind; causing lewd ideas."'[83] If the dictionary definition of the word 'obscenity' was vague, then how were the magistrates and others supposed to define it, and how was their definition to be applied to the actual works that were presented before them as being offensive? After all, it was not just sex, violence and blasphemy in literature that were deemed obscene. As in the case of Harriette Wilson, libel was classed as obscene, seemingly without reference to its actual content and accusations, and as discussed in the introduction, political pamphlets, guilty of stirring unrest, were also deemed obscene, demonstrating that the word could have a variety of meanings for different people.

Another problem linked to the definition of 'obscenity', was what type of literature would become objectionable under the Act. If the censorship of literature was subjective and based on a word which nobody properly understood, then another fear, expressed by Lyndhurst and supported by several other Lords, was 'what would be done in the case of art (especially classical) which is highly celebrated but would come under the definition of obscene?'[84] In most cases the Act would apply mainly to the production and sale of pornography, available in places such as Holywell Street, which is mentioned specifically in the debates surrounding the second and third readings (June-July, 1857) of the Bill in the House of Lords. But Lyndhurst and two other lords, Wensleydale and

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[82] *Hansard*, III, CXLVI, c. 866.
[83] *Hansard*, III, CXLVI, c. 330-1.
[84] *Hansard*, III, CXLVI, c. 331.

Wynford, saw fit to mention specifically that other texts such as Dryden, Shakespeare and the classical authors Ovid, Juvenal and Lucullus[85] would also come under the jurisdiction of Campbell's planned legislation, and while such texts were not wholly obscene, as with the case of explicit pornography, they did contain extracts which could be found objectionable. Readers bear this out: Tom Barclay, in his search for material concerning sexual matters 'found some answers in secondhand schooltexts of Ovid, Juvenal and Catullus: though he knew no Latin beyond the mass, the English notes offered plenty of background on the filthy loves of gods and goddesses,'[86] thus proving the point of Wensleydale who went on to protest that 'there was not a library in which books could not be found containing passages which a strict-dealing magistrate might consider to bring them within the operation of the Bill.'[87] This fear of texts being judged as obscene from a single passage did eventually become a reality, and the revision to the Obscene Publications Act regarding the judgement of the whole text rather than an out-of-context passage did not occur until the next century.[88] This judgement, which was widely reported at the time, may have affected which texts were unofficially censored within the domestic sphere, with whole books being banned due to a single passage, rather than the publication's merit being judged on the content of the text in its entirety.

By the Bill's second reading, Campbell found himself protesting that 'he had no desire whatever to interfere by legislation with books, or picture, or prints, such as were described to their Lordships the other evening as being endangered by this measure.'[89] Yet despite this not being his desire, he had no means of preventing it from happening. In this statement he clearly refutes the idea that literature of high quality would face censorship through his bill, yet previously he had vehemently insisted that 'the question of whether the pictures or books impugned were obscene or not was left to the jury to decide.'[90] Campbell gives no acknowledgement that the jury's ideas of obscenity are entirely subjective, and

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[85] *Hansard*, III, CXLVI, c. 332, c. 336. It is worth noting here that despite Wensleydale's assertion, Lucullus was not in fact a classical author, but a Consul in the early Roman Empire famed for his extravagant behaviour.
[86] Tom Barclay, *Memoirs and Medleys: The Autobiography of a Bottle-Washer* (Leicester: Edgar Backus, 1934), p.19-20.
[87] *Hansard*, III, CXLVI, c. 336.
[88] The 1959 Obscene Publications Act was revised following the prosecution of the publishers Penguin for printing Lawrence's *Lady Chatterley's Lover*.
[89] *Hansard*, III, CXLVI, c. 865.
[90] *Hansard*, III, CXLVI, c. 337.

that this subjectivity does put such 'art' at risk of being censored, regardless of whether it should be or not. As Geoffrey Robertson described in his book, *Obscenity*: 'both 'obscenity' and 'indecency' are defined by reference to vague and elastic formulae, permitting forensic debates over morality which fit uneasily into the format of a criminal trial.'[91] A text could face a jury who had a distinct dislike for any distasteful connotations, regardless of whether the text in question was centuries old and written by a highly-regarded author, as it was content, and not context, which was to be judged. In this scenario, the classics that Wensleydale and Wynford were so concerned about faced no protection from the censorship from an unsympathetic judge and jury, thus confirming the two Lords' right to be sceptical about Campbell's assertion that classical literature was guaranteed to be safe from judgement.

Campbell's protestations that it was only base publications such as pornography that would come under attack from his Bill were short-lived as he soon brought the need for literary censorship of novels into the ongoing debate. After several amendments had been made to the initial Bill, Campbell brought 'received' information into the debate regarding the obscenity contained within a novel: a translation of Dumas' *The Lady of the Camellias* (1848). By highlighting this novel within his speech, Campbell made it clear that it was not only pornography that people had to be concerned about. He deliberately becomes a part of the debate over what is art, and what is not. Although Campbell insisted that 'he did not wish to create a category of offences in which this book might be included,'[92] he obviously felt that such a category should be created. Campbell professed that upon the bill's first reading 'he was [...] much surprised by some of the criticisms that he had to encounter.'[93] In order to face this criticism, Campbell may have used *The Lady of the Camellias* to demonstrate that the amount of literature that could be classed as obscene was much broader than expected, showing it to be a greater danger than at first thought. Pornography was the obvious choice for censorship, as its offences towards the morals of the reader were explicit and visible. Novels, on the other hand, were just as suspect as pornography, but their offences were more implicit and less visible, making the danger of reading such texts less obvious to the regulators.

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[91] Robertson, p. 1.
[92] *Hansard*, III, CXLVI, c. 1152.
[93] *Hansard*, III, CXLVI, c. 864.

By singling out *The Lady of the Camellias*, Campbell asserted that the need for censorship of literature is all-encompassing, regardless of the text's credentials, a concern which had already been raised by Lyndhurst. The inclusion of novels in the obscenity debate by Campbell opened a can of worms that was going to have consequences for more than a century, particularly with regards to British literary form and the publication of translations. Whilst it was unlikely that pornography would make its way openly into the domestic sphere, novels would, and, more importantly, they might be read by the most vulnerable family members of all: women, young men, children and the domestic help. In the case of novels, it appeared that Campbell had already recognized the lack of support that he would face if he attempted to introduce more comprehensive legislation into Parliament: 'it was only from the force of public opinion and an improved taste that the circulation of such works could be put a stop to.'[94] As with the proposed measures taken to uphold the Act, Campbell expressed a disgust with and desire to halt these publications and their effects at the point of sale, expressing his surprise that *The Lady of the Camellias* was 'sold at *all* the railway stations.'[95] By using this example, it seems that Campbell saw himself as the person with the most authority regarding the literature that should face censorship through his Bill, regardless of the fears and concerns of his fellow politicians.

Campbell did make some concessions: faced with the concern regarding the qualifications of others to judge what was obscene, he conceded that rather than the entire jury being responsible for the decision, 'it should be left to the Judge to say what was and what was not an obscene publication.'[96] This makes the judgement of obscene literature even more authoritarian with the judge taking on the role of a moral guardian in addition to his pre-existing condition as a guardian of the law.

The Passing of the Obscene Publications Act

Perhaps surprisingly, given the criticisms listed, Campbell's Bill had many supporters as well as opponents. Perhaps less surprisingly, the most powerful and influential of these was the Society for the Suppression of Vice, founded in 1802.

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[94] *Hansard*, III, CXLVI, c. 1152.
[95] *Hansard*, III, CXLVI, c. 1152.
[96] *Hansard*, III, CXLVI, c. 1153.

In 1803, shortly after its formation, the Society had published a list containing the social issues that they felt required stronger regulation; one of these issues was regarding the 'publication of blasphemous, licentious and obscene books and prints.'[97] In its dealings with obscene publications the Society was following in the footsteps of the Proclamation Society [established in 1787] which had endeavoured to 'save 'the rising generation' of the respectable ranks of society from the lure of indelicate literature and pornography.'[98] Nead notes that the society had a vested interest in the outcome of the Bill having drafted obscenity legislation prior to Campbell,[99] and so used its influence to support him within the House of Lords. During the third reading of the Bill, Campbell read a letter out from the Society's secretary which contained 'information regarding the uselessness of the current legal measures against obscenity,'[100] particularly regarding the lack of measures in place to stop those prosecuted from re-offending. This letter, from a body that had been working for half a century towards this cause, would have been utilised to show those who had doubts, such as Lyndhurst, that the current legislation was not effective enough. Campbell also had the support of another organised body: the Society for the Encouragement of Pure Literature. This society was referenced with regard to *The Lady of the Camellias*, upon Campbell's acknowledgement that while he had no power to decide the fate and nature of all literature, there were societies in place to aid those who may need assistance in making suitable literary judgments.

Given that Campbell had such strong and well established supporters of his legislation, it does not appear that he expected such strong opposition or so many amendments to the wording of the Bill. Support did come through to him from outside the societies and the House of Lords though. The parliamentary debates regarding the Obscene Publications Act were documented in newspapers such as *The Times* and the *Daily Telegraph*, creating awareness of the legislation throughout the public and drumming up support for Campbell. *The Times* in particular viciously attacked Campbell's critics and provided a list of controversial texts which the newspaper considered obscene, a guide for anxious patriarchs

[97] Roberts, p. 159.
[98] Roberts, p. 161.
[99] Nead, p. 158.
[100] *Hansard*, III, CXLVI, c. 1355.

perhaps.[101] These included controversial classical texts by Petronius, Nonnus, Martial, Catullus and Ovid, all of which were considered unsafe if bought from low-rent bookseller.[102]

These lists and guides as to what were inappropriate texts raises an interesting question: would people seek out these condemned texts if they were not made aware of their existence and content by these moral censors? This may seem a groundless concern as without written records it cannot be certain that readers would look at such a list in order to find scandalous reading material, but it was a concern to some that this would be the effect of lists such as this. In the House of Commons, when debating support for the Obscene Publications Act, Napier expressly stated that he 'thought that, instead of giving increased publicity to the sale of such publications, by a public prosecution, the moral poison ought to be destroyed on the spot.'[103] Napier obviously believed that by revealing the titles of obscene literature to the public, it would provoke an interest in them, thereby perhaps increasing their sales out of interest rather than guiding readers away from them. The same reasoning could be applied to lists such as that printed in *The Times*, which could possibly encourage people to read those books rather than steering them away from them as originally intended.

After the mauling that Campbell's legislation received upon its first reading he commented that he had been prepared to halt the legislation, but had received 'such strong solicitations to proceed from various Members of that House, from clergymen of all denominations, from many medical men, from fathers of families, and from young men […] that he thought it his duty to persevere.'[104] All of these people soliciting Campbell to continue are those 'authorities' that were in a position to influence and censor, unofficially, the literature that others were reading. Campbell also announced to the House of Lords, at various stages of the Bill's progression through Parliament, that he had received letters from people as diverse as the Archbishop of Canterbury who supported the bill,[105] and the Messrs. Smith, who supplied the books sold at major train stations.

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[101] '[Untitled]', *The Times*, 29 June 1857, p. 8.
[102] '[Untitled]', 29 June 1857, p. 8.
[103] *Hansard*, III, CXLVII, c. 1478.
[104] *Hansard*, III, CXLVI, c. 864-5.
[105] *Hansard*, III, CXLVI, c. 1362.

This latter letter had been written in retaliation to Campbell's statement of shock that *The Lady of the Camellias* was of an obscene nature, yet was available to buy at railway stations, where W.H. Smith's had a monopoly on railway bookstalls. The Act had provoked such widespread coverage and support that his denunciation of the railway stations for allowing such texts to be sold there could have led to a decline in bookstall business. In retaliation the Messrs. Smith felt obliged to give a public announcement that they were 'most sincerely anxious that no improper publication should be sold at any station at which they had control.'[106] In this instance, the support for Campbell's bill was not given freely, but under pressure so as to avoid a backlash against the Messrs. Smith's sales of literature. This announcement was not just integral to Smith's maintaining its reputation, but also to it maintaining its monopoly on the railway bookstalls which it rented. As Mary Hammond states in *Reading, Publishing and the Formation of Literary Taste in England, 1880-1914*, Smith's business, which received its first railway franchise at Euston station in 1848, depended on 'continued good relations with the railways companies, run almost exclusively by middle-class entrepreneurs who had been criticised for the offensive nature of bookstalls and were being forced to take seriously new notions about public duty.'[107] This meant that as part of its contract with the railway companies, Smith's was forbidden from selling any indecent or seditious material, and as such, would be eager to refute any public suggestion made that it was selling licentious or obscene literature on business grounds as well as moral ones.[108]

Indeed, prior to this announcement by the Messrs. Smith, but after the second reading of the Act in the House of Lords, the issue of booksellers fearing for the safety of their stock was raised in the House of Commons. It was Monckton Milnes who again presented a case for opposition against certain parts of the Bill, stating that:

> […] he had been informed by several respectable booksellers in the metropolis, that they viewed with dread the progress of this Bill, [...] because, being accustomed to buy whole libraries and large masses of books containing many thousand volumes which it was impossible to

[106] *Hansard*, III, CXLVI, c. 1357.
[107] Mary Hammond, *Reading, Publishing and the Formation of Literary Taste in England, 1880-1914* (Aldershot: Ashgate Publishing, 2006), p. 67.
[108] Hammond, p. 67.

> examine thoroughly [...] they really were not acquainted with the nature of all the books which lay in stock in different parts of their large establishments at any particular moment. They entertained a well-grounded fear that, in a trade where so much competition existed, the Bill, if passed, would enable any man, hostilely disposed towards them, to give information, and declare upon oath, that he knew they had some obscene books in their possession. They said the chances were, that the allegation might turn out to be true.[109]

The sheer volume of books kept in larger stores, including Smiths, meant that the fear of prosecution or of a store inadvertently selling an obscene text, such as *The Lady of the Camellias*, was always prevalent. In this respect, the larger booksellers that were patronised by respectable members of the public were in as much danger of prosecution and defamation as the smaller and more specialised booksellers frequented by those patrons of Holywell Street that Lord Campbell denounced.

The Constraints of the Obscene Publications Act

Even after the Act was passed on the 25th August 1857, the controversy and uncertainty surrounding it did not abate. Despite Campbell noting in Parliament that the first warrants and arrests had already been successful, the publishers and sellers prosecuted were mainly those on Holywell Street, a known area of pornographic distribution.[110] The nature of obscenity was still being questioned with regards to literature that was not explicitly pornographic. The Act itself merely lists those publications targeted as being ‘Obscene Books, Papers, Writings, Prints, Drawings or other Representations’.[111] This was the only description given by the legislation as to what could be prosecuted and it left a lot to be desired. A definition of what could be counted as ‘obscene’ had still not

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[109] *Hansard*, III, CXLVII, c. 1479.
[110] *Hansard’s Parliamentary Debates*, III (London: Cornelius Buck, 1857), CXLVIII (1857), c. 227.
[111] ‘An Act for more effectually preventing the Sale of Obscene Books, Pictures, Prints, and other Articles’, *Justis*, <http://www.justis.com/document.aspx?doc=e7jsrUrxA0LxsKjIoYqZn1qdo2WIivLerIOJitrvqJedo1CZi4mZiXmcmJGdo1iclIOuDYL2CKL2y0L2BULezIOdm9baa&relpos=0>, [accessed 19 February 2014].

been agreed upon and while this description lists the variety of publications (books, images, etc.) that could fall under the Act, no explanation is given as to what 'other Representations' included, an issue that was to provoke a legal challenge towards the Act within the first decade of its passing. Even in the legislation's own wording, it was still not clear exactly what the criteria of an obscene publication were.

Although Campbell did eventually see his Bill passed into legislation, there was one area in which his fervour for more controlling obscenity legislature was not effective: Scotland. When the Act was first presented within Parliament, it was thought that the scope of the legislation would encompass all of Great Britain, which operated under common law when it came to prosecuting obscenity. However, after the second reading of the Bill in the House of Lords, debate arose in the Commons amongst the Scottish Members of Parliament as to whether it was necessary that the legislation become applicable to Scotland. The Lord Advocate for Scotland at the time, James Moncreiff, suggested to Sir Erskine Perry, the Member for Devonport who was charged with seeing the Bill through Parliament, and the Home Secretary, Richard Butler, that '[he] believed that the existing law in Scotland was quite adequate to the suppression of the productions aimed at by the Bill.'[112] This motion to exclude Scotland from the Bill caused some dissent within the Commons with some Members voting for such an exclusion – Roebuck is quoted as having stated that, 'a more preposterous Bill had never been sent down from the House of Lords—and that was saying a great deal'[113] – and some Members voting against the proposal, such as Sir George Grey and William Adams. Eventually, Perry passed a clause on the Bill which allowed Scotland to be exempted from the legislation, citing the Home Secretary's recommendation as the reasoning behind his decision.[114]

Although this verdict was something of a blow to the passing of the Act, especially given its creator's nationality, during the third reading of the Bill in the House of Lords, Campbell attempted to put a positive spin on the decision:

> There was another Amendment—namely, that this Bill should not extend to Scotland. With respect to that Amendment, the Lord Advocate had informed him that the Bill was wholly unnecessary in that part of the

[112] *Hansard*, III, CXLVII, c. 1478.
[113] *Hansard*, III, CXLVII, c. 1475.
[114] *Hansard*, III, CXLVII, c. 1483.

> kingdom, for by the common law of Scotland they had powers more stringent for putting down nuisances of the kind in question than it was proposed to confer by this Bill, and those powers, he was informed, were exercised. He might be permitted to say that, perhaps the existence of those powers had contributed to the greater morality which was allowed to exist in the northern part of the kingdom.[115]

It was no doubt, this 'greater morality' of the Scots in general, that allowed Campbell to justify why the existing common law was adequate for Scotland, yet deemed not sufficient for England, and it was this model of 'greater morality' which he was determined to use as a guide. It was, henceforth, stated in the final legislation that 'This Act shall not extend to Scotland.'[116] This stipulation became the 1857 Act's sole limitation.

The protests and obstructions to the passing of the Act were all for naught though. The Act was eventually passed after its third reading in the House of Lords, and although the legislation was never as extensive as Campbell had first hoped when he first presented his Sale of Obscene Books etc. Bill, it did give extensive powers that had never been seen before to the police and magistrates in their use of warrants. The Act allowed any magistrate or any two Justices of the Peace to issue warrants to search premises following a single complaint of obscene publications being traded. As previously agreed upon in the House of Lords, privately owned collections of pornography or obscene materials were exempt from seizure, with only those articles that were 'for the Purpose of Sale or Distribution, Exhibition for Purposes of Gain, lending upon Hire, or being otherwise published for Purposes of Gain', being legitimate targets.[117] Once the magistrates were satisfied that any items were being traded as a commodity then they had the power to issue the new search warrants:

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[115] *Hansard*, III, CXLVII, c. 1949.

[116] 'An Act for more effectually preventing the Sale of Obscene Books, Pictures, Prints, and other Articles', *Justis*, <http://www.justis.com/document.aspx?doc=e7jsrUrxA0LxsKjIoYqZn1qdo2WIivLerIOJitrvqJedo1CZi4mZiXmcmJGdo1iclIOuDYL2CKL2y0L2BULezIOdm9baa&relpos=0>.

[117] 'An Act for more effectually preventing the Sale of Obscene Books, Pictures, Prints, and other Articles', *Justis*, <http://www.justis.com/document.aspx?doc=e7jsrUrxA0LxsKjIoYqZn1qdo2WIivLerIOJitrvqJedo1CZi4mZiXmcmJGdo1iclIOuDYL2CKL2y0L2BULezIOdm9baa&relpos=0>.

> [The Magistrates could] give Authority by Special Warrant to any Constable or Police Officer into such House, Shop, Room, or other Place, with such Assistance as may be necessary, to enter in the Daytime, and, if necessary, to use Force, by breaking open Doors or otherwise, and to search for and seize all such Books, Papers, Writings, Prints, Pictures, Drawings, or other Representations as aforesaid found in such House, Shop, Room, or other Place […].[118]

The wording used by the Act with regards to the warrant was particularly strong, especially when one considers the controversy in the House of Lords and the objections raised by Roebuck and Monckton Milnes. According to the Act, a magistrate or Justice only had to have reasonable suspicion, based on a single complaint, that obscene publications were located on a property to call for a search to be carried out, and the search could be carried out with significant damage to the property taking place. The assurance of the legislation that the police were entitled to enter premises with whatever 'Assistance' they saw fit and by using force and 'breaking open Doors or otherwise' would have done nothing to reassure Roebuck and Milnes that the power to issue warrants would remain free from abuse and left the owners of said properties at a distinct disadvantage in relation to the agents of the law.[119]

On the 7th December 1857, Campbell once again stood before the House of Lords and called for a Return to show off what his Act had accomplished. He boasted to his fellow Lords of the success the initial warrants had had against the proprietors of obscenity in Holywell Street, reporting with glee that these cases were now in the hands of a magistrate.[120] Campbell was so impressed by the Bill's success that he announced that, 'This siege of Holywell Street might he compared to the siege of Delhi.'[121] Campbell added to this assertion of success by informing

[118] 'An Act for more effectually preventing the Sale of Obscene Books, Pictures, Prints, and other Articles', *Justis*, <http://www.justis.com/document.aspx?doc=e7jsrUrxA0LxsKjIoYqZn1qdo2WIivLerIOJitrvqJedo1CZi4mZiXmcmJGdo1iclIOuDYL2CKL2y0L2BULezIOdm9baa&relpos=0>.

[119] 'An Act for more effectually preventing the Sale of Obscene Books, Pictures, Prints, and other Articles', *Justis*, <http://www.justis.com/document.aspx?doc=e7jsrUrxA0LxsKjIoYqZn1qdo2WIivLerIOJitrvqJedo1CZi4mZiXmcmJGdo1iclIOuDYL2CKL2y0L2BULezIOdm9baa&relpos=0>.

[120] *Hansard*, III, CXLVIII, c. 226-7.

[121] *Hansard,* III, CXLVIII, c. 227. The Siege of Delhi was one of the decisive conflicts of the Indian Rebellion against the British East India Company which attempted to restore control of the city back to the Mughal king, Bahadur Shah II, in the earlier part of 1857

the other Lords that the shops in Holywell Street where obscene publications could be found had been shut up and that the street was now free of obscenity.[122]

To silence the critics such as Lyndhurst, Wensleydale and Brougham who had protested against the Act in fear that non-obscene literature might be prosecuted without a valid reason, Campbell stated that:

> He believed that the apprehensions expressed in certain quarters as to the probable effect of the Act in one respect had not been realised, for as yet no repertory of the fine arts had been disturbed. With the view of testing the accuracy of his information he moved for a— Return of the Informations laid under the Act 20th and 21st Vict. Cap. 83, "for more effectually preventing the Sale of Obscene Books, Pictures, Prints, and other Articles," the Warrants issued thereupon, and the Result of the Proceedings in each Case.[123]

Campbell was clearly taking this moment in the House of Lords as an opportunity to show off the success of the Act. However, as his announcement of the Act's progress came only three months after the legislation was passed, his claims of success were perhaps a little premature.

(see Nayanjot Lahiri's 'Commemorating and Remembering 1857: the Revolt in Delhi and its Afterlife', *World Archaeology*, 35.1 (2003), 35-60).

[122] *Hansard*, III, CXLVIII, c. 227.

[123] *Hansard,* III, CXLVIII, c. 227.

Chapter Two

'The title-page alone was enough to condemn the book': The First Prosecutions

This was Campbell's shining moment, his opportunity to demonstrate that the Obscene Publications Act worked as an effective piece of legislation in the form that it had been presented to the House of Lords. And despite the legislation still having much to prove at this point, Campbell was accurate when he announced that the Act so far had managed to rid the streets of some 'abominable commodities'.[124] The first recorded prosecutions under the Obscene Publications Act were presented in a preliminary hearing before the Magistrates' Court at Bow Street on Tuesday 22nd September 1857. In this instance, the lawyer for the prosecution, Mr Bodkin, applied for the court to summon six individuals on charges of distributing obscene publications based on a series of raids made in two locations, Holywell Street and Wych Street.[125] The *Morning Chronicle* reported that:

> […] an application was made to his worship [the magistrate, David Jardine] on behalf of the Treasury for summonses against the parties, to show cause why the property should not be destroyed or detained as evidence on which to found further proceedings. Mr. Bodkin, in making the application, expressed a hope that under the provisions of this act Government would be enabled to suppress this infamous traffic.[126]

One of the more interesting points to note in this first case in which publishers of obscenity were summoned before a magistrate is that the application was made on behalf of the Treasury. While it is unclear whether the remit for this kind of prosecution would have fallen under the jurisdiction of any other governmental department at this time, it harkens back to the early debates in Parliament

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[124] *Hansard*, III, CXLVIII, c. 227.
[125] Bodkin worked for the Department of Public Prosecutions and was often in charge of the prosecution in cases of obscene publications, as will be evident later.
[126] 'Police News: Bow-Street – Yesterday', *Morning Chronicle*, 23 September 1857, p. 8.

surrounding the Act when obscene publications were not presented as a moral issue, but a financial one.[127]

These first prosecutions are of particular interest because of the level of detail the newspaper reports go into when describing how the warrants and raids were carried out. This report by the *Morning Chronicle* is particularly significant as it addresses two of the main issues of contention in the earlier debates: the use of the police force and the publications seized. In these first cases, the raids seem to have been carried out on a large scale. It was reported that the seizure of publications was made by 'Superintendent Durkin, and a large body of police, including six inspectors'.[128] It is not clear, however, whether these raids were carried out simultaneously, thus requiring such a large body of police. What seems more troubling, particularly in light of general public feeling surrounding the police force (see previous chapter), was that when Bodkin was compelled to explain the circumstances surrounding the raids to the magistrate, he stated that in each instance, the police were armed.[129] While the number of police present at these raids can be explained fairly easily – one inspector in control of each seizure, while the other police are employed in ensuring that the suspects do not flee or destroy the evidence – the use of arms by the police force appears to be excessive given that the arrests and seizures made are related to obscene publications and not violent crime. It was noted though by Mr Bodkin that:

> The proceedings were taken with such caution that none of the parties were aware that a seizure was contemplated, till they found their houses in possession of the police and every avenue guarded.[130]

With respect to these raids, it was made plain that Bodkin saw them as a success to the degree where he felt the need to comment on them. He obviously took no issue with the numbers of police involved in this operation. Apart from his brief

[127] As discussed in Chapter One, Lord Campbell's initial surprise at the spread of obscene publications led him to suggest that they should be approached in a similar manner to goods where taxation had not been enforced (*Hansard*, III, CXLVI, c. 328-9). This first case being made on behalf of the Treasury suggests that the issue of taxation on these goods had not been fully set aside by the moral campaigning which had seen the Act passed, but was still something the Government still wished to pursue, especially given the revenues these materials could earn from their wider distribution, something Bodkin clearly wished to suppress.
[128] 'Police News: Bow-Street – Yesterday', 23 September 1857, p. 8.
[129] 'Police News: Bow-Street – Yesterday', 23 September 1857, p. 8.
[130] 'Police News: Bow-Street – Yesterday', 23 September 1857, p. 8.

mention at the beginning of the proceedings, he does not mention the arming of the police again, and one is left wondering whether this series of raids was a test case for the legislation and the use of the police within it. It is also possible that being the first of its kind, the police enforcers were unsure about how their presence would be greeted during these raids and so took extra precautions while the outcome was still unknown.

The other contentious issue raised during the parliamentary debates was that of the material prosecuted and the protection of controversial but not obscene classical literature. In these cases the question of what could be considered obscene was not even debated. The prosecution detailed the seized publications as being 'prints of the most loathsome description' along with 'a number of portfolios, containing prints of the most disgusting description'.[131] This kind of description came to typify later reports of obscenity prosecutions as the publications in question were lambasted with very strong language – 'loathsome', 'disgusting', 'vile' – yet the reports on the cases never fully explained what was so terrible about them. In this case, the language used in the court gives the impression that the prints seized were akin to hardcore pornography, but without any kind of detailed description given, those outside the courtroom would have little idea what kind of material met the criteria of being legally obscene. The secrecy surrounding the seized material is also continued when in addition to the prints, Bodkin related that 'an immense quantity of books' had also been acquired.[132] No indication is given as to what these books might be, and it is left to speculation as to how immoral the content may have been.

One of the named publications seized before the court proceedings was the controversial periodical *Paul Pry*, the first editions of which were recorded in 1825. Bodkin makes a point of noting that this was one of a number of works which had previously been subjected to former prosecution, indicating perhaps that when making the seizures, Durkin and the other detectives targeted publications which had already been proved obscene under common law. *Paul Pry* was a significant find, as Bodkin notes in his address, 'for publishing which a man is now in prison'.[133] The man in question was the notorious radical and publisher

[131] 'Police News: Bow-Street – Yesterday', 23 September 1857, p. 8.
[132] 'Police News: Bow-Street – Yesterday', 23 September 1857, p. 8.
[133] 'Police News: Bow-Street – Yesterday', 23 September 1857, p. 8.

of pornography, William Dugdale, who was serving a year's imprisonment for the publication of both *Paul Pry* and *Women of London*, and was still in jail for the duration of the Act's passing and this first seizure under the new legislation.[134] Dugdale had begun his career as part of a circle of radical publishers who operated in and around Holywell Street in the early nineteenth century. In *Victorian Babylon*, Lynda Nead states that following anti-radical repression in the 1820s, the market for radical publications contracted and so Dugdale 'made an opportunistic move into the lucrative market in obscenity'.[135] Highly successful following this change of market, Dugdale had become known as the largest publisher of obscene titles in England by the mid-1840s.[136]

On the whole, the legislators appear to have erred on the side of caution when implementing this new Obscene Publications Act. From the overly-cautious approach by the police, to the content of the material seized, these first warrants and arrests issued demonstrate a very conservative approach to the legislation. There was nothing controversial or groundbreaking regarding this prosecution. The publications seized were indicated as being extremely pornographic, and the other material that was gathered was selected on the basis that it had been proved obscene in earlier obscenity cases. The question of whether or not these publications may have some redeeming features was never raised. Interestingly, there was some debate within the court as to who should be the judge of the seized materials. During the debates in the House of Lords it was assumed that the magistrate would have the final say whether a seized publication was obscene by the letter of the law or not, however in this instance that was not the case. The magistrate, Jardine, enquired how Bodkin knew that the books seized were obscene to which Bodkin replied, 'I believe it is, but the book had better be read'.[137] This was greeted by laughter, but highlights a problem first displayed by Lord Campbell when he singled out *The Lady of the Camellias* for censorship.

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[134] Iain McCalman, 'Unrespectable Radicalism: Infidels and Pornography in Early Nineteenth-Century London', *Past and Present*, 104 (1984), 74-110 (p. 108). William Strange was prosecuted at the same time as Dugdale for producing the same two publications, although he received a shorter jail term of just three months. Interestingly, the case of these two publishers was commented on at the time by Lord Campbell, who would present his case for the Obscene Publications Act later that month to Parliament.
[135] Nead, p. 178.
[136] Geraldine Beare, 'Dugdale, William', *Oxford Dictionary of National Biography*, <http://www.oxforddnb.com/view/article/65592?docPos=14250>, [accessed 27 October 2013].
[137] 'Police News: Bow-Street – Yesterday', 23 September 1857, p. 8.

Literature was being seized and potentially condemned without even being read by those censoring it. There was a strong chance that publications might be destroyed based on hearsay rather than actual content.

In the case of this initial hearing, the books were read, although not by the magistrate. Bodkin suggested to Jardine that as Superintendent Durkin had been in charge of the operation to raid the publishers' homes, it should be left to him to study the seized books. Thus Durkin agreed to read the seized materials and 'mark the obscene passages'.[138] While it can be reasonably assumed that Durkin was capable of identifying obscenity given his commanding role in the raids, allowing him to be the judge of obscenity was an unusual action to take, considering that the legislation had been passed on the premise that only the legal authority of a judge could determine obscenity within literature. Furthermore, this invested Durkin with greater powers than he should necessarily have had as a detective. This could be considered a controversial beginning to the legislation's implementation.

The unconventionality of this first hearing perhaps highlights the uncertainty with which this first case proceeded. Indeed, what it appears to underline is a desire by the courts to get this first prosecution under the Act right and set a precedent which could be easily followed. Thus the second hearing of this particular case was also presented by all parties with a level of caution that was not to last. The second hearing took place just days after the first on Friday 25th September, with the same parties gathered, only on this occasion the defendants in question had been summoned as well. Whereas in previous reports of the first hearing only two of the defendants in question had been named – persons identified as Mr. Smith and Charles Paul – during the second hearing the names of all six people charged with selling obscene publications were reported. Despite Campbell's focus on Holywell Street in his December address to the House of Lords, only a few of the initial raids carried out were in that particular location and even then there is some confusion between the reports from the first and second hearings as to where the raids actually took place. The *Morning Chronicle,* in its initial reporting of the raids and first hearing, described the locations where warrants were issued as three addresses in Holywell Street and

[138] 'Police News: Bow-Street – Yesterday', 23 September 1857, p. 8.

three in Wych Street.[139] Reports from the *Standard*, the *Daily News* and even the *Morning Chronicle* after the second hearing contradict this initial statement and list the people indicted after the raids as being William Smith, Charles Paul, Mary Elliott and James Thornhill from Holywell Street, and Mary Wilson and a Mr. Reves from Wych Street.[140] For some of these individuals indicted, such as Mary Elliott, this was to be the first of many prosecutions for the publication and selling of obscene literature under the new legislation. For others, it was the start of a curious coincidence of names. The prosecution of James Thornhill was the first of four separate incidents where men with that family name were prosecuted under the Obscene Publications Act in the six months following the implementation of the legislation. While it is not easy to prove whether they were all the same man or all belonged to the same family, in the case of John Thornhill, prosecuted in November 1857, it transpired that Thornhill was the son-in-law of the repeat offender William Dugdale and was keeping his business running while he was in gaol, hence explaining how Dugdale was indicted for these offences while still serving his year-long prison sentence for the earlier publication of *Paul Pry*.[141]

Each of the accused shop owners dealt with the accusations in court differently. William Smith was the first to be called before Jardine, even though he did not attend in person. In Smith's case, his lawyer offered no outright defence of the publications which had been seized on his premises. Instead he 'proposed to consent to the destruction of the articles'.[142] Smith's counsel seemed unconcerned by the fate of the publications (indeed the order for their destruction could be seen as an admission of their obscene nature), but he was

[139] 'Police News: Bow-Street – Yesterday', 23 September 1857, p. 8. This first report, the most detailed newspaper report which covered these proceedings, listed the addresses raided as being 14, 52 and 53 Holywell Street, and 2, 40 and 45 Wych Street. It is unclear whether this report of the addresses was wholly accurate as the number of arrests and the defendants' addresses given do not match up accurately between reports. However, in later reports one of the defendants, Charles Paul, gave his address as 2 Holywell Street, indicating mistakes were made either in the reporting of the case by the newspapers or in the police reports given in court. It is important to reflect that with no accurate court records kept, some incorrectness in detail must be accounted for.

[140] These names were all reported as being the same the day after the second hearing by all three newspapers mentioned: 'The Police Courts: Bow-Street', *Daily News*, 26 September 1857, p. 6; 'The Holywell-Street Seizures', *Morning Chronicle*, 26 September 1857, p. 5; 'Police: Bow-Street', *Standard*, 26 September 1857, p. 7.

[141] 'Police: Bow-Street', *Morning Post*, 21 November 1857, pg. 7.

[142] 'Police: Bow-Street', 26 September 1857, p. 7.

more concerned by the casings that two of the print images seized were contained in:

> He understood that the gold mountings were worth 20 shillings each and upwards, and he considered it was a question, whether condemning the picture, the magistrate was to condemn the gold in which it was mounted.[143]

Smith's lawyer received reassurances from Jardine that the mountings for the images would be separated from the prints and returned as they had been found, but the contrast between Smith's willingness to rid himself of the books and prints seized and his unwillingness to let the gold casings go is interesting. While the quantity of publications seized from Smith's property is undisclosed, one must assume that either the value of the seized materials was negligible to Smith compared to the value of the casings, or that Smith had weighed the value of trying to hold onto the publications taken and fight his case, against the cost of getting rid of the potentially illegal material and thus protecting himself from future prosecution. In any case, the suggestion by Smith's counsel to destroy the articles seized (minus the gold casings) was politely turned down on the basis that it would destroy any further evidence needed to convict Smith of an offence under the Obscene Publications Act.[144]

Smith was not the only defendant not to appear at the second hearing of this case. Wilson, Elliott and Reves also did not attend. Both Charles Paul and James Thornhill did attend the hearing and each submitted a different defence for his case. Paul denied that there was anything obscene within any of the articles seized from his property, while Thornhill admitted to there being some obscene prints seized within the publications taken from his property, but alleged that he was unaware of their presence within his stock as they had been left by a previous tenant of Holywell Street.[145] Later, during the final hearing of the case, Paul would change his defence to a plea of ignorance, stating that the books in question 'had been on sale a long time without any intimation that they were "illegal," and that [the] defendant did not know that they were there'.[146] Given the newness of the

[143] 'Police: Bow-Street', 26 September 1857, p. 7.
[144] 'Police: Bow-Street', 26 September 1857, p. 7.
[145] 'Police: Bow-Street', 26 September 1857, p. 7.
[146] 'The Holywell-Street Nuisance', *Morning Chronicle*, 14 October 1857, p. 7.

legislation that would judge the publications seized from Paul's property, this could have potentially been the strongest defence offered by any of the defendants as the time between the Act passing and the legislation being enforced was so short that booksellers would not have had time to assess their stock and ensure that their wares were legal.

What is fascinating about this case is that as it was the first of its kind, the defences offered for the same charge are so varied. In the case of the three individuals who offered a defence in the second hearing (all through the same defence lawyer), it is almost as if the defendants are investigating which approach a judge would treat more leniently. This is particularly significant when, as this thesis will later demonstrate, one considers the diversity of methods employed by publishers in avoiding prosecution by the authorities. This diversity is further demonstrated by the fourth line of defence given by Mary Wilson at the final court date the following month. In Wilson's case, 'Mr Bodkin said a letter had been received from this woman, that she was about to adopt a more respectable mode of life'.[147] This show of repentance may have been genuine – Wilson having been overcome with regret for her lifestyle upon being called before the courts – or, more likely, it was a ploy to avoid any further consequences. In any case, Wilson's defence of repentance and renewal of a moral lifestyle was the most successful as Jardine does not follow up on her alleged guilt any further.[148] Wilson's defence was only presented to Jardine at the final hearing of the case in October, whereas the other defences were offered at the second hearing on the 25th September. In all the defendants' cases, the final magistrate's decision was adjourned until the 14th October as once again a familiar issue raised its head: what publications could be considered obscene?

As discussed earlier in this chapter, in was not Jardine, the magistrate, who initially took on the task of determining which of the publications seized could be considered obscene, but Superintendent Durkin, the detective in charge of the six raids which resulted in this prosecution. Durkin's summary of the contents of the seizures was that 'he found the greater portion of them to be obscene. A few did not appear to be positively obscene, and some were in sealed packets, but with inscriptions leading to the inference that the contents were

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[147] 'Police: Bow-Street', *Standard*, 14 October 1857, p. 8.
[148] 'Police: Bow-Street', 14 October 1857, p. 8.

obscene'.[149] Between the first and second hearings, Jardine had taken charge of the duty of determining which of the seized articles were obscene, indicating either that Durkin's initial assessment would not be admissible as a judgement or that he had only been requested to assess the seized materials in order to bring the six defendants before the courts. When the adjournment of the final decision was announced, it was to give Jardine 'time to perform the painful but inevitable task of examining these things [himself]', before any pronouncement on the articles' obscenity could be given, thus adhering to the agreed decision in Parliament that it was the judge who would be the sole individual to decide on the presence of obscene content.[150]

It was not just the unnamed publications that were seized as well as the named copies of *Paul Pry* that needed to be assessed. Both Charles Paul and James Thornhill were identified as being in possession of copies of *Aristotle's Masterpiece* (first published in 1700), and both defendants argued against this particular text being considered obscene.[151] Despite the grand, philosophical and classical indications this title gave, the text was in fact a well-known sex manual described by Steven Marcus as 'the most widely circulated work of sexual and proto-medical folklore in the English seventeenth and eighteenth centuries'.[152] By defending this text, Paul and Thornhill may have hoped that further scrutiny into its content would be avoided and thus they could keep hold of their stock.

Aristotle's Masterpiece was not the only text in this case to have the morality of its content questioned. As mentioned previously, *Paul Pry* was identified in the first hearing of this initial case as being one of the texts seized which was judged on face value to be obscene. This was done on the basis that two men had previously been imprisoned under the old common law for its publication and sale.[153] During the second hearing of this case, an unexpected defence of the periodical was put forward, not by any of the defendants involved in the case, but by its editor, W.B. Roche, accompanied by his attorney, who appeared in court and tried to make his case heard by Jardine. When Jardine

[149] 'Police: Bow-Street', 26 September 1857, p. 7.
[150] 'Police: Bow-Street', 26 September 1857, p. 7.
[151] 'Police: Bow-Street', 26 September 1857, p. 7.
[152] Marcus, p. 29. See also Mary E. Fissell's 'Hairy Women and Naked Truths: Gender and the Politics of Knowledge in "Aristotle's Masterpiece"', *The William and Mary Quarterly*, 60.1 (2003), pp. 43-74.
[153] McCalman, p. 108.

refused to hear Roche speak on the basis that the matter was unconnected with the actual prosecution, Roche declared:

> "There must be some reason why these things are taken. Now I say that *Paul Pry* has been seized without containing any objectionable matter; and it does appear to me-"[154]

At this point Roche's argument was abruptly cut off leaving us unclear about how his argument of the innocence of *Paul Pry* would have progressed. While Roche was somewhat justified in questioning why *Paul Pry* had been seized and presented as an obscene text in court, Jardine was not impressed by his defence of his editorship although he did add to his rebuke, that 'it may be that there are publications which, however indecent, are not positively obscene'. However, he did inform Roche that 'that will have to be decided at the next hearing'.[155]

Roche was not to get off so lightly. During his interruption of the court proceedings, Superintendent Durkin announced that he had read the two 'editions' of *Paul Pry* seized in the police raids, as instructed in the first hearing of this case, and had determined that 'one is obscene, the other is very indecent, but I think hardly comes within the act'.[156] Although this statement was clearly meant as a warning to Roche about the shaky legal ground he was on, what is apparent in this argument is the very thin line between what is obscene within the remit of the law and what is merely indecent and indelicate. Durkin is not clear in any of the news reports on this hearing as to what identified one edition of *Paul Pry* as being obscene within the context of the new legislation and thus deserving of prosecution, and what made the other edition merely something he would not wish the public to read.[157] This is a worrying statement, as Durkin, a mere police officer, was attempting to put a legal definition of obscenity upon this text when it was still unclear what legal obscenity was. One of the disadvantages of these court records is that a certain amount of delicacy was used when describing how exactly a text was obscene, with many details being glossed over for the sake of

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[154] 'Police: Bow-Street', 26 September 1857, p. 7.
[155] 'Police: Bow-Street', 26 September 1857, p. 7.
[156] 'Police: Bow-Street', 26 September 1857, p. 7.
[157] 'Police: Bow-Street', 26 September 1857, p. 7.

the reading public.[158] Durkin's description does not help in assessing how these contrasting cases of obscenity and indecency were determined in relation to each other.

While Roche may have been trying to avoid any prosecution at all involving *Paul Pry* as a named text, what he may have actually aimed to do was minimise the risk of him being held accountable for any obscenity found within it under the new legislation as he was the periodical's editor. The cases in April 1857 of William Dugdale and William Strange being sent to prison for the publication of this journal, as well as its mention in this seminal case under the Obscene Publications Act, meant that the journal could quite easily become a future target in any raids, especially if it was recognised as a text known for having obscene content. Roche's appearance at this second hearing is almost an attempt to head off any future prosecution of the journal or its editor. The argument to dissuade Jardine from prosecuting this text given by Roche's attorney was that, 'it had contained nothing objectionable since it had passed into the hands of his client'.[159] By making this statement so publicly, Roche was disassociating himself from the previous editorship of *Paul Pry* which had seen Dugdale and Strange jailed for obscenity, thus no doubt hopefully disassociating himself from any chance of prosecution.

In a strange twist to this incident, the same reports which detailed Roche's intervention in the second hearing of this trial also included a mention from the former editor of *Paul Pry*, initially noted in the first hearing of this case when Durkin was explaining why copies of the journal had been seized: 'The former publisher of *Paul Pry* stated that he had served his term of imprisonment, and had no further connection with the paper.'[160] This unidentified publisher can reasonably be assumed to be William Strange given that his prison sentence was only for three months, whereas Dugdale's term of imprisonment was for a year. With both editors of the periodical distancing themselves from the editions of the journal identified as obscene by Durkin, it would be impossible to prosecute the

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[158] Newspapers would generally find their way into the homes of either the middle or upper classes and, therefore, a certain standard of decency in the reporting would be expected to be maintained.
[159] 'Police: Bow-Street', 26 September 1857, p. 7.
[160] 'Police News: Bow-Street – Yesterday', 23 September 1857, p. 8; 'Police: Bow-Street', 26 September 1857, p. 7.

editor of said editions given that no-one was prepared to take responsibility for its publication, leaving the future of the periodical uncertain. In the end, the editions of *Paul Pry* which had been seized were returned to their owners following the third hearing, as Jardine had determined that they were not to be classed as obscene under the Act. This was no doubt a huge relief for Roche.[161]

Aristotle's Masterpiece did not fare as well as *Paul Pry*, however. In Jardine's final judgement, both Paul and Thornhill's copies were ordered to be destroyed.[162] This was the strongest punishment meted out by Jardine, with most of the seized articles being destroyed and just a few select titles returned. All in all this was a very restrained final judgement, especially given the strong language used in the earlier hearings as to the seriousness of the obscenity and the offence. As far as this case goes in setting a precedent for the future, the verdict mirrored the rest of the hearing in being remarkably cautious and thoughtful. While none of the six defendants received any kind of punishment beyond the negligible financial loss from the destruction of their stock, it is interesting that as the court's final pronouncement, Jardine announced that some of the seized books which had been judged obscene by him would be held back from destruction for seven days in case evidence was needed in the future to prosecute any of the six defendants.[163]

Despite the restraint exercised in dealing with these cases under the new Obscene Publications Act, and the lack of strong sentences, it was not long before some news outlets were heralding the perceived success of Campbell's Bill. In a round-up of recent court cases relating to obscenity and public disturbances, the *Morning Post* claimed that, 'The infamous mart of obscenity, so long carried on with matchless effrontery in Holywell-street has been closed, by the vigorous application of Lord Campbell's act of last session'.[164] Not only does the *Morning Post* reveal its support for the Act in this article, the strong language utilised in its description of the type of publications seized in these raids – the seized articles are referred to as 'filthy [...] abominations' – is proof of that, but it also seems to

[161] 'Police: Bow-Street', 14 October 1857, p. 8.
[162] 'Police: Bow-Street', 14 October 1857, p. 8.
[163] 'Police: Bow-Street', 14 October 1857, p. 8.
[164] '[Untitled]', *Morning Post*, 19 October 1857, p. 4.

be a kind of preview to Campbell's speech to the House of Lords in December. The *Morning Post* claims:

> Since that time there have not been publicly exhibited in Holywell-street any of the objects which were recently so displayed, as to make it impossible for reputable persons to pass through it. The worst of its shops have also been shut up[165]

One wonders whether the motivation behind this was to quell any lingering fears the public and the legislators may have had regarding the type of articles which fell under the definition of obscenity – thereby demonstrating how works of art were safe under the Act's scope – and also any fears there may have been regarding the involvement of the police force and its detectives. The *Morning Post*, whilst initially associated with the Whig political stance, became increasingly conservative in the mid-nineteenth century after its editorship was taken over by Peter Borthwick, a Conservative MP, in 1848 and later passed to his son in 1852.

There are several issues with this article, which are obvious with the benefit of hindsight, whereby the truth behind the raids and arrests has been stretched. For example, the *Morning Post* boasts that there are no longer any obscene articles on public display along Holywell Street.[166] While this could be considered a success seeing as it was one of the original aims listed in Campbell's initial proposals to the House of Lords, at the same time it only reveals half the story. While these articles may not have been be available on stands on the street or in the shop windows, this does not mean that obscene publications were not available inside the actual premises themselves. In this first case, both James Thornhill and Charles Paul had articles seized from their business which they claimed not to know anything about.[167] Therefore, an assumption can be made that some of the most notably obscene of the articles seized by Durkin and the police were not those conspicuously displayed within the business. There is an element of concealment already present within this first prosecution case, which perhaps demonstrates the naivety with which Campbell and the *Morning Post* approach the issue of the Holywell Street thoroughfare. Cleaning up the visible front of the street may have been a success, but it in no way guaranteed that the

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[165] '[Untitled]', 19 October 1857, p. 4.
[166] '[Untitled]', 19 October 1857, p. 4.
[167] 'Police: Bow-Street', 26 September 1857, p. 7; 'The Holywell-Street Nuisance', p. 7.

worrisome obscene publications were not hidden within the street's premises and thus still be a risk to the morality of the area. It is also a rather premature statement as when the next set of raids took place in Holywell Street and the adjoining Wych Street, some of the seized obscene articles were taken from the shop window of Edward Morris's premises.[168] The other claim that the *Morning Post* made in this article is that the worst of the shops selling this kind of material had been shut down.[169] As stated, a number of other raids did take place on the same street after this article was published, therefore, even though the worst of the shops may have been shut, others selling controversial material were still operating, thereby negating the *Morning Post*'s claims of absolute success when it came to the cleansing of Holywell Street.

Justice Coleridge on Obscenity

The *Morning Post* article was not the only commentary on the new legislation that appeared after the first series of prosecutions had taken place. One of the most widely reported speeches given on these prosecutions and the nature of the Obscene Publications Act was delivered by Mr. Justice Coleridge at the Court of Queen's Bench on November 10th 1857. The first part of Coleridge's speech was mainly composed of an impassioned support for the passing of the new legislation, especially given the perceived success of the initial seizures and prosecutions. He began by imparting his belief that the Obscene Publications Act was a necessary piece of legislation despite the problems it faced in getting through Parliament as it was widely accepted that the old common laws were not adequate enough to stop the trade of obscenity. Coleridge then went on to argue his belief that the dangers of obscene publications were so deadly that it was impossible to exaggerate them:

> They had all been young, and they retained recollections of what passed at that time in their bosoms, and, looking into their own heart, they could not doubt that if publications of this nature had the misfortune to fall in the way of the young, they were calculated to do harm; and, unhappily for

[168] 'Police Intelligence: Bow Street – Yesterday', *Morning Chronicle*, 14 November 1857, p. 7.
[169] '[Untitled]', 19 October 1857, p. 4.

> the depravity of human nature, such impressions were retained longer than matters more worthy of being treasured up in the mind.[170]

His personal feelings on the matter of obscene publications made clear, Coleridge then went on to analyse the problems of defining obscenity and the dangers of certain texts unwittingly finding themselves prosecuted. Although Coleridge's speech lauded Lord Campbell for his efforts to get the Bill passed, describing the politician as a 'noble and learned lord' and applauding his efforts in 'facilitating the punishment of persons who were engaged in this wicked and most nefarious trade', his speech also highlighted a key issue with the legislation that had not been resolved before its passing: the question of defining obscenity and ensuring that classical and medical literature was not prosecuted unnecessarily.[171]

Coleridge's fears were initially brought about by the prospect of publishers of obscenity attempting to divert attention from their own wares by indicating, without reason, that publications other than their own should be prosecuted under the legislation instead.[172] Coleridge put forward that, 'it was not uncommonly said that this or that picture of some great artist – this or that statue – this or that poem – might properly form the subject of prosecution, being of a loose, pernicious, or voluptuous character'.[173] By making this argument, Coleridge is harking back to the fear expressed in the House of Lords during the Obscene Publications Act's second reading by Lords Lyndhurst, Wensleydale and Brougham, that classical art and literature would be censored for its sometimes-licentious content without respect for its historical and educational significance. Coleridge's defence of this type of art and literature relies less on the concept that high art must be considered acceptable no matter what, and more on the protection and guidance of the individual viewing said art:

> A corrupt mind, bringing its own corruption to a picture, statue or poem, might perhaps make it worse, but an honest and chaste mind looked at it

[170] 'Court of Queen's Bench – Tuesday: The Grand Jury – Obscene Publications', *Standard*, 11 November 1857, p. 7.
[171] 'Court of Queen's Bench – Tuesday', 11 November 1857, p. 7.
[172] 'Court of Queen's Bench – Tuesday', 11 November 1857, p. 7.
[173] 'Court of Queen's Bench – Tuesday', 11 November 1857, p. 7.

> without injury, and received from the contemplation of it a high, pure, and instructive pleasure.[174]

In this respect, Coleridge is indicating that in matters of obscenity it is not the art that is at fundamental fault, but the readers and what prior knowledge and insinuations they bring to their viewing. In order to illustrate this, Coleridge presents to the Grand Jury, the case of Milton's *Paradise Lost*, and the corresponding sculpture produced by Baily of Eve in the Garden of Eden, where she is shown to be naked and admiring her form in a fountain. While Coleridge accepts that this nudity can be perceived as controversial, he also states that *Paradise Lost* is a beautiful piece of literature, based on religion, and therefore has no harmful intentions towards the viewer/reader.[175] He then contrasts this with the type of material produced by the booksellers and publishers of Holywell Street which he argues has no artistic or spiritual value, but instead is sold merely to 'excite depraved passions', thereby stripping it of any pure intentions and making its producers liable for prosecution.[176]

The other example Coleridge gives to illustrate the difference between controversy in high literature and obscenity in pornography, is perhaps more startling than his reference to Milton. He candidly admits that without careful reading, certain passages of the Bible, specifically the interactions between Joseph and Potiphar's wife, could be seen as controversial, yet because of the context and quality of the literature involved, as well as the religious aspect, no-one could possibly argue that it was there to titillate the reader.[177] He also presented the same argument for the case of medical texts where some immodest detail had to be allowed in order for physicians to learn adequately.[178]

Coleridge's point in presenting this argument, he later explained, was 'to point out to [the Jury's] minds the broad and grave distinction which existed between the two cases', emphasizing the difference in intention when publishing informative and educational texts as opposed to those that expressly wish to

[174] 'Court of Queen's Bench – Tuesday', 11 November 1857, p. 7.
[175] 'Court of Queen's Bench – Tuesday', 11 November 1857, p. 7.
[176] 'Court of Queen's Bench – Tuesday', 11 November 1857, p. 7.
[177] 'Court of Queen's Bench – Tuesday', 11 November 1857, p. 7.
[178] 'Court of Queen's Bench – Tuesday', 11 November 1857, p. 7.

harm the reader.[179] It is interesting that Coleridge feels the need to make this point, perhaps showing that cases in which such a mistake was to be made were expected with the new legislation, no matter the reassurances given by Campbell and his supporters before the Act's passing. It is somewhat telling that even after the 'success' of the first set of prosecutions under the Act, such reassurance was still needed for the public and the conservators of high art that the legislation was capable of being selective in respect to the articles seized and destroyed. It is also significant that it is in this summing up of the public's concerns, that Coleridge raises the issue of what the *Morning Chronicle*, which also reported on this speech, perceived as his primary concern: the usefulness of Grand Juries in determining what is obscene and what is art.[180]

The *Morning Chronicle* stated that Coleridge's speech on obscenity, actually evolved out of a need to defend the presence of Grand Juries in the English legal system, rather than to express concern for the arts and science under the new legislation. This newspaper states that 'Were it not for the pertinacity with which the country clings to its institutions, especially in matter judicial, we should have got rid of them [grand juries] long ago'.[181] By making this statement, the *Morning Chronicle* expressed its own opinion that the presence of juries in trials is an inconvenience in passing judgement; however, Coleridge's speech does compel the newspaper to acknowledge that 'it is, therefore, with peculiar pleasure that we find the Grand Juries can, after all, be turned to some account'.[182] Coleridge may have had an ulterior motive to his commentary on the legislation, but despite this, he did manage to clearly and concisely set out how the presence of a body of people – the jury – were preferable to a sole magistrate when dealing with the complicated issue of defining what was obscene, particularly when it came to assessing texts, such as the classics, which may contain controversial passages and could, therefore, be judged harshly. Whether the public were convinced by Coleridge of the Grand Juries being the right individuals to determine obscenity or not, the key issue was that there were still concerns even after the legislation had been put into action that the correct definition for obscenity, whatever it was, would not be adhered to.

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[179] 'Court of Queen's Bench – Tuesday', 11 November 1857, p. 7.
[180] 'Grand Juries made Useful', *Morning Chronicle*, 13 November 1857, p. 4.
[181] 'Grand Juries made Useful', p. 4.
[182] 'Grand Juries made Useful', p. 4.

Coleridge's commentary on the Obscene Publications Act may have raised a valid question over the nature of obscenity, but in no way does it insinuate that the judges of obscenity in the first court case, Jardine, Durkin and the other police inspectors, did an inadequate job. As in the article from the *Morning Post* from October, this new commentary does not present any inference that the first case was not successful. The article from the *Morning Post,* however, did not have the benefit of greater hindsight that Coleridge did in accounting for success, as when that first article was published the first prosecution were not even fully completed. Two days after the *Morning Post*'s account of the success of the first prosecutions, the *Daily News* and the *Morning Post* itself both reported on the final completion of the case following Jardine's confiscation of some of the seized articles from the earlier prosecution for seven days.[183] Jardine had given a week for the destruction of the articles to be appealed against by the defendants in the case, but all apart from James Thornhill allowed their items to be taken without protest, perhaps foreseeing that this approach would lead to less trouble for them and their businesses in the long term. In order to appeal against the decision of Jardine at Bow Street, Thornhill was made to enter into bail conditions, posting £100 himself as well as sureties of £50 each from two guarantors.[184] It is interesting to note that of Thornhill's two guarantors one, William Palmer, was a stereotype founder, and thus could be seen to have a vested interest in the result of this prosecution case given his involvement in the printing and publishing industry, and the other, Thomas Clark, was a proprietor of a public house in Wych Street, and thus was possibly subjected to his own form of persecution as various vice societies sought to curb alcoholism.[185] The identities of Thornhill's supporters illustrate the wide scope of individuals both involved in and concerned with this new legislation.

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[183] 'The Police Courts: Bow-Street', *Daily News*, 21 October 1857, p. 7; 'Police Intelligence: Bow-Street', *Morning Post*, 21 October 1857, p. 7.
[184] 'The Police Courts: Bow-Street', 21 October 1857, p. 7.
[185] 'The Police Courts: Bow-Street', 21 October 1857, p. 7; In Sheffield, the Maine Law Alliance held a discussion on the restriction of the sale of intoxicating drinks during which various methods were proposed to halt the trade of publicans. One of the proposed methods was to petition the magistrates to refuse a publican the right to trade, and similarities were drawn between the approaches to halting the spread of alcoholism and the spread of obscene publications ('Maine Law Alliance', *Sheffield and Rotherham Independent*, 7 November 1857, p. 6).

The Second Wave of Raids

Whether or not the courts ever found reason to collect the bail money put up on Thornhill's behalf is unknown; what is certain is that his appearance at Bow Street in October was not to be his last. On November 13th 1857, the police raided both Holywell Street and Wych Street and once again six properties were targeted, including a repeat raid at 14 Holywell Street, the property of Mary Elliott, and seizures at 5 Holywell Street, the residence of one John Thornhill.[186] While Elliott is an obvious repeat offender, Thornhill is harder to track as a repeat offender, both for the modern scholar and the magistrates of the time. The most obvious indicator of this is the altered Christian name – from James to John – but the address targeted by the police on 13th November, 5 Holywell Street, is different from the one reported as the property of James Thornhill, being number 53 of the same road.[187]

In the cases of both Elliott and Thornhill, the court, once again presided over by Jardine with Bodkin acting as the public prosecutor, identified that these two individuals were repeat offenders. Elliott was the simpler to identify given that the second raid on her property was made at the same address as previously. In her case, the detective who had supervised the raid on her property, Inspector Leicester, indicated to the court that she was the same defendant who had appeared on similar charges earlier that year, although Bodkin confused her with Mary Wilson, one of the defendants from the previous case, stating that: '[Elliott] was the woman who wrote a penitential letter, promising that she would never commit herself again'.[188] Elliott later came forward to disavow the courts of this as part of her defence, yet she did admit to being one of the same individuals prosecuted beforehand. This was a fairly straightforward identification of one of obscenity's repeat offenders. It was not Elliott's last arrest under the Act, and it is important not to dismiss her as a continuing purveyor of controversial literature, despite her appearances in court being less showy than those of Dugdale and Thornhill. After all, as the courts point out in this instance, she had been in

[186] 'Police Intelligence: Bow-Street – Yesterday', *Morning Chronicle*, 14 November 1857, p. 7.
[187] 'Police Intelligence: Bow-Street – Yesterday', *Morning Chronicle*, 14 November 1857, p. 7.
[188] 'Police Intelligence – Bow-Street', *Morning Post*, 14 November 1857, p. 7.

continual business at the Holywell Street location for over 39 years and was not likely to stop.[189]

Thornhill, as witnessed by the problems already identified, was more difficult for Jardine and Bodkin to recognize as a repeat offender. The inspector carrying out the seizures at the location of 5 Holywell Street, Inspector Pether, did not actually visually identify Thornhill and instead was confronted during the raid by Thornhill's wife. When he inquired whether her husband was the same man who had been summoned to court as a result of the earlier seizures, 'he said so to the woman, and she did not deny it'.[190] Although Mrs Thornhill's silence was neither a confirmation nor a denial of his identity, certain other details revealed by her, such as her husband's full name, John Rigdon Thornhill, indicate that he was indeed the same man, and, as well as being a repeat offender in this instance, he was possibly the same individual who would be prosecuted by the courts for the same offence two additional times in early 1858.[191] Unfortunately, during the second hearing of this case, where the six defendants were summoned to appear before Jardine, Thornhill did not appear on his own behalf, thereby eradicating any opportunity for Jardine and Bodkin to formally identify him as being the same man as James Thornhill who had appeared at Bow Street the month before.[192] Given that James Thornhill had previously entered into recognisances with the courts to the sum of £200, he had a substantial amount to lose if he was recognized as being one and the same as John Thornhill.

Although at such an early stage of the Act's implementation it is hard to draw definitive conclusions as to its effectiveness, one can assume that the presence of two repeat offenders within the initial two cases prosecuted under the Act, a third of the total number of people summoned to court, demonstrates that the hesitancy with which the initial case was dealt with and the light

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[189] 'Police Intelligence – Bow-Street', *Morning Post*, 14 November 1857, p. 7.
[190] 'Police Intelligence – Bow-Street', *Morning Post*, 14 November 1857, p. 7.
[191] 'Police Intelligence – Bow-Street', *Morning Post*, 14 November 1857, p. 7. John Rigdon Thornhill was prosecuted again on 2nd February 1858, only on this occasion he was sentenced along with Thomas Blacketer to six months hard labour ('Central Criminal Court, Feb. 2.', *The Times*, 3rd February 1858, p. 9). A second man, John Higdon Thornhill, possibly the same individual given the similarity in name, was prosecuted at the Old Bailey in January, between the two prosecutions of Rigdon Thornhill ('John Higdon Thornhill, Sexual Offences', 4th January 1858, *Old Bailey Online*, <http://www.oldbaileyonline.org/browse.jsp?id=t18580104-160&div=t18580104-160&terms=thornhill#highlight> [accessed 4th December, 2013]).
[192] 'Police Intelligence: Bow-Street', *Morning Post*, 21 November 1857, p. 7.

judgement which Jardine handed down in October (the destruction of the obscene materials with some financial loss to the publishers and booksellers) was clearly not enough of a deterrent to the offenders to keep them from breaking the law again.

John Thornhill's absence from the second hearing of this case brings to the fore another repeat offender, albeit one who worked from behind the scenes: William Dugdale. As previously stated, Dugdale was serving a year's prison sentence for selling copies of *Paul Pry* at this time, yet neither his shop nor his influence had slackened during his imprisonment. When John Thornhill's wife was questioned by Inspector Pether during the November raids, she revealed that Thornhill was not the legal owner of the premises, but instead that he was merely in possession of the shop until her father, Dugdale, was released.[193] When the second hearing took place and all the defendants were summoned to Bow Street, Dugdale appeared in lieu of Thornhill, thereby taking on legal responsibility for his son-in-law's shop and the contents held within.[194] 5 Holywell Street was not the only premises raided for which he took legal responsibility. When Thomas Blackall was summoned on the same occasion, once again Dugdale stepped forward and claimed ownership and occupancy of that property, 16 Holywell Street.[195] Reporting on Dugdale's appearance, the *Morning Post* wrote that 'he had been brought up on a *habeas* from the Coldbath-fields Prison, where he is at present undergoing a sentence of two years' imprisonment for selling obscene publications'.[196] That Dugdale continued to own shops stocking the same kind of material that he had been sent down for, again shows that even with the new Act – Dugdale had been imprisoned under the previous common laws on public nuisance – the purveyors of obscenity were perhaps not taking the new legislation very seriously and thus it was not enough of a deterrent to halt their business.

Dugdale's appearance at court in this instance did cause quite a disturbance. *Lloyd's Weekly Newspaper* reported that in his defence, Dugdale 'showed a determination to protract the case as much as possible, declaring that

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[193] 'Police Intelligence – Bow-Street', *Morning Post*, 14 November 1857, p. 7.
[194] 'Police Intelligence: Bow-Street', *Morning Post*, 21 November 1857, p. 7.
[195] 'Police Intelligence: Bow-Street', *Morning Post*, 21 November 1857, p. 7.
[196] 'Police Intelligence: Bow-Street', *Morning Post*, 21 November 1857, p. 7. Although the *Morning Post* reports that Dugdale was serving two years' imprisonment, earlier reports contradict this and state that his sentence was only of a year's duration.

he "did not often get a day out"'.[197] He then proceeded to protest an elaborate defence against the seizures that had taken place in both his properties. Firstly, he protested that the searches that had taken place were illegal.[198] When this accusation was rebutted by Jardine, Dugdale then went on to argue that the publications seized were not obscene. At one point, he offered to read over the articles page by page with Jardine to prove the innocence of their content.[199] Not surprisingly, Jardine refused this offer, at which point Dugdale then tried another course of action:

> He took the same course as in the former case, insisting upon each of the condemned books being shown to him, and asking the magistrate to point out the objectionable portions, which of course his worship refused to do. As, however, he failed to show cause against the destruction of the copies, the order was made out.[200]

Dugdale's suggestions to Jardine and defence of his stock may have been seen by *Lloyd's Weekly* as being disruptive, but he was not the sole trader to take this approach with the magistrate's court. William Wynn also made a similar suggestion to Jardine that he be present while the magistrate read over all the materials seized to judge their obscenity. In this case, the suggestion was made not just to prolong the court case, but because Wynn wished to have the opportunity to defend the contents of some of his stock:

> Some of the things seized were such as he had really believed he was justified in selling, and others which he had considered doubtful had been thrown under the counter, and were not intended for sale. He wished to explain all these points to the magistrate.[201]

Mary Elliott also argued that not all of the books seized from her property were obscene and thus needed to be returned, but once again Jardine left the issue of the publications' nature to his own discretion and refused to hear her protests.[202] Elliott also seemed determined to disprove the incorrect assumption that she was

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[197] 'The Holywell-Street Seizures', *Lloyd's Weekly Newspaper*, 22 November 1857, p. 12. The newspaper also described Dugdale as the 'Ogre of Holywell-street' in this report.
[198] 'Police Intelligence: Bow-Street', *Morning Post*, 21 November 1857, p. 7.
[199] 'The Holywell-Street Seizures', 22 November 1857, p. 12.
[200] 'Police Intelligence: Bow-Street', *Morning Post*, 21 November 1857, p. 7.
[201] 'Keeping Within the Law', *Morning Chronicle*, 16 November 1857, p. 8.
[202] 'Police Intelligence: Bow-Street', *Morning Post*, 21 November 1857, p. 7.

the defendant Mary Wilson who had sent the magistrate's court a letter vowing to leave the obscenity industry. The *Morning Post* reported that Elliott 'expressed great anxiety' to disabuse the courts of this misunderstanding, and one can only wonder why she felt so vehemently about protesting her innocence in this respect when she showed little concern for the real charge against her of selling obscenity.[203] While the true reasons behind her protest are not recorded, a guess can be hazarded that perhaps Elliot felt that being mistaken for Wilson would harm the judgment made against her by Jardine. Wilson was dismissed from the court proceedings in October due to her renouncing her current lifestyle. If it emerged that Wilson had perjured herself in this letter and carried on with her illegal activities, Jardine may have judged her more harshly if she repeated her offences. In her protest against the mistaken identity, Elliott was perhaps protecting herself from the stronger judgment she might receive if the error was allowed to stand.

Of the other defendants in this case, only Richard Wynn offered a different kind of defence against the charges. He protested that he was not in the habit of dealing with publications such as those found at his property and that they had slipped into his stock without him noticing. Although Jardine commented that this was no real defence, he agreed that Richard Wynn's alleged ignorance would be taken into account if any future prosecution was to be taken up against him.[204]

As with the previous court case, Jardine failed to sentence any of the defendants to actual punishment. Instead, once more, he settled for merely condemning and destroying those articles seized which he deemed to be obscene and in contradiction of the law, whilst returning those that were either judged to be innocent or of a dubious, if not obscene, nature.[205] As before, most of the publications that had been seized by the police remained unnamed during these proceedings; however, there were three titles named by the press. Both Edward Morris and William Wynn had copies of *Aristotle's Masterpiece* seized and condemned, although as part of his argument that not all of his books could be considered obscene, Wynn did try to convince Jardine that as a sex manual, that

[203] 'Police Intelligence: Bow-Street', *Morning Post*, 21 November 1857, p. 7.
[204] 'Police Intelligence: Bow-Street', *Morning Post*, 21 November 1857, p. 7.
[205] 'Police Intelligence: Bow-Street', *Morning Post*, 21 November 1857, p. 7.

particular text was in fact a medical work and should be allowable under the law.[206] The magistrate did not agree with this pronouncement at all, stating that 'The title-page alone was enough to condemn the book'.[207]

The other two named texts in these proceedings were also part of the stock taken from William Wynn's premises. The first was a copy of the opera *La Traviata*, which was a musical production based on the novel that Lord Campbell himself had denounced in the House of Lords, Dumas' *The Lady of the Camellias*.[208] This publication was perhaps an easy target for the police to seize given its notoriety at being singled out as an example of the type of publication that should be removed from the streets. Unfortunately, none of the reports covering this case go on to describe whether or not these copies of *La Traviata* seized from Wynn's shop were actually included in the items condemned by Jardine or whether they were returned to Wynn. The other text named was a religious one, *Foxe's Book of Martyrs*, presumably seized for the graphic descriptions of religious violence in it. However, Wynn protested that it was plates of this text that had been seized and consequently the police were unable to determine what the text actually was as they could not read backwards.[209] In this instance, Jardine agreed that there was nothing wrong with this text and, therefore, allowed the copies of it seized to be returned to Wynn.[210]

There are many traits about this second case under the Act that mirrored the first. Once again, the defendants did not receive any prison sentences or fines for selling the articles seized by the police and condemned by Jardine. Instead the only hardship they suffered was that of lost stock and profit from the publications destroyed by the courts. The other similarity between this case and the last was the defences given by the people involved who pleaded a mixture of indignation and ignorance. This case differed from the last, in that there appears to be a level of organisation not present in the first case. Firstly, in this instance, each of the six raids of the shops had a separate detective in charge who reported their findings

[206] 'Police Intelligence: Bow-Street', *Morning Post*, 21 November 1857, p. 7.
[207] 'Police Intelligence: Bow-Street', *Morning Post*, 21 November 1857, p. 7.
[208] 'Keeping Within the Law', p. 8.
[209] 'Keeping Within the Law', p. 8.
[210] 'Police Intelligence: Bow-Street', *Morning Post*, 21 November 1857, p. 7.

back to Bodkin and then Jardine.[211] Secondly, unlike the first case of this kind, there was no presiding police detective in charge of the raids as there had been in the September seizures. And in this instance, it was Jardine solely who had charge of determining whether the articles seized were obscene or not, rather than allocating the task to the presiding officer.

The Case of James Cowen

The last case under the Obscene Publications Act to be tried in 1857 was very different from the preceding two. For one, the trial of James Cowen (sometimes reported as James Cowan) was held in the Central Criminal Court of the Old Bailey on 23rd November 1857, instead of at the Magistrates' Court at Bow Street as the others were. Cowen appeared before the Old Bailey charged with 'Unlawfully exhibiting and publishing an impious and obscene placard, with intent to bring into contempt the services of religion'.[212] Cowen's trial is the only case under the Obscene Publications Act listed in the Old Bailey's records where the charge was classed as a Royal Offence rather than a Sexual Offence. This was probably due to the content of the offending placard. While the Old Bailey records merely list this publication as offensive to religious services, the report in the *Standard* states that Mr Bodkin – again prosecuting on behalf of the public prosecution service – described the placards in stronger language than appeared in the official court records. Bodkin's description of Cowen's offence was:

> [...] the exhibition of libellous and offensive placards outside his [Cowen's] shop, and he was very glad that the course that had been taken by his counsel rendered it unnecessary to produce these placards in court, as they were of the most indecent and obscene description. They were also calculated to create dissension among the Queen's troops, and to prevent

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[211] 'Police Intelligence – Bow-Street', *Morning Post*, 14 November 1857, p. 7, and 'Keeping Within the Law', p. 8. Both of these newspapers reported on the different police detectives in charge of each raid. Inspectors Mitchell, Mackenzie, Leicester, Pether, Webb and Firmir took charge of the seizures at the properties.

[212] 'James Cowen, Royal Offences', 23 November 1857, *Old Bailey Online* <http://www.oldbaileyonline.org/browse.jsp?id=def1-7-18571123&div=t18571123-7#highlight> [accessed 1 December 2012].

persons from enlisting, and the exhibition also caused crowds of persons to assemble and occasioned a public nuisance.[213]

The offences listed in this denunciation by Bodkin are many, although the prosecutor's decision not to allow the publication a viewing in court means that details of what the seized placard's content was is unavailable. It is possible that the text was medical in nature and possibly contained some science which contradicted popular religious views, given that Cowen is constantly described in the *Standard's* report as being a medical man.[214]

The way the court dealt with Cowen's offence was also very different from how Jardine approached the Holywell and Wych Street offenders in that the case was dealt with a lot more seriously and harshly than those held at Bow Street. Although Cowen pleaded guilty to the publication, stating that he had only produced the placard in a fit of excitement and now saw the harm in it, and offered to pay recognisances to avoid a jail sentence for his first offence, Bodkin gave a firm statement to the court that future punishment would be inevitable if Cowen found himself before the courts again.[215] Bodkin stated that 'he wished it to be understood that if a conviction had taken place the defendant would have been dealt with in a very different manner, and the Court would have passed a severe sentence'.[216] This is very different from the leniency with which the other defendants of obscenity cases were handled, where the destruction of their publications was the only punishment. Cowen was both denounced loudly by Bodkin, although for unknown reasons the *Standard* was the only newspaper in which this court case was reported in detail, and forced to pay £200 in recognisances to the courts.[217] Bodkin also warned Cowen that as a purveyor of medical texts any literature he exhibited would be closely watched. The only visible reason for the severity with which this case was dealt is the content of the obscene publication seized being classed as a Royal Offence, as opposed to just a Sexual Offence, such as *Aristotle's Masterpiece* and other texts seized in the raids near the Strand. This would justify the sentence and the warnings given, as well as the location of this case being in the Central Criminal Court as opposed to a

[213] 'Central Criminal Court, Nov 23', *Standard*, 24 November 1857, p. 7.
[214] 'Central Criminal Court, Nov 23', *Standard*, 24 November 1857, p. 7.
[215] 'Central Criminal Court, Nov 23', *Standard*, 24 November 1857, p. 7-8.
[216] 'Central Criminal Court, Nov 23', 24 November 1857, p. 8.
[217] 'Central Criminal Court, Nov 23', 24 November 1857, p. 8.

magistrate's court. However, this can only remain a supposition as the details in this case are very sparingly given.[218]

Campbell's Claims of Success

These three cases were the only ones to have taken place when the House of Lords reconvened in December 1857 after a three-month recess over the autumn period and Lord Campbell, who had been so instrumental in the Obscene Publications Act being passed, wasted no time in requesting a move for a Return in order to demonstrate its success since its implementation . He announced to the rest of the Lords that 'he was assured that it had operated most beneficially'.[219] As previously stated in this chapter, Campbell even went so far as to compare the seizures which had been made at Holywell Street as being comparable to the Siege of Delhi, an obviously over-exaggerated boast. He then goes on to explain:

> The place was not taken in a day, but repeated assaults were necessary, and at last he was told, it was now in the quiet possession of the law, for the shops where these abominations were found had been shut up, and the rest of the houses were now conducted in a manner free from exception.[220]

This statement of success given by Campbell is interesting for a number of reasons. Firstly, there is the story of the repeated 'attacks' on Holywell Street – the same ones compared to the attacks on Delhi – in which the language used by Campbell implies a large number of raids on the location. In fact, at this point in time, only two separate raids on Holywell Street had occurred, which while truthful to the use of the word 'repeated', also is not the large numbers of seizures implied to the Lords. Secondly, and this is a point which was raised in the previous chapter regarding the arguments Campbell presented in Parliament, the

[218] In the Old Bailey court records, the entire case is described in two sentences only, consisting of a brief description of the offence, Cowen's plea and the amount of recognisances paid by him; 'James Cowen, Royal Offences', 23 November 1857, *Old Bailey Online* <http://www.oldbaileyonline.org/browse.jsp?id=def1-7-18571123&div=t18571123-7#highlight> [accessed 1 December 2012].
[219] *Hansard*, III, CXLVIII, c. 226-7.
[220] *Hansard*, III, CXLVIII, c. 227.

information that Campbell passes on in the House of Lords, is once again received information. These details of the raids and the current situation at this time regarding the Act are not ones that Campbell has ventured out and gathered himself; it is information that he has no doubt been handed in order for him to make these positive claims in Parliament. Thus the claims as to the new morality and sanctity of Holywell Street that he makes are evidently derived from sparse facts that he had been given on the police raids and the sentences issued.

The next set of raids and prosecutions under the Obscene Publications Act in London took place once again at the location of Holywell Street, indicating that this particular thoroughfare had not been as cleansed of its immoral businesses as Campbell had proclaimed. With both John Rigdon Thornhill and Mary Elliott receiving repeat prosecutions, this shows that the businesses that they ran and their publication of obscene texts and print neither waned nor vanished entirely in response to the first two raids of the area. Not only does this negate Campbell's received information of the street being cleansed, but it also demonstrates the lack of severity in sentencing that this chapter has previously commented on, as evidently the perpetrators of this crime felt no compunction in repeating the offence. While in some ways it could be argued that Campbell was right when he spoke of success - after all, prosecutions were actually brought to court and obscene material taken off the streets - it is not the overwhelming success that would come with completely ridding a specific area of crime. Campbell's fixation on Holywell Street is understandable given its importance in the debates preceding the Act, but it is also incredibly short-sighted given that over a third of the raids and prosecutions which had taken place were at locations other than Holywell Street, thereby highlighting that even though it was a central location for the police to target in their raids, it was not the sole location of obscene publishing as implied by Campbell.

The one area in which it can be said that Campbell could confidently claim success with the Act was when he stated that contrary to the worries that existed before the Act, 'no repertory of the fine arts had been disturbed'.[221] This statement is wholly accurate, unlike the ambiguity within the others, as apart from the debates in court over whether the issues of *Paul Pry* seized could be

[221] *Hansard*, III, CXLVIII, c. 227.

seen as obscene or not, nothing that could be considered as 'art' or 'classical' had been seized as part of a police raid yet, even without a clear definition of obscenity being available to the courts. This argument over art, even though it had been partially settled in the parliamentary debates, was not fully completed, and would not be until a classical publication was seized and tried. It was, however, one that remained in the public consciousness.

In December 1857, Andrew James Symington wrote and published a book entitled *The Beautiful in Art, Nature, and Life*, a review of which was included in the 30th December edition of the *Morning Post*. Although the *Morning Post* describes Symington as being both conservative and 'very catholic' in his tastes, it does single out a paragraph in his book which describes the place of the nude figure in art and how this relates to the Obscene Publications Act.[222] While Symington describes some of the art portraying nude bodies in the Manchester Art Treasures Exhibition as being worthy of censorship under the Obscene Publications Act given their 'utterly depraved and disgracefully immoral' subject, he also expresses the desire for such art to not be suppressed but used to educate people and elevate public taste.[223] Although this may appear to be a contradiction in his argument, that something is both depraved and yet morally educational, Symington places emphasis on the intent of the artists when creating the work to determine its morality, rather than the actual content of the artwork.[224] It is a fascinating argument, and the fact that it appears in Symington's book shows that it was not just the law courts who were still struggling with a definition of obscenity. The public and scholars were also still concerned with how obscene publications were to be defined even after the first prosecutions.

Repeat Offenders and Developments in Sentencing

Following the case of James Cowen, no other prosecutions under the Obscene Publications Act took place in the United Kingdom in 1857 and only four

[222] 'Literature: The Beautiful in Art, Nature, and Life. By Andrew James Symington. Longmans', *Morning Post*, 30 December 1857, p. 2.
[223] 'Literature: The Beautiful in Art, Nature, and Life.', p. 2.
[224] 'Literature: The Beautiful in Art, Nature, and Life.', p. 2.

people were prosecuted under the Act the following year in 1858.[225] The first of these prosecutions was against the repeat offender John Higdon Thornhill, his name once again slightly altered. This prosecution, which took place at the Old Bailey, was not reported publicly outside of the court records, which was fairly unusual for a case of this kind at this time.[226] Thornhill appeared at the Old Bailey on the 4th January 1858 charged with 'unlawfully procuring obscene and indecent prints, for the purpose of uttering and publishing the same'.[227] As with Cowen's case, the Old Bailey records do not give much detail beyond this as to how the prosecution of Thornhill was handled; however, it is noted that in this instance Thornhill pleaded guilty, something which he had avoided doing when appearing before the Bow Street Magistrates' Court in late 1857. In spite of this guilty plea, Thornhill once more managed to escape any severe punishment for his offence with his judgement respited, as the court was provided with a statement of his good character which it chose to take into account.[228]

Despite his appearance at the Old Bailey and the report of his good character, it was not long after this, barely a month, until Thornhill was once again prosecuted for the sale of obscene works. On Wednesday 3rd February, the *Birmingham Daily Post* reported in a short article that three people were convicted that day of keeping shops where obscene publications were sold.[229] Although this article does not name those prosecuted, it does reveal their sentences, which were harsher than had been seen before in a prosecution of this

[225] On 3rd December, Richard Strong was prosecuted in Dublin under that country's obscene publications legislation in proceedings that closely mirrored the British procedures for implementing the Obscene Publications Act. He was granted bail and the seized publications were destroyed, despite Strong using a plea of ignorance as to the books' content as his defence ('Law Intelligence: Dublin Police – Yesterday', *Freeman's Journal and Daily Commercial Advertiser*, 29 December 1857, p. 4).
[226] This lack of reporting could have been due to the court proceedings being subject to tender with one specific publisher, thereby limiting how much detail was released to the general newspaper industry, however, this can only ever be a supposition on my part. Much reporting on the prosecutions under the Obscene Publications Act was not as detailed as it previously had been suggesting that public interest in the cases was possibly waning.
[227] 'John Higdon Thornhill, Sexual Offences', 4 January 1858, *Old Bailey Online*, <http://www.oldbaileyonline.org/browse.jsp?id=t18580104-160&div=t18580104-160&terms=thornhill#highlight> [accessed 4th December, 2013].
[228] One cannot help but wonder if this statement of good character would have been received in such good faith if Thornhill had appeared once more before Jardine at Bow Street in this instance; 'John Higdon Thornhill, Sexual Offences', 4th January 1858, *Old Bailey Online*, <http://www.oldbaileyonline.org/browse.jsp?id=t18580104-160&div=t18580104-160&terms=thornhill#highlight> [accessed 4th December, 2013].
[229] 'Latest News: Obscene Publications', *Birmingham Daily Post*, 3 February 1858, p. 4.

nature: twelve months' imprisonment for the female defendant and six months' hard labour for each of the two male defendants.[230] An article in *The Times* that appeared on the same day named the defendants as Thomas Blacketer, John Rigdon Thornhill and Mary Elliott, all of whom had been in court on similar offences previously.[231] While Blacketer and Thornhill had been convicted of being in possession of obscene publications previously, they were given shorter sentences that Elliott, as their defence counsel argued that they had merely been tenants in shops owned by Thornhill's father-in-law William Dugdale, rather than engaged in selling obscene publications themselves. As affidavits were submitted to the court claiming that both Blacketer and Thornhill had subsequently shut down the businesses where the obscene publications were found, the magistrate accepted their pleas of repentance and thus they received only six months' hard labour.[232]

Mary Elliott's defence, on the other hand, was not accepted. Like Blacketer and Thornhill, Elliott tried to claim that since the last time she had appeared in court she had closed down her business and had nothing more to do with the trade in obscene publications. This defence was refuted by the prosecutor, Bodkin, who stated that since the first time that Elliott had appeared before the magistrates, a second raid on her shop had been carried out and that fresh supplies of obscene materials had been found to replace those destroyed when she had been convicted the previous November and her shop had remained open for trade.[233] For her blatant disregard of the obscenity legislation and in consequence of her previous conviction, Mary Elliott was sentenced to twelve months' hard labour, the harshest punishment meted out under the Obscene Publications Act so far. Previously, in the cases held at Bow Street, the defendants had been let off with a warning and with the offensive property being seized and destroyed. Even in the cases which had appeared at the Old Bailey, both Cowen and Thornhill had their sentencing respited after the judge had received evidence

[230] 'Latest News', p. 4.
[231] 'Central Criminal Court, Feb. 2.', *The Times*, 3 February 1858, p. 9. Although Blacketer was named in *The Times*' report as having previously been indicted for possessing obscene publications, his name had not appeared in any other news reports for this crime. It is possible, therefore, that Thomas Blacketer could be the same man as Thomas Blackall, who also worked for William Dugdale and was prosecuted in November 1857.
[232] 'Central Criminal Court, Feb. 2.', 3 February 1858, p. 9.
[233] 'Central Criminal Court, Feb. 2.', 3 February 1858, p. 9.

of their good character and sincerity in pleading guilty. This harsher sentencing is understandable given the repeat offences of Thornhill, Blacketer and Elliot, although it perhaps indicates that with the first batch of prosecutions out of the way and analysed, combined with the number of repeat offenders of this crime, a tougher approach towards these purveyors of obscenity was needed.[234]

An article regarding these convictions in the *Bury and Norwich Post, and Suffolk Herald* nine days later, which borrowed heavily from *The Times*' reporting of the case, heralded these convictions even as it reported them, stating that, 'the Royal Academy of Filth in Holywell-street, has been shorn of its dirty honours and dirty profits'.[235] This article also clearly sees this case as the first successful one under the Obscene Publications Act, making a point to sum up the prosecution by repeating the tough sentences given and reflecting that: 'These were the first prosecutions that had been instituted under Lord Campbell's Act, and they have been attended with complete success.'[236] Evidently, *The Bury and Norwich Post* viewed this case as the first true prosecution given that it ended in a 'proper' conviction, as opposed to the previous instances where the defendants walked free from Bow Street with little more than a slap on the wrist.

The next prosecution under the Obscene Publications Act did not occur until August 1859, over a year after the convictions of Blacketer, Thornhill and Elliot, when an eighteen-year-old by the name of George Ray was indicted for selling 100-200 of the 'most disgusting songs'.[237] This case did not take place in London, but in Huddersfield, and perhaps this explains the lighter sentence Ray was given – a fine of forty shillings was issued and paid.[238] This sentence is in stark contrast to the only other prosecution made under the Act that year, which did take place in London, where both John Piper and Maurice Desplaud Roux were convicted in the Old Bailey and sentenced to six months' imprisonment each for 'unlawfully selling photographic prints, containing thereon obscene

[234] 'Central Criminal Court, Feb. 2.', 3 February 1858, p. 9.
[235] 'Law Intelligence: Obscene Publications', *Bury and Norwich Post, and Suffolk Herald*, 9 February 1858, p. 4.
[236] 'Law Intelligence: Obscene Publications', p. 4.
[237] 'Magistrates in Petty Sessions', *Huddersfield Chronicle and West Yorkshire Advertiser*, 20 August 1859, p. 6. The *Leeds Mercury* also reported on this conviction in less detail, although in that case the defendant's first name was given as John instead of George ('Huddersfield', *Leeds Mercury*, 20 August 1859, p. 5).
[238] 'Magistrates in Petty Sessions', 20 August 1859, p. 6.

representations'.[239] The difference between these two sentences which were issued in the same year is stark, and perhaps indicates the different attitudes taken towards this crime in different parts of the country. The sentencing of Desplaud Roux and Piper in London mirrors the sentencing eighteen months previously when Elliott, Thornhill and Blacketer were convicted, whereas Ray's conviction and sentence almost seems to occur outside of those which took place in London.

What is interesting about these three cases beyond the sentencing, is the length of time which occurs between Ray's conviction and the previous convictions of Elliot, Thornhill and Blacketer. Given that within the space of four months in 1857, twelve individuals were brought to court under the Obscene Publications Act, it seems almost unfathomable that between February 1858 and August 1859, a period of eighteen months, no prosecutions occurred. Unfortunately, there is no commentary on the lack of prosecutions in the press, so the reason for this gap existing is still in the dark. There are two possible arguments that could be put forward for explaining this gap in prosecutions, but both are solely educated guesses rather than definitive explanations. The first is that Campbell achieved one of his primary aims which was to clear Holywell Street and the surrounding areas, including Wych Street, of its trade in questionable publications. This would have taken care of known areas of the obscene publications trade and therefore eliminated any obvious locations for raids, leaving any future cases to become known to the police by chance. The second was that the struggle experienced by the police and the courts in previous cases in determining what an obscene publication actually was perhaps hindered any future seizures made under the legislation. Whether either of these arguments is factually correct cannot yet be determined, but what can be concluded is that both of these arguments came to the fore when the new decade began and new forms of popular literature emerged which presented new challenges.

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[239] 'John Piper, Maurice Desplaud Roux, Sexual Offences', 24th October 1859, *Old Bailey Online*, <http://www.oldbaileyonline.org/browse.jsp?id=t18591024-963&div=t18591024-963&terms=desplaud|roux#highlight> [accessed 7th January 2013].

Chapter Three

Newspapers, Bibles and Wax Models: The Problem of Definition

In June 1861, Lord Campbell, who had pushed so hard for the success of the Obscene Publications Act, died. Without him, much of the momentum that had carried the Act through its first two years in operation began to diminish, and the first half of the 1860s became more characterized by its lack of prosecutions under the Obscene Publications Act than by the action taken to counteract any literary obscenity. The two years prior to Campbell's death, however, heralded this decline in prosecutions under the Obscene Publications Act, as the waning of court cases brought under the Act after 1858, as described in the previous chapter, was not just a temporary dip in prosecutions and cannot be attributed solely to his death. Following the trial of George Ray in August 1859, only two cases of literary obscenity were prosecuted under the Act until John Ellam in April 1865. Considering the number of prosecutions that occurred within the first year of the Act's passing, this diminishing of cases is quite surprising. Campbell's description of the situation in London in the House of Lords in 1857 made the operations involved in producing and distributing obscene publications seem vast and never ending, when he described the industry as being one in which 'considerable capital was engaged'.[240] Given that the enormity of this illegal trade was one of the key arguments he made in support of the legislation, it is very unlikely that the entire obscenity industry involved only the fifteen people who had been prosecuted so far, raising the question of why so few prosecutions now occurred. It is difficult to believe, and highly unlikely, that the initial prosecutions made under the Act had completely cleaned up the streets of London as Campbell had victoriously claimed at the end of 1857, therefore, there must be other reasons not readily apparent as to why this decline of prosecutions occurred.

There are a number of possible reasons why the number of prosecutions lessened during this period. One is that with Campbell's change of political position from Lord Chief Justice to Lord Chancellor, and then his subsequent

[240] *Hansard*, III, CXLVI, c. 327.

death, the Act had lost its key supporter and, therefore, lost the momentum it had been operating under since its passing. It is also possible that changing social and political issues in the early 1860s diverted operational attention away from the Obscene Publications Act with the subsequent result being a reduction in prosecutions. However, as will be shown, the Act itself was still very much present in the public consciousness during this period, both in terms of new political discussion and procedures, and in public debates surrounding obscenity and morality. While the Act may not have been practically implemented as frequently during this period, culturally and politically, discourses on the legislation were gaining momentum.

What is evident, is that the style of newspaper reporting on this subject changed dramatically during this period as these new debates emerged. The changes to the way in which newspapers approached their reporting on the cases and similar issues are very important and need to be considered carefully, as the absence of consistent court records makes them one of the few reliable sources available in detailing court cases. From the intricately detailed two-column accounts of the cases of William Smith, Mary Elliott, etc. from the *Morning Chronicle* in September 1857, which can be read as a full transcription of the hearing, to the rather more perfunctory three lines detailing the arrest and punishment of George Ray in the *Huddersfield Chronicle and West Yorkshire Advertiser*, the difference in both length and detail of the reports is surprising.[241]

The shortening of the articles on obscenity cases such as these, and the reduction of reports during the early 1860s, could be a result of several things. Firstly, the cases which were reported are ones in which the purveyors of obscenity have actually been brought to court. During the debates surrounding the passing of the Act, Campbell set out his plans for how the Act should be enforced, which included issuing warrants for homes and businesses where obscene material was suspected to be present and relying upon undercover spies to inform the police when such material was found.[242] The problem with issuing warrants for premises where obscene literature and prints were only 'suspected' to exist meant that innocent homes and shops could come under scrutiny from

[241] 'Police News: Bow-Street – Yesterday', 23 September 1857, p. 8; 'Magistrates in Petty Sessions', 20 August 1859, p. 6.
[242] *Hansard*, III, CXLVI, c. 327-8.

the authorities, and thereby directly affect the ratio of warrants issued to prosecutions made. In addition to this, individuals could not be prosecuted for owning a private collection of pornography or questionable literature, which was most clearly evidenced in the case of Henry Spencer Ashbee, whose pornographic print collection was well established, and who even compiled a three-volume bibliography of erotic works between 1877 and 1885. As long as the publishers and printers kept any obscene works out of their business premises, possibly in the adjoining private premises, the prosecutors would not necessarily have been capable of proving definitively that these individuals were going to distribute the materials to the public. The newspapers may not have recorded these failed warrants for public perusal as failed cases would not have been of as much interest as successful raids with the appropriate level of scandal attached.

Secondly, it could be suggested that newspapers stopped reporting cases such as this in such detail, or so often, as a response to public interest in the matter. The *Morning Chronicle* and others' reporting of the first prosecutions under the Act could have been so expansive solely because they were the first cases of their kind in British history, and the newspapers responded to public interest by reporting on those prosecutions in greater detail than they would normally. By the time George Ray was prosecuted for selling obscene prints and songs, he was merely the latest defendant hauled in front of a judge for the crime, and so interest in his particular case was lessened. However, given the number of mentions of the Obscene Publications Act that followed Ray's prosecution in various papers, some of which will be explored in more detail later in this chapter, it is difficult to judge how concerned the newspaper-reading public were by the issues and prosecutions that evolved out of the legislation, and whether this would affect the style and frequency of reporting during this period.

Without these reports though, no matter their style, it is difficult to tell how many actual prosecutions under the Obscene Publications Act did occur between 1859 and 1865. The records kept by courts such as the Old Bailey have few reports detailing prosecutions under the Obscene Publications Act, and none during this period.[243] As conjectured previously, it is possible that failed warrants were issued but came to nothing, but without any current supporting evidence

[243] For a list of known prosecutions made under the Obscene Publications Act during the period covered by this thesis, please refer to the Appendix.

from contemporary sources, the assumption must be made that the lack of public information in the news sources of the day does actually reflect a reduction in successful prosecutions. As short as the articles on George Ray's prosecution may be, at least the case did receive a few lines of note in regional newspapers, demonstrating there was still some interest in these cases, no matter how brief.[244] It is not too much to suppose that similar prosecutions would receive the same, even with a new, more restrained approach to the issue in reporting.

The Libel Bill

In spite of there being very few reported court cases during this period, the Obscene Publications Act did remain a part of the public consciousness and this time was characterised by a series of discourses surrounding the Act and its place in art, legislation and the continuing morality debates of this period. The first of these involved the next piece of legislation that Lord Campbell championed in the House of Lords, the Libel Bill, which dealt with the issue of how newspapers reported incidents. The new Libel Bill was supposed to be an improvement on its predecessor by setting out clearer guidelines under which free speech was protected while the written component of communication faced harsher regulations. This was designed to curb potentially libellous reports in newspapers that evolved from the recording of conversation. Campbell wanted to ensure with this Bill that any parliamentary debates or public meetings and consultations were covered by law, so that any wayward words or arguments spoken in public could not be reported as slanderous fact in newspapers. As part of his defence of this new legislation during its first reading he stated, 'Spoken words, however cowardly and scandalous, did not give a cause of action unless some special loss could be proved, but if such words were reduced to writing and published they would form the subject of an indictment or a civil action.'[245] Campbell appeared to feel that, like obscene publications, much of the damage caused by reported slander was not in the actual content of an article, but the intent behind its publication. He expressed the view that by making public in

[244] 'Magistrates in Petty Sessions', 20 August 1859, p. 6.
[245] 'Imperial Parliament, House of Lords – Tuesday, April 13: Libel Bill', *Daily News*, 14 April 1858, p. 2. See also *Hansard's Parliamentary Debates*, III (London: Cornelius Buck, 1858), CXLIX (1958) c. 947-82.

writing something which is potentially spoken offhand, the newspapers are aiming to cause mischief by giving the spoken words a gravity and offensiveness that may not have been originally intended.

Campbell was not so lucky in his argument for the Libel Bill as he had been previously. As was the case with the Obscene Publications Act, the House of Lords was once again unwilling to consider any changes being made to the existing legislation until a clear explanation was given as to why a new bill was thought necessary. As in the earlier parliamentary debates, the first person to throw up an objection to the new legislation was Lord Lyndhurst, although he was joined in his concerns by the Lord Chancellor, Lord Chelmsford, who cautioned Campbell about his approach with this new bill.[246] Chelmsford refused Campbell and his bill a second hearing and warned of taking his position for granted:

> […] my noble and learned Friend must not be allowed to draw too largely on his stock of merit, and upon the influence which he possesses in your Lordships' House, by calling on your Lordships to take upon trust, without very careful examination, any proposal which he submits to your Lordships' attention. The Bill proposes alteration in the existing laws; and the real question is, is there any necessity for the change? is there any grievance? or is there any mischief arising from the present law which requires that any alteration should be brought about in the law? My noble and learned Friend has, I think, failed altogether in the establishment of any case in support of his Bill.[247]

Chelmsford evidently felt that Lord Campbell had stretched himself too far with this Bill and had not considered properly the need and care for presenting a more convincing argument for changes to libel law other than merely expressing concern for the state of newspaper reporting and giving the House of Lords a history of libel legislation.[248] Although Campbell's speech in the House of Lords was given using the same kind of language and fervour as when he debated the case against obscene publications, this time it was to no avail. In a rather condescending conciliatory comment to Campbell as he rejected the proposition

[246] Lord Chelmsford was succeeded as Lord Chancellor in June 1859 by Campbell, who held the post for two years until his death in 1861.
[247] *Hansard*, III, CXLIX, c. 972.
[248] 'Imperial Parliament, House of Lords', 14 April 1858, p. 2.

for a second reading, Chelmsford stated, ‘if my noble and learned Friend had never passed any other measure than his recent one, by which he suppressed the sale and circulation of impure and infamous publications, I think he would be entitled to the gratitude of every one who has the morality and well being of society at heart.’[249] Although the *Daily News* reported that this compliment was greeted by a ‘hear hear’ from the other Lords, it appears as a somewhat petty dismissal of Campbell’s efforts, lauding him for the passing of the Obscene Publications Act while designating it as the sole success of Campbell’s political legacy despite his continued presence in Parliament.

Campbell fought back against Chelmsford’s dismissal. Although the other Lords had made comments about Campbell not taking the goodwill that the success of the Obscene Publications Act had gifted him for granted, it was still the weapon he wielded to garner sympathy and support. In this instance, he protested against the Libel Bill being rejected for a second hearing and proposed that its first incarnation be put before a select committee to be considered. Campbell argued that:

> The bill for preventing the sale of obscene publications had been more bitterly assailed than the present bill, but it had been passed into law, and had the great glory of having entirely fulfilled the object for which it was proposed. If the present bill passed, it might obtain the same approbation from some future occupant of the woolsack.[250]

Campbell was clearly relying here on the good reputation of the Obscene Publications Act in its first year of legislation to help push through further legislation that he supported. Despite his claim of complete success under the earlier Act and the support from other Lords regarding his morality campaign against literature, that good reputation only went so far. The House of Lords had supported his obscenity bill, allowing it to be passed after multiple readings and adjustments, but Campbell’s Libel Bill was defeated 35:7 and the bill never received a second reading.

Despite the failure of Campbell’s Libel Bill to be passed, concerns about the style of newspaper articles during this period were widespread and often

[249] *Hansard*, III, CXLIX, c. 972.
[250] ‘Imperial Parliament, House of Lords’, 14 April 1858, p. 2.

linked to the issue of obscene publications. There were worries that modern reporting had become more explicit than most books and prints prosecuted under the Act, and prior to Campbell's support of the Libel Bill, he had presided over a court case which gained notoriety and condemnation more for the way in which it had been reported than for the actual offence. As part of its 'Opinions of the Press' column, the *Wrexham and Denbighshire Advertiser* reported that the *Morning Post* had condemned *The Times* for its reporting style in the case of the Queen v. Robinson.[251] The reporting of this court case raised some questions about how morally sound the conservative *Times* – which had in fact strenuously supported Campbell's Obscene Publications Act the previous year – really was, with the *Morning Post* claiming, 'Still less are we accustomed or inclined to join with those who, while aping all the fashionable exteriorities of moral Puritanism, are indulging – as we know that many are indulging – only a vulgar and prurient love of impurity.'[252] This accusation of immorality by the *Morning Post* towards *The Times* and other similar newspapers – from which, of course, it excludes itself – demonstrates just how news reporting was coming to be viewed in the wake of more definitive obscenity legislation.

The *Morning Post* then continued to attack the reporting of *The Times* and went so far as to suggest that an extension to the Obscene Publications Act covering newspapers and journals was required, even though it may have hindered their own publication:

> But really we cannot help declaring our opinion that, unless the good sense and good taste of newspaper proprietors become promptly sufficient to prevent them from pandering to this foul and filthy propensity of human nature, and unless they can abandon the pecuniary profits arising from such publications, and endure the pecuniary loss

[251] 'Opinions of the Press', *Wrexham and Denbighshire Advertiser*, 9 January 1858, p. 2. Although this article appears to have been copied verbatim from the *Morning Post*, a search for the original copy of the article yields no results, hence the need to utilise the dissemination employed by the *Wrexham and Denbighshire Advertiser*. The Queen v. Robinson was a perjury case brought against Mr Robinson in December 1857 which alleged that he had lied under oath in the divorce case of Evans v. Evans. Robinson had been brought forward as a witness to Mrs Evans' infidelity, but had denied having an affair with the lady. Interestingly, the judge presiding over this perjury case was Lord Campbell ('Law Intelligence: Court of the Queen's Bench, Dec. 21', *Morning Post*, 22 December 1857, p. 6.).
[252] 'Opinions of the Press', p. 2.

> which may possibly arise from their suppression, we think – although no lover of Lord Campbell's late Act for the extinction of obscene publications – that the very argument sustained for extending the policy, if sound, to such reports as *The Times* gives, *in extenso*, of the circumstantial bestialities of The Queen v. Robinson.[253]

This suggestion that the Obscene Publications Act be extended and that *The Times* itself be covered under it marks quite a shift in opinions regarding obscenity and what type of publications should be covered under the Act. Clearly, having the new legislation which gave all appearance of being effective at tackling the problem of immorality in print was beginning to stir up ideas about what exactly should be prosecuted under the legislation. In the Act's readings in Parliament, Campbell had judged that it was prints, pornography and the odd racy French novel which should fall under the Act's jurisdiction. To suggest that newspapers now needed to fall into this category of publications to be monitored was relatively unheard of. The *Morning Post*'s suggestion was an intriguing one to emerge from a fellow newspaper. Perhaps seeing this case and the complaints against the reporting style, the paper took the opportunity to denounce *The Times* in particular, as it scathingly commented, 'many columns of the great public instructor have been filled with a story and with scenes, which the broadest English comedy and the vilest fashionable adultery of French romances never surpassed'.[254] By comparing the journalism of *The Times* with the farce of the stage and the luridness of the European novel, the *Morning Post* was seeking to discredit the other newspaper by arguing that the facts of the court case had been drowned out by vicarious detail, leaving it as little more than sensation fiction, ripe for obscenity prosecution.[255] In reality, *The Times* tended to show a bias

[253] 'Opinions of the Press', p. 2.

[254] 'Opinions of the Press', p. 2. The article also claimed that *The Times'* coverage of The Queen v. Robinson was more obscene than anything which had been seized from the pornographers of Holywell Street.

[255] While the *Morning Post*'s article denouncing *The Times'* reporting is an interesting example of the competitiveness between various newspapers and thus makes a well-defined case for tighter newspaper regulations, it also reveals the newspaper's hypocrisy. In the *Morning Post*'s 'Law Intelligence' report on December 22nd 1857, the newspaper provides a full transcript for its readers of the Queen v. Robinson case. In it, lurid details of the divorce case and the alleged adultery are described. The sole concession to discretion that the *Morning Post* makes is omitting what was seen when a witness in the case describes spying on Robinson and Mrs Evans through a peephole. One can only surmise that the *Morning Post*'s outrage came not from general reporting on cases such as these, but from *The Times*, usually a highly conservative paper, providing a similar style of

towards free speech, both politically and in its own reporting. The nature of the Queen v. Robinson case was sensational in itself and to report the whole case faithfully and wholly, as *The Times* was condemned by the *Morning Post* for doing, would have provoked controversy amongst its conservative readership.[256]

The 'Opinions' column in the *Wrexham and Denbighshire Advertiser* was not the last report following the Obscene Publications Act to express concern about the reporting styles and sensationalism in newspapers. In an anonymous letter written to the *Lancaster Gazette*, a reader noted that said newspaper was engaging in a disagreement with *The Observer* which had descended into an argument over which newspaper contained the most indecent reports.[257] The reader then notes that as part of this argument *The Observer* attempted to take the moral high ground by claiming that the *Lancaster Gazette* had printed some perceived obscenity with the advertisements in the newspaper. Although the reader of the *Gazette* protests that this was not the case, he does, however, delight in informing the *Lancaster Gazette* of the obscene nature of a report contained within *The Observer*.[258] As the reader gleefully points out:

> Would any of your readers take up the *Observer* of last Saturday and read the report of the Concealment of Birth case and say whether in all the obscene publications yet issued anything so vile has yet appeared in the columns of a so-called family newspaper?[259]

According to this reader, the *Observer*'s crime was in reporting with too much sensationalism and not enough decency the details of a closed court case. In this respect, the *Observer* is judged to have committed the same faux pas as *The Times* in its reporting of the Robinson divorce case. In both these instances the reporting was seen as being obscene in that it overexposed the details of controversial court cases. In the case of this letter to the *Lancaster Gazette*, the objective seems to be encouraging the paper to show up the *Observer* as

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reporting, and therefore competition to the *Morning Post* ('Law Intelligence: Court of the Queen's Bench', p. 6).

[256] This was not the last time that *The Times*' support for free speech came into conflict with its conservative anti-obscenity leanings. The same conflict became apparent once more in the Queen v. Scott case detailed in the next chapter.

[257] 'Correspondence', *Lancaster Gazette*, 27 September 1862, p. 8.

[258] 'Correspondence', p. 8.

[259] 'Correspondence', p. 8.

hypocritical.[260] One wonders whether any of the newspapers were producing truly obscene and offensive reports, or if the concept of obscene publications was just being used so that the papers could criticise each other under the guise of a popular moral crusade.

The Reporting of Divorce Cases

Lord Campbell may not have been successful with his Libel Bill, but a year later on 7 February 1860, the issue of libel and obscene reportage raised its head again when Lord John Manners applied for a new bill to be passed so that the legal proceedings within the Divorce and Matrimonial Causes Court could proceed within closed doors so the press could not report publicly any scurrilous details of people's private lives.[261] Manners stated that, 'it was his deliberate conviction that during the last autumn and winter the evils resulting from the publicity of the proceedings of the Divorce Court were far more widely spread than had been those which had resulted from the indecent publications of Holywell Street.'[262] From Manners' plea one would assume that the prospect of divorce was seen to be as explicit and immoral as the pornography censored under the Act and, as reported in the *Bristol Mercury*, his supporter in the promotion of this Bill, Robert Cecil, joined him by announcing that those who rejected this proposed Bill, 'proceeded upon the assumption that obscene publications did no harm to public morals'.[263] With this one statement, Cecil had made clear that he associated reporting within the Divorce Court as being on a par with the sex, violence, blasphemy and other perversions which had characterized the publications already prosecuted under the Obscene Publications Act.

In some respects, divorce during this period could be perceived as inherently scandalous, if not obscene. In her analysis of the various legal degrees of marital separation, Olive Anderson emphasizes that while the Divorce Act of 1857 legally gave identical terms for divorce to men and women, the criteria by

[260] 'Correspondence', p. 8.
[261] 'Parliamentary Proceedings: The Divorce Court', *Bristol Mercury*, 11 February 1860, p. 1.
[262] *Hansard's Parliamentary Debates*, III (Cornelius Buck: London, 1860), CLVI (1860), c. 615.
[263] 'Parliamentary Proceedings', p. 1.

which a divorce decree was granted was conditional on evidence of adultery, cruelty or two years' wrongful desertion.[264] Whichever term was presented to the courts as reasoning to seek a divorce decree, the potential for scandal and public revelations of immoral behaviour were high and could ruin both parties' reputations irreparably. For example, another supporter of Manners, Mr. Macauley, highlighted two examples from the Divorce Courts to the House of Commons in which scandal that he felt should have been contained behind closed doors, was made public to the detriment of the persons involved:

> The First was a case in which the wife charged cruelty against her husband under circumstances particularly revolting; and the second was one in which the wife sought to annul the marriage on a ground which had already been hinted at, and when for the first time in this country, and the first time in Christendom, a modest woman was placed in the witness-box and obliged in the presence of the public to speak to details to which he could only darkly allude.[265]

In both cases, the implication in Macauley's speech is that the indiscretion of the court's proceedings would adversely affect the reputations of the women involved through no fault of their own.

As in the case of Campbell before him though, who had also argued for certain court and parliamentary discussions to be hidden from the public as part of his Libel Bill, Manners found that his plea for privacy in the Divorce Courts was rejected before it had an opportunity to reach a second hearing. One of the objectors, Mr E. James, argued against Manners, claiming that, 'The remedy proposed would not have the desired effect of preventing the publication of indecent reports; for if the court sat with closed doors, a prurient curiosity would be excited, and reports would be furnished, either by reporters in wigs and gowns, or by the attorneys and their clerks'.[266] Although James's argument has an element of truth to it when he stated that the newspaper would get a story one way or another, his suggestion that the reporters would find their way into the

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[264] Olive Anderson, 'Civil Society and Separation in Victorian Marriage', *Past and Present*, 163 (1999), 161-201 (p. 165). Anderson also notes that 42% of Victorian divorce proceedings were instigated by wives, many of whom alleged cruelty as a reason for divorce rather than adultery.
[265] *Hansard*, III, CLVI, c. 627.
[266] 'Parliamentary Proceedings', p. 1.

courts using disguises and dressed up as solicitors is a humorous one, although it is perhaps a little incompatible with the intended seriousness of Manners' bill.

James was not the only member of the House of Lords to see this as an opportunity for comedy, rather than a serious discussion about libel and the newspapers. When given the opportunity to speak, Mr Roebuck claimed:

> The Divorce Court had shown that the middle classes were as corrupt as those above or below them, and the exposure was a very good thing too. He hated shams, and the middle class morality was the greatest of all shams.[267]

This pronouncement was greeted by much laughter in the House of Lords, emphasizing that perhaps the issue of morality and the newspaper was one which the Lords felt was obsolete given the sensationalist and profiteering nature of the newspaper industry. Roebuck's denunciation of middle class morality is almost a criticism of the kind of morality groups and societies that had formed in this century, as discussed in the first chapter, and their highhandedness when it came to utilizing the law to get what they wanted. Roebuck had spoken out in the House of Lords against the passing of the Obscene Publications Act, but had been defeated by Campbell and his wave of support and campaigning from such groups, which is perhaps why Roebuck felt the need to attack their own moral standards in this similar issue of obscene publishing. Although Roebuck voted against these proposals for tighter censorship, it is surprising to note that his initial problem with the Obscene Publications Bill was that it violated the privacy of people's homes through the issuing of search warrants.[268] However, in direct opposition to his desire to protect privacy, with this proposed bill, he was willing to set this objection aside and allow reporting on the public's marriage and divorce cases, without concerning himself that this can be seen as a violation of privacy too. His comment on corruption and exposure indicates that unlike those innocently affected by warrants (and suffering a breach of privacy), the Divorce Court was a place for the public airing of people's immorality and folly and thus deserved no concession to privacy. The similarities between the proposal of this legislation and the earlier Libel Bill were evident to most in the House of Lords,

[267] 'Parliamentary Proceedings', p. 1.
[268] *Hansard*, III, CXLVII, c. 1475.

and the same objections stood as before, allowing Manners' bill to be rejected by a 185 majority, a comprehensive defeat that shattered any possibility of it receiving a second reading.[269]

Search Warrants and the Night Poaching Prevention Bill

During the initial readings of the two libel bills, the Obscene Publications Act was held up as an example of legislation in which obscenity in literature could be controlled. It was through these libel bills that obscenity in newspapers and journals was hoped to be stamped out. Even though both bills failed to be passed in the House of Lords, they were not the sole instances in which new legislation proposed was influenced by aspects of the Obscene Publications Act. In July 1862, the Night Poaching Prevention Bill was put before the House of Commons with the members debating how such a Bill was to be enforced.[270] One of the key issues debated in this Bill and reported in detail by the *Daily News* was how rural policemen, especially in forces low in numbers, were expected to confront gangs of poachers in order to catch them in the act of committing the crime. In order to counter this risk to the police, an amendment was proposed to give the police the option to stop and search people on suspicion of the offence. This stop and search option was presented as a successor to the search warrants issued as part of the implementation of the Obscene Publications Act.[271] Although these warrants had been lauded by Campbell in December 1857 as a success, one of the opponents to the Obscene Publications Act when it passed through the Commons, Mr. Ayrton, remained sceptical as to the effectiveness of such procedures and charted their dubious history:

> He called attention to the fact that little by little attempts were being made – first, by the shipowners, to follow little bits of rope and yarn; next, by the iron trade of Birmingham, to follow little bits of things to the marine store dealer's, and summarily search the premises. This year the Government had introduced a measure giving a summary power of

[269] 'Parliamentary Proceedings', p. 1.
[270] 'Imperial Parliament: House of Commons ', *Daily News*, 24 July 1862, p. 2. See also *Hansard's Parliamentary Debates*, III (Cornelius Buck: London, 1862), CLXVIII (1862), c. 705-26.
[271] 'Imperial Parliament: House of Commons ', 24 July 1862, p. 2.

> searching for things stolen out of the store depots; and subsequently the same power was given to search summarily for obscene prints. All those attempts were departures from the ordinary process of law by means of summons and conviction.[272]

Ayrton's history of the use of search warrants and the industries they were involved in is fascinating, particularly when one considers the type of crime traditionally associated with them. Dealing in old metals, naval stores and poaching all imply that the search warrants were used in issues of theft to find and identify stolen objects and materials. The Obscene Publications Act is the only bill mentioned in which it is the item searched for (the obscene publications) that is itself illegal.

Ayrton clearly does not support the use of search warrants with regards to either the Obscene Publications Act or the Night Poaching Prevention Bill. Mirroring the concerns that were raised in the hearings of the Obscene Publications Bill, he argued, 'As the Bill stood, any person, at any time of the day or night, going along a highway, might be suspected of the unlawful possession of game, and be stopped and searched by the police.'[273] He clearly believed, as was feared with the warrants for the Obscene Publications Act, that given that sort of power, the police would take advantage and search everyone regardless of suspicion. Ayrton's concerns were dismissed by several other Members of Parliament, and although the *Daily News* does not report on the motivation behind their contention, it would be interesting to consider whether the early success of the warrants used in the implementation of the Obscene Publications Act influenced their support of the stop and search method by policemen.[274] This incident of the Act being raised once more in Parliament demonstrates how important the new powers used to execute it were, as the methods used were influencing how legislation and policing were developing in this period.

The Leeds Anatomical Museum

[272] *Hansard*, III, CLXVIII, c. 719.
[273] *Hansard*, III, CLXVIII, c. 719; 'Imperial Parliament: House of Commons ', 24 July 1862, p. 2.
[274] 'Imperial Parliament: House of Commons ', 24 July 1862, p. 2.

Outside of new legislation, most of the contemporary discourses on obscene publications in this period wrestled with the question of the definition of obscenity. One of the most curious cases involved an Anatomical Museum which had models seized under the Obscene Publications Act, but in which questions were raised as to whether this legislation was appropriately used. In January 1860, the *Leeds Mercury* reported that The Leeds Anatomical Museum had a week earlier had several wax models seized following a warrant issued under the provisions of the Obscene Publications Act, and in order to salvage their exhibits, the proprietors had to appear before the Mayor at the town hall to plead their case.[275] What is of interest is that much of the early debate in this case involved the magistrates on the bench deciding whether or not the models came under the category of objects which could be seized under the Obscene Publications Act, being neither prints nor publications. The public prosecutor, Mr Bond, went into great detail to explain how these models fell under the Act's jurisdiction:

> The first clause of the Act gives the Magistrates power to seize all obscene books, papers, writings, prints, pictures, drawings, or other representations, published for sale or distribution, or exhibited for the purpose of gain, and [he] contended that though the word model was not used, the object of the act was to give further powers for the suppression of all obscene, lewd, and immoral exhibitions, and that such objects as those exhibited in this museum, came within the general words "other articles" and "other representations," provided that he established that they were obscene or immoral.[276]

The case that Bond presented was that regardless of whether the items seized fell strictly under the remit of the Act, if they were judged to be obscene, then they should be covered by the legislation. Presumably the wording of this legislation would allow the models to be prosecuted under the category of 'other representations'.

The attorney for the defence, Mr Maule, picked up on this debatable assertion, and argued:

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[275] 'Suppression of a Leeds Anatomical Museum', *Leeds Mercury*, 3 January 1860, p. 3.
[276] 'Suppression of a Leeds Anatomical Museum', p. 3.

> Both in the preamble and the clause [of the Obscene Publications Act], the objects set forth were books, prints, drawings, writings, and other representations, and it was clear from these three words that the Legislature only intended to reach obscene publications and prints – things, which, to use an artist's phrase, were described or drawn on the "flat," not "the round" models or statuary.[277]

This argument conveys two interesting points. Firstly, there was still clearly some confusion over whether three-dimensional art such as sculpture or statuary could be defined as a 'publication' and thereby be seized under the Obscene Publications Act as opposed to being addressed under common law. Maule continued his claim that the three-dimensional models from the Anatomical Museum could not be judged and destroyed under the Act by arguing that if these things created in 'the round' were prosecuted then 'what was to become of a large portion of the sculpture in the Crystal Palace, and their galleries of art.'[278] These arguments highlight one of the key issues raised in the debates when the Act was passing through Parliament and that was what to do about art, particularly art which could be considered risqué.

The second issue that this argument raises, is that even with the previous cases which occurred in London in the three preceding years, there was still some confusion about what actually constituted an 'obscene publication'. In this instance, the question became whether an item could fall under the legislation if it could not be described as a publication, but could still be judged as obscene. Both attorneys list in some detail all the "flat" materials which are considered publications and therefore exposed to the weight of the law, however no consensus was actually reached on the matter of three-dimensional objects. There was no guidance for this issue and it was left to Mr Bond to determine the manner in which these three-dimensional wax models should be judged in this case:

> [...] it would be absurd to suppose that the act contemplated the suppression of obscene and immoral books and prints, while it left obscene and immoral models or sculpture untouched. If, therefore, he

[277] 'Suppression of a Leeds Anatomical Museum', p. 3.
[278] 'Suppression of a Leeds Anatomical Museum', p. 3.

> proved that the public exhibition of such morals did not promote science and morality, and they were satisfied that they were obscene and indecent, he should ask them to order the models which had been seized to be destroyed.[279]

Here, Bond clearly stated how he thought the confusing issue should be addressed, informing the magistrates that they should ignore that the models are not a 'publication' and instead merely judge them on their obscenity. The suggestion is almost that if the models were not found to be immoral, then they would not fall within the Obscene Publications Act's remit, but by dint of being obscene, they were covered by the Act regardless of their physical form. Beyond Maule, none of the magistrates present presented any objections, so it was assumed the models were found suitable to be judged under the Act.

With this hurdle navigated, all that was left to determine was whether or not wax models depicting various parts of the human anatomy were obscene or scientific. This debate was an important one as scientific tomes and images were already viewed with some suspicion, especially if they could be found to have any hint of impropriety or blasphemy. This had been in evidence throughout the first half of the nineteenth century where cheaply produced scientific and anatomical texts, such as George Combe's *The Constitution of Man in Relation to External Objects*, a study of phrenology and natural law published by W. and R. Chambers between 1835 and 1840, faced public outcry when made available to the general public.[280] Despite its blending of Christian doctrine and scientific theory, *The Constitution of Man* was widely condemned by evangelicals and as James A. Secord explains:

> What had been seen as misguided (and, from some perspectives, a bit silly)when limited to a genteel, educated audience was dangerous in the hands of the people at large.[281]

Human physiology was perceived to be the preserve of the scientific community and to make such matters public, even twenty-five years later, was viewed as

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[279] 'Suppression of a Leeds Anatomical Museum', p. 3.
[280] James A. Secord, *Victorian Sensation: The Extraordinary Publication, Reception, and Secret Authorship of Vestiges of the Natural History of Creation* (Chicago & London: The University of Chicago Press, 2003), p. 73.
[281] Secord, p. 73.

distasteful and inappropriate. Indeed, as part of his efforts to have the models destroyed, Bond argued, 'No doubt these models might be very proper things to exhibit in a purely medical and anatomical museum, where they would be studied for scientific purposes, but their general exhibition could not in any way promote scientific truth, and would only tend to excite the prurient taste of the curious'.[282] Despite the museum in Leeds being named as an Anatomical Museum, Bond evidently felt that the attraction lacked scientific authenticity and merely exhibited such models in order to shock and agitate those who saw it. There is an implication in his attack as well that a museum classed as being 'medical and anatomical' would attract a different class of viewers to a general exhibition. This view indicates that only a certain type of person – medical or academic – would be able to view such an exhibition without any undesirable reactions to the models shown. The general public, here designated the title of 'the curious', were clearly thought by Bond to be incapable of visiting the exhibition without the models provoking an inappropriate response.

This point of view was echoed later in the decade by the publication of Isaac Baker Brown's medical textbook, *On the Curability of Certain Forms of Insanity, Epilepsy, Catalepsy, and Hysteria in Females*. Brown's text, which advocated the use of clitoridectomies or ovariotomies as a cure for masturbation and the various hormonal diseases that ostensibly arose from it, was widely condemned by the *British Medical Journal* upon its publication in 1866.[283] Despite Brown being a well-respected doctor within the field of women's medicine, his book was heavily criticised by the *British Medical Journal* and his fellow doctors, firstly for advocating the procedure of clitoridectomies publicly, and secondly for making such medical knowledge available to the public. As Elizabeth Sheehan sums up the criticism of Brown, 'Information on matters such as gynaecological operations could appeal only to prurient public interest and was especially harmful to female morals'.[284] This argument is nearly identical to the one used by Bond with regards to the wax models. Medical or scientific knowledge is not the issue in these cases, but allowing the general public to have said knowledge was

[282] 'Suppression of a Leeds Anatomical Museum', p. 3.
[283] Clitoridectomies are the surgical procedure by which the clitoris is removed from the genitals. Ovariotomy is the term given to a surgical incision into the ovaries, and in modern medicine more commonly refers to the removal of an ovarian tumour.
[284] Elizabeth Sheehan, 'Victorian Clitoridectomy: Isaac Baker Brown and his Harmless Operative Procedure', *Medical Anthropology Newsletter*, 12.4 (1981), pp. 9-15, (p. 13).

considered dangerous due to their limited understanding. In Brown's case, making this insight into gynaecological medicine public cost him his positions in both the Obstetrical Society and the Medical Society of London, of which he was once president.[285]

Bond was so convinced of the indecency of the models that he even procured a surgeon, a Mr Nunneley, to appear in court as a witness for the prosecution. His role was to give an official scientific evaluation of the models to determine whether they were appropriate for an anatomical museum or if they had been created solely to excite the lusts of the public who saw them. A similar evaluation by a surgeon had previously been sought upon the publication of George Eliot's *Adam Bede* in 1859, when her publisher, John Blackwood, approached James Y. Simpson, a Professor of Midwifery, to analyse the propriety of the text when discussing the pregnant character, Hetty.[286] When giving his evaluation, Nunneley spoke in the strongest of terms:

> [...] he had that morning examined the models which had been seized, and they were disgusting and beastly in the highest degree. Worse figures he had never seen even in Paris. They were utterly useless for the purposes of science, and degrading to the public taste to be thrown open to general inspection. He believed their sole object was to pander to the worst passions of the public.[287]

Nunneley's criticism of the wax models was everything the prosecution was looking for – a respected surgeon denouncing the statuary in the harshest terms. His comment about the models being worse than anything he had seen in Paris was a sharp blow, as French culture, particularly its literature, was seen as being especially immoral and degrading when the Obscene Publications Act was debated in Parliament. Nunneley's condemnation of the models raised an interesting point which had come up again and again in many of the debates surrounding the definition of obscenity and obscene objects, and that was the question of intent. Nunneley presented the idea that the models had been specifically created for the purpose of pandering to the public's lusts and depravity, yet this assertion makes the assumption that the proprietors of the

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[285] Sheehan, p. 14
[286] Matus, p. 1.
[287] 'Suppression of a Leeds Anatomical Museum', p. 3.

museum intended to offend the public. If this assumption could be disproved, as the later arguments of Maule attempted, then would the pure intentions behind the wax model display rid the exhibition of its obscenity?[288] When Nunneley was cross-examined on the subject, his previously harsh words vanished and he was forced to concede that 'When he said they were useless for scientific purposes, he meant that they were of no use for teaching anatomy or pathology'.[289] The argument here is whether or not the strict physiological accuracy of the models was enough to rid them of any implied obscenity. Nunneley eventually allowed that '[The models] might not be untrue in fact as a whole, but they were clumsily made and very coarse'.[290]

In contrast to Nunneley's evaluation of the wax models, during which under cross examination he was forced to concede the point on the obscene nature of the statues and merely comment on their physical accuracy, Simpson, who had the benefit of not being called as a legal witness for an obscenity trial, was allowed to evaluate the content of *Adam Bede* not only on its accuracy in depicting pregnancy, but on its propriety in being made available to the public. As Matus argues, 'the field of an expert on matters of sexuality and reproduction embraced not merely issues of scientific accuracy but the appropriateness of their extra-medical provenance'.[291] In a court of law, however, this use of medical practitioners as judges of propriety with relation to bodily issues could not fit within a legal framework. Surgeons and professors could judge the items in question based on their physiological accuracy, but it was not decided by them whether any inaccuracy in bodily portrayals rendered the objects obscene.

The concession given by Nunneley that these models could be viewed as merely poorly created statuary which gave the appearance of crudeness was one that Maule, acting for the defence, picked up on. He argued:

> There was nothing obscene, or lewd, or voluptuous in the figures, and they could only be considered as representing certain phases in the

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[288] 'Suppression of a Leeds Anatomical Museum', p. 3.
[289] 'Suppression of a Leeds Anatomical Museum', p. 3.
[290] 'Suppression of a Leeds Anatomical Museum', p. 3.
[291] Matus, p. 1-2.

development of life and disease, with great power and general correctness, though not with scientific accuracy.[292]

Maule's defence here hinged on the notion that the style of the models bore no impact on the intent behind displaying them. Therefore, although physiological accuracy was absent from the models, the proprietors' intent behind displaying them was still to inform rather than offend the general public. He also dismissed any suggestion that the wax models would inspire prurient thoughts in the visiting public, stating that, 'so far from these models exciting the prurient tastes of those who saw them, they were calculated to warn the young from immoral and vicious courses, and that it was only the ill-regulated mind which could view them with anything but feelings of disgust and apprehension of the danger which flowed from uncontrolled indulgence'.[293] In this way, Maule turns the tables on the notion of obscenity, arguing that something designed to educate could not be obscene in its own right, but the immoral desires and thoughts of others, in this case the viewing public, can be imposed upon an innocent object, the wax models. This argument hinges on the notion that only an obscene mind can see obscenity in an object or publication, although this was not an accepted view.

Despite the logic in Maule's arguments, and the points he raises about the nature of obscenity and its effect on the untainted mind, he failed to have the models reinstated in the museum and they were ordered by the magistrates to be destroyed.[294] There are some residual questions, however, over the validity of this prosecution case under the Obscene Publications Act as the proprietors of the museum were not technically on trial and despite the order for the wax models to be destroyed, no conclusion was satisfactorily reached in court as to whether the legislation had been used appropriately on this occasion.

The Relationship between Religion and Obscene Publications

Outside of the Leeds Anatomical Museum, many of the debates surrounding the Obscene Publications Act in this period involved the tricky relationship between obscenity and religion. In some cases, the presence of

[292] 'Suppression of a Leeds Anatomical Museum', p. 3.
[293] 'Suppression of a Leeds Anatomical Museum', p. 3.
[294] 'Suppression of a Leeds Anatomical Museum', p. 3.

obscene publications in both the UK and the world was viewed as a continuing evil to be fought against with education. In a meeting of the Christian Knowledge Society, reported on by the *Hull Packet*, when reporting on the aims and objectives of the society, Bishop Spencer recounted:

> At this time there was much of infidelity, much that was evil, -- much was done for the spread of unchristian knowledge. Shops were opened for the sale of blasphemous, infidel, and obscene publications; and it was no use their attempting to close their eyes to the fact. It was a matter which concerned all – masters and mistresses, husbands and wives, parents and children.[295]

The Christian Knowledge Society felt that this spread of 'unchristian knowledge' was ever-present and only the spread of the Bible, the Book of Common Prayer and other religious tracts to the poor and the working classes would halt it.[296] Unlike other religious societies, such as the Society for the Suppression of Vice, which actively pursued prosecutions against publishers of obscenity, the Christian Knowledge Society's approach is less aggressive and more focused on the role that education played. The inference in their work is that obscene publications are only a danger when placed in uneducated hands, thus importance is placed on making sure the vulnerable received the 'right' kind of reading material.

This approach to the issue of obscene publications was not exclusive to the Christian Knowledge Society, as a similar method was enployed by the National Society for Educating the Children of the Poor in the principles of the Established Church. They too felt that it was education, rather than prosecution, which was the best way to tackle the problem of obscene publications. During one of their recorded meetings, William Page Wood, the Vice-Chancellor of the Society, when discussing the merits of teaching children to read respectable literature, announced that '[...] curiosity was increased by the facilities for reading afforded by cheap newspapers and cheap literature. Now these cheap novels might be good or evil, according to their contents, and it was very desirable that the minds of the people should be inculcated with principles that would lead

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[295] 'Christian Knowledge Society', *Hull Packet and East Riding Times*, 23 August 1861, p. 6.
[296] 'Christian Knowledge Society', p. 6.

them to choose the good and refuse the evil'.[297] The Society hoped that a Christian education would lead children away from the mischief imbued within obscene publications as any intelligence gained through study would naturally lead them away from immoral influences. In a statement of the success of this kind of endeavour, Page Wood declared:

> In many districts that admirable agency the Book-Hawking Association, besides an immense diffusion of Bibles and Prayer-books, had by its sale of tracts and good and useful books beaten the vile and obscene publications which were formerly read completely out of the field.[298]

While obscene publications were still plentiful at this time, Page Wood clearly thought that by spreading Christian knowledge any desire from the Society's recipients to seek out or consume obscene literature would be blunted and thus their trade would wither.

Not all discourses involving the issue of obscenity and the church were quite as good-natured as these two. As part of a series of debates on the subject of 'unity in the Protestant Church', the two speakers dissolved into an argument about whether the Protestant or the Catholic Church was the true Church of Christ, in which slurs and accusations of obscenity were made against the religious tracts and Bibles of both denominations. One of the debaters, Mr Feury, who was charged with defending the Catholic faith, argued, 'Mr. Todd [his opponent] had told them that there were parts of the Romish Catechism not fit to read to the meeting. Well, there were numerous passages in the Bible equally unfit to read.'[299] Todd's response to this harsh indictment of Protestant texts was to question, 'whether Mr. Feury dared to class the Bible with the obscene publications of his church?'

Feury's admittance of there being questionable content in the Bible is fascinating as this was an issue that had not been raised in relation to obscene publishing either in the parliamentary debates or any of the previous prosecutions. Select passages of the Bible, particularly those in the Old

[297] 'The National Society', *Essex Standard*, 10 October 1862, p. 3.
[298] 'The National Society', p. 3.
[299] 'Discussion on Catholicism', *Sheffield and Rotherham Independent*, 10 December 1862, p. 3.

Testament, could potentially be viewed as obscene, being violent or sexual by nature; although, one wonders whether the Bible's status as a religious text puts it in the same class of text as classical literature, with allowances made for its age and the contemporary views held at the time of publication. Its position as a religious work did not offer much protection against the accusation of obscenity – James Cowen's trial at the Old Bailey in 1857 had already proven that texts which debated religion could be successfully prosecuted – but the Bible, as the seminal Christian text had not faced yet such censorship.

Todd's dismissal of all other Catholic works as being obscene publications was particularly incendiary as it immediately insinuated that Catholicism itself harboured immoral influences capable of corrupting those who followed it. To describe an entire body of religious tracts as obscene simply due to the conflicting religious message within was severe and yet typical of a spreading anti-Catholic rhetoric seen during this decade, as will be shown in the next chapter. Publication of condemnatory and defamatory literature from both sides of the religious argument eventually led to prosecutions under the Obscene Publications Act of several religious pamphlets, including *The Confessional Unmasked*, the pamphlet that led to the definition of the Obscene Publications Act being amended. What this argument does show was that outside of the pornographers of Holywell Street, the label of 'obscene publications', as seen in the earlier cases of the newspapers, was used as a slur between competing factions, giving the term a malice not ascribed to its legal definition.

The New Methods of the Obscenity Publishers

All of the discussion and debates around obscene publications during this period of diminished prosecutions did not mean that 'immoral' books had ceased to be traded. The reduction in prosecutions did not come from a lack of obscenity to prosecute, as publishers and booksellers merely changed their methods of selling their wares to the public. Publications were being extensively traded at a distance by post, rather than in the traditional bookshops, for example. In September 1861, William Dugdale once again appeared in court, alongside Henry Smith, who managed one of Dugdale's shops, charged with selling indecent books

and prints.[300] As discussed in the last chapter, Dugdale and his employees, including his son-in-law, had been indicted several times before, both under the new Obscene Publications Act and under the old common law, for the sale of obscene publications. On this occasion *The Times* reported that not only had Dugdale been selling obscene materials from his shop, he had been taking orders by post for these publications. During a raid on Dugdale's property, it was reported that 'The officers who took Dugdale into custody found a large stock of obscene publications at the defendant's shop in Holywell-street, and also a variety of letters from persons who had enclosed postage stamps for lewd or obscene prints and books, and complained that they had never been forwarded'.[301]

Dugdale's use of a postal ordering system for distributing his wares demonstrates the expansion of the obscenity industry whereby members of the public no longer had to have face to face contact with immoral booksellers and could instead, by way of post, acquire obscene publications more discreetly than in the past. Indeed, Dugdale appears to even be taking fraudulent advantage of this new distance selling by accepting money for these controversial publications while not sending away the product that had been paid for. No doubt he saw the benefits of this practice as it was unlikely that any of his conned customers would approach the authorities for fear of being unmasked as a buyer of such materials, which while not illegal in itself, could potentially cause embarrassment or damage reputations. To have Dugdale prosecuted for this crime would publicly expose the buyers themselves, and no doubt one of the attractions of purchasing obscene publications by mail would be the anonymity granted by the process.

One wonders whether any action could legally be taken against Dugdale in this case, even if his customers wanted to. In *Copyright, Obscenity and Literary History*, David Saunders reflects that in nineteenth-century, civil-law doctrine copyright protection is withheld from obscene and immoral publications.[302] Through this doctrine, as obscene publications exist outside of the law, they are not legally protected by any legislation covering normal publications. In terms of copyright legislation, this means that obscene publications are considered to be in the public domain and, therefore, can be legally plagiarised; however, it is difficult

[300] 'Police', *The Times*, 30 September 1861, p. 9.
[301] 'Police', p. 9.
[302] Saunders, p. 431.

to determine whether the same rules exist in the case of theft or fraud attached to an obscene publication. If money relating to the purchase of an obscene publication is stolen, would it be possible to reclaim that money given that the distribution of such a product in the first place would be illegal? Even if they were not able to reclaim their money from Dugdale, his clients were still determined to receive some kind of compensation as their letters of protest showed:

> One of them, from Edinburgh, in a woman's handwriting, threatened the defendant with "revenge" if he did not return the money or send a "racy book."[303]

Although it is only the prosecution's word that this threatening letter was written by a woman, it is somewhat amusing to consider that Dugdale's clients were not so outraged as to shun the idea of any further business with him, but were instead far more concerned with getting their hands on the 'racy books' that they were promised.[304]

This method used by sellers of obscene publications of reaching out to buyers by post became more commonly reported during this decade as in the case of a correspondent to the *Morning Post*, named only as a 'clergyman and a concerned parent', who was horrified when an allegedly obscene publication actually managed to breach the safety of his home.[305] This concerned parent recounted:

> A very smart-looking book, bound in mauve cloth with gilt edges, reached me by post a day or two ago. I thought it might be a present for one of my children, as it had all the appearance of a birthday book, and I was consequently about to excite their curiosity by leaving them to guess for whom it was sent. Judge, then, of my surprise and disgust, on tearing off the envelope, to find it one of those filthy publications which are so often

[303] 'Police', p. 9.
[304] The prosecution in this case against William Dugdale and Henry Smith was undertaken by the Society for the Suppression of Vice who would have paid for it to take place ('Police', p. 9).
[305] 'Obscene Books', *Morning Post*, 16 August 1864, p. 6.

advertised in the newspapers addressed to clergymen, parents, and guardians![306]

This letter to the *Morning Post* tells us about the methods now seemingly employed by the purveyors of obscenity. Sellers were now using the postal system to send out samples of their wares cold to targeted addresses. This is unlike the case of Dugdale for whom using the post was a way of sending – or not sending in his case – obscene books which had been specifically ordered and purchased in this way by his customers. As many books of this period contained advertisements for similar works, it can be reasonably assumed that this sample text was sent out as bait to drum up more business for its publishers, and those who read and enjoyed such works would potentially purchase from the same tradesmen in the future. This method of distributing obscene texts, as well as being an advertisement to drum up trade, was also a safer method of sale of these types of texts for the publisher. As seen from the prosecutions on Holywell and Wych Streets in September 1857, the police targeted these publishers for prosecution partly because they knew where they were. The fixed location of the shops made it easier for detectives to search for obscene publications, because the area of their distribution was readily apparent. By sending out obscene publications by post, the publishers of these works took a lower risk in distributing them as the location from which they were sent was less simple to determine and could be concealed by all manner of subterfuge.

In the case of the clergyman above, apart from the title page of the book he was sent – which was included with his letter to the *Morning Post* - the rest of the text was destroyed and no mention was made of contacting the authorities to seek an investigation and prosecution of the originators of this book.[307] Unfortunately, this destruction of the text and censorship of its title means that we have no way of determining whether it was a truly immoral publication or not. If it was indeed an immoral book, whether by legal definition or by personal definition, one must question why such a text would have been posted to a clergyman of all people when, as will be examined in more detail later, the usual targets for such postings were men in the armed services and school boys.

[306] 'Obscene Books', p. 6.
[307] 'Obscene Books', p. 6.

While the clergyman was evidently outraged by this mysterious book, as demonstrated by the strong language used in his letter, it is impossible for us to determine the true nature of the publication or why its recipient found it so morally objectionable. As evidenced earlier in this chapter, the absence of a clear and strong legal definition of obscenity led to many people coming up with their own definitions of what constituted an obscene publication. As seen in the cases of the wax models and the Catholic Bible, there was a very fine line being drawn by the public as to what could be classed as obscene versus what was merely objectionable. The clergyman's own act of censorship – burning the book in the fire – was designed by him to protect his children, for whom he wrote that he initially thought that the book was intended. It is uncertain whether this book was really intended for the children or whether this book's appearance provoked the clergyman's existing anxieties over the subject of the availability of obscenity. His letter to the *Morning Post* detailing his concern for the moral wellbeing of his children would have certainly struck a chord with other parents reading the newspaper. However, his burning of the book meant that all the evidence of its supposed obscenity was destroyed and without the text in question, a case against it could not have been brought.

What this case clearly demonstrates is that advertisements publicising the availability of controversial texts, as mentioned by the clergyman, were now being actively circulated in newspapers, apparently targeting 'respectable' men. If this was the case, then the publishers of obscenity were clearly becoming bolder in their efforts to draw in new clientele by printing advertisements so openly and inviting censorship in whatever form. It could be suggested that the increased appearance of these public advertisements correlated with the reduced appearance on the streets of the purveyor of obscenity. As discussed in the case of Dugdale, the postal system created distance between the sellers and their customers thus minimizing the risk of prosecutions, and advertisements, in contrast with shop fronts, would have many of the same benefits.

What this letter to the *Morning Post* does better than many of the earlier debates surrounding obscene publications is demonstrate just how insidious and dangerous unchecked literature was perceived to be. The protection of the reading habits of the vulnerable was mainly debated in the abstract previously –

there may be children who would suffer from reading immoral texts – yet this case explicitly describes just how close the clergyman's own children came to such a fate. A text that seems so innocent, described in such detail to show that it is an object of beauty, wrapped like a gift, yet concealing such 'filth' within, shows in this instance how difficult it was to protect the young when sinister and immoral literature was seen by the clergyman to be disguised in the shape of a birthday book. This is a text which has breached the walls of the clergyman's house under false pretences and can thus be seen as more dangerous than openly obscene literature which could be successfully kept out. The clergyman went on to complain, 'Supposing I had been from home and it had fallen into other hands, who can calculate the amount of both direct and indirect mischief that might have been caused?'[308] No doubt the 'other hands' that the clergyman was speaking of were those of his children and the thought of what damage could be done to them by reading an obscene text was evidently a worrying one.

It is important to note that as the book in question was destroyed, it is not possible to state whether or not it really would have had dire consequences for any innocent minds that may have read it. Whether the text was truly obscene or just unwanted by its recipient, the clergyman in this case study has presented a compelling argument for a tougher stance on obscenity. His letter contains all the elements discussed within the House of Lords when considering the Obscene Publications Act and reinforces the purpose behind the legislation: the book's beautiful covering and its delivery to his home shows the insidious nature of obscene texts, which appear so harmless, but can do so much damage, and which can inveigle their way into the sacrosanct space of the private household; and the danger of this text almost falling into the hands of his children demonstrates the ease with which undeveloped and unknowing minds can access and be corrupted by obscene literature. Whatever the true nature of the book in question and the clergyman's intentions in bringing it to the attention of the *Morning Post*, this letter is as much a cautionary tale as it is a letter of complaint.

Despite the lessening of prosecutions in this period in the early 1860s, what can be seen is that the concept of what constituted an obscene publication and what the clear definition of obscenity actually was, was still quite a confused

[308] 'Obscene Books', p. 6.

issue, with multiple suggestions put forward as to the role and danger of such texts. What the prosecution of Dugdale in 1861 shows is that obscene publications did not disappear during this period, but instead new methods were developing to distribute such works outside of the typical book shop framework and it was only a matter of time before the moral authorities began to prosecute such literature in earnest again. That time came on 28th April 1865 when John Ellam was prosecuted for the sale of obscene prints in Yorkshire. In a statement which followed the examples set in the late 1850s, the news report of his prosecution contained little detail, merely stating that he had been convicted and would be sent to the Wakefield House of Correction for one month.[309] While Ellam's conviction and sentence may seem almost negligible by comparison to some of the tougher sentences previously meted out, his case is important as it heralds the beginning of an increased legal and criminal interest in the Obscene Publications Act and the literature which fell under it in the latter half of the 1860s.

The first case tried during this revived interest in the matter of obscene publications was that of Adolphus Judge in 1866, who also acted under the alias of Adolphus Delplangue, a pornographic publisher who had been convicted under the Obscene Publications Act previously in 1862 and sentenced to twelve months hard labour for his crime.[310] Due to the reticence common in the reporting style of this time, little detail is given of his case other than that he was convicted for the sale of obscene prints and that his prosecution was paid for by the Society for the Suppression of Vice.[311] Renewed interest in this type of case in the latter half of the 1860s, though, meant that his second indictment and conviction in 1866 was reported in much more detail and included a description of how he perpetrated his crime and was eventually caught.

Much like William Dugdale, Adolphus Judge had conducted his trade in obscenity mainly by post, sending out catalogues of publications which could then be ordered, a method that the *Standard* claimed was 'an old offence in a new

[309] 'Magistrates in Petty Sessions – Thursday', *Huddersfield Chronicle and West Yorkshire Advertiser*, 29 April 1865, p. 6.
[310] 'Central Criminal Court', *The Times*, 4 March 1862, p. 11.
[311] 'Central Criminal Court', 4 March 1862, p. 11.

form'. [312] This new form of selling obscene publications was to send these catalogues of advertisements out to barracks, dockyards, ships and public schools in the hopes of gaining interest in the products available which would then be ordered by post and dispatched by Judge. One of these circulars, as reported by the *Daily News*, fell into the hands of a married officer in the cavalry barracks at Canterbury who reported the incident to the army chaplain.[313] At what point the Society for the Suppression of Vice who prosecuted the case got involved is unclear, but what is evident is that similarly to the methods initially suggested by Lord Campbell in the Parliamentary debates, a sting operation was then set up to catch Judge in the act of selling such publications:

> A communication was sent in reply to this circular to a place set forth in it, and a book containing specimens of photographic slides of a very indecent character were sent to choose from. Some other letters passed between the prisoner [Judge] and a supposed "Captain Brown," and an interview was arranged to take place between Captain Brown and the prisoner at a house in King-street, St James's. There a young officer lying at Canterbury Barracks appeared and personated "Captain Brown," and purchased two books, four slides, and a pack of cards from the prisoner, for which he paid him 5l.[314]

This purchase was then followed a day later by the arrest of Judge who was identified as the seller by both the fake Captain Brown and the arresting officer, Sergeant Thomas, who had been undertaking surveillance at the address in question. The revived interest in this case was such that in addition to the extensive reporting of this case, the courtroom itself where the case was tried was recorded as being 'very crowded'.[315]

Adolphus Judge's case raises two interesting points. The first is that while sentences given to the publishers of obscenity had become harsher over the first half of the 1860s, judges were now coming down even harder than before on repeat offenders. Judge had already been convicted of this offence in 1862, and a further warrant had been issued upon his release from prison in 1863 when he

[312] 'Police: Bow Street', *Standard*, 27 March 1866, p. 7.
[313] 'Middlesex Sessions', *Daily News*, 4 April 1866, p. 6.
[314] 'Middlesex Sessions', 4 April 1866, p. 6.
[315] 'Middlesex Sessions', 4 April 1866, p. 6.

immediately resumed his prior activities. Judge received the maximum sentence possible for this crime of two years hard labour with £200 of sureties to be paid once he was released, with the Judge, Mr Bodkin, announcing 'he only regretted that the law did not empower him to pass a heavier sentence'.[316] This was not the sole case of the maximum penalty for this crime being issued for a repeat offender, as the same sentence was issued to William Dugdale upon his final conviction for distributing obscene publications in June 1868. It was obviously felt that these harsher penalties were needed, as destroying stock, being issued fines and light prison sentences were not working to deter publishers of obscenity from re-offending. The second point raised by this case is that of the consumer buying these products. In the case of the clergyman in 1864, he also received an unasked for publication with various advertisements for what he called 'obscene' publications in them, and in his letter to the *Morning Post* had bemoaned these advertisements targeted at 'respectable men', and yet these respectable men, such as men of the church, are not the natural purchasers of obscenity. For an experienced pornographer such as Judge, his targets for business were not vicarages or private houses, but army and navy barracks, ports and public schools, all locations where a predominantly male population of working age resides. While some of these men may be thoroughly respectable, such as the army chaplain and the married officer, these are the types of environment where pornography and other vices can flourish. By this reasoning then, it calls into question the claim by the anonymous clergyman that the publication he received was truly obscene, as a man of his profession is not the type to be targeted by publishers of true obscenity.

Obscenity and Other Social Evils

Some of the new interest in the cases of obscene publishing was purely legislative, with interested parties seeing the 'success' of the Obscene Publications Act as grounds to introduce more comprehensive legislation to tackle the social and moral evils of the time. Unlike the case of the Night Poaching Prevention Bill, which merely wished to adopt the Obscene Publications Act's stop and search methods, other bodies held the Obscene Publications Act up as an

[316] 'Middlesex Sessions', 4 April 1866, p. 6.

example of the triumph of moral legislation against social ills, and saw the Act as the prototype for other measures. The United Kingdom Alliance, for example, sought to introduce new legislation to Parliament which would halt the traffic of liquor and close down grog-shops, as they viewed alcoholism as the cause of the working man's ills.[317] The United Kingdom Alliance's aim was to 'draw the attention of the Government and the people to the cause of the evil of drunkenness, which was the sale of drink, and when they succeeded to draw the attention of the people to the cause, it would be at once removed'.[318] This approach to the perceived evil of alcoholism is very similar to that taken by Lord Campbell and his supporters when sponsoring the Prevention of Obscene Publications Bill in Parliament, in that the issue is not the product itself, in this instance, alcohol, but in its distribution and availability to the common man. Neal Dow, speaking at the Alliance's meeting reported here, went on to emphasize the hazards of the distribution of alcohol, and interestingly mentions not only the human and moral costs of alcohol abuse, but also the financial costs:

> It was not possible to exaggerate the evils arising out of the liquor traffic, unless they could estimate the value of human souls. The liquor traffic entailed a loss on the country of hundreds of millions of pounds, and created 600,000 drunkards in Britain alone, 60,000 of whom died annually.[319]

As with obscene publications, despite half of the objection to the product available being on moral grounds, as shown by Dow's emphasis on the cost to the human soul, the other half of the objection is reminiscent of Lord Campbell's horror on finding that obscene publications were not taxed. It is this emphasis on cutting off the trade of alcohol at the distribution point which is then discussed further by Dow, and it is at this point in his speech that he holds up the Obscene Publications Act as an example of effective legislation which cuts off the offensive product from the buying public at its source of distribution:

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[317] 'Visit of General the Hon. Neal Dow to Bangor', *North Wales Chronicle*, 13 April 1867, p. 8.
[318] 'Visit of the Hon. Neal Dow', p. 8.
[319] 'Visit of the Hon. Neal Dow', p. 8. Dow was a guest speaker at this meeting of the United Kingdom Alliance having founded the Maine Liquor Law in the United States of America.

> The trade in obscene publications was prohibited, and gambling houses were suppressed, and the same course should be adopted with regard to the liquor traffic, as that was as inconsistent with the general good as the other trades.[320]

Dow evidently saw the suppression of obscene publications within legislation as an opportunity to stamp down on other areas of immorality. Obscenity and gambling had already been suppressed, so the trading of other vices should also be dealt with in accordance with the existing legislation.

The United Kingdom Alliance was not the only moral movement to see the Obscene Publications Act as the first step towards controlling and suppressing various social evils. In a letter to the *Daily News*, boldly headed "The Procuress", a JNO. W. Miller [*sic*] wrote in to advertise a meeting to form a committee with a view to petitioning the Home Secretary for stronger legislation against those who procure women to work in brothels.[321] As Miller writes, the formation of this committee would be 'in order that the present defective state of the Statute Law may be amended, and that the importation of foreign girls or the procuration of English girls for the purpose of prostitution be made a felony, and all those harbouring, aiding, receiving, or abetting therein, be equally amenable as principles'.[322]

Miller's concerns on this matter were not the first occasion on which it had been suggested that following the passing of the Act, new measures should be taken to address the vice of prostitution. In a piece of commentary in *The Times*, which appeared in January 1858 at the height of the early prosecutions under the Act, it was suggested that the law governing brothels and street prostitution should be amended to fall more in line with the new legislation on obscenity.[323] The apparent "success" of the issuing of warrants and use of the police led *The Times* to claim that any new legislation dealing with vice issues would not be subjected to any abuse by those in authority:

[320] 'Visit of the Hon. Neal Dow', p. 8.
[321] JNO. W. Miller, "The Procuress", *Daily News,* 23 June 1868, p. 7.
[322] "The Procuress", p. 7.
[323] '[Untitled]', *The Times*, 8 January 1858, p. 6.

> The rule in all such cases is to give the power, and to leave it in the discretion of the authorities only to employ it on proper occasions. We have ample guarantees now-a-days that such discretion cannot be abused.[324]

This article shows that while *The Times* is not viewing the passing of the Obscene Publications Act and its apparent success as a call to arms against vice, as Miller and the United Kingdom Alliance appear to be, it is acknowledging that the new policing methods used to counteract the sale of obscenity may provide a solution to the logistical problems of legally countering vice at its source rather than disturbing those who procure such services.

Similarly to Miller's worries later on, *The Times* also views an influx of foreign sex workers into the country as one of the main causes for concern, mirroring the debates over obscene publications a year previously where Campbell pointedly denounced the French novel, *The Lady of the Camellias*, and continuing the bias against European culture which implicitly linked it with immorality:

> Again, the benevolent persons who have taken it in hand to deal with this monstrous evil assert that the introduction of foreign Prostitutes, or – what is still worse – of girls yet uncontaminated, for the purposes of Prostitution, might be discouraged much more than it is, perhaps well-nigh totally prevented. Undoubtedly, England does not desire free trade in Prostitution.[325]

It is the fear of British women being drawn into this despicable 'foreign' trade that provokes the strongest reaction from *The Times*, and its view of the innocent being 'contaminated' by continental influences once again mirrors Campbell's approach to the problem of obscenity, viewing vice as a poison that spreads through the vulnerable and corrupts the body. In the cases of prostitution, this point of view was often verified by the spread of venereal diseases between the sex workers and their clients. The Contagious Diseases Acts passed in 1864 and 1866 helped to support this view, as although they offered some kind of monitoring for the women involved – police supervision and hospital

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[324] '[Untitled]', 8 January 1858, p. 6.
[325] '[Untitled]', 8 January 1858, p. 6.

examinations – they also only tackled half of the problem. The prostitutes are seen to be the infectious beings, even being subjected to compulsory hospital detentions under the Contagious Diseases Act, while their clients are left to spread further disease unchecked amongst the populace. As argued by M.W. Adler:

> Society was happier ignoring the problems of these illnesses and, if forced to face them, developed suitable defence mechanisms. One was to project the blame on to the prostitute, or treat her as a non-person.[326]

Miller's approach to the presence of foreign women in this business, a decade later, is a little more generous, viewing all the women engaged in prostitution as victims rather than as infectious beings. Miller expresses in his letter to the *Daily News* that he wishes to form a society to protect these women and halt this trade, and that this society will be formed 'on the same principle as the Society for the prevention of Cruelty to Animals'.[327] This comparison, although rather unflattering for the women involved, does demonstrate that Miller apparently felt that these prostitutes were victims of cruelty who needed to be rescued from their abusers, the pimps and procurers who had forced them into the sex trade.

As with the United Kingdom Alliance before him, Miller seemed to view the obscene publications legislation as the beginning of a new attack on social immorality:

> We have taken great pains to check the sale of obscene publications, to close the Haymarket night houses, and in some instances to prosecute the common brothel-keeper; but these temples of sensuality, these mansions of iniquity, these "Colossi" of filthy debauchery remain unchecked, and continue in our very midst, daily sacrificing to their own sensual and selfish appetites the health, the morals, the life, and the immortal spirits of the fairest, the most defenceless – unprotected – and interesting part of God's creation.[328]

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[326] M.W. Adler, 'The Terrible Peril: A Historical Perspective on the Venereal Diseases', *British Medical Journal*, 281.6234 (1980), pp. 206-11, (p. 206).
[327] "The Procuress", p. 7.
[328] "The Procuress", p. 7.

Miller, like Campbell and the United Kingdom Alliance, clearly saw the removal of such temptations as obscenity, prostitution and alcohol as the only options available to protect the most vulnerable in society. However, unlike Campbell's obscene publications, the reports on these cries for stronger legislation seem to lack the public impetus which drove forward Campbell's petition for new legislation, and thus make the issues involved appear less urgent. Despite the social and moral concerns evident during this period, it seems that Campbell's Bill against obscene publications appeared at the right time to make the appropriate impact, whereas the protests of Miller and the United Kingdom Alliance come during a period of greater religious unrest which dominated public interest in a way that alcoholism and prostitution did not.

Chapter Four

The Case of *The Confessional Unmasked*: Obscenity and Religious Sacrilege

The period of religious unrest that exploded in the late 1860s evolved from a build-up of tension between various denominations that had been brewing throughout the decade. As has already been seen in the previous chapter, the growing divisions between Catholics and Protestants led to each side beginning to engage with the question of obscenity as a weapon against the other. In *Crime and the Irish*, Roger Swift accounts for the increase in Protestant and Catholic tensions as a result of a mid-Victorian resurgence in popular Protestantism which evolved from a combination of the passing of the Roman Catholic Relief Act and the re-establishment of the Roman Catholic hierarchy, the consequences of the Tractarian controversy, and the growing numbers of Irish Catholics migrating to British cities following the Great Famine of the 1840s and 1850s.[329]

This latter issue was particularly contentious. During the Great Famine, the potato harvest, a food source on which the majority of the population existed, failed for four consecutive years between 1845-1848, and led to the emigration from Ireland of over a million of the populace by 1851. The English middle-classes saw this as a sign of the moral failings of the Irish, as Catholics, rather than as a natural and economic disaster resulting from bad harvests and the repeal of the corn laws in 1846.[330] The mass emigration of the Irish to Britain in this period saw the limited resources of various towns and cities around the country stretched to their limits by the incoming Irish famine victims, many of whom were suffering from disease. In his study of the Irish migrants arriving in Wales during this period, Paul O'Leary notes that the Irish travelling over on boats, often confined in the same area as cattle, were incredibly susceptible to "famine-fever" – a

[329] Roger Swift, 'Crime and the Irish in Nineteenth-Century Britain', in *The Irish in Britain 1815-1939*, ed. by Roger Swift and Sheridan Gilley (London: Pinter Publishers, 1989), pp. 163-82 (p. 171).

[330] See M. W. Heslinga, *The Irish Border as a Cultural Divide: A Contribution to the Study of Regionalism in the British Isles* (Assen: Royal VanGorcum, 1962), p. 191; Peter Gray, 'Punch and the Great Famine', *History Ireland*, Vol. 1 (2), (1993), pp. 26-33, (p. 27-8).

combination of typhus, relapsing fever, dysentery and scurvy.[331] O'Leary argues that these cases of disease, along with the strain on resources and the regional Poor Laws, led to anxiety about the number of Irish migrants settling in Britain, and this quickly turned to anger: 'Popular reaction to the famine immigrants varied from the all-too-rare cases of sympathy to the more common response of overt hostility.'[332] In the case of the Irish settlers in South Wales, this hostility led to an anti-Irish riot in November 1848 and attacks on both sides of the population. According to O'Leary these events led to a lot of negative press, which 'contributed to a composite picture of the Irish as a diseased and destitute group of lawless individuals whose presence inexorably led to disturbances of the peace.'[333] This was not just evident in Wales, as this popular image of the Irish criminal abounded in all of Britain's major industrial cities, where many of the Irish migrants relocated to search for employment, and heightened tensions between the evangelical Protestant community and their new predominantly Catholic neighbours. The Irish, particularly the Irish Catholics, were, therefore, a target for those who wished to banish not only the physical disease they brought with them, but also the moral 'disease' they inevitably spread not only through their religion or criminality, but through their nationality. Swift reflects these tensions between the Irish and the English also rose temporarily between 1865 and 1868 as Fenian activities such as the raid on Chester Castle, the Clerkenwell bombing and the 'Manchester Martyrs' case raised fears of Irish nationalist violence.[334]

Swift argues that discourses around Irish criminality were a direct result of these tensions and this chapter extends his argument here, seeing these exacerbated religious tensions in this period as contributing directly to the problem of defining obscenity. The 'Discussion on Catholicism', which took place in Sheffield in 1862, demonstrates how each side was utilizing the Obscene Publications Act and the loose definition of obscenity to attack the religious

[331] Paul O'Leary, 'A Regional Perspective: The Famine Irish in South Wales', in *The Irish in Victorian Britain: The Local Dimension*, ed. By Roger Swift and Sheridan Gilley (Dublin: Four Courts Press, 1999), pp. 14-30, (p. 22).
[332] O'Leary, p. 26.
[333] O'Leary, p. 27.
[334] Roger Swift, 'Heroes or Villains?: The Irish, Crime and Disorder in Victorian England', *Albion, A Quarterly Journal Concerned with British Studies*, 29.3 (1997), 399-421, (pp. 411-412).

literature produced by the other, with even the Bible coming under fire for containing certain 'obscene passages'.[335] Without these cultural conditions, an official, legal definition may have taken a lot longer, and may have emerged in a very different form. The enormity of the tensions between the English and the Irish made the problem impossible to ignore in this instance, although, as discussed in the previous chapter, the debates around the definition of obscenity were already beginning to be influenced by other causes of social unrest in the 1860s. In 1865, this issue became even more heated with the publication of *The Confessional Unmasked: Showing the Depravity of the Romish Priesthood, the Iniquity of the Confessional and the Questions put to Females in Confession*, an anti-Catholic pamphlet produced by the Protestant Evangelical and Electoral Union.[336]

Appearing first in various advertisements in newspapers such as *The Times* for the price of one shilling, *The Confessional Unmasked* claimed to show 'the conversations held by Priests with the Wives and Daughters of Englishmen: being the Questions put to Penitents by their Spiritual Advisors'.[337] While this description of the pamphlet given in the advertisement is fairly innocuous at first glance, the language used was meant to provoke anxiety about the conversations in question, thus stirring up interest in the publication. Emphasis placed on the phrase 'Wives and Daughters of Englishmen' would presumably inspire an immediate concern for said wives and daughters, women being perceived as some of the most vulnerable members of society. The reference to their relationship with 'Englishmen' provokes an image of an idealised version of the consummate British individual – someone white, male, middle class and Protestant.

It is possible that this appeal to 'Englishmen' may have not just been aimed towards those who resided in England specifically, but to all those resident in Great Britain. In *The Stranger in Nineteenth-Century Irish Literature*, Melissa

[335] 'Discussion on Catholicism', p. 3.
[336] The Protestant Evangelical and Electoral Union was commonly abbreviated to the Protestant Electoral Union in the reports studied and therefore will be abbreviated as such in this thesis.
[337] 'The Confessional Unmasked', *The Times*, 8 June 1865, p. 17. *The Confessional Unmasked* had previously been published; however, this marks a period where the pamphlet became heavily promoted by bodies such as the Protestant Evangelical and Electoral Union.

Fegan presents the idea that 'Englishness becomes less a badge of nationality and more a polar opposition to Irishness'.[338] In her study of racialising Irishness, Cora Kaplan supports this argument that the Irish were seen as being both 'other' and the same. Kaplan examines the Reverend Charles Kingsley's letters detailing his travels through Ireland in 1860, and in particular one instance in which Kingsley witnessed the poverty in Ireland and stated that his sympathy was exacerbated by the poor appearing to him as 'white chimpanzees', a condition which provoked his sympathies more than if the Irish had presented themselves on his travels as 'black chimpanzees'.[339] Kingsley views the Irish in his letters as being clearly racially 'other' from the English, such as himself (despite his own West Indian heritage on his maternal side), and despite describing them as 'chimpanzees', a traditional slur against those of African descent, Kaplan argues that his distress upon seeing the poor Irish was more due to their similarities – their skin colour – to Englishmen. Kaplan reasons that:

> The oxymoron of 'human chimpanzees' places the Irish in that unthinkable category caught between the animal and the human – the stuff of fantasy or nightmare, its gothic implications deepened when Kingsley confesses that the dread such monstrosity induces is as much due to their whiteness – the ineradicable sign that they are his fellow creatures.[340]

In this respect, Kingsley has used the analogy of the white chimpanzee to separate himself from the Irish. The English and the Irish may have similarly coloured skin, but his description of the Irish as chimpanzees implies a ferality and unpredictability to their nature, which is in contrast to his contained, refinement as an English gentlemen. This concept of polar opposition between English and Irish is one developed by Kaplan and Fegan with reference to the works of Scottish travel writers, such as Thomas Campbell Foster and Henry Inglis. These Scottish writers identified themselves as 'English' during their journeys through Ireland, thus presenting themselves as from a more industrially advanced and

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[338] Melissa Fegan, ''Isn't It Your Own Country?': The Stranger in Nineteenth-Century Irish Literature', *Yearbook of English Studies*, 34 (2004), 31-45 (p. 34).
[339] Cora Kaplan, 'White, Black and Green: Racialising Irishness in Victorian England', in *Victoria's Ireland? Irishness and Britishness, 1837-1901*, ed. by Peter Gray (Dublin: Four Courts Press, 2004), pp. 51-68, (p. 54).
[340] Kaplan, p. 55.

wealthier society. Despite the disparity in the writers' true nationality and their adopted national identity, the opposition between them, as Englishmen, and the Irish, as examined by Kaplan, raises the question of how to define the opposition to the Irish people and the Catholic Church in this chapter, both together and separately.

Fegan argues that during the Great Famine in the 1840s, the British obsession with Ireland stemmed from 'the fear of a prosperous Protestant nation that the geographic and political proximity of a poor, populous Catholic country would prove a serious economic and social liability'.[341] The use of the word 'nation' here is inclusive of all three countries, England, Wales and Scotland, which are presented here as bound by a common religion, which unites them in a national identity. Ireland, despite the Act of Union of 1801, was still viewed as the 'other' in part due to religious differences. From Fegan's surmises it can be argued that when the advertisement for *The Confessional Unmasked* appealed to 'Englishmen', it was more than just appealing to fellow countrymen but to a national identity defined by and bound to its predominant religion. The Protestant Electoral Union's advertisement can consequently be viewed as orchestrating conflict between 'Englishmen' and Catholics, or as would later be reported Protestants and the Irish.

This is an advertisement which aims to appeal to the conservative Anglican family man, the target reader of a paper such as *The Times*, concerned with protecting those in his household, something which is supported by the second half of the advertisement which states, 'This work should be read at the present time by every father, husband and brother'.[342] The inference in this advertisement is that the discussions that take place within the confessionals of the Catholic Church are compromising in some way. Although the pamphlet merely claims to illustrate the supposedly confidential conversations which have taken place, it is the reference to the questions asked by the priests that hints at some kind of impropriety and instigates anxiety. The anti-Catholic insinuations within this advertisement also serve as a prelude to the riots involving the Irish community. As Swift comments, 'the terms 'Irish' and 'Catholic' were virtually

[341] Fegan, p. 34.
[342] 'The Confessional Unmasked', 8 June 1865, p. 17.

synonymous in English eyes'.[343] This common association between the two, combining national identity with religious identity, in addition to the advertisement's call to 'Englishmen' alone, supports the idea that this pamphlet served not only to divide religious opinion but also to divide communities and exacerbate pre-existing tensions between the English and Irish. It is important when considering the contemporary sources used within this chapter, to acknowledge Fegan and Swift's consensus on the presence during this period of the Irish Catholic 'other' in the minds of the inhabitants of mainland Britain. As Swift states, the two concepts of the Irish and the Catholics were viewed interchangeably during this period, despite the fact that not all Irish people were Catholics and not all Catholics were Irish, and popular publications of this time supported this merging of two separate identities.[344] In his article *Punch and the Great Famine*, Peter Gray argues that *Punch*, *The Times* and the *Illustrated London News* formed a network of similarly focused journals (all with anti-Catholic leaning and little sympathy for the plight of the Irish) which together formed most middle-class and conservative public opinion, thus reinforcing this singular identity of the Irish Catholic in the public's mind.[345]

William Murphy and the Wolverhampton Riots

While *The Confessional Unmasked* was an incendiary text in itself, its seizure by the Watch Committee of Wolverhampton and prosecution under the Obscene Publications Act, which took place nearly two years later in March 1867, sparked a series of remarkable and unforeseen consequences. As well as the prosecution of further anti-Catholic propaganda, this seizure also resulted in the arrests of key members of the Protestant Electoral Union, riots in Wolverhampton, Birmingham and London, and attacks on the Irish Catholic community in the capital, as well as the amendment of the Obscene Publications Act itself to establish a clearer definition of obscenity for the courts. There is little evidence to explain why it took so long for the publication of *The Confessional Unmasked* to excite such a strong public reaction. It is possible that this time was

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[343] Roger Swift, 'Anti-Catholicism and Irish Disturbances: Public Order in mid-Victorian Wolverhampton', *Midland History*, Vol. 9 (1984), pp. 87-108 (p. 87).
[344] Gray, p. 27.
[345] Gray, p. 27.

taken for the publication to gain popularity and infamy through word of mouth. The controversy began when a prominent member of the Protestant Electoral Union, William Murphy, lectured in Wolverhampton on the text in question.[346] Murphy, an Irish Protestant whose family had converted from Catholicism in his youth, had moved to England in 1862 expressly to work as an evangelist. He gave a number of anti-Roman Catholic lectures between 1864 and 1871, until he was injured by Irish miners and died as a result.[347] According to *The Times*, the scheduling of Murphy's lecture 'produced the greatest excitement among the Irish Roman Catholics of the district, and the magistrates deemed it necessary to obtain the assistance of two troops of Hussars from Coventry'.[348] Murphy was a controversial figure outside of his lectures due to his religious conversion in his early life. During the Great Famine, Protestant associations had been accused of proselytising the starving Catholic masses in return for relief, a charge which provoked much bitterness among the Catholic church.[349] Not only was Murphy giving speeches denouncing Catholic practices, but he also represented the Protestant associations that had allegedly taken advantage of the Catholic poor in their time of need. The Catholic community saw Murphy's presence in the city as provocative and decided to express their displeasure by converging on the town hall where the lecture was taking place. While three thousand people attended the lecture, demonstrating the popularity of the subject and not necessarily of the pamphlet itself, *The Times* reported that there were up to ten thousand people outside the hall and that the police had to deal with threats of arson and remove bludgeons from the Catholic protesters.[350] It is worth bearing in mind that while there are no clear statistics available on the religious beliefs of Murphy's audience, it was reported that both Protestants and Catholics attended the lectures, with the latter attending mostly out of curiosity. While the majority of the crowd gathered outside the hall were Catholics, only a small number of them were there specifically to protest against the content of Murphy's lecture.

[346] John Wolffe, 'Murphy, William', in *Oxford Dictionary of National Biography* <http://www.oxforddnb.com/view/article/37796> [accessed 18 June 2013].
[347] John Wolffe, 'Murphy, William', in *Oxford Dictionary of National Biography* <http://www.oxforddnb.com/view/article/37796> [accessed 18 June 2013].
[348] 'The Wolverhampton Riots', *The Times*, 25 February 1867, p. 12.
[349] See R.F. Foster, *Modern Ireland, 1600-1972* (London: Penguin, 1989), pp. 318-344.
[350] 'The Wolverhampton Riots', p. 12.

This threat of violence, although tempered by the authorities in this instance, demonstrates just how divided the two religious factions had become and how controversial *The Confessional Unmasked* had become between its publication and the riots two years later. The report in *The Times* on the riots in Wolverhampton on the 22 February, some of which was paraphrased from an earlier *Manchester Times* article, may have exaggerated the disturbance caused by the Irish protesters, but it kept the reporting in line with *The Times*' anti-Catholic stance during this period. Despite developing some Tractarian sympathies during university, the proprietor of *The Times*, John Walter, was a staunch anti-Catholic and the newspaper reflected these views.[351] On an earlier occasion the newspaper had balked at supporting relief efforts for the Irish Famine, a stance maintained in spite of the editor, John Thadeus Delane's Irish roots.[352] Swift's study into the Wolverhampton disturbances, while acknowledging that Murphy's first two lectures did instigate some violence and rioting within the city, relates a more moderate story in comparison to *The Times*' account. Swift's investigation notes that while greater trouble was expected, 'the crowds of Irish outside the hall remained relatively orderly during the evening, although jeers greeted Protestants as they arrived for the lecture and some young men were seen attempting to 'bonnet' passersby'.[353] While Swift paraphrases the *Wolverhampton Chronicle*, it is important to recognise that his reference to the 'crowds of Irish' could be referring to large crowds of Catholics of any nationality or even curious bystanders. While the Irish were commonly associated with public disorder, and perhaps more visible to reporters and the public in their protests against Murphy's lectures, it is too much of a generalisation to state that everyone who gathered outside Murphy's lectures was either Irish or a protester.[354]

While both Swift and *The Times* reflect on the volume of protesters outside the lecture hall, which in itself can be viewed as intimidating, their accounts of the violence vary in tone, with Swift's account, based on a study of the *Wolverhampton Chronicle*, portraying the violence which did occur that

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[351] Dilwyn Porter, 'Walter, John', in *Oxford Dictionary of National Biography* <http://www.oxforddnb.com/view/article/28638?docPos=5> [accessed 9 August 2013].
[352] Fegan, p. 35
[353] Swift, 1984, p. 97.
[354] Swift, 1984, p. 97.

evening – some local Irish throwing stones at houses of known Protestants and insulting people on the street – as opportunistic rather than an armed organised mass of people dedicated to ending Murphy's lectures.[355] While this fairly restrained protest on the part of the Catholic protesters and the Irish rioters may have been due to the excessive numbers of police forces brought in and recorded by *The Times*, it is difficult to know to what extent the public disorder would have escalated had they not been present. By this measure, it is also difficult to interpret to what degree the protests were specifically against *The Confessional Unmasked* as a text, rather than against Murphy's inflammatory anti-Catholic lectures in general.

The Prosecution of Henry Scott

Strong feelings about this text did have a direct bearing on the ways in which the legal definition of obscenity was arrived at. A month after Murphy's lecture and the subsequent Wolverhampton riots, Henry Scott, a metal broker, was charged with selling an obscene book named in the Petty Sessions Court as *The Confessional Unmasked*.[356] It was stated in court as part of Scott's defence that:

> The defendant sold the work in consequence of his sympathy with the principles of the [Protestant Electoral] union, and because the lecturer Murphy, when he was in Wolverhampton, was unable to supply the great demand which was made for the work.[357]

It was then revealed that during the search which had taken place in Scott's property, a further 252 copies of the pamphlet were found, ready for distribution. Interestingly, this is one of the few early cases under the Obscene Publications Act in which the individual arrested for distributing the 'obscene' text was not the publisher as well. Scott was well-defended by said publisher, as in addition to his own legal counsel, Mr. Kydd, he was also given additional support by Mr. C Bassett, a London-based barrister who acted on behalf of the Protestant Electoral

[355] Swift, 1984, p. 97.
[356] 'The 'Confessional Unmasked'', *The Times*, 20 March 1867, p. 12.
[357] 'The 'Confessional Unmasked'', 20 March 1867, p. 12.

Union.[358] This gives this particular case an added dimension, as it is no longer about an individual being prosecuted solely for his role in the distribution of obscene publications, but about a religious organization defending the type of publications it was allowed to produce in the name of religious liberty. In the case of *The Confessional Unmasked*, this was not just about Henry Scott, but about all the other distributors of this pamphlet and the Union itself, as a guilty verdict for Scott could herald further prosecutions of the same text and its supporters.

The defence of the text Scott put forward was fairly sophisticated compared to other obscenity cases during this decade. The prosecution itself hinged not on the sale of the publication, as in other cases where evidence of distribution was required for prosecution, but on the 'obscene' content of the pamphlet as its only evidence. This meant it was only the publication and not the character of Scott that was called into question, unlike in prosecution cases such as those featuring Holywell Street publishers. Scott's defence of the text was divided into a two-pronged attack. The first argument given was that all of the extracts from *The Confessional Unmasked* decreed as obscene were in fact reprinted directly from Roman Catholic standard works. This was supported by two witnesses, Reverend B. McGhee and Mr Samuel Hurst, who confirmed the accuracy of the reprinted extracts.[359] The argument here, which is similar to the one which took place between Todd and Feury in the religious debates of 1862, is that Catholic works are themselves inherently obscene, thus criticism of their immorality would inevitably and unavoidably reference such obscenity. This raises the controversial issue of how obscenity could be addressed and reported on without repeating the obscenity itself for the benefit of a new audience. As previously discussed, earlier in the decade, accounts of divorce proceedings and open court cases in various newspapers, including *The Times*, had already caused a stir by directly reporting all the unseemly details to their readers under the guise of providing them with an accurate and truthful information service. Scott's defence utilized this argument in the same fashion: if people were to be informed about what kind of obscene Catholic rhetoric was being disseminated, then some repetition of the aforementioned obscenity was both necessary and inevitable. This method of repeating obscenity to illustrate its immorality, whether in the

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[358] 'The 'Confessional Unmasked'', 20 March 1867, p. 12.
[359] 'The 'Confessional Unmasked'', 20 March 1867, p. 12.

guise of informing the general public of its existence or not, was heavily criticized in the late 1850s and early 1860s, as discussed in the previous chapter, and yet, for all the early protests against it, it was still occurring and, up until this point and the case of *The Confessional Unmasked*, still balancing delicately on the line between being news about obscenity and being an obscene publication itself.

The second part of the defence of the text was that passages of a similar 'obscene' nature were to be found in other texts which had not faced any kind of prosecution and, therefore, *The Confessional Unmasked* should not face prosecution either. Kydd lists such texts as those written by French authors and their subsequent English translations, classical authors such as Homer and Virgil, and works such as Allan Ramsey's *Monk and the Miller's Wife*, Alexander Pope's *January and May* and William Shakespeare's *As You Like It* as being equally worthy of seizure and prosecution by the watch committee under the Obscene Publications Act.[360] Somewhat sarcastically it is also suggested that 'they [the Watch Committee] might be expected to send a rural policeman to Dulwich Gallery and carry away on his shoulders the beautiful picture of the "Loves of Venus and Apollo"'.[361] Although the suggestion of a work of art being removed from public viewing and carried away on a policeman's shoulders is not a serious one, Kydd was using the legal precedent set the decade beforehand, where classical literature and other notable works had avoided prosecution, in order to mount his defence of *The Confessional Unmasked*.

While some of the texts noted by the defence had already been identified in the early stages of the Obscene Publications Act's formation – French novels, classical texts and the works of Shakespeare had all been discussed in the debates surrounding the Act's passing – this is the first occasion when the defendant's barrister has suggested alternative titles to be prosecuted in lieu of the accused text. One wonders whether Scott and the Protestant Electoral Union are suggesting that the phrase 'obscene publication' in suffering a lack of an official definition has in fact multiple definitions, some of which are worthy of prosecution, some of which are not. In mentioning specific titles, the defence does not wholly condemn these alternate texts as obscene, but questions what kind of morality should be put on trial. It is possible that the alleged immorality

[360] 'The 'Confessional Unmasked'', 20 March 1867, p. 12.
[361] 'The 'Confessional Unmasked'', 20 March 1867, p. 12.

contained within Catholic doctrines and, therefore, included within *The Confessional Unmasked,* was perceived as being dangerous to those practising that religion, but not necessarily harmful to all. This idea mirrors one presented in the original parliamentary debates that a sound mind could read an obscene text and not be psychologically harmed in the same way that a vulnerable individual reading the same text would be. In this respect, it could be inferred that those practising Catholicism were more vulnerable to immoral suggestion in the first place, than the middle-class, Protestant 'Englishman' of the advertisement in 1865. By comparison, non-religious works by authors such as Allan Ramsay and Alexander Pope could be viewed as more obscene as they were read for pleasure and had no religious element, therefore all who read them were susceptible to their immorality, rather than just those readers with particular religious leanings.

Regardless of the defence given by Scott and the Protestant Electoral Union, the magistrates in the case, Hickling and Walton, found *The Confessional Unmasked* to be obscene under the terms of the legislation and ordered that the copies seized be burnt.[362] Before this could take place, the case was required to be heard first in Quarter Sessions, and then in a higher court. Unsurprisingly, the defence appealed against this decision and the case was moved to be heard before the Recorder, Mr Powell QC, in the Quarter Sessions.[363] Although the text was found to be obscene by not one, but two magistrates, the appeal against this decision was moved forward easily enough and the deliberations at the end of this petty session were more concerned with whether the Watch Committee had behaved appropriately in seizing this text, an action which was undertaken independently of the Town Council.[364] Clearly there was still some concern about independent bodies taking advantage of the search warrants issued as part of this legislation and *The Times'* reporting of the case added that in a meeting held by the council later that day, it was agreed that the committee's actions 'would be condemned by the majority of the council'.[365]

Roger Swift argues that this condemnation of the Watch Committee that had seized the copies of *The Confessional Unmasked* was formed on the

[362] Reports in The Times use the spelling of Hickling, rather than the more common Hicklin, used when describing the 'Hicklin test' for obscenity.
[363] 'The 'Confessional Unmasked'', 20 March 1867, p. 12.
[364] 'The 'Confessional Unmasked'', 20 March 1867, p. 12.
[365] 'The 'Confessional Unmasked'', 20 March 1867, p. 12.

understanding that the Committee's prosecution of Scott was an infringement of his civil and religious liberty, his right to free speech, essentially.[366] However, the Committee had initially charged Scott himself with attacking civil and religious liberties in selling *The Confessional Unmasked*.[367] Although these counter-claims of infringing civil and religious liberties on both sides are acknowledged, the Watch Committee proceeded with its prosecution of the text and Sir John Morris presented the Borough Magistrates and Town Council of Wolverhampton with a resolution condemning the Watch Committee's actions. Swift goes on to comment that this ruling on the Watch Committee's actions came about from the opinions of the town's ratepayers who argued that Scott had sold the pamphlet to educate people rather than to harm its readers, and that the Watch Committee had previously demonstrated inconsistency when dealing with William Murphy himself.[368]

The Watch Committee's protection of William Murphy when he was lecturing in Wolverhampton is presented here, both by Swift and the *Wolverhampton Chronicle*, as a sign of the Committee's irregularity when it came to upholding the law. Swift comments that, 'they had initially protected Murphy when they did not know who he was or whence he came, yet now sought to prosecute Scott for selling one of Murphy's texts'.[369] What Swift fails to acknowledge, is that while public opinion may have condensed Murphy's lectures and Murphy's pamphlets into one single issue, they cannot be judged together as a sole legislative problem. The protection of Murphy and the prevention of large-scale rioting must be viewed as an issue of civil and public disorder – for the Watch Committee not to protect Murphy would have possibly resulted in further violence or assault to his person. However, as previously seen in discussions surrounding the Obscene Publications Act, Murphy was not legally responsible for the content of *The Confessional Unmasked* when the obscene pamphlet was distributed, despite being its author. The indefinable nature of obscenity legislation at this time meant that a man could verbally express 'obscene' sentiments using his powers of freedom of speech, and even commit them to paper. Yet he could not then distribute those ideas to others if written. It was this

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[366] Swift, 1984, p. 98.
[367] Swift, 1984, p. 98.
[368] Swift, 1984, p. 98.
[369] Swift, 1984, p. 98.

contradiction that confused and marred the effectiveness of obscenity legislation and thus helps illustrate the need for a clearer definition of how the Act would work in practical terms.

What this argument over civil liberties demonstrates is that the Protestant faction clearly felt that their exposé of corrupt Catholic practices was entirely justified in the name of free speech. This argument dismisses any inference of dangerous obscenity within *The Confessional Unmasked* and Scott's sale of the text, on the basis that exposing the 'truth' behind the Catholic confessional was beyond any common laws on social unrest and immorality. The claim and counter-claim of breaching civil and religious liberties demonstrates one of the key questions with this prosecution: to what extent was the Wolverhampton court ruling on the obscenity of the text, *The Confessional Unmasked*, and to what extent were they actually ruling on Murphy's lectures and the violent public reaction that they provoked? Despite *The Confessional Unmasked* being judged in court to be obscene, it was still the actions of those who brought about the prosecution that received the most censure in this article. This censure perhaps illustrates *The Times*' religious bias, given that the newspaper's reporting of the incident implicitly supports the right to free speech in this pamphlet, rather than supporting the Watch Committee's censorship of an 'obscene' Protestant text.

Murphy's Lectures in Birmingham

Before the second hearing in front of the recorder could occur, more riots took place during and after another series of Murphy's controversial lectures denouncing the Catholics, this time in Birmingham, a city which had the eighth highest population of Irish immigrants in Britain in 1871.[370] This was not an atypical location; by comparing the locations of Murphy's lectures and the riots which followed them with Colin G. Pooley's statistical research into the Irish populations in British cities, it becomes evident that Murphy was promoting his anti-Catholic stance in cities where the largest number of Irish immigrant communities were to be found, such as London, Manchester, Birmingham and

[370] Colin G. Pooley, 'Segregation or Integration? The Residential Experience of the Irish in mid-Victorian Britain', in *The Irish in Britain 1815-1939*, ed. by Roger Swift and Sheridan Gilley (London: Pinter Publishers, 1989), pp. 60-83 (p. 63-7).

Wolverhampton. London, Manchester and Wolverhampton had the first, fourth and eighteenth most populous Irish immigrant communities within Britain meaning that any show of strength by these communities, such as rioting, would have been highly visible, thus attracting more public attention towards the controversies and disorder surrounding both William Murphy and *The Confessional Unmasked*.[371] Although the locations chosen for Murphy's lectures may have just been coincidental due to many of these locations being large industrial towns with plenty of low or unskilled employment for the working classes, with interested parties from both sides of the divide, it also can be viewed as a provocative act to take such a text as *The Confessional Unmasked* into these areas with strong Irish Catholic communities, where a strong reaction to the text was likely.[372] Although *The Times* reported that in this instance Murphy's lecture on the Roman Catholic confessional was not as well attended, the violence that followed it had escalated quite dramatically compared to the riot in Wolverhampton, with property destroyed and some policemen who had been exercising crowd control receiving 'scalp wounds'.[373] Also in contrast to the matter-of-fact tone in which the Wolverhampton riots had been reported was the somewhat anticipatory voice of *The Times* when talking about Murphy's lectures, especially with regards to the controversial topics, and the possibility of more unrest to come in Birmingham. The article, written four days after the riots, announces that Murphy is to give a second lecture: 'To-morrow it is "The Confessional Unmasked." The subject is exciting, but every precaution would be taken against an outbreak.'[374]

The excitement of the topic seems to hinge upon a kind of sensationalism, rather than strong religious argument, similar to that condemned as obscene or near-obscene in the late 1850s and early 1860s. It is surprising that *The Times*, which disapproved of the sensation and immoral inferences which were inherent in the controversial libel and divorce cases within this period, should allow the content of Murphy's lectures to be printed in the newspaper given their inflammatory nature and wild supposition. It is possible that this printing of part of Murphy's lecture allowed *The Times* to air its own views within the safe

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[371] Pooley, p. 66.
[372] Pooley, p.63-6.
[373] 'The Rioting in Birmingham', *The Times*, 21 June 1867, p. 12.
[374] 'The Rioting in Birmingham', p. 12.

argument of public interest and impartiality, although given the newspaper's well known anti-obscenity reputation, this article would have had to be very carefully balanced between its anti-obscenity and anti-Catholic stances . This article on the Birmingham riots offers a glimpse of the content of one of Murphy's lectures, during which it was suggested that Catholic nunneries should be inspected in the same manner as hospitals, prisons and workhouses. Nuns had long been held up as an object of Protestant alarm during this period, mainly due to the increased spread of convents in England following both the Catholic Emancipation in 1829 and the restoration of the Roman Catholic hierarchy in 1850. Susan O'Brien attributes this fear to a lack of understanding by the public of what nuns actually did given the different rules each order had regarding how publicly visible their nuns were in society.[375] It is possible that the opportunities offered to women in nunneries in mid-century Britain also provoked the Evangelical middle classes into anxiety, given that the social order of society outside of the cloisters was not adhered to within the nunneries. O'Brien notes that for many working-class women, the convents offered opportunities for the nuns to receive professional training as nurses and teachers, and even encouraged some to go to university – a rare achievement for women in this period.[376] In her study of Jane Barker's writings on convents, Tonya Moutray McArthur views this as a rejection of the traditional feminine role of women: '[...] convents were centers of political and cultural resistance, allowing women an alternative to marriage and motherhood and serving as spaces within which single and married women found fellowship and retreat, education and spiritual direction.'[377] Much like the Irish being perceived as the 'other' to the Englishman, Catholic nuns in many ways could be seen as the dangerous 'other' compared to the obedient Protestant wife or daughter, and thus they and their religious establishments were viewed with suspicion.

Alongside nuns, the other socially dangerous female figure in nineteenth-century perceptions was the prostitute or fallen woman. In her article 'The Convent, The Brothel and the Protestant Woman's Sphere', Tracy Fessenden

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[375] Susan O'Brien, '*Terra Incognita*: The Nun in Nineteenth-Century England', *Past and Present*, 121 (Nov. 1988), pp. 110-40, (p. 111).
[376] O'Brien, p. 138.
[377] Tonya Moutray McArthur, 'Jane Barker and the Politics of Catholic Celibacy', *Studies in English Literature, 1500-1900*, 47.3: Restoration and Eighteenth Century (2007), pp. 595-618, (p. 597).

comments that 'As (at least rhetorically) veiled women, the nun and the prostitute typically signal feminized forms of instability, hiddenness, or deception.'[378] If one accepts this statement as a common Protestant opinion of the nuns themselves, it then follows that the convents would also be perceived as places where deception and hidden vice were maintained, something Murphy exploited during his speech. In one particularly sensational statement, Murphy practically accuses the Catholic church of covering up the 'real' causes of nuns' deaths:

> Suppose my wife to-night died suddenly, and that I buried her without a coroner's inquest, would she not be taken out of the grave again? (Yes.) Then, I say, we know not of what the nuns die. (Hear, hear.) Then, I say, we should have coroner's inquests over the nuns.[379]

In addition to provocative remarks such as this, once again, as stated in the advertisement for *The Confessionals Unmasked*, Murphy speaks of the desperate need to protect the wives and daughters of the nation:

> His object was to protect their wives and daughters. If Mayors and magistrates did not care for their wives and daughters he did. (Applause.) He cared for his wife, and therefore she should not go to the confessional. (Cheers.) And if other folks were careless about Popery, he should not be so, because if Popery got the upper hand he could not speak.[380]

While Murphy's words are not obscene in the strictest sense – it can be assumed that *The Times* would not have reprinted them if they were – they were certainly offensive to the Catholic community, and as he addressed his speech on nunneries to 'Englishmen and Englishwomen', it is plain to see that he was making a clear delineation between the majority English Protestant faction in the city and the minority Irish Catholic faction.

Despite Murphy's controversial lectures, there was some serious debate following Henry Scott's prosecution over whether a text such as *The Confessional*

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[378] Tracy Fessenden, 'The Convent, The Brothel and the Protestant Woman's Sphere', *Signs*, 25.2 (2000), pp. 451-78, (p. 457). While Fessenden's work covers the Irish emigration and spread of convents following the Catholic Emancipation and the Great Famine in the United States of America, the issues surrounding the divide between the Catholic minority and Protestant majority parallel those occurring in the United Kingdom.

[379] 'The Rioting in Birmingham', p. 12.

[380] 'The Rioting in Birmingham', p. 12.

Unmasked could actually be seen as illegal. An article appeared in the conservative *Pall Mall Gazette* in July 1867 which questioned the illegality of the text following its prosecution. In this article it was noted that despite *The Confessional Unmasked* being found obscene by the magistrates Hickling and Walton, this decision was overturned on appeal by the Recorder at Wolverhampton Quarter Sessions, Mr Powell QC, although it was done on the grounds that the matter be decided at a higher court. The article reports that the basis for this overturning of Hickling and Walton's conviction of the text was due to the meaning behind the pamphlet's production:

> The pamphlet, he says, is clearly obscene, but to publish an obscene book is not a misdemeanour at common law, unless the publication is prompted by a corrupt motive.[381]

Once again, the question of intention with regards to publishing obscenity is considered key in determining whether or not a text was obscene. The *Pall Mall Gazette* considered Powell's logic in this case to be flawed, one of 'confounding intention and motive'.[382] Powell's defence of *The Confessional Unmasked* was to state that 'The appellant's [Scott] object in keeping these books was not to sanction or promote immorality; but to use them as a weapon of offence against what he deems the errors of doctrine and abuses in practice in the Romish Church'.[383]

While Powell had no qualms in denouncing the immorality in the text, he obviously considered that as the publishers of the pamphlet, the Protestant Electoral Union, only wished to expose the shortcomings of the Roman Catholic Church and its priesthood, and that any obscenity contained within the literature and any offence caused as a result of reading it was almost negligible. The *Pall Mall Gazette* argued in response that while the Union's motive of displaying what it deemed the Catholic Church's failures for all to see may have been pure, the intention that emerged from this motive – to produce an obscene publication dealing with the subject – was still readily apparent. It is this intention, rather than the 'purer' motive behind the publication, that makes *The Confessional*

[381] 'The Legality of the "Confessional Unmasked"', *Pall Mall Gazette*, 13 July 1867, p. 10.
[382] 'The Legality of the "Confessional Unmasked"', p. 10.
[383] 'The Legality of the "Confessional Unmasked"', p. 10.

Unmasked an illegal text. As the *Pall Mall Gazette* explains, 'an act must be intentional to be criminal'.[384] The newspaper went on to argue that:

> Applying this principle to the present case, surely the question for Mr. Powell was whether the publication of the "Confessional Unmasked" in the manner complained of was a publication generally injurious to the public at large, not whether the motives of the publisher were amiable or legitimate.[385]

Powell's decision to overturn Hickling and Walton's verdict on *The Confessional Unmasked* was a controversial one. Unlike previous arguments surrounding the text in which the presence of obscenity within it was questioned, Powell's verdict, and indeed the *Pall Mall Gazette's* verdict, is that the immorality within the pamphlet was not even in question; both assert quite strongly that *The Confessional Unmasked* is an obscene text. The debate surrounding it following the judgment in the Quarter Sessions is more focused on the question of what makes an obscene publication legal or illegal. As has been previously discussed in this thesis, there was a large range of texts which were essentially excluded from illegality based on the essential knowledge within them, such as medical textbooks, or based on their role in literary history, such as the classical texts and Shakespeare. In some respects it could be argued that even the Bible falls into this category of exempt texts.[386] However, what this prosecution case demonstrates is that there was a very fine line still between what was acceptable and what was condemnable, and it was this problem that the Court of Queen's Bench sought to solve when *The Confessional Unmasked* was tried for the third and final time.

Cockburn's Judgment on Literary Obscenity

Tried before the Court of Queen's Bench under the Lord Chief Justice Alexander Cockburn on April 29th 1868, this third hearing aimed to resolve once and for all the question of whether the original verdict decided on by the magistrates Hickling and Walton in Wolverhampton was to stand or whether Powell's reversal of this judgment would be upheld. After the current legal

[384] 'The Legality of the "Confessional Unmasked"', p. 10.
[385] 'The Legality of the "Confessional Unmasked"', p. 10.
[386] 'The Legality of the "Confessional Unmasked"', p. 10.

standing of the case was recapped for the Justices' benefit, Mr Kydd (Kidd), once again acting in defence for Henry Scott, put forward a similar argument to that in the case's first hearing. He reasoned that there were other texts and images being publicly sold and displayed with obscene content within them and that his client, Scott, had only wished to bring to light Catholic misdemeanours. However, Justice Blackburn contested that this 'good' intent on publishing the pamphlet was immaterial when weighed against the damage the text could cause:

> Then, do you say that, having such an object, it justifies any amount of publication of obscene matter and any amount of public mischief?[387]

Blackburn, mirroring the opinion of the *Pall Mall Gazette* article, evidently did not feel that the ends justified the means in the case of this pamphlet. While the early debates surrounding the Obscene Publications Act had argued that literary obscenity could be determined by the motive of the person publishing the item in question, the original motivation of Scott in distributing this text was almost dismissed as inconsequential. Throughout the proceedings, he had been recognised as a well-meaning and respectable figure, but this had no weight when balanced against the blatant obscenity within *The Confessional Unmasked*. It was the text alone that was judged in the end, rather than the civil liberties which allowed such an opinion to be expressed in the first place.

Following Kydd's defence the judges left the court to weigh up the situation, and it was the speech then given by Chief Justice Cockburn that formed the 'test' for obscenity which was to form the basis for all future obscenity cases. Cockburn announced that the decision to allow the publication of *The Confessional Unmasked* by Powell was to be reversed, and although he acknowledged the reasoning behind the Recorder's decision to overturn the magistrates' verdict due to the good intentions behind Scott's action, Cockburn announced, 'In that respect I differ from him [Powell], and I think that if there be an intentional breach of the law, the criminal character of the act is not affected by the existence of some ulterior object of an honest character'.[388] He then went on to add that despite this ulterior motive – to condemn Catholic practices –

[387] 'Court of Queen's Bench', *The Times*, 30 April 1868, p. 12.
[388] 'Court of Queen's Bench', 30 April 1868, p. 12.

existing, the content of the text itself is clearly obscene and indictable under the legislation of the Obscene Publications Act.[389]

In spite of the Protestant Electoral Union's claims that *The Confessional Unmasked* merely reprinted evidence taken from Catholic tracts, and was only immoral in the religious sense, all three courts had found the text to contain obscene material and therefore the pamphlet was classed as an obscene publication. Unlike previous prosecutions, where there seemed to be an element of doubt as to the true nature of obscenity, in this case it appeared almost blindingly obvious to all that the text within the pamphlet was obscene in the truest form. As Cockburn explains:

> I take it that the test of obscenity is this – whether the tendency of the matter published is to deprave and corrupt the minds of those whose minds are open to such evil influences, and into whose hands it may happen to fall? [...] The law says you must not publish an obscene book. The book here published is obscene. The obscenity is clear and decided, and it is impossible to suppose that the man who published it did not know that the effect upon the minds of many of those who read it must have been of the most mischievous character.[390]

Cockburn went on to add that the arguments within the text, that 'Wives and Daughters' needed to be protected from the priesthood in the Roman Catholic Church, were a weak excuse for the publication of such obscene content as the majority of those who read *The Confessional Unmasked* would not have dreamed of becoming Catholic and thus facing the prospect of the confessional in the first place.[391] This assertion by Cockburn strips the text of its alleged moral convictions and leaves it exposed as merely a lewd printed attack against the Catholic Church. Cockburn, it seems, would find no morality present in the pamphlet regardless of intention or execution.

Summing up the Judges' decision to reverse Powell's verdict in the Quarter Sessions in Wolverhampton and to destroy the copies of the text seized, he concluded:

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[389] 'Court of Queen's Bench', 30 April 1868, p. 12.
[390] 'Court of Queen's Bench', 30 April 1868, p. 12.
[391] 'Court of Queen's Bench', 30 April 1868, p. 12.

> The publication is obscene; and if a man publishes matter manifestly obscene he must be taken to have had the intention which is to be inferred from his act, and it is not permitted to him to say that he had a good object in doing it. This the law does not allow; the law must be obeyed, and any ulterior objects must be attained by means which are not a breach of the law.[392]

This statement is worded almost as a warning to others who may try to use the same defence as Scott. Clearly Cockburn felt that whatever pure or noble intentions might be claimed in future trials under the Act, they would be disregarded if the manner in which their cause was addressed either showed blatant obscenity or had a corrupting influence on those who read it.

In an interesting move, after Cockburn had spoken, Justice Blackburn also summed up his feelings on the case and addressed the controversial and confusing issue of what to do when the 'obscene' text in question was one that was highly respected literature:

> The statute, he said, required that the magistrates should be satisfied not only that the publication was obscene and indictable as such, but also a "proper subject of indictment," which no doubt, was intended by the Legislature to prevent vexatious prosecutions of old and standard works which might contain some obscene matter, as, for instance, the works of Swift and Dryden, or some of our older dramatists.[393]

By addressing this issue, Blackburn had sought to answer one of the key questions still surrounding the legislation: what was to be done in the case of art and classical literature?

The Consequences of Cockburn's Judgement

Cockburn's seminal judgement on the issue of obscenity and intent came to define the prosecutions which occurred in the century after this trial. In the aftermath of Henry Scott's prosecution and the destruction of the copies of *The*

[392] 'Court of Queen's Bench', 30 April 1868, p. 12.
[393] 'Court of Queen's Bench', 30 April 1868, p. 12.

Confessional Unmasked, this judgement had a dramatic and immediate effect. Within a month of Cockburn's decision, on Tuesday 12th May, both the *Birmingham Daily Post* and the *Glasgow Herald* reported that in Rochdale, a town just outside Manchester, a dentist, Joseph Pearson Dickin, a known supporter of William Murphy, had his property searched and was indicted as a result for the possession and supposed distribution of another title published by the Protestant Electoral Union, *Depravity of the Roman Priest, and the Immorality of the Confessional: Discussion between William Murphy and Edward Money*.[394] Unlike Henry Scott, for whom it had been argued that he distributed *The Confessional Unmasked* for educational purposes rather than financial gain, Dickin was reported to be selling copies of the pamphlet for two shillings a piece, double the price of the pamphlet when it was advertised in *The Times* in 1865. It is difficult to determine though whether this price increase occurred due to inflation, the Protestant Electoral Union raising the price due to increased demand for the text, or whether Dickin himself was turning a 50 percent profit for selling the pamphlets.[395] Both reports stated that over 3800 copies of this new pamphlet had been seized, and that Murphy himself was present on the property and was indicted alongside Dickin in order to explain why these texts should not be destroyed. Of these two highly similar reports, it was only that of the more liberal *Birmingham Daily Post* that linked Murphy's presence in relation to these seizures with more riots that had occurred the day after in nearby Ashton, once again between supporters of the Protestant Electoral Union and Catholics who resented the incendiary content of Murphy's lectures and publications.[396]

On Wednesday 13th May 1868, Dickin and Murphy appeared in Rochdale Police Courts to defend themselves against the charges, although Murphy was only appearing in defence of the publications rather than of himself. The first account of this trial which appeared in the *Leeds Mercury* reported that Dickin's defence against the charge of distributing an obscene publication was that the books did not belong to him in the first place, but 'were left at his house by Mr.

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[394] 'Serious Riots at Ashton: Extensive Seizure of Murphy's Books', *Birmingham Daily Post*, 12 May 1868, p. 4; 'Extensive Seizure of Murphy's Books', *Glasgow Herald*, 12 May 1868, p. 2.

[395] 'Serious Riots at Ashton', p. 4; 'Extensive Seizure of Murphy's Books', 12 May 1868, p. 2.

[396] 'Serious Riots at Ashton', p. 4.

Murphy as a matter of convenience'.[397] This defence that the books were only located on Dickin's property for storage purposes was dismissed when the Chairman of the trial enquired: 'you admit that they were in your possession and for sale?'[398] When Dickin replied in the affirmative, the magistrates ordered the publications to be destroyed. Although the *Leeds Mercury* report on this case was the earliest account published in a newspaper, it was not the most detailed report. The *Glasgow Herald*, for example, which was printed a day later, included additional details by stating: 'All women were ordered to leave the court before the examination began, and the advice was complied with.'[399]

Although other reports commented on the popularity of this trial amongst the public, only the *Glasgow Herald* mentions that women specifically were asked to leave to spare them the details of the case. Both the *Glasgow Herald* and others did add to the account of the court case by describing how the warrant for Dickin's premises came to be issued following the sale of a copy of *Depravity of the Roman Priest* to a Susan Meredith who then sold it forward to a policeman.[400] The women being asked to vacate the court in order to protect their sensibilities was not the only case of censorship to protect the audience within the court. When presenting to the Magistrates the obscenity contained within *Depravity of the Roman Priest*, Mellor, the town clerk refused to describe the offensive passages out loud:

> He would not read one of them aloud in court, but would hand them up to the magistrates. The Town-clerk directed the magistrates' attention to the ninth page of the book, and said it was most obscene, filthy, abominable, and scandalous.[401]

This was not particularly uncommon as earlier books censored had not been read aloud in court either; however, given that this publication was described as a

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[397] 'Local and General: The seizure of Murphy's Obscene Book', *Leeds Mercury*, 14 May 1868, p. 3.
[398] 'Local and General', p. 3.
[399] 'Murphy's Obscene Books Ordered to be Destroyed', *Glasgow Herald*, 15 May 1868, p. 6. This detail was perhaps aimed towards the newspaper's conservative male readership.
[400] 'Murphy's Obscene Books,' p. 6. As stated, the *Glasgow Herald* was not the only newspaper to report this detail. The *Manchester Times* ('Extensive Seizure of Murphy's Books', 16 May 1868, p. 5.) and *Derby Mercury* ('[Untitled]', 20 May 1868, p. 6.) also reported on Meredith's involvement in the case.
[401] 'Extensive Seizure of Murphy's Books', *Manchester Times*, 16 May 1868, p. 5.

discussion on religious matters, to censor the content seems to be a strong measure and could arguably be a reaction to the strong judgement meted out on the similar *The Confessional Unmasked*. Indeed, the judgement given by Cockburn and Blackburn on *The Confessional Unmasked* was even raised as a point for consideration in judging this text. During Mellor's speech for the prosecution, he noted:

> A similar case had been tried by the magistrates of Wolverhampton, and finally had been decided in the Court of Queen's Bench. The chief justice held that the intention might be good, but that it was an obscene publication and ought to be destroyed.[402]

Following this judgement, the copies of *Depravity of the Roman Priest* were ordered destroyed, despite Dickin's appeal otherwise. Given the immediacy of both the issuing of the warrant and the decisive ruling that the publications be destroyed, it can be reasonably assumed that Cockburn's ruling on *The Confessional Unmasked*'s obscenity had a tremendous impact on how the Obscene Publications Act was viewed, especially when it came to religious publications. The trial of *Depravity of the Roman Priest* featured none of the criticisms that had dogged the earlier trial, such as the questioning of the validity of the search warrants and rights of police to seize the texts, or the lengthy appeals against the initial conviction. Perhaps learning from the drawn out and contradictory nature of the case of *The Confessional Unmasked*, the magistrates in this instance came to a quick and decisive judgement on *Depravity of the Roman Priest* by disregarding any protests from Dickin and Murphy that the text was a force for good as it exposed Catholic misdeeds, and focusing solely on the obscene content.[403]

The speed at which this prosecution progressed and with which the appeal was dismissed was evidently a result of Cockburn's ruling a month earlier. This prosecution took place without any of the hesitancy or confusion over obscenity that had marred the earlier prosecution cases in the decade beforehand. Cockburn's ruling, what would come to be known as the Hicklin Test for obscenity, had evidently clarified in the lawmakers' eyes what they were

[402] 'Extensive Seizure of Murphy's Books', 16 May 1868, p. 5.
[403] 'Extensive Seizure of Murphy's Books', 16 May 1868, p. 5.

looking for in terms of literature outside of pornography, and they wasted no time in putting it to the test in Dickin's case. While Dickin's trial had a sensationalist edge to it, what with his defence of the publication and the presence of William Murphy, already a figure of interest, both in court and in Dickin's property when the seizures where made, there was another less dramatic prosecution taking place at the same time under the same charge which merited only a few lines in the newspapers. In the same courtroom that Dickin was tried, another man, John Huddleston, a bookseller, was also prosecuted for possessing thirteen copies of *Depravity of the Roman Priest*. Unlike the publicity given to Dickin's prosecution, however, Huddleston's prosecution on the same charge was dealt with swiftly and, according to the newspaper reports, without argument.[404] The same verdict was given in Huddleston's case and the publications in question were destroyed, but this prompt judgement demonstrates, perhaps more than in Dickin's case, just how much of a change Cockburn's pronouncement would have. No longer was the character of the seller up for debate; instead the only issue called into question was the obscenity of the text and then what action was to be taken to deal with the problem.[405] In the immediate aftermath of the decision of the Court of Queen's Bench, it appeared that new stricter and more fast-paced measures were beginning to be undertaken in the legal fight against obscenity.

Conclusion

In the wake of Cockburn's decision and the new 'Hicklin' test for obscenity, in which any publication containing obscenity could be prosecuted regardless of meaning or context, the number of obscenity prosecutions rose, with the 1870s and 1880s seeing an unprecedented number of texts prosecuted. Novels, previously a difficult genre of book to indict due to the intangible nature of any controversy written within, were now being pursued with books by authors such as Thomas Hardy and Emile Zola falling foul of the legislation. Lord Campbell's desire to see immoral fictional works prosecuted and banished from the shelves was finally coming true, albeit a good decade after his death. Other forms of print were also gradually falling under the legislation following the 1868

[404] 'Extensive Seizure of Murphy's Books', 16 May 1868, p. 5.
[405] 'Extensive Seizure of Murphy's Books', 16 May 1868, p. 5.

judgement. In 1885, the journalist W.T. Stead's controversial four-part article for the *Pall Mall Gazette*, 'The Maiden Tribute of Modern Babylon', saw Stead imprisoned for child abduction and various street sellers of the magazine prosecuted under the Obscene Publications Act for trading the journal.[406] While the early 1860s had seen debates on the limits to which the press could discuss 'obscene' matters, very little before this had been done legally to combat obscenity in newspapers and journals, and the legislation came down hard upon the *Pall Mall Gazette*.

The fast-evolving publishing industry and constantly changing attitudes towards what could acceptably be printed, along with the uncertain nature of the original Obscene Publications Act, made legislating during the late 1850s and 1860s confused and unsystematic. In an era when scandal and sensation were becoming increasingly popular amongst readers of both fact and fiction, the Obscene Publications Act struggled to operate in its original form where only the obviously immoral and dangerous could be prosecuted. In many ways, the legislation was constantly struggling during its first decade to keep up with changes, not only in publishing and the press, but in legislation, society, religion, science and medicine as well. In this period, when the legislation was establishing itself, the ever-changing Victorian society responded by appropriating the Obscene Publications Act and giving it new meaning based on society's needs, rather than meaning based on a firm moral grounding. The Obscene Publications Act of 1857 can therefore be seen to be a prototype of both itself and of future obscenity legislation, bearing more resemblance to the common law obscenity legislation that immediately preceded it, as opposed to the definitive form the legislation took following its 1868 amendment.

Even with the new legal precedent set by Cockburn in 1868 which led to an increased volume of prosecutions under the Obscene Publications Act, it is somewhat ironic that the next individual to be prosecuted immediately after Dickin and Huddleston using the anti-obscenity legislation was in fact William Dugdale, the radical-turned-pornographer and repeat offender, and one of the first publishers prosecuted under the Act when it was passed in 1857. Dugdale, alongside his servant James Milson, was prosecuted after the seizure of 35,000

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[406] W. Sydney Robinson, *Muckraker: The Scandalous Life and Times of W.T. Stead, Britain's First Investigative Journalist* (London: The Robson Press, 2012).

publications and 500 images from a property in Holywell Street.[407] Despite Dugdale being 73 years old at the time of this prosecution case, he was granted no leniency on account of his old age:

> The Assistant Judge, in pronouncing sentence, expressed his opinion that the age of Dugdale was rather an aggravation of than an excuse for his offence, and accordingly committed him for eighteen months.[408]

In this instance, both Dugdale's past convictions for the same offence and age counted against him, with the Assistant Judge's ruling seeming to pronounce that Dugdale was essentially old enough to know better when it came to this offence, and, henceforth, he received a harsher judgement than he may have got if this had been a first offence. As seen in the other cases during the 1860s, the rulings towards offenders varied between short prison sentences, fines and mere destruction of the offensive materials. Dugdale's punishment, however, was direct and relatively harsh, with eighteen months' imprisonment being towards the upper end of the scale when it came to average prison terms for this particular crime. As it was, this conviction for publishing and distributing obscene publications was Dugdale's last. He died in Clerkenwell House of Correction in November of the same year.[409] Commenting on Dugdale's final arrest and conviction, the *Cheshire Observer* noted that 'the prints and lithographic stones seized at the time of Dugdale's last apprehension were worth several thousand pounds, and if of a moral character would have been of considerably greater value'.[410] In one of the lengthier obituaries that marked Dugdale's death, the *Glasgow Herald* described his death as a victory for morality:

> With his death one of the most indefatigable instruments for pandering to depraved tastes has been removed, and it is to be hoped that morality will be permanently the gainer.[411]

Dugdale had become a publisher whose name was synonymous with immorality and obscenity to the extent where he almost rises above the common criminality

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[407] '[Untitled]', *Standard*, 14 July 1868, p. 4.
[408] '[Untitled]', 14 July 1868, p. 4.
[409] 'Death in Gaol of a Notorious Character', *Cheshire Observer*, 21 November 1868, p. 7.
[410] 'Death in Gaol', p. 7.
[411] 'Death of a Literary Pest', *Glasgow Herald*, 18 November 1868, p. 7.

of other obscenity publishers. His repeat offending had given him publicity and a notoriety that was reflected in the various obituaries.

At the inquest into his death, which was found to result from natural means, his daughter complained that Dugdale's will to live may have been prolonged if he had been given more intellectual reading material, other than the *Bible*, religious tracts, and copies of *Leisure Hour* and *Chamber's Journals*, while in prison.[412] It is possible that Dugdale's distaste for the religious texts he had been provided with was due to his past as a publisher of radical literature, which could be viewed as a sign of possible atheism, rather than because of the intellectual content of such texts. Rather ironically, the jury at the inquest agreed with this pronouncement of Dugdale's daughter and recommended that in future gentlemen such as Dugdale should be given a higher quality of reading material while in prison, a decision which the *Glasgow Herald* greeted with some incredulity and a somewhat sarcastic response:

> From all these incidents an observant reader would arrive at various remarkable conclusions – first, that Mr William Dugdale knew the Bible, the Prayer Book, and "tracts" – number unknown – by heart; secondly, that books on history and geography contained an elixir that would have prolonged his valuable life; thirdly, that, in the opinion of a British jury, he belonged to the "higher class of men;" and fourthly, that the Bible, Prayer Book, &c., are below the "intellectual character" which a Clerkenwell jury thinks adapted to the lofty mental type to which the late Mr Dugdale belonged.[413]

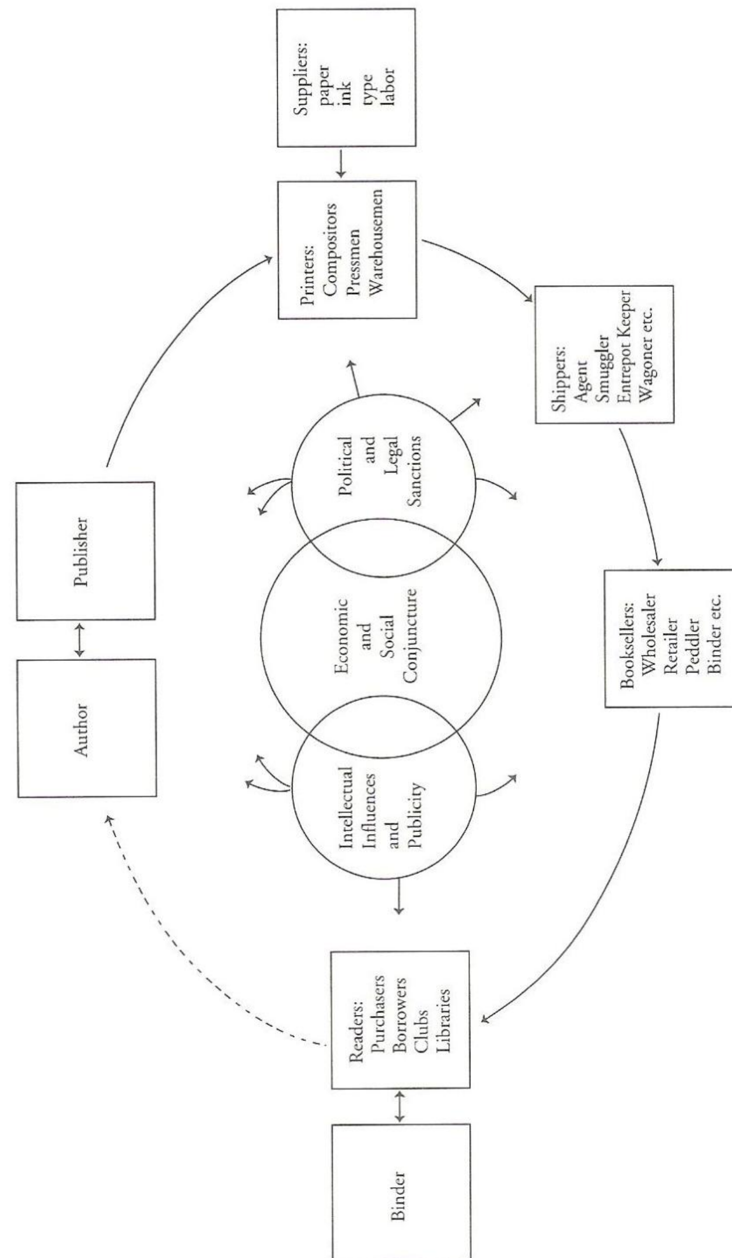
Whether it could be argued that Dugdale was of that "higher class of men" that would appreciate quality literature or not, it remains the case that throughout this period, from the passing of the Obscene Publications Act until his death, he was one of the obscenity industry's most notorious pornographers and one of the most prosecuted of publishers. His passing marked the end of a particular chapter in obscenity legislation, and the introduction of a new phase – heralded by the Hicklin case – that was to last for almost a century.

[412] 'Death of a Literary Pest', p. 7. It is unknown whether Dugdale's daughter present at the inquest was also the daughter who married James Thornhill, a fellow pornographer operating with Dugdale's support in the late 1850s.
[413] 'Death of a Literary Pest', *Glasgow Herald*, 18 November 1858, p. 7.

Appendices

Appendix 1

Darnton's Communications Network



From Robert Darnton, *The Forbidden Bestsellers of Pre-Revolutionary France* (New York and London: W.W. Norton & Company, 1995), p. 183.

Appendix 2

Table of Prosecutions under the 1857 Obscene Publications Act, 1857-1868

Defendant	Publication	Original Prosecution Date	Prosecuting Counsel	Judge/Magistrate	Sentence	Source
Mary Elliott	Various unknown, inc. *Paul Pry*	22 September 1857	Mr Bodkin	Mr Jardine	Publications destroyed	*Morning Chronicle* , 23 September 1857, p. 8; *Morning Chronicle,* 26 September 1857, p. 5
Charles Paul	*Aristotle's Masterpiece* ; Various unknown, inc. *Paul Pry*	22 September 1857	Mr Bodkin	Mr Jardine	Publications destroyed	*Morning Chronicle* , 23 September 1857, p. 8; *Morning Chronicle* , 26 September 1857, p. 5
Reo [sic]/Reves	Various unknown, inc. *Paul Pry*	22 September 1857	Mr Bodkin	Mr Jardine	Publications destroyed	*Morning Chronicle* , 23 September 1857, p. 8; *Morning Chronicle* , 26 September 1857, p. 5
William Smith	Various unknown, inc. *Paul Pry*	22 September 1857	Mr Bodkin	Mr Jardine	Publications destroyed	*Morning Chronicle* , 23 September 1857, p. 8; *Morning Chronicle* , 26 September 1857, p. 5
James Thornhill	*Aristotle's Masterpiece* , Various unknown	22 September 1857	Mr Bodkin	Mr Jardine	Publications destroyed	*Morning Chronicle* , 23 September 1857, p. 8; *Morning Chronicle* , 26 September 1857, p. 5
Mary Wilson	Various unknown, inc. *Paul Pry*	22 September 1857	Mr Bodkin	Mr Jardine	Publications destroyed	*Morning Chronicle* , 23 September 1857, p. 8; *Morning Chronicle* , 26 September 1857, p. 5
Mary Elliott	Various unknown, inc. Paul Pry	20 November 1857	Mr Bodkin	Mr Jardine	Publications destroyed	*Morning Post* , 21 November 1857, p. 7
Edward Morris	*Aristotle's Masterpiece* ; Various unknown	20 November 1857	Mr Bodkin	Mr Jardine	Publications destroyed	*Morning Post* , 21 November 1857, p. 7
Thomas Blackall; William Dugdale	Various unknown	20 November 1857	Mr Bodkin	Mr Jardine	Publications destroyed	*Morning Post* , 21 November 1857, p. 7
William Wynn	*Aristotle's Masterpiece* ; *Fox's Book of Martyrs* ; Various unknown	20 November 1857	Mr Bodkin	Mr Jardine	*Fox's Book of Martyrs* returned; Other publications destroyed	*Morning Post* , 21 November 1857, p. 7
Richard Wynn	Various unknown	20 November 1857	Mr Bodkin	Mr Jardine	Some publications destroyed; Others returned	*Morning Post* , 21 November 1857, p. 7
John Thornhill; William Dugdale	Various unknown	20 November 1857	Mr Bodkin	Mr Jardine	Publications destroyed	*Morning Post* , 21 November 1857, p. 7

James Cowen	Unknown religious placard	23 November 1857	Unknown	Unknown	Released on bail	*Old Bailey Online* , <http://www.oldbaileyonline.org/browse.jsp?id=t18571123-7&div=t18571123-7&terms=obscene#highlight>
John Higdon Thornhill	Various unknown	4 January 1858	Unknown	Unknown	Released on good character reference	*Old Bailey Online* , <http://www.oldbaileyonline.org/browse.jsp?id=t18580104-160&div=t18580104-160&terms=obscene#highlight>
Thomas Blacketer	Various unknown	2 February 1858	Unknown	Unknown	Six months' hard labour	*The Times* , 3 February 1858, p. 9
John Rigdon Thornhill	Various unknown	2 February 1858	Unknown	Unknown	Six months' hard labour	*The Times* , 3 February 1858, p. 9
Mary Elliott	Various unknown	2 February 1858	Unknown	Unknown	Twelve months' hard labour	*The Times* , 3 February 1858, p. 9
George (John?) Ray	Unknown drawings and songs	16 August 1859	Detective-Officer Patridge	Unknown	40 shillings fine	*Huddersfield Chronicle and West Yorkshire Advertiser* , 20 August 1859, p. 6
John Piper	Unknown photographic prints	24 October 1859	Unknown	Unknown	Six months' imprisonment and two years' recognisances	*Old Bailey Online* , <http://www.oldbaileyonline.org/browse.jsp?id=t18591024-963&div=t18591024-963&terms=obscene#highlight>
Maurice Desplaud Roux	Unknown photographic prints	24 October 1859	Unknown	Unknown	Six months' imprisonment and two years' recognisances	*Old Bailey Online* , <http://www.oldbaileyonline.org/browse.jsp?id=t18591024-963&div=t18591024-963&terms=obscene#highlight>
William and Lewis Lloyd	Anatomical wax models	31 December 1859	Mr Bond, Mr English	Mayor W. Kelsall	Models destroyed	*Leeds Mercury* , 3 January 1860, p. 3
William Dugdale	Various unknown	7 October 1861	Mr Sleigh, Mr Pritchard, Mr Ollette	Mr Bodkin	Sentence deferred	*The Times* , 8 October 1861, p. 9
Henry Smith	Various unknown	7 October 1861	Mr Sleigh, Mr Pritchard, Mr Ollette	Mr Bodkin	Sentence deferred	*The Times* , 8 October 1861, p. 9

Adolphus Henry Judge (Delplangue)	Various unknown	3 March 1862	Mr Sleigh, Mr Giffard	Unknown	Twelve months' hard labour	*The Times* , 4 March 1862, p. 11
John Ellam	Various unknown	28 April 1865	Unknown	Unknown	One month imprisonment	*Huddersfield Chronicle and West Yorkshire Advertiser* , 29 April 1865, p. 6
Adolphus Henry Judge (Delplangue)	Various unknown	26 March 1866	Sergeant Thomas, Mr Sleigh, Mr M. William, Mr Pritchard, Mr Ollette	Mr Vaughan, Mr Bodkin, Mr Payne	Two years' hard labour, two sureties equalling 50l., 100l. bail to be paid by Judge	*The Standard* , 27 March 1866, p. 7; *Daily News* , 4 April 1866, p. 6
Henry Scott	*The Confessional Unmasked: Showing the Depravity of the Romish Priesthood, the Iniquity of the Confessional and the Questions put to Females in Confession*	18 March 1867	Unnamed town clerk of Wolverhampton,	Mr B. Hickling, Mr F. Walton, Lord Chief Justice Alexander Cockburn, Justice Blackburn	Publications destroyed	*The Times* , 20 March 1867, p. 12; *The Times* , 30 April 1868, p. 12.
Joseph Pearson Dickin	*Depravity of the Roman Priest, and the Immorality of the Confessional: Discussion between William Murphy and Edward Money*	13 May 1868	Mr Mellor	Unknown	Publications destroyed	*Glasgow Herald* , 15 May 1868, p. 6
John Huddleston	*Depravity of the Roman Priest, and the Immorality of the Confessional: Discussion between William Murphy and Edward Money*	13 May 1868	Mr Mellor	Unknown	Publications destroyed	*Glasgow Herald* , 15 May 1868, p. 6

William Dugdale	Various unknown	13 July 1868	Superintendant Durkin	Unknown	Eighteen months' imprisonment	*The Standard*, 14 July 1868, p. 4
James Milson	Various unknown	13 July 1868	Superintendant Durkin	Unknown	Nine months' imprisonment	*The Standard*, 14 July 1868, p. 4

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