Wicked Words and Illegal Imaginings:
A Genealogy of Obscenity
In Which a Criminological Case Study of *Fanny Hill* Is Conducted

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ABSTRACT

A genealogy of the concept of obscenity is conducted through a case study of John Cleland's novel, *Memoirs of a Woman of Pleasure* (1748-1749), popularly known as *Fanny Hill*. Analytic attention is focused on *events* (i.e. given moments in history characterized by struggle), *discourses* (i.e. systems of knowledge), and *practices* (i.e. institutional procedures), all of which are interrelated, and *problematizes* them with a moral regulation interpretive framework. This dissertation considers how *Fanny Hill* was (re)problematized as obscene through historically specific discursive practices, and how these discursive practices, conceived as the exercise of power in conjunction with systems of knowledge or as projects of moral regulation, had effects on the constitution of subjectivities and social orders. Further, this dissertation problematizes the ways that these discourses, practices and effects – particularly those pertaining to harm – continue into the present.

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CHAPTER I

Making Criminological Sense of Literature, Obscenity and Obscene Literature

Introduction

Once upon a time, I became interested in literature as a valuable but neglected object of criminological study. I'm not unique in thinking that cultural or artistic artefacts have a lot to say; Becker believes that "telling about society" (the title of his book) is common to researchers, journalists and artists.[1] Like Becker, I enjoy movies and literature and feel that through them I learn "interesting stuff about society".[2] It was a good day when I realized that I could actually study this "stuff", combining my interest in criminology and literature in a scholarly project. I didn't have to confine myself to the "official literature" but could explore literature itself. "Obscene literature" provided an interesting opportunity to explore forbidden or criminalized literature, and recent events involving *Fifty Shades of Grey* (2011) and Luka Magnotta suggest that a criminological study of obscenity is particularly timely.

Fifty Shades, published between 2011 and 2012, is a best-selling trilogy written by E. L. James; the first novel was translated into film in 2015. *Fifty Shades* is sexually explicit in content and involves BDSM, or bondage/discipline, dominance/submission, and sadism and masochism. The commercial and popular success of *Fifty Shades* is noteworthy because, at least in recent history, obscene literature was associated primarily with sexual literature, and in

[1] Howard S. Becker, *Telling About Society* (Chicago: University of Chicago Press, 2007), 7.

[2] Becker, *Telling About Society*, xi.

particular literature that contravened sexual norms.[3] The publication of the *Fifty Shades* trilogy, however, seemed to indicate that sexual literature was "liberated" from the "bonds" of censorship (or that it could publicly and profitably enjoy its bonds).[4] If that was the case, I wanted to know what happened to make the unhindered publication of sexual literature possible. Alternatively, I wanted to know if this "mommy porn" (as it was called in popular media) was subject to different, perhaps extra-legal forms of censure or regulation. Basically, I wanted to know if obscenity – or our ideas about obscenity – ended or transformed.

The second event suggesting that a criminological study of obscenity is timely related to the first degree murder of Lin Jun by Luka Magnotta in 2012, which received international attention. Magnotta filmed the murder and dismemberment of Jun, as well as necrophilic acts, in the video *1 Lunatic 1 Ice Pick*. What caught my attention was that Magnotta was also charged with publishing and mailing obscene material;[5] he uploaded part of the video to Bestgore.com and mailed body parts to elementary schools and political party offices. Again, this raised the possibility that the legal category of obscenity had at some point in history changed, no longer attaching itself to fiction, such as literature, film or art, but to "real" acts.

Both *Fifty Shades* and Magnotta captured popular interest. I suggest that a study of obscene literature – through a case study of the novel *Fanny Hill* (1748-1749) – provides

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[3] For example, three of the most well-known and analysed examples of obscene literature include *Memoirs of a Woman of Pleasure*, also known as *Fanny Hill* (1748-1749), which describes the sexual career of a prostitute, and *Madame Bovary* (1856) and *Lady Chatterley's Lover* (private version 1928, public version 1960), both of which deal with adultery.

[4] While I later discuss the problem with conceiving obscenity within a legalistic framework of oppressive censorship, liberation and progress continue to be prominent themes in popular and academic discourse pertaining to obscenity.

[5] This was interesting because a first degree murder conviction carried the maximum penalty of life imprisonment; the additional charges of obscenity were therefore superfluous, but perhaps served another (denunciatory?) function.

exciting academic possibilities for criminology beyond acting as a "novel" object of study. This project makes substantive, methodological and theoretical contributions. Briefly, this project contributes empirically to the literature on obscenity generally and to the novel *Fanny Hill* specifically by describing historical events and relations that are implicated in the conceptualization of obscene literature. Methodologically, this project demonstrates that a study of obscene literature benefits criminology by encouraging reflexivity when literature is taken as an object of study; it also reintroduces the genealogical importance of locating the emergence and descent of obscenity within history (distinct from progress narratives) while critically considering the effects of power and knowledge on the constitution of subjects and social orders; and finally this project demonstrates how to move between and effectively study the relations between thought objects (e.g. obscenity) and material objects (e.g. the novel *Fanny Hill*). Theoretically, this project offers a conception of obscenity and its historical relations, and also moves beyond an historical description of obscenity in order to implicate obscenity (including its effects and regulation) in the present. This project therefore provides criminological contributions both through the research process and the research project. The following section briefly introduces the problematic object of study around which this project develops.

A Brief History of *Fanny Hill* and Obscene Literature

I have already mentioned that *Fanny Hill* is the empirical referent for this project.[6] This section describes the process of selection and provides a brief history of the novel. In order to select an object of study, I compiled a list of books that had been declared legally obscene but were later declared "classics"; these books, I reasoned, could best demonstrate or at least point to

[6] John Cleland, *Fanny Hill: Or, Memoirs of a Woman of Pleasure* (1748-1749; New York: Modern Library, 2001).

transformations in legal and popular understandings of obscenity. I had a list of about twelve titles ranging in dates from the mid-eighteenth to the mid-twentieth centuries, published in different languages and countries. While they all seemed interesting (of course) and I could see potential links between them, it would have been impossible to conduct a rigorous, nuanced, meaningful study of obscene literature that could adequately account for the differences of time, place and text across so many different novels. Fortunately, *Fanny Hill* seemed tailor-made for my purposes, given that I was particularly interested in the historical emergence and transformation of the obscene as it pertained to literature.

John Cleland's *Memoirs of a Woman of Pleasure*, popularly known as *Fanny Hill*,[7] is unique in its persistence in history. First published in two volumes in 1748-1749, *Fanny Hill* is generally acknowledged to be the first English language pornographic, or sexually obscene, novel.[8] What is so fascinating about this novel is that for over two hundred years *Fanny Hill* was subject to numerous efforts to regulate it on the grounds of obscenity. The enduring preoccupation with *Fanny Hill* offers an unparalleled opportunity to explore and document the transforming discourses and regulatory practices associated with obscene literature in general, and this novel in particular; in other words, *Fanny Hill* is a lens through which to view the regulatory projects – from moral campaigns to economic restrictions and sanctions to criminalization to aestheticization to academicization – that pertain to literature and the obscene.

The main objection to studying this admittedly unique case is whether *Fanny Hill* is exceptional or typical in comparison to other pieces of literature that have been identified as

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[7] *Fanny Hill* is the title of the expurgated version that was published in 1750. Both popular and academic literature variously refer to the novel either by its original or eponymous title. I generally refer to the novel by its more popular and recognizable name.

[8] E.g. David Foxon, *Libertine Literature in England 1660-1745* (New York: University Books, 1965), 45.

obscene. *Fanny Hill* is certainly exceptional in terms of its longevity and visibility as obscene literature, both materially and symbolically. However, it is also typical in that other events involving obscene literature, such as trials or seizures, clustered around events involving *Fanny Hill*. I argue that *Fanny Hill* is both exceptional and typical; this project seeks to make sense of the clusters of historical events in which *Fanny Hill* was implicated, as well as the strange significance and even symbolism of *Fanny Hill* as obscene literature, in order to better understand the historical conceptualization and effects of obscenity.

Obscene libel having been recognized in English common law in 1727, the impoverished upper class author John Cleland drew the attention of the British Privy Council with the publication of *Memoirs* in 1749 and the expurgated *Fanny Hill* in 1750; criminal charges against him were recommended, but were never pursued.[9] Less than ten years later, subsequent editions of the novel were deemed legally obscene in Britain.[10] Decades later in 1821, *Fanny Hill* was the first novel to be successfully prosecuted in the United States (Massachusetts) for obscenity;[11] the novel had been in circulation in the New England states for several years, and possibly decades.[12] In addition to political and legal intervention in both Britain and the United States, *Fanny Hill* was subject to ongoing economic sanctions (e.g. seizures), as well as cultural campaigns organized by groups such as the Society for the Suppression of Vice and Citizens for Decent Literature. In the 1960s, legal battles were launched to prevent *Fanny Hill* from being

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[9] Foxon, *Libertine Literature*, 58.

[10] Donald Thomas, *A Long Time Burning: The History of Literary Censorship in England* (London: Routledge and Kegan Paul, 1969), 85.

[11] *Commonwealth v. Holmes*, 17 Mass. 336 (1821)

[12] Marcus A. McCorison, "Two Unrecorded American Printings of 'Fanny Hill'," *Vermont History* 40 (1972): 64-66; Marcus A. McCorison, "Memoirs of a Woman of Pleasure or Fanny Hill in New England," *American Book Collector* 1 (1980): 29-30.

published in Britain and the United States. While *Fanny Hill* was found to be obscene in Britain in 1964,[13] unexpurgated versions were published soon thereafter with no legal consequences.[14] In 1966, the United States Supreme Court ruled that *Fanny Hill* was not obscene and seemed to inaugurate the legal recognition of the "art for art's sake" movement.[15] This court decision affirmed that *Fanny Hill* had a modicum of redeeming social value, characterized as artistic merit and historical and social insight.[16] With this decision, *Fanny Hill* went from being conceptualized as obscene to being conceptualized as literature; this project demonstrates that this historical transformation was both complex and contingent, and that it has significant consequences beyond the legal or aesthetic determination of a book.

The art for art's sake paradigm has had significant consequences for critical social sciences in the last fifty years; in assuming that literature is "merely" or "purely" aesthetic, the historical function and social impact of literature – and especially of *Fanny Hill* – are being neglected and perhaps forgotten.[17] The tendency to treat literature as a value-free medium that exists on an alternate artistic plane of reality, separate from social processes and implications, is

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[13] *R. v. Gold (Mayflower Books intervening)*, (1964). See footnote 986.

[14] Thomas Grant, "'Exciting, Bawdy, Extrovert': *R v Gold (Mayflower Books Intervening) (1964)*," in *Jeremy Hutchinson's Case Histories* (London: John Murray, 2015), 168.

[15] The ideas of art for art's sake are well-formulated in Oscar Wilde's preface to his novel, *The Picture of Dorian Gray*, originally published in 1891. He explains that while an author might use vice and virtue as material for art, art itself was neither immoral nor virtuous, but rather aesthetic and amoral. He writes: "They are the elect to whom beautiful things mean only Beauty. There is no such thing as a moral or an immoral book. Books are well written, or badly written. That is all." Oscar Wilde, *The Picture of Dorian Gray* (1891; London: Arcturus, 2009), 7.

[16] *A Book Named "John Cleland's Memoirs of a Woman of Pleasure" v. Attorney General of Massachusetts*, 383 U.S. 413 (1966)

[17] Annabel Patterson, *Censorship and Interpretation: The Conditions of Writing and Reading in Early Modern England* (Madison: University of Wisconsin Press, 1984), 23.

uncritical and ahistorical. Because literary art (or literature) problematizes and is problematic, wanting to control or regulate it is an historical exercise;[18] the current acceptance of literature as art is a recent development that limits the social science gaze. While certain schools of thought, such as feminism and Marxism, have focused on cultural production as a site of political conflict, scholarly attention to cultural artefacts such as literature is minimal within criminology; this project seeks to reintroduce obscene literature as an object of study that speaks to the regulation not only of books, but also of subjects and social orders. This insistence on the importance of problematizing obscenity is particularly important given that the lawyer involved in several high-profile obscenity cases in the United States (including the *Fanny Hill* cases), Charles Rembar, wrote a book entitled *The End of Obscenity*.[19] The belief that obscenity ended in the 1960s fails to account for its re-emergence (or reinvention or transformation) as a problem at the turn of the century (e.g. as a significant feminist concern in the 1980s and 1990s). I suggest that the persistence of obscenity and its regulation is not only historical, but continues in the present and thus justifies this criminological project that considers the emergence, existence and effects of the obscene.

Literature has been regulated or forbidden since at least the sixth century when the *Decretum Gelasianum*, the first Roman Index, banned heretical, apocryphal, and superstitious works, as well as the forged works of martyrs.[20] To give a few other examples, the *Index*

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[18] Jonathan Dollimore, *Sex, Literature and Censorship* (Malden, MA: Blackwell, 2001), xi-xii.

[19] Charles Rembar, *The End of Obscenity: The Trials of* Lady Chatterley, Tropic of Cancer, *and* Fanny Hill (New York: Random House, 1968).

[20] John Chandos, "'My Brother's Keeper'," in *'To Deprave and Corrupt...': Original Studies in the Nature and Definition of 'Obscenity'*, ed. John Chandos (New York: Association Press, 1962), 16.

Librorum Prohibitorum, published in 1559, prohibited certain works throughout Christendom and was not suppressed until 1965.[21] The *Officiorum ac munerum* of 1897 prohibited writing that defended duelling, suicide, divorce, or provided information on secret societies.[22] In each of these cases, the indices were created by the Church rather than the state. What is perhaps surprising is that none of these or other similar historical compilations of forbidden books devote much attention to sexual works. In other words, the association of literature and sexuality as problematic or obscene is a relatively recent historical development that roughly corresponds to the publication and subsequent historical career of *Fanny Hill* and has largely occurred under state rather than religious regulation.

I emphasize the importance of an historical understanding or method because the obscene is frequently associated with morality and/or with the religious repression of sexuality. Historically, however, this is an inaccurate or incomplete understanding. This project makes sense of the concept of the obscene, and in particular its historical sequences, in order to recover the continuing influence of the past (and the obscene) within the present. The following section discusses how such a project on obscene literature "fits" within criminology.

Criminology and Literature

Within the social sciences there is some reluctance to adopt fiction as an object of study. Ruggiero writes that colleagues discouraged him from writing *Crime in Literature: Sociology of*

[21] Nicholas Harrison, *Circles of Censorship: Censorship and Its Metaphors in French History, Literature, and Theory* (New York: Oxford University Press, 1996), 11, https://doi.org/10.1093/acprof:oso/9780198159094.001.0001.

[22] Chandos, "'My Brother's Keeper'," 17.

Deviance and Fiction; they thought his transgression of disciplinary boundaries was unwise.[23] He persevered, however, because he believes that fiction can clarify sociological concepts and serve as a pedagogical technique.[24] This section investigates the constraints of conventional thinking within criminology, particularly pertaining to analyses involving literature, and describes the challenges and opportunities of such investigations.

Criminology has been the frequent object or target of criticism and critique. Shearing suggests that criminology is wrongly considered to be a "crime-ology", narrowly focused on the object of "crime".[25] Similarly, Braithwaite is critical of the rigidity of criminology for its commonly chosen objects of study, the three C's of criminology: cops, courts, and corrections.[26] In contrast, Garland and Sparks call criminology a "permeable" category that cannot and does not monopolize ideas about crime.[27] These discussions point to a conception of criminology as a substantive research area, or a more or less bounded discipline concerned in some way with crime. They are also suggestive of disagreement or fragmentation. Ericson and Carriere suggest that the "fragmentation" of criminology in terms of its objects of study, methods and aims is part

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[23] Vincenzo Ruggiero, *Crime in Literature: Sociology of Deviance and Fiction* (New York: Verso, 2003), acknowledgements.

[24] Ruggiero, *Crime in Literature,* 1.

[25] Clifford D. Shearing, "Decriminalizing Criminology: Reflections on the Literal and Tropological Meaning of the Term," *Canadian Journal of Criminology* 31, no. 2 (1989): 170-172, HeinOnline Law Journal Library.

[26] John Braithwaite, "The New Regulatory State and the Transformation of Criminology," *British Journal of Criminology* 40, no. 2 (2000): 229, https://www.jstor.org/stable/23638475.

[27] David Garland and Richard Sparks, "Criminology, Social Theory and the Challenge of Our Times," *British Journal of Criminology* 40, no. 2 (2000): 190, https://www.jstor.org/stable/23638473.

of a wider historical fragmentation of the academy and other social institutions.[28] They also suggest that this fragmentation allows for reflexivity.[29] Bosworth and Hoyle similarly describe criminology as fragmented, and advocate for a reflexive criminology that (re)considers the purpose, impact, methodologies, key issues, current challenges, and historical changes of criminology.[30]

Criminology stands to benefit from an historical reconsideration of disciplinary boundaries. Over forty years ago, Pearce remarked that criminology developed primarily as a policy science devoted to scientifically addressing practical questions such as why people become criminals and what should be done to/with/for them.[31] More recently, Garland and Sparks suggest that criminology can continue to pursue a technical course or engage in a more critical role.[32] It is important to think about the historical and professional development of criminology because doing so makes it evident that the discipline is not an autonomous, self-standing one, but rather is affected by historical trends and pressures. This project conceptualizes criminology not as a discipline or a substantive area of research, but as "a form of

[28] Richard Ericson and Kevin Carriere, "The Fragmentation of Criminology," in *The Futures of Criminology*, ed. David Nelken (Thousand Oaks: Sage Publications, 1994), 89.

[29] Ericson and Carriere, "The Fragmentation of Criminology," 96-97.

[30] Mary Bosworth and Carolyn Hoyle, "What Is Criminology? An Introduction," in *What is Criminology?*, ed. Mary Bosworth and Carolyn Hoyle (Oxford: Oxford University Press, 2011), 3-7.

[31] Frank Pearce, *Crimes of the Powerful: Marxism, Crime and Deviance* (London: Pluto Press, 1976), 25.

[32] Garland and Sparks, "Challenge of Our Times," 201.

practice that produces knowledge and discourse on crime, deviance, control and justice".[33] In other words, criminology is a site of knowledge production that is itself located in an historical "field" characterized by struggle for power and resources.[34]

An historical view of criminology also suggests that the preferred objects and methods of study are open to change. Criminology, along with and sometimes indistinguishable from sociology, emerged during the Industrial Revolution. Lepenies suggests that from the mid-nineteenth century, literary studies and sociology were in competition to provide models of living and ways of making sense of modern industrialized society.[35] He describes an historical process of alienation in which the social sciences withdrew or separated from literary studies.[36] Similarly, Sagarin believes that literary studies and the social sciences became bifurcated in history; he writes that "[t]wo groups of thinkers, both looking at the same object, were going their separate ways".[37] Sagarin suggests that the difference between the novelist and the social scientist is one of métier and method; in other words, they have different ways of portraying, understanding and explaining human behaviour – and of legitimating these ways – but reach similar conclusions.[38]

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[33] Aaron Doyle, Janet Chan and Kevin D. Haggerty, "Transcending the Boundaries of Criminology: The Example of Richard Ericson," in *What is Criminology?*, ed. Mary Bosworth and Carolyn Hoyle (Oxford: Oxford University Press, 2011), 287.

[34] Doyle, Chan and Haggerty, "Transcending the Boundaries," 287.

[35] Wolf Lepenies, *Between Literature and Science: The Rise of Sociology*, trans. R. J. Hollingdale (New York: Cambridge University Press, 1988), 1.

[36] Lepenies, *Between Literature and Science*, 3-15.

[37] Edward Sagarin, "In Search of Criminology through Fiction," *Deviant Behavior* 2, no. 1 (1980): 75, https://doi.org/10.1080/01639625.1980.9967543.

[38] Sagarin, "In Search of Criminology," 77-78.

It is important to address this idea of separation or segregation between artists and social scientists or the arts and social sciences, famously described by C.P. Snow as "two cultures".[39] Dichotomies – or ideas about truth, scientific inquiry, and rationality versus fiction, imagination and emotion – constitute and perpetuate a particular (true, scientific, and rational) criminology. I do not suggest that all criminology is in this vein, because it isn't; however, I do suggest that the general tendency toward dichotomization and division (e.g. of criminology and literary studies as well as of science and fiction) is indicative of Foucault's "will to truth".[40] Certain forms of "scientific" knowledge are privileged while imaginative or fictional forms of knowledge are disregarded or devalued because of the historical and contingent distinctions *between* disciplines (and their attendant authoritative claims) that provide systems of truth, propositions, rules, definitions, techniques and instruments that limit what can and cannot be studied and discussed *within* disciplines.[41] This project therefore challenges the distinction and division between social science and art, criminology and literature, in order to explore the richness a consideration of both can provide.[42]

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[39] C. P. Snow, *The Two Cultures and the Scientific Revolution* (New York: Cambridge University Press, 1959), 2.

[40] Michel Foucault, *The Archaeology of Knowledge and the Discourse on Language*, trans. A. M. Sheridan Smith (New York: Pantheon Books, 1972), 219.

[41] Foucault, *The Archaeology of Knowledge*, 222.

[42] I am not alone in this type of endeavour. For example, Littlefield suggests that fiction is associated with the representational while science is associated with the real; the television drama *CSI* (2000-2015), however, "combines both (forensic) science and fiction in defiance of the presumed division between the two cultures", and also blurs the boundaries that distinguish disciplines and their "proper" objects of investigation. Melissa M. Littlefield, "Historicizing *CSI* and Its Effect(s): The Real and the Representational in American Scientific Detective Fiction and Print News Media, 1902-1935," *Crime, Media, Culture* 7, no. 2 (2011): 135-136, https://doi.org/10.1177/1741659011406700.

The inclusion of fiction, including but not limited to literature, as a criminological object of study has been discussed before. Fiction is argued to challenge criminological conventions,[43] serve as a pedagogical tool or a means of theorizing,[44] and provide insight into (popular understandings of) crimes, criminals and criminal justice.[45] Taking fiction as an object of study is not a guarantee of creative or rigorous criminology, however.

Talbot, for example, speculates on why so many people read crime fiction, postulating that it is enjoyable, functional (e.g. reinforcing social norms, for example when the "bad guy" is caught and punished), and/or cathartic (e.g. allowing readers to connect with difficult human situations).[46] Regardless of the reasons that people read crime fiction, Talbot takes an empiricist turn by suggesting that either these fictions reflect "reality" or they do not.[47] Having compiled a sample of fiction and after comparing it to official crime data, Talbot concludes that "the results of the research appear to indicate a negative correlation between crime in fiction and crime in

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[43] E.g. Robert J. Kelly, "Mapping the Domains of Crime: The Contributions of Literary Works to Criminology," *International Journal of Offender Therapy and Comparative Criminology* 35, no. 1 (1991): 54-56, https://doi.org/10.1177/0306624X9103500105; Jon Frauley, "On Imaginative Criminology and Its Significance," *Societies* 5, no. 3 (2015): 618-619, https://doi.org/10.3390/soc5030618.

[44] E.g. Ruggiero, *Crime in Literature*, 1, 3; Andrew P. Carlin, "The Corpus Status of Literature in Teaching Sociology: Novels as 'Sociological Reconstruction'," *American Sociologist* 41, no. 3 (2010): 218-221, https://www.jstor.org/stable/40983450; Jon Frauley, "The Fictional Reality and Criminology: An Ontology of Theory and Exemplary Pedagogical Practice," *Current Issues in Criminal Justice* 21, no. 3 (2010): 437-438, HeinOnline Law Journal Library.

[45] E.g. Kelly, "Mapping the Domains," 49-50; Ruggiero, *Crime in Literature*, 5-6; Nicole Rafter, *Shots in the Mirror: Crime Films and Society*, 2nd ed. (New York: Oxford University Press, 2006), 8-9.

[46] Charles K. Talbot, "The Moral Mirror Image of Crime: A Comparison of Recorded Crime and Crime Recorded in Fiction," *International Journal of Comparative and Applied Criminal Justice* 6, no. 2 (1982): 196-197, https://doi.org/10.1080/01924036.1982.9688753.

[47] Talbot, "The Moral Mirror Image," 197.

society".[48] While Talbot's consideration of the degree to which literature mirrors or reflects social life is only one approach that social scientists have adopted to study literature,[49] Young is critical of the trend toward debunking, in which criminologists seek to overturn representations by appealing to reality.[50]

Young notes that criminology has preferred objects of analysis, which she identifies as interpersonal crime, fear of crime, and trends in crime prevention and punishment.[51] She suggests that the omission of the crime-culture relationship in the area of criminology is strange given the prevalence of such analyses in, for example, feminist and cultural studies, as well as in the popular media.[52] An anthology edited by Gregoriou called *Constructing Crime: Discourse and Cultural Representations of Crime and 'Deviance'* includes contributions from Spanish and

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[48] Talbot, 201.

[49] See Antonio Candido, "Criticism and Sociology (An Attempt at Clarification)," in *On Literature and Society*, ed., trans. Howard S. Becker (Princeton, NJ: Princeton University Press, 1995), 146-148. Sociological approaches to the study of literature include studies that relate a type of literature to social conditions, or that consider the reception of a piece of literature by the public, the position and social function of the writer in terms of social organization and production, the ideology or political functions of literature and authors, or the origins of literature or specific genres.

[50] Alison Young, "In the Frame: Crime and the Limits of Representation," *Australian and New Zealand Journal of Criminology* 29, no. 2 (1996): 81, https://doi.org/10.1177/000486589602900201. See also Frauley, who rejects empiricist techniques and suggests that "factual" works reflect reality no more truthfully than "fictional" works; instead "[e]ach reflects *upon* reality and so in this way they do not mirror or *correspond* directly to reality but are made to *refer* to reality in a particular way". Jon Frauley, "Fact, Fantasy, Fallacy: Division between Fanciful Musings and Factual Mutterings," in *Framing Law and Crime: An Interdisciplinary Anthology*, ed. Carolyn Joan "Kay" S. Picart, Michael Hviid Jacobsen and Cecil Greek (Madison, WI: Fairleigh Dickinson University, 2016), 434, ProQuest Ebook Central.

[51] Alison Young, "Culture, Critical Criminology and the Imagination of Crime," in *The Critical Criminology Companion*, ed. Thalia Anthony and Chris Cunneen (Sydney, AU: Hawkins Press, 2008), 18.

[52] Young, "Culture, Critical Criminology," 18.

English language and literature, linguistics, music, criminology, and legal, gender, and cultural studies; the anthology demonstrates how different disciplines contribute to an understanding of crime's construction.[53] Perhaps tellingly, the criminological contribution is in the section called "Constructing Criminal Facts" (instead of "Constructing Criminal Fictions", "Constructing Social Identities and Wrongdoings", or "Constructing Gendered Crime"). Young calls for criminologists to think more critically about the implications of the popular cultural fascination with crime.[54]

This project is a conscious contribution to a criminology that is relevant and timely, imaginative and diverse in its objects of study, and reflexive and methodologically sound. In particular, this project pushes the boundaries of "conventional" criminology by looking into newer substantive areas of research (i.e. obscene literature), by adopting a methodological approach that is responsive to the research problem rather than dictated by disciplinary conventions, and by making broader theoretical contributions above and beyond the empirical concerns of this project on obscene literature.[55] In other words, this project purposefully looks beyond the objects of study typically considered by criminologists and makes connections with (in particular) legal studies, literature, law and literature, history, and sociology in order to rethink and rework social theorizing generally and criminological theorizing specifically.[56]

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[53] Christiana Gregoriou, ed., *Constructing Crime: Discourse and Cultural Representations of Crime and 'Deviance'* (New York: Palgrave Macmillan, 2012), https://doi.org/10.1057/9780230392083.

[54] Young, "Culture, Critical Criminology," 19.

[55] See Doyle, Chan and Haggerty, "Transcending the Boundaries," 286-287.

[56] See Doyle, Chan and Haggerty, 293-295.

Given the minimal criminological attention to fiction, the following section considers the law and literature movement in order to develop a criminology and literature endeavour.

Law and Literature

Law and literature is a significant area of study that deals with issues pertaining to (predictably) law and literature. The reason I include this section is to balance the previous section's optimism that the study of fiction or literature is going to revolutionize or even "save" criminology. The purpose of this section is to consider an alternative and related approach, including its strengths and weaknesses, in order to further consider the legitimacy and usefulness of a criminological project that considers literature as an object of study.

Law and literature is approached in several ways by legal studies and literary studies.[57] Law *in* literature studies consider the legal themes and content that are present in literature. Law *as* literature studies apply the techniques of literary criticism or analysis to legal narrative, including courtroom arguments and judgments. Law *of* literature studies consider how law regulates literature. Law and literature, therefore, is not a straightforward field of study.

As with criminology, law and literature began at a particular point in time. The philosophical birth of law and literature is generally traced back to United States Supreme Court Justice Benjamin Cardozo, who wrote the well-known essay "Law and Literature" in 1925. However, law and literature as a recognizable area of study, characterized by consistent research objects, methods and aims, emerged with the narrative turn. Beginning in the 1990s, jurists and literary critics became interested in the connections between law and literature, including the

[57] See Ian Ward, "Law and Literature," *Law and Critique* 4, no. 1 (1993): 43-79, https://doi.org/10.1007/BF01128400; María José Falcón y Tella, *Law and Literature* (Boston: Brill, 2016), https://doi.org/10.1163/9789004304352.

ways that literature critiques, illustrates or reinforces law.[58] White describes the law and literature movement in the United States as a return to the beginnings of legal thought, or a return to the classic Greek emphasis on rhetoric rather than the more recent association of law with the sciences and the idea (or ideal) of realism.[59] From the literary perspective, Weisberg suggests that there was a backlash within literature against the idea (or ideal) of unity and meaning (i.e. as the narrative turn encouraged a dramatic devaluation of authoritative and totalizing discourse).[60] Thus, at around the same time (circa the 1990s) there was a general movement of law and literature toward each other. Peters, however, comments on this mutual attraction, suggesting that what happened was less a beneficial coming together than an exaggeration of the strengths and weaknesses of both disciplines.[61]

For example, Yachnin and Manderson argue that literary studies needs a public dimension of responsibility (which can be learned from law); they suggest that literary studies is isolated from real world concerns and needs to be more relevant and public (like law).[62] Additionally, they argue that law needs to reconnect with the subjects of law (e.g. be more

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[58] Christian Biet and Lissa Lincoln, "Introduction: Law and Literature," *Law and Humanities* 5, no. 1 (2011): vii, HeinOnline Law Journal Library.

[59] James Boyd White, "The Cultural Background of *The Legal Imagination*," in *Teaching Law and Literature*, ed. Austin Sarat, Cathrine O. Frank and Matthew Anderson (New York: Modern Language Association of America, 2011), 29-31.

[60] Richard H. Weisberg, "Law and Literature as Survivor," in *Teaching Law and Literature*, ed. Austin Sarat, Cathrine O. Frank and Matthew Anderson (New York: Modern Language Association of America, 2011), 40-41.

[61] Julie Stone Peters, "Law, Literature, and the Vanishing Real: On the Future of an Interdisciplinary Illusion," in *Teaching Law and Literature*, ed. Austin Sarat, Cathrine O. Frank and Matthew Anderson (New York: Modern Language Association of America, 2011), 80-81.

[62] Paul Yachnin and Desmond Manderson, "Shakespeare and Judgment: The Renewal of Law and Literature," *European Legacy* 15, no. 2 (2010): 211, https://doi.org/10.1080/10848771003647931.

humanistic, like literature) and adopt narrativity and reflexivity (e.g. the traits of literature) over objectivity, impersonality and regulation.[63] In other words, law and literature need to learn from and adopt the best of the other. To be fair, elsewhere Manderson criticizes what he calls the "salvific belief in the capacity of literature to cure law or perfect its justice",[64] or the presentation of law and literature as the realization of an Aristophanic love.[65] Olson also comments on the apparent infatuation of law and literature and suggests that law is characterized as masculine and rational while literature is characterized as emotional and feminine; she argues that law and literature research contributes to gendered understandings of both areas of study, in which a heteronormative romance is ultimately satisfying and redemptive.[66] In other words, the "marriage" of law and literature is believed to save or at least improve them both.

Criticisms like these have caused a number of recent texts to question or defend law and literature studies.[67] One technique prevalent in these discussions is the naturalization of the relations between law and literature. For example, Hanafin, Geary and Brooker write that "[l]aw and literature have always lived together, trespassed on, and infiltrated each other. The recent

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[63] Yachnin and Manderson, "Shakespeare and Judgment," 211.

[64] Desmond Manderson, "Modernism and the Critique of Law and Literature," *Australian Feminist Law Journal* 35, no. 1 (2011): 107, https://doi.org/10.1080/13200968.2011.10854462.

[65] Manderson, "Critique of Law and Literature," 120.

[66] Greta Olson, "Law is Not Turgid and Literature Not Soft and Fleshy: Gendering and Heteronormativity in Law and Literature Scholarship," *Australian Feminist Law Journal* 36, no. 1 (2012): 65-66, https://doi.org/10.1080/13200968.2012.10854468.

[67] E.g. Maria Aristodemou, "The Trouble with the Double; Expressions of Disquiet in and around Law and Literature," *Law Text Culture* 11, no. 1 (2007): 183-208, HeinOnline Law Journal Library; Paul J. Heald, "The Death of Law and Literature: An Optimistic Eulogy," *Comparatist* 33, no. 1 (2009): 20-28, https://www.jstor.org/stable/26237206; Desmond Manderson, *Kangaroo Courts and the Rule of Law: The Legacy of Modernism* (New York: Routledge, 2012); Anna Schur, "Flourishing or Perishing? Law and Literature Airbrushed," *Law and Literature* 26, no. 1 (2014): 105-116, https://doi.org/10.1080/1535685X.2014.888189.

growth of intellectual studies of their relationship has simply been the overdue recognition of this fact. If literature has laws, law also has a literary dimension".[68] This movement of law and literature toward one another is, however, political rather than natural. Law and literature scholars (believe that they) have something to gain through the intermingling of law and literature; there is an interested rather than a neutral or natural exchange of knowledge. In particular, there is an exchange of legitimacy and relevance. By presenting law and literature as a perfect union that balances rhetoric and realism, meaning and meaningfulness, reflexivity and objectivity, and the private and the public, law and literature seems to be a better, more complete and more authoritative science.

In one sense, the law and literature project is not much different (at least in its goals) than what I argued in the previous section about criminology and literature. An interdisciplinary approach is likely able to provide a richer and more reflexive project. But the law and literature discussion also highlights the politics of such an approach. Interdisciplinary approaches are, at least in part, intended to be *more* truthful, scientific, and effective than other approaches. To a certain extent, this problem is inescapable; research is intended to produce "good" knowledge, however that is defined historically and by discipline. On the other hand, realizing the politics of such research decisions enables a reflexive questioning of what *exactly* ties law and literature together. Or what do literature and criminology *really* have to do with one another? Adopting an interdisciplinary approach is not a guarantee of reflexivity; instead, being aware of the politics of such decisions helps point to relations between power and knowledge.

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[68] Patrick Hanafin, Adam Gearey and Joseph Brooker, "Introduction: On Writing: Law and Literature," *Journal of Law and Society* 31, no. 1 (2004): 1, https://www.jstor.org/stable/1410439.

To conclude, I suggest that there is something to be gained from the introduction of literature as an object of criminological study: a more reflexive and relevant criminology. However, and more importantly, I want to underscore that methodological choices – from the selection of objects of study, to disciplinary presuppositions and predispositions, to tried and true methods of analysis – are always prompted by considerations other than a pure and simple search for truth and/or knowledge. Instead, power is very much implicated in these decisions and in the production of truth and knowledge. Both this section and the one that preceded it illuminate some of the benefits, conventions and constraints of a criminological project that considers literature. The following section continues this critical trend as I consider what exactly "literature" is.

Describing Literature and Thinking About It, Too

This section explores what "literature" is and why it is so important to think about this. In particular, this section emphasizes that not all texts are perceived, treated, or read as equal. For example, the division of literature into different types, such as scholarly literature (which is scientific) and poetic literature or fiction (which is aesthetic), has significant effects on how these types of literature are valued and read.

Asking "what is literature?" is particularly important for this project because within the social sciences, the literariness of a text can be ignored or glossed over. This occurs when literature is translated as "documents" or "texts" that help reconstruct the past or provide evidence of social life.[69] Consider, for example, Time's *Shakespeare's Criminals: Criminology, Fiction, and Drama*, a criminological work pertaining to Shakespeare's plays in which the

[69] Dominick LaCapra, *History and Criticism* (Ithaca, NY: Cornell University Press, 1985), 126.

themes of law and justice and their historical and contemporary relevance are examined.[70] Time looks at fictional depictions of criminal behaviour, the motivations for such behaviour, and the models of social control that respond to such behaviour.[71] The rationale for this work is that "criminology should broaden its search for answers as to why people commit crimes. Literary works have seldom been reviewed for insights even though literary writers from time immemorial have been writing about crime and criminals".[72] This analysis applies the same criminological techniques to fiction as to fact, asking the same sorts of questions and answering them in the same sorts of ways without considering what, if any, differences exist between fiction (or texts designated as literary) and other forms of representation. As Said writes, too often "the critic is concerned with interpretations of a text, but not with asking if the text is a text or with ascertaining the discursive conditions by which a so-called text may, or may not, have become a text".[73] In other words, the question of what literature is and what exactly we are doing when we look at literature as a particular style or form of text is bypassed. The designation of texts as one thing (e.g. a work of literature) instead of another (e.g. an historical document) and the power relations implicated in successful designations must be problematized

[70] Victoria M. Time, *Shakespeare's Criminals: Criminology, Fiction, and Drama* (Westport, CT: Greenwood Press, 1999).

[71] Time, *Shakespeare's Criminals*, ix-x.

[72] Time, x.

[73] Edward W. Said, *The World, the Text and the Critic* (Cambridge, MA: Harvard University Press, 1983), 55.

in order to highlight the struggles involved in such designations, as well as the effects of such designations.[74]

As Ellis suggests, attempts to define literature are not only statements of fact (e.g. literature is...), they also indicate status or importance (e.g. literature is distinct from or better than...).[75] For Ellis, there is no agreement about the facts of literature; literary scholars have attempted to define literature according to its characteristics, such as "literary" ingredients or organization.[76] However, many literary texts have ordinary diction and grammar, and conversely many non-literary works have literary features such as metaphor or alliteration; further, plays and conversation transcripts, for example, share similar rather than distinctive organizational forms.[77] Instead of looking for characteristics that define literature once and for all, Ellis suggests that instead we should consider "the appropriate circumstances for the use of the word [i.e. literature] and the features of those circumstances that determine the willingness or unwillingness of the speakers of the language to use the word".[78] Instead of depending on the inherent characteristics

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[74] Consider, for example, Dworkin's argument that obscene writing is an act, rather than art or idea; this distinction is significant because acts are clearly subject to legal prohibition and punishment. Andrea Dworkin, "Against the Male Flood: Censorship, Pornography, and Equality," *Harvard Women's Law Journal* 8, no. 1 (1985): 6, HeinOnline Law Journal Library.

This argument was successfully carried over into the Canadian Supreme Court ruling in *R. v. Butler*, [1992] 1 S.C.R. 452, in which anti-pornography feminists argued that women's rights needed to be balanced against the right to freedom of expression; obscenity was successfully argued to encourage degrading views of women that could promote violence against women and thus obscene materials could legally be limited and punished. This case underscores the significance of the designation of texts.

[75] John M. Ellis, *The Theory of Literary Criticism: A Logical Analysis* (Berkeley: University of California Press, 1974), 22-23.

[76] Ellis, *Theory of Literary Criticism*, 26-27.

[77] Ellis, 27-29.

[78] Ellis, 34.

of a text to define it, he directs attention to the historical rules of formation and exclusion that allow a text to be conceptualized as literature (or flowers to be conceptualized as weeds or *Fanny Hill* to be conceptualized as obscene).[79]

Given the above, how does this genealogical project conceptualize literature? With rare exceptions, Foucault does not specifically address the study of literature. Bennington and Young suggest that appropriating Foucault for literary criticism is problematic because Foucault contradicts himself; in earlier works he describes literature as a transgressive force, while in later works he considers the way in which the production and consumption of literature are constituted within a discursive formation.[80] However, Foucault does have some interesting things to say about literature and our relation to it; his writings on madness and sexuality in particular contain numerous references to and uses of literature.

As I did in the first sections of this chapter, Foucault problematizes divisions between disciplines and categories, such as science and literature, fact and fiction.[81] He suggests that these divisions "are always themselves reflexive categories, principles of classification, normative rules, institutionalized types: they, in turn, are facts of discourse that deserve to be analysed beside others . . . they are not intrinsic, autochthonous, and universally recognizable characteristics".[82] In other words, literature is not a universal typology, but an historical designation stemming from particular historical and material relations. It should be noted that

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[79] Ellis, 40-42.

[80] Geoff Bennington and Robert Young, "Introduction: Posing the Question," in *Post-Structuralism and the Question of History*, ed. Derek Attridge, Geoff Bennington and Robert Young (New York: Cambridge University Press, 1987), 6-7.

[81] Foucault, *The Archaeology of Knowledge*, 22.

[82] Foucault, 22.

Foucault challenges not only literature, but all forms or genres, including science, religion, history, and fiction.[83] He suggests that the distinctions that make these "great historical individualities" are, while taken for granted, not necessary or necessarily obvious.[84]

Having problematized literature, Foucault makes an interesting methodological move when he questions whether a book or an oeuvre is a unity.[85] While the book is a material and individual thing (i.e. it occupies a defined space) and has a certain economic value, Foucault suggests that "[t]he frontiers of a book are never clear-cut: beyond the title, the first lines, and the last full stop, beyond its internal configuration and its autonomous form, it is caught up in a system of references to other books, other texts, other sentences: it is a node within a network".[86] In other words, *Fanny Hill* is not simply an object that I paid for and which has been sitting on my desk for the last five years; instead, "it indicates itself, constructs itself, only on the basis of a complex field of discourse".[87] This means that throughout this project, I do not seek to define, defend, or determine a version of *Fanny Hill*; instead, I trace out the genealogy of multiple *Fanny Hill*s as they exist in time and within particular historical conditions and discursive formations.

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[83] Foucault, 22.

[84] Foucault, 22.

[85] Foucault, 23.

[86] Foucault, 23.

[87] Foucault, 23.

Despite having rejected the peculiar properties of literature and the unity of the book, Foucault does not precipitate a "descent into discourse".[88] Foucault would not try to argue that *Fanny Hill* is an illusory or illegitimate construction (after all, there really is a book that has been sitting on my desk for five years). Instead, Foucault recommends removing the "virtual self-evidence" of, for example, *Fanny Hill* as literature, as a unity, as a commodity, or as obscene.[89]

Said perhaps does a better job than Foucault in discussing literature, and he does so in a way that is both consistent with (and occasionally critical of) Foucault. He suggests that as literary criticism has become institutionalized and professionalized, there has been a general retreat into textuality, and there has been an inadequate consideration of power relations implicated in the creation and consumption of a text.[90] This retreat into textuality undermines the historicity of a text; in other words, through the process of literary criticism (which considers the text itself), the text becomes bereft of its particular history. To be clear, Said is not saying that understanding history will solve the mystery of the text and make everything perfectly knowable; instead, he points to the changeable historical relations and conditions that influence both the perception and reception of a text (e.g. as "literature" or as "obscene").

In addition to emphasizing the importance of historical conditions and relations when considering a text, Said also discusses the significance of culture. Culture, for Said, is something one both belongs to and possesses, and which has boundaries that designate belonging and

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[88] See Bryan D. Palmer, *Descent into Discourse: The Reification of Language and the Writing of Social History* (Philadelphia: Temple University Press, 1990).

[89] Foucault, *The Archaeology of Knowledge*, 26.

[90] Said, *The World, the Text and the Critic*, 3-5.

exclusion.[91] He also describes it as a particular power relation that can authorize, dominate, legitimate, interdict, etc.[92] He writes that "culture is a system of discriminations and evaluations" or what he calls "a system of exclusions" that classifies, orders or makes identifiable concepts like bad taste and immorality, which are seen as outside of culture and which are maintained through state and other institutions.[93] He links this understanding of culture to Foucault, suggesting that culture is an institutionalized process that makes concepts (like literature) appropriate and excludes other concepts (like obscenity) that are inappropriate.[94] In other words, culture is an institutionalized process that acts to identify and authorize what counts as culture, as well as what does not.

In addition to making sense of literature in relation to history and culture, Said also points to the politics of literature and in particular to the role of the university in consecrating canons or classics.[95] Said writes that "[w]hether a text is preserved or put aside for a period, whether it is on a library shelf or not, whether it is considered dangerous or not: these matters have to do with a text's being in the world, which is a more complicated matter than the private process of reading".[96] In other words, this process of venerating or denigrating (or designating as obscene) literature cannot be taken for granted, and is not based solely on the merits of a text. Instead, Said suggests that we must consider the ways "in which the text is a monument, a cultural object

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[91] Said, 8-9.

[92] Said, 9.

[93] Said, 11.

[94] Said, 12.

[95] Said, 21.

[96] Said, 35.

sought after, fought over, possessed, rejected, or achieved in time".[97] This project considers why *Fanny Hill*, over and in time, as a cultural object has been vilified, lauded, regulated, prohibited, commercialized and studied in order to understand the sequences of *Fanny Hill*s as obscene and as literature, and their implications in various relations of power and knowledge.

This section discussed why it is important to consider what literature is. To be clear, I am not arguing that literature is (or even is not) necessarily a distinct or special form of text. Instead, this project considers the particular and contingent relations and formulations of *Fanny Hill* as literature, among other things, in and through time. Literary attributions were described as being implicated in historical, cultural and political processes and relations. The following section similarly considers and critiques the conceptualization of obscenity.

Conceptualizing Obscenity

It might seem strange that I have written so much about criminology, law and literature, and literature and have yet to address a perhaps crucial question: what is obscenity? Having read many competing and sometimes contradictory definitions of obscenity, I was reminded of Borges's typology, which Foucault discusses in *The Order of Things*.[98] Foucault explains that our thoughts are ordered by our time and place, and that our attempts to order and differentiate are both limited and limiting.[99] The main reason I am reluctant to define obscenity (besides the fact that arriving at a definition is not the point of this project), is that a definition makes a

[97] Said, 150.

[98] Michel Foucault, *The Order of Things: An Archaeology of the Human Sciences* (New York: Pantheon Books, 1970), xv-xviii.

[99] Foucault, *The Order of Things*, xv-xxi.

concept concrete and constant rather than complex and contingent. Further, I wish to avoid attempting to fit concepts into clearly defined yet unclearly derived categories.

Wagner's definition provides one example of the problems inherent in defining concepts; he writes that erotica "is a comprehensive term for bawdy, obscene, erotic, and pornographic works, including scatological humour and satire, which often employ sexual elements".[100] He defines one abstraction in terms of another. What is bawdy? Obscene? Erotic? Pornographic? Wagner continues: "The terms bawdy (a), used synonymously with ribald, obscene (b), and erotic (c) should cause no difficulties, denoting (a) the humorous treatment of sex; (b) a description whose effect is shocking or disgusting; and (c) the writing about sex within the context of love and affection".[101] Here he simplifies rather than problematizes what is actually quite complex; these categories are the subject of numerous sometimes conflicting or competing definitions. Wagner concludes that "[t]he stumbling stone is pornography. Entire books have been written on the question, what is pornography?".[102] The reason for his confusion about the meaning of pornography is as unclear as his certainty regarding the other definitions and categories. My goal here is not to single out one particular attempt at definition and pick it apart; instead, I want to discuss how others have made sense of the obscene in order to demonstrate that arriving at a definition is not particularly fruitful.

Definitions of the obscene vary according to discipline. These disciplinary definitions transform (rather than make transparent) the obscene into the subject of judicial decisions and

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[100] Peter Wagner, *Eros Revived: Erotica of the Enlightenment in England and America* (London: Secker and Warburg, 1988), 5.

[101] Wagner, *Eros Revived*, 5.

[102] Wagner, 5.

processes (e.g. legal studies),[103] controversial works of art (e.g. literary studies),[104] misogynist representations of gendered hierarchies (e.g. feminist studies),[105] or objects that cause measurable harm (e.g. empiricist social science).[106] Definitions of the obscene also vary according to who defines or decides. Is it the king, priest, publisher, judge, literary critic, moral entrepreneur, or academic? Finally, definitions of the obscene vary according to whether they are based on the content of obscene literature or the presumed effects of the content. In other words, a book might be considered obscene in itself or only when someone (perhaps a youth, woman, or servant) reads it. What I want to emphasize is that definitions of obscenity are contingent or variable; that is, these definitions depend on external factors such as position, power, and presumed purpose, and are not integral to a text itself.

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[103] E.g. Richard Funston, "Pornography and Politics: The Court, the Constitution, and the Commission," *Western Political Quarterly* 24, no. 4 (1971): 635-652, https://www.jstor.org/stable/447102; Raymond D. Gastil, "The Moral Right of the Majority to Restrict Obscenity and Pornography through Law," *Ethics* 86, no. 3 (1976): 231-240, https://www.jstor.org/stable/2380191.

[104] E.g. Nicholas J. Karolides, Margaret Bald and Dawn B. Sova, *100 Banned Books: Censorship Histories of World Literature* (New York: Checkmark Books, 1999); Elisabeth Ladenson, *Dirt for Art's Sake: Books on Trial from* Madame Bovary *to* Lolita (Ithaca, NY: Cornell University Press, 2007).

[105] E.g. Susan Griffin, *Pornography and Silence: Culture's Revenge Against Nature* (New York: Harper and Row, 1982); Susanne Kappeler, *The Pornography of Representation* (Minneapolis: University of Minnesota Press, 1986); Andrea Dworkin, *Pornography: Men Possessing Women* (New York: E. P. Dutton, 1989).

[106] E.g. Edward Donnerstein, Daniel Linz and Steven Penrod, *The Question of Pornography: Research Findings and Policy Implications* (New York: Free Press, 1987); Daniel Linz et al., "Estimating Community Standards: The Use of Social Science Evidence in an Obscenity Prosecution," *Public Opinion Quarterly* 55, no. 1 (1991): 80-112, https://www.jstor.org/stable/2749142; Daniel Linz et al., "Discrepancies between the Legal Code and Community Standards for Sex and Violence: An Empirical Challenge to Traditional Assumptions in Obscenity Law," *Law and Society Review* 29, no. 1 (1995): 127-168, https://www.jstor.org/stable/3054056.

Historical studies, with their attention to change, rarely include a definition of the obscene because the discipline recognizes the variability of the concept across time and place; historical studies in general do not try to manage or limit obscenity through definition. For example, Moulton suggests that definitions of the obscene refer to the content, the way the content is presented, and/or the attitude of the observer; additionally, moral valence or judgement is often part of a definition of obscenity.[107] McDonald calls the obscene a "fuzzy" category, dependent on the boundaries of what a particular dominant group identifies.[108] DeJean argues that obscenity is in a continual historical process of being reinvented, both in meaning and in form.[109] Hunter, Saunders and Williamson discuss how ideas about the obscene are cyclical and changeable and write, "[f]or this reason we have not attempted to describe pornography in terms of a single origin, underlying essence or general function. Instead, we have concentrated our attentions on the shifting historical circumstances in which it has emerged".[110] Instead of trying to determine and defend what obscenity is, Hunter, Saunders and Williamson acknowledge the multiplicity of obscenity and conduct a thoughtful search for its origins and effects. Likewise, instead of attempting to define the obscene, this project focuses on making sense of obscenity as a concept with attendant discourses, practices and effects; definitions of the obscene are important only insofar as they pertain to these discourses, practices and effects.

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[107] Ian Frederick Moulton, *Before Pornography: Erotic Writing in Early Modern England* (New York: Oxford University Press, 2000), 3-4.

[108] Nicola McDonald, "Introduction," in *Medieval Obscenities*, ed. Nicola McDonald (Rochester, NY: York Medieval Press, 2006), 12.

[109] Joan DeJean, *The Reinvention of Obscenity: Sex, Lies, and Tabloids in Early Modern France* (Chicago: University of Chicago Press, 2002), 2.

[110] Ian Hunter, David Saunders and Dugald Williamson, *On Pornography: Literature, Sexuality and Obscenity Law* (London: Macmillan Press, 1993), ix.

If I don't know exactly what obscenity is, then how, to rephrase a famous judicial statement, will I know it when I see it?[111] Downes and Rock suggest that even commonplace, natural objects are not necessarily obvious or self-evident in their meaning; they give an example, suggesting that a desert means something different to oil prospectors, ecologists, botanists, painters, the Bedouin, or readers of *Dune* (1965).[112] Similarly, Sayer differentiates between what he calls material objects (or the thing itself, i.e. the desert) and thought objects (or thoughts about the thing, e.g. the desert as economic opportunity).[113] Therefore, understanding or making sense of *Fanny Hill* requires the researcher to think about it as a material object (i.e. a book), and as a thought object (e.g. a book that has been conceptualized as obscene or as literary). Sayer claims that this process is not relativist; instead, there is a connection between material and thought objects and, further, it is possible to make sense of this connection.[114]

To expand on this point, Sayer rejects the suggestion that social objects, or objects to which we are expected to attach meaning (such as books, which we have all "interpreted" and "analysed" in high school English classes), are reducible to the subjective beliefs, opinions or attitudes of individuals.[115] Personal opinions are not thought objects. Instead, Sayer suggests that intersubjective meaning can provide insight into thought objects, or how we collectively or

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[111] In *Jacobellis v. Ohio*, 378 U.S. 184 (1964), United States Supreme Court Justice Potter Stewart declined to define obscenity, instead insisting that he knew it when he saw it.

[112] David Downes and Paul Rock, *Understanding Deviance: A Guide to the Sociology of Crime and Rule-Breaking*, 6th ed. (New York: Oxford University Press, 2011), 199.

[113] Andrew Sayer, *Method in Social Science: A Realist Approach*, 2nd ed. (New York: Routledge, 1992), 65-66.

[114] Sayer, *Method in Social Science*, 67-68.

[115] Sayer, 32.

as distinct groups make sense of *Fanny Hill*, for example.[116] This idea of intersubjective meaning is important; Sayer argues that meanings are constructed, communicated and shaped through relationships.[117] In other words, Sayer rejects the idea that social objects such as *Fanny Hill* are experienced differently or randomly by every individual; instead, more or less cohesive groups create and communicate meanings that are tied to and shaped by their relationships to material historical arrangements.

What Sayer calls "frames of meaning" are common or collective frameworks that allow groups and individuals to engage with and interpret social objects.[118] These frames of meaning are constructed and communicated within certain historical relations to agents and institutions and by certain languages.[119] Thus, frames of meaning, or ways of looking at and making sense of social objects, are shaped by our particular place in history and by our relationship to particular agents and institutions (e.g. to our parents or employer, or to a religious institution or liberal arts college). This material place in history is expressed through language, or a common vocabulary with which we express social objects; language also functions to shape or constrain how we see social objects. The frame of meaning of a nineteenth century religious parent will almost certainly express a social object like *Fanny Hill* in a much different language than a twenty first century professor of gender studies. Both frames of meaning, however, derive from particular and historical and material arrangements, and are expressed with a particular language.

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[116] Sayer, 32.

[117] Sayer, 32.

[118] Sayer, 35-36.

[119] Sayer, 32-36.

Instead of concepts such as obscenity being personal and subjective, for Sayer, meaning as well as social practice pertaining to the obscene is constructed and constrained within material frameworks.[120] Sayer suggests that material systems (re)produce systems of meaning that in turn (re)produce the material systems; in other words, there is a reciprocally confirming relationship between materiality and meaning.[121] For this project, this means that attempts to make sense of *Fanny Hill* as obscene literature also require that sense be made of the frames of meaning in which the book is implicated (i.e. its particular place in history and its relations to agents, institutions and language). This process of conceptualizing, of going back and forth between the material object and the thought object and between material conditions and frames of meaning, is demonstrated in subsequent chapters.

Disciplinary Approaches to the Study of Obscenity

Having declined to define obscenity, instead providing a general framework for making sense of the obscene, this section summarizes how obscene literature has been studied by legal studies, literary studies, and empiricist social sciences. I want to be very clear that this is not an exhaustive review of the scholarly literature on obscenity or obscene literature, but is instead intended to highlight the main problems in various approaches to the study of obscene literature. In this section I speak very generally and recognize that there are exceptions to the trends identified; however, establishing these general trends allows me to distinguish this project from typical studies of obscene literature. Further, while I attempt to be charitable regarding the

[120] Sayer, 32-36. Thanks in part to his choice of language, such as the reference to "frames of meaning" or to the construction of social objects, Sayer could be mistaken for a symbolic interactionist or a social constructionist. However, his insistence on the material basis of both meaning and reality distinguishes him from these approaches.

[121] Sayer, 33.

contributions of these approaches, I intentionally point to the polarized and even polemical aspect of discussions (or debates) concerning obscenity. For example, legal and literary studies are primarily concerned with whether obscenity legislation is or is not defensible or reasonable, while empiricist social science research claims that obscenity does or does not cause harm. The purpose of this section is not to condemn these positions or to denigrate the value of taking up such a position on obscenity. Instead, the goal is to open up a theoretical space for the potential of an alternative approach to studying obscenity.

There is another and perhaps more important reason that I conduct such a purposeful rather than exhaustive review of the scholarly literature on obscenity. This project ultimately conducts a genealogy of obscene literature; the scholarly literature on obscenity generally and *Fanny Hill* specifically is prominently featured in Chapter 6 of my analysis. In other words, this project does eventually engage more vigorously with the scholarly literature on obscenity as part of a history of the present. For the moment, however, this section considers the typical types of studies, questions, and conclusions in the scholarly literature on obscenity in order to understand the limits and benefits of each, and also to eventually locate and differentiate the genealogical approach adopted in this project (described in Chapter 2).

Legal Studies

In legal studies, obscenity is frequently considered on a case basis, where each legal case is studied for its legal precedent. This is an important point to consider; cases that set precedents are presumed to be significant and become the primary objects of study, in addition to promulgating legal doctrine. The significance of these cases stems from the fact that as legal precedents, they supersede older and perhaps "outdated" legal decisions. For this reason,

analyses within legal studies frequently involve comparisons between cases. The methodological implication is that legal studies in general demonstrates a strong tendency toward progress narratives; there is an assumption that newer legal decisions are better or more progressive or enlightened than older ones, and that this can be adequately demonstrated by comparing historical cases. Additionally, the focus on precedent-setting cases shifts attention away from the obscene, either as a concept or object, to the significance of the legal decision itself.

Frequently, legal studies scholars adopt a case study approach that relies on content analysis in order to consider legal decisions and precedents with the goal of determining what constitutes obscenity as a legal definition. For example, Schnall documents United States Supreme Court definitions of obscenity extending back to the British definitions.[122] Similarly, four decades later Alexander retraces the common law antecedents of American obscenity doctrine.[123] Within legal studies, obscenity is generally understood to be the result of court rulings, meaning the obscene is constituted and regulated primarily by law.[124] This understanding of the determinative or definitional function of law explains why *Fanny Hill* can be seen as a significant milestone in American First Amendment history; however, the book itself remains unexamined beyond its contribution to legal precedent.[125] In other words, as a

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[122] Marc Schnall, "The United States Supreme Court: Definitions of Obscenity," *Crime and Delinquency* 18, no. 1 (1972): 59-67, https://doi.org/10.1177/001112877201800110.

[123] James R. Alexander, "*Roth* at Fifty: Reconsidering the Common Law Antecedents of American Obscenity Doctrine," *John Marshall Law Review* 41, no. 2 (2008): 393-433, HeinOnline Law Journal Library.

[124] E.g. Funston, "Pornography and Politics," 635.

[125] E.g. Paul F. Hennessey, "Constitutional Law – Obscenity and the First Amendment – *Attorney General v. A Book Named 'John Cleland's Memoirs of a Women* [sic] *of Pleasure*

discipline, legal studies tends to be insular or doctrinal in focus, looking only at cases (and in particular the legal decisions) rather than broader social or historical trends that pertain to obscenity.

Even when social or historical trends are considered, they are generally analysed within a legalistic framework. For example, Nowlin writes about the changing use and influence of expert witnesses in twentieth century North American obscenity cases; while the introduction of expert witnesses in obscenity cases is an interesting historical development, his analysis points to the lack of consensus among experts and as a result he discounts their political and moral claims-making activities.[126] Rather than concluding, as Nowlin did, that the actions of experts are argumentative rather than factual, the role of expert witnesses at trial could also be viewed as (perhaps) an integral site at which knowledges pertaining to obscenity competed, reproduced and/or transformed. Nowlin's use of a legal language and framework causes him to focus on the "facts" (e.g. the legal results of the claims made by expert witnesses) and issues of fairness, for example, rather than the implications of a competition for dominance that happens to be taking place in relation to legal processes.

In addition to the methodological implications of the decision to study precedent-setting cases and perform limited content analysis of legal cases and decisions, the importance of

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[sic]," *New England Law Review* 25, no. 3 (1966; 1991): 887-893, HeinOnline Law Journal Library; Gayle Wintjen, "Twenty-five Years Later: Constitutional Law – Obscenity and the First Amendment – *Attorney General v. A Book Named 'John Cleland's Memoirs of a Woman of Pleasure'*," *New England Law Review* 25, no. 3 (1991): 875-886, HeinOnline Law Journal Library.

[126] Christopher Nowlin, *Judging Obscenity: A Critical History of Expert Evidence* (Montreal and Kingston: McGill-Queen's University Press, 2003), xii-xvi.

language is not always considered.[127] The legal decision or verdict takes a particular form, beginning with the identifying title, the crime or point of law involved, the précis, and so on to the final judgement. This language powerfully shapes the discourse on obscenity, yet this is rarely considered in legal studies.[128] Instead of focusing on the interaction of legal discourses with other discourses or subjugated knowledges, or on the processes that declare something legal and acceptable or illegal and unacceptable, legal studies tends to focus on the content of the judicial decision rather than on its emergence, existence, or effects.[129]

To summarize, legal studies generally employs content analyses of legal cases, and focuses in particular on precedent-setting cases and their corresponding judicial opinions, sometimes omitting a thoughtful consideration of how the trial and legal decision function in and relate to a material historical context.

Literary Studies

Literary studies has by far the most scholarship on obscene literature. At the risk of simplifying the work of many scholars over many decades, literary studies that consider obscene literature generally focus on genre, gender, cultural/political issues, form, authorial intention, and/or engage in comparison. The studies focused on genre are concerned with the idea of

[127] The law and literature movement, discussed earlier, is an obvious and significant exception to this trend.

[128] An interesting exception is an article by Witte that looks at examples of judicial writing that have literary flair and differ from the traditional legalistic framework and language. Ryan Benjamin Witte, "The Judge as Author / The Author as Judge," *Golden Gate University Law Review* 40, no. 1 (2009): 37-65, HeinOnline Law Journal Library.

[129] Watkins is a notable exception; she considers the influence of the art for art's sake movement and discourse on English law. Dawn Watkins, "The Influence of the Art for Art's Sake Movement upon English Law, 1780-1959," *Journal of Legal History* 28, no. 2 (2007): 233-256, https://doi.org/10.1080/01440360701485207.

distinction or classification; they debate whether or not particular obscene or pornographic works are or can be considered literature, or they discuss libertine literature as a unique genre.[130] The studies that focus on gender are primarily concerned with the relationship between depictions of fictional women and "real" women, as well as the politics of such depictions.[131] Relatedly, there are studies that focus on a particular scene or portrayal within a text that often pertains to non-(hetero)normative subjects or behaviours; in *Fanny Hill*, for example, the sodomitical scene that comprises approximately two pages of the novel has received significant scholarly attention.[132]

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[130] E.g. John Hollander, "The Old Last Act: Some Observations on *Fanny Hill*," *Encounter* 21, no. 4 (1963): 69-77; Malcolm Bradbury, "*Fanny Hill* and the Comic Novel," *Critical Quarterly* 13, no. 3 (1971): 263-275, https://doi.org/10.1111/j.1467-8705.1971.tb00673.x; Michael Shinagel, "*Memoirs of a Woman of Pleasure*: Pornography and the Mid-Eighteenth-Century English Novel," in *Studies in Change and Revolution: Aspects of English Intellectual History 1640-1800*, ed. Paul J. Korshin (Menston, UK: Scolar Press, 1972), 211-236; Randolph Trumbach, "Erotic Fantasy and Male Libertinism in Enlightenment England," in *The Invention of Pornography: Obscenity and the Origins of Modernity, 1500-1800*, ed. Lynn Hunt (New York: Zone Books, 1993), 253-282.

[131] E.g. Patricia Meyer Spacks, "Female Changelessness; Or, What Do Women Want?" *Studies in the Novel* 19, no. 3 (1987): 273-283, https://www.jstor.org/stable/29532507; Randolph Trumbach, "Modern Prostitution and Gender in *Fanny Hill*: Libertine and Domesticated Fantasy," in *Sexual Underworlds of the Enlightenment*, ed. G. S. Rousseau and Roy Porter (Manchester, UK: Manchester University Press, 1987), 69-85; Gary Gautier, "Fanny Hill's Mapping of Sexuality, Female Identity, and Maternity," *Studies in English Literature, 1500-1900* 35, no. 3 (1995): 473-491, https://www.jstor.org/stable/450893; David Weed, "Fitting Fanny: Cleland's *Memoirs* and the Politics of Male Pleasure," *Novel* 31, no. 1 (1997): 7-20, https://www.jstor.org/stable/1345963; Margaret E. Mitchell, "'Dreadful Necessities': Nature and the Performance of Gender in *Memoirs of a Woman of Pleasure*," *Women's Studies* 32, no. 3 (2003): 305-324, https://doi.org/10.1080/00497870310070; Thomas Alan Holmes, "Sexual Positions and Sexual Politics: John Cleland's *Memoirs of a Woman of Pleasure*," *South Atlantic Review* 74, no. 1 (2009): 124-139, https://www.jstor.org/stable/27784834.

[132] E.g. Kevin Kopelson, "Seeing Sodomy: *Fanny Hill*'s Blinding Vision," *Journal of Homosexuality* 23, no. 1/2 (1992): 173-183, https://doi.org/10.1300/J082v23n01_09; Donald H. Mengay, "The Sodomitical Muse: *Fanny Hill* and the Rhetoric of Crossdressing," *Journal of Homosexuality* 23, no. 1/2 (1992): 185-198, https://doi.org/10.1300/J082v23n01_10; Hal Gladfelder, "Plague Spots," in *Social Histories of Disability and Deformity*, ed. David M. Turner and Kevin Stagg (New York: Routledge, 2006), 56-78; Danielle Bobker, "Sodomy, Geography, and Misdirection in *Memoirs of a Woman of Pleasure*," *University of Toronto Quarterly* 79, no.

Other studies consider the form or techniques used in a text and the effects of such authorial decisions.[133] Some studies investigate the life and/or intentions of the author in order to provide insight into the text itself.[134] Finally, some studies compare texts either to trends in "reality", such as philosophical or commercial trends,[135] or to other literary texts.[136]

With such a diversity of topics of analysis, it seems quite bold to make any generalizations about literary studies. Yet literary studies, no matter the particular focus of analysis (e.g. genre, gender, etc.), tends to share certain commonalities or propensities. As in legal studies, case studies and content analysis are the dominant methods of analysis used, although the goal of literary studies is to determine subjective meanings rather than objective

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4 (2010): 1035-1045, https://doi.org/10.3138/utq.79.4.1035; Joseph Bristow, "Homosexual Writing on Trial: From *Fanny Hill* to *Gay News*," in *The Cambridge Companion to Gay and Lesbian Writing*, ed. Hugh Stevens (New York: Cambridge University Press, 2011), 17-33.

[133] E.g. Robert Markley, "Language, Power, and Sexuality in Cleland's *Fanny Hill*," *Philological Quarterly* 63, no. 3 (1984): 343-356, ProQuest Periodicals Archive Online; Julia Epstein, "Fanny's Fanny: Epistolarity, Eroticism, and the Transsexual Text," in *Writing the Female Voice: Essays on Epistolary Literature*, ed. Elizabeth Goldsmith (Boston: Northeastern University Press, 1989), 135-153.

[134] E.g. William H. Epstein, *John Cleland: Images of a Life* (New York: Columbia University Press, 1974); Hal Gladfelder, *Fanny Hill in Bombay: The Making and Unmaking of John Cleland* (Baltimore, MD: Johns Hopkins University Press, 2012).

[135] E.g. Leo Braudy, "*Fanny Hill* and Materialism," *Eighteenth-Century Studies* 4, no. 1 (1970): 21-40, https://www.jstor.org/stable/2737611; Barry Ivker, "John Cleland and the Marquis d'Argens: Eroticism and Natural Morality in Mid-Eighteenth Century English and French Fiction," *Mosaic* 8, no. 2 (1975): 141-148, https://www.jstor.org/stable/24776982; Jad Smith, "How Fanny Comes to Know: Sensation, Sexuality, and the Epistemology of the Closet in Cleland's *Memoirs*," *Eighteenth Century* 44, no. 2/3 (2003): 183-202, https://www.jstor.org/stable/41467925.

[136] E.g. Edward W. Copeland, "*Clarissa* and *Fanny Hill*: Sisters in Distress," *Studies in the Novel* 4, no. 3 (1972): 343-352, https://www.jstor.org/stable/29531528; Michael Wilding, "Paradise Lost and Fanny Hill," *Milton Quarterly* 6, no. 2 (1972): 14-15, https://www.jstor.org/stable/24462553; Ann Louise Kibbie, "Sentimental Properties: *Pamela* and *Memoirs of a Woman of Pleasure*," *English Literary History* 58, no. 3 (1991): 561-577, https://www.jstor.org/stable/2873456.

definitions of obscene literature. Literary studies is interpretive and often didactic; literary scholars often treat texts as though they have a hidden or inexplicit meaning or moral and attempt to reveal it and link it to the "real" world. The methodological tendency to consider the minutiae of a text, as well as the tendency toward specialization (e.g. specialization in eighteenth century libertine literature in England) narrows the analytic gaze to particular texts at particular times rather than viewing texts as implicated in ongoing historical processes.

The main concern with literary studies is the same as in legal studies; literary studies tends to take for granted that some books are or were obscene and analyses these obscene novels in order to make sense of them. For example, Karolides, Bald and Sova compiled and summarized censored books and categorized them according to whether they were banned for political, religious, sexual or social reasons.[137] In general, these analyses fail to consider the overlap among categories as well as the changeable nature and methods of book banning. This assumption of the reality and significance of "obscene" literature (generally as determined by law or legal decision) underlies the work done in this discipline and perhaps serves to reinforce the "reality" of obscene literature.

To summarize, literary studies covers a great range of topics pertaining to obscenity, but uses a narrow range of methods with which to analyse them. Additionally, the underlying assumption that texts are obscene potentially hinders the revelation of subjugated or popular knowledges.

[137] Karolides, Bald and Sova, *100 Banned Books*.

Social Science

In dealing with obscenity generally, and *Fanny Hill* specifically, very little social science research has been conducted – depending, of course, on the definition of the social sciences. In 1969, Rosen and Turner noted that "[t]he contributions of sociologists to the understanding of pornography have been extremely small".[138] In the social sciences, research is predominantly empiricist,[139] and Diamond's comprehensive review suggests that most research attempts to operationalize and measure obscenity and its potentially harmful effects.[140] Examples include Rosen and Turner, who identified different demographic and attitudinal variables between those who saw pornography and those who did not,[141] and Shepher and Reisman, who considered whether pornography that appealed to male sexual fantasy impacted patterns of heterosexual monogamy.[142] These studies tell us very little about the concept of obscenity; instead, they measure external elements (generally pertaining to the idea of harm) assumed to be associated with obscenity.

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[138] Lawrence Rosen and Stanley H. Turner, "Exposure to Pornography: An Exploratory Study," *Journal of Sex Research* 5, no. 4 (1969): 235, https://www.jstor.org/stable/3811427.

[139] Foddy is an exception to this trend; he describes reactions to obscenity from a symbolic interactionist perspective. William H. Foddy, "Obscenity Reactions: Toward a Symbolic Interactionist Explanation," *Journal for the Theory of Social Behaviour* 11, no. 2 (1981): 125-146, https://doi.org/10.1111/j.1468-5914.1981.tb00029.x.

[140] Milton Diamond, "Pornography, Public Acceptance and Sex Related Crime: A Review," *International Journal of Law and Psychiatry* 32, no. 5 (2009): 304-314, https://doi.org/10.1016/j.ijlp.2009.06.004.

[141] Rosen and Turner, "Exposure to Pornography," 235-246.

[142] Joseph Shepher and Judith Reisman, "Pornography: A Sociobiological Attempt at Understanding," *Ethology and Sociobiology* 6, no. 2 (1985): 103-114, https://doi.org/10.1016/0162-3095(85)90003-2.

According to Donnerstein, Linz and Penrod, "[s]ocial scientists have generally not asked the questions that have been most relevant … – whether pornography is offensive or immoral – not because these are unimportant questions but because they are exceedingly difficult to pursue given the methods traditionally used by social scientists"; instead, social science research has focused on opinions and experiences of pornography.[143] In other words, the empiricist nature of much of the social science research on obscenity is attributed to limitations of method. I'm not sure that these questions are the most relevant ones that we can ask in the social sciences; they are not the questions being asked in this project. While I am aware that my project crosses conventional disciplinary boundaries, the social sciences in general and criminology in particular have methodological and epistemological techniques that can contribute significantly to an understanding of obscene literature and *Fanny Hill* that have not been taken up by the existing empiricist research.[144]

To summarize, social science research on obscenity is limited and primarily empiricist.[145] Social scientists seem to have largely abandoned or avoided a topic that provides insight into deviance, social identity and interaction, moral regulation, and many other areas that traditionally fall under the social science purview.

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[143] Donnerstein, Linz and Penrod, *The Question of Pornography*, 145.

[144] But what about the feminist porn wars of the 1980s and 1990s?! What about the emerging transgression literature?! Significant research in both gender and queer studies has been done on *Fanny Hill* and obscenity, but these studies are (interestingly) most often included in journals of literature, history, law or culture. This is certainly not enough to dismiss or ignore these contributions; I assure the reader that I return to these studies in particular as part of this project's genealogical analysis in Chapter 6.

[145] I discuss the work of Richard Jochelson and Kirsten Kramar, as well as Mariana Valverde, on obscenity in Chapter 6; their work is clearly not empiricist, but it also does not deal specifically with obscene literature.

Summary of Three Approaches to the Study of Obscenity

This section discussed three of the major approaches in obscenity scholarship: legal studies, literary studies, and the social sciences. The goal was to problematize current research, as well as to highlight areas for further development. Remarkably, George Ryley Scott's *"Into Whose Hands": An Examination of Obscene Libel in Its Legal, Sociological and Literary Aspects*, which was published in 1945,[146] encapsulates nearly all of the obscenity scholarship that was written over the intervening seven decades. He discusses the historical origins and development of obscenity, including religious, political, legal and technological developments. He problematizes the definition of obscenity, considering its cultural and legal meanings and interpretations. He considers what distinctions, if any, exist between literature and pornography. He describes the objects, methods and effects of censorship, and how these have changed over time. He summarizes prominent legal cases and analyses "obscene" novels. Finally, he contrasts various philosophical arguments, such as the pro- and anti- censorship debate. The only substantial area of scholarship missing from his book is the emerging transgression literature that focuses on the potentially subversive nature of sexualities. It is surprising that scholarship in the area of obscenity has not changed significantly, although it does suggest that a new method and approach may be fruitful.

An Historical Approach to the Study of Obscenity Considered

Having already briefly discussed the approaches of legal studies, literary studies, and social sciences to the study of obscenity, this section discusses obscenity as an object of historical study. The obscene has only become an object of critical historical study only

[146] George Ryley Scott, *"Into Whose Hands": An Examination of Obscene Libel in Its Legal, Sociological and Literary Aspects* (London: Gerald G. Swan, 1945).

recently;[147] this is a reminder that disciplinary trends affect the selection of objects of study as well as the knowledge produced. Extending this thought, it is interesting to see that in different periods, dominant concerns, approaches or disciplines have been associated with the study of obscenity. For example, censorship debates dominate obscenity scholarship of the 1960s;[148] legal case reviews are prominent in the 1970s;[149] feminist concerns with pornography proliferate during the 1980s;[150] and transgression literature is prominent in the 2000s.[151] While I survey the historical research on obscenity in this section, an historical survey of the research on obscenity reveals that historical and contemporary trends direct scholarly attention. Certain objects of study, questions and methods pertaining to obscenity, and even certain disciplines, emerge and become dominant at certain times. The researcher's awareness of her position within the field is part of a reflexive approach to research.

Although the study of the obscene is not a large field within historical studies, once again this is not intended to be an exhaustive review. Instead, I highlight and problematize certain aspects of historical approaches to and studies of obscenity in order to open up a theoretical space for this project.

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[147] Harry G. Cocks, "Reading Obscene Texts and their Histories," *Media History* 18, no. 3/4 (2012): 275, https://doi.org/10.1080/13688804.2012.722421.

[148] E.g. Alec Craig, *The Banned Books of England and Other Countries: A Study of the Conception of Literary Obscenity* (London: George Allen and Unwin, 1962); Thomas, *A Long Time Burning*.

[149] E.g. Rembar, *The End of Obscenity*; Schnall, "Definitions of Obscenity," 59-67.

[150] E.g. Griffin, *Pornography and Silence*; Kappeler, *The Pornography of Representation*; Dworkin, *Men Possessing Women*.

[151] E.g. Hastings Donnan and Fiona Magowan, "Sexual Transgression, Social Order and the Self," in *Transgressive Sex: Subversion and Control in Erotic Encounters*, ed. Hastings Donnan and Fiona Magowan (New York: Berghahn Books, 2009), 1-24.

It makes sense to start with the work of David Foxon, who is perhaps the most cited authority in the field.[152] What is so interesting about Foxon is that he does not identify himself as an historian (although he worked in the British Museum), but as a book collector whose interest in "curious" books unexpectedly led him to write a book.[153] Foxon begins by justifying his reasons for writing about what he calls "dirty books".[154] Citing the example of *Fanny Hill* (interestingly), which had a first run of 750 copies at six shillings each (for a maximum profit of one hundred pounds, of which Cleland received twenty), Foxon wanted to explore why, despite very little profit, authors and publishers of obscene literature were willing to risk imprisonment or other penalties.[155] He also indicates an interest in the obscene because it is rarely studied and because he wished to gain an "understanding of the way in which the unacknowledged attitudes of different periods affected their literature".[156] Foxon highlights a tension in the literature that continues today, questioning why the obscene flourished despite opposition, and/or if our understanding of the obscene today fails to acknowledge the place, purpose and prevalence obscene literature had in the past.

Foxon briefly traces the historical origins of obscene literature, as well as the origins of obscene literature as a problem. It is important to note that these are not necessarily the same thing; for example, he discusses prominent obscene works, such as *Venus in the Cloister* (1683), which circulated in the seventeenth century but only became problematic (i.e. legally obscene) in

[152] Foxon, *Libertine Literature*.

[153] Foxon, v-vii.

[154] Foxon, v, xi.

[155] Foxon, vii-ix.

[156] Foxon, ix.

the eighteenth century.[157] In discussing the origins of obscene literature, Foxon suggests that obscene literature in England was initially continental in origin; in other words, they were translations of Italian and subsequently French works.[158] He points first to the Italian literature, identifying the influence of Pietro Aretino, who wrote the *Sonetti lussuriosi* (1524) which was accompanied by engravings by Marcantonio Raimondi that are now known as *Aretine's Postures*; Aretino also wrote *Ragionamenti* (1534), which is the model for the whore dialogue.[159] From Italy, Foxon shifts his focus to France and the French whore dialogue *L'École des filles* (1655); around this time, French translations became the main source of obscene literature in England.[160] As a matter of interest, Foxon mentions Samuel Pepys, the London diarist to whom he attributes the earliest specific reference (in 1668) to an obscene work, and references what has become one of the most quoted passages in the history of obscene literature; Pepys called *L'École des filles* (1655) "'a mighty lewd book, but not yet amiss for a sober man once to read over to inform himself in the villainy of the world'".[161] Eventually, Foxon concludes his history of the development of obscenity with *Fanny Hill*, which he suggests is the "first original English prose pornography, and the first to break away from the dialogue form into the style of the

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[157] Foxon, ix.

[158] Foxon, x.

[159] The whore dialogue is a form of writing dating from the Renaissance that features an older, more experienced woman (usually although not always a prostitute) giving advice (and in particular sexual advice) to a younger woman. In addition to being erotic or sexually explicit works, whore dialogues often contained philosophical, satirical and/or anti-clerical messages or themes.

[160] As an aside, DeJean traces the emergence of the word "obscenity" itself to its French origins in 1660s Paris; Molière introduced it in *La Critique de l'École des femmes* (1663). DeJean, *The Reinvention of Obscenity*, 4-5, 13, 105.

[161] Quoted in Foxon, *Libertine Literature*, 5-6.

novel".[162] Foxon writes that "the most important and unexpected discovery in this study is the way in which pornography seems to have been born and grown to maturity in a brief period in the middle of the seventeenth century",[163] a finding echoed in the historical literature.

I devote so much attention to Foxon because his influence is evident in historical studies that follow the same basic timeline, highlighting the same figures and literature and events in more or less detail.[164] Foxon's interest was in "curious" books; I find it curious that his influence on the study of obscenity has gone unremarked. Since Foxon's survey, historical research pertaining to the obscene has in some cases become more specific, dealing with particular movements, groups, and/or individuals, such as the purity movement in conjunction with vice societies,[165] the FBI,[166] and/or Anthony Comstock.[167] Some historians focus on the relations and functions of obscenity; for example, obscenity was considered to be a corrupting influence on

[162] Foxon, 45.

[163] Foxon, ix.

[164] E.g. Lynn Hunt, "Introduction: Obscenity and the Origins of Modernity, 1500-1800," in *The Invention of Pornography: Obscenity and the Origins of Modernity, 1500-1800*, ed. Lynn Hunt (New York: Zone Books, 1993), 9-45; Julie Peakman, *Mighty Lewd Books: The Development of Pornography in Eighteenth-Century England* (New York: Palgrave MacMillan, 2003), 15-22.

[165] E.g. Paul S. Boyer, *Purity in Print: The Vice-Society Movement and Book Censorship in America* (New York: Charles Scribner's Sons, 1968); Edward J. Bristow, *Vice and Vigilance: Purity Movements in Britain since 1700* (Totowa, NJ: Rowman and Littlefield, 1977).

[166] E.g. Douglas M. Charles, *The FBI's Obscene File: J. Edgar Hoover and the Bureau's Crusade Against Smut* (Lawrence: University Press of Kansas, 2012).

[167] E.g. Nicola Beisel, *Imperiled Innocents: Anthony Comstock and Family Reproduction in Victorian America* (Princeton, NJ: Princeton University Press, 1998), ProQuest Ebook Central.

youth,[168] or a concern of women.[169] Some historical research considers particular topics or styles of obscenity, including works involving the harem or the foreigner, flagellation or pederasty.[170] These histories typically present themselves as factual, either uncovering new information or debunking existing information. They also typically deal with the past from the position of the present; in other words, as if the past is a finished event that can be observed and recorded.

These histories also typically situate the obscene in one of three ways. First, some histories present the obscene as part of an "underworld" or a secret world.[171] In these histories, the obscene is argued to be marginal and counter to respectable and conventional standards or norms. Second, some histories treat the obscene as integrated within or at least related to the broader culture.[172] These histories argue that the obscene both shaped and reflected economic, social, cultural and scientific developments. Before discussing the final approach to dealing with the obscene historically, I comment briefly on these positions.

Both positions are problematic in that they construct dualisms not only between an underworld and a mass or dominant culture, but also between the past and the present. Pease

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[168] E.g. Marjorie Heins, *Not in Front of the Children: "Indecency," Censorship and the Innocence of Youth* (New York: Hill and Wang, 2002).

[169] E.g. Alison M. Parker, *Purifying America: Women, Cultural Reform, and Pro-Censorship Activism, 1873-1933* (Urbana: University of Illinois Press, 1997).

[170] E.g. Colette Colligan, *The Traffic in Obscenity from Byron to Beardsley: Sexuality and Exoticism in Nineteenth-Century Print Culture* (New York: Palgrave Macmillan, 2006).

[171] E.g. Walter Kendrick, *The Secret Museum: Pornography in Modern Culture* (New York: Viking Penguin, 1987).

[172] E.g. Moulton, *Before Pornography*; Karen Harvey, *Reading Sex in the Eighteenth Century: Bodies and Gender in English Erotic Culture* (New York: Cambridge University Press, 2004).

provides an example of a history that utilizes dualisms to sustain an argument.[173] She argues that graphic sexual representation was normalized in the twentieth century as a result of a cultural and aesthetic shift,[174] contrasting the past with the present. In order to understand how pornography became classified as art, she separates pornography and art as if they are distinct,[175] creating opposing categories. She goes on to contrast the mind (associated with art) and the body (associated with pornography), as well as high and low culture.[176] Her argument is not unique and is a common way of engaging in sense-making (e.g. creating categories of like and unlike). However, dualism limits the complexity of obscenity because it insists that the obscene (including *Fanny Hill*) must be pornographic *or* artistic, part of the underworld *or* mass culture, legal *or* illegal, physiological *or* intellectual. This approach falls into the definitional problem previously discussed, in that it fails to allow for, much less account for, changes in our conceptualizations of *Fanny Hill*, for example. What follows is a third historical approach that holds promise for conceptualizing obscenity in and through history.

Hunter, Saunders and Williamson highlight shifts in knowledge pertaining to the obscene; for example, they note that Victorian conceptions of obscenity as harmful were debunked, but subsequently feminists reintroduced this association with harm in the latter part of the twentieth century.[177] Hunter, Saunders and Williamson suggest that the obscene is fluid, calling it variously "an eroticising instrument, a saleable commodity, a crime, an object of

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[173] Allison Pease, *Modernism, Mass Culture, and the Aesthetics of Obscenity* (New York: Cambridge University Press, 2000).

[174] Pease, *Aesthetics of Obscenity*, xi.

[175] Pease, xii.

[176] Pease, xii, 3.

[177] Hunter, Saunders and Williamson, *On Pornography*, ix.

governmental concern and medical regulation, an ethical occasion or an aesthetic phenomenon".[178] In other words, Hunter, Saunders and Williamson consider how the shifting historical conditions in which obscenity (re)emerges affect the constitution of the obscene, its (presumed) effects, and the response to the obscene. Empirically, they focus attention not on the obscene itself, but on the specific agents and institutions that are implicated in the regulation of the obscene.[179]

Taking a different approach, DeJean focuses less on the regulation of obscenity than on its historical "reinvention". She argues that the concept of obscenity developed according to historical conditions, and focuses on a particular recognizable form of and response to obscenity in seventeenth century France, and also acknowledges that obscenity existed both before and after this particular incarnation of obscenity.[180] Having argued that there was change, or reinvention, at that point in time, she had to establish difference; she focuses on the differences in the nature of obscene representations and the way in which obscene representations were transmitted and received.[181] These were identified by considering simultaneous and interrelated conditions and events, such as the emergence of a mass market print culture, a new kind obscene literature written in the vernacular, and modern censorship (including the trial).[182] Thus, DeJean identifies the importance of events, and also their associated conditions, for an historical study of a particular (re)conceptualization of obscenity.

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[178] Hunter, Saunders and Williamson, ix.

[179] E.g. Hunter, Saunders and Williamson, 86.

[180] DeJean, *The Reinvention of Obscenity,* 2-3.

[181] DeJean, 3.

[182] DeJean, 3-4.

Taken together, the works by Hunter, Saunders and Williamson and DeJean highlight the possibility of a project that considers historical concepts (instead of definitions) pertaining to the obscene, the (perhaps regulatory) response to the obscene, and the specific events that help constitute or contest these concepts, discourses and practices.[183] The following chapter discusses how such a genealogical project will unfold. Before moving to the next section, however, I wish to say a few more words about Hunter, Saunders and Williamson's project.

A Foucaultian approach to the study of obscenity (or pornography) and its regulation was adopted by Hunter, Saunders and Williamson; given the overlap with my own project, I briefly consider this work for its strengths and main points of divergence from this project. Hunter, Saunders and Williamson reject truth claims about pornography (e.g. what it is and what its effects are). In a single sentence they capture the historicity and contingency of pornography, writing that,

> [f]rom D. H. Lawrence's attempt to distinguish erotic art and pornography to the feminist denunciation of Lawrence as a pornographer, from the specification and regulation of pornography as a social harm by jurists in the 1860s to the debunking of this claim by their liberal colleagues in the 1960s, from this debunking to the reinstatement of the social harmfulness of pornography as the instrument of sexism, knowledge of pornography has been inseparable from the competing agencies of its use and regulation, its discrediting and valorisation.[184]

Hunter, Saunders and Williamson effectively challenge the progressive view of obscenity, which typically traces sexuality from a frank and healthy Elizabethan experience to Puritan

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[183] There are many sociological studies that consider the production, reproduction and transformation of concepts, similar to this project, including: Stuart Hall et al., *Policing the Crisis: Mugging, the State, and Law and Order* (London: Macmillan Press, 1978); Denise Riley, '*Am I that Name?': Feminism and the Category of 'Women' in History* (Minneapolis: University of Minnesota Press, 1988); Mitchell Dean, *The Constitution of Poverty: Toward a Genealogy of Liberal Governance* (New York: Routledge, 1991); William Walters, *Unemployment and Government: Genealogies of the Social* (New York: Cambridge University Press, 2000), https://doi.org/10.1017/CBO9780511557798.

[184] Hunter, Saunders and Williamson, *On Pornography*, viii.

repression to the liberalism of the 1960s, to the re-inscription of the feminist harm argument.[185] Instead of a progress narrative, they focus their attention on projects and programmes that are implicated in the constitution and regulation of pornography. Without using the term genealogy, Hunter, Saunders and Williamson nevertheless reject the possibility of describing pornography "in terms of a single origin, underlying essence or general function".[186] Instead, they look at pornography as being located within history and subject to change. This distancing of their scholarship from the "rhetoric" of pornography and its study is instructive, as are their attempts to describe pornography in terms of specific historical discourses and practices.[187]

Hunter, Saunders and Williamson make an excellent argument for the study of pornography and its regulation that draws implicitly on Foucault. They suggest that typical studies of obscenity have three main problems. First, these studies tend to activate the repressive hypothesis.[188] Second, they engage in "the speaker's benefit", or claim "a certain moral authority flowing from the courage displayed in breaking taboos, transgressing prohibitions, and speaking up for the silenced".[189] Finally, these studies tend to (ironically) contain a lot of quotes from obscene books.[190] Their approach, in contrast, seeks to be critical of the myth of repression, to be descriptive and historical rather than indignant, and to be provocative through analysis rather than quotation. Their approach focuses on the productive

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[185] Hunter, Saunders and Williamson, 2-4.

[186] Hunter, Saunders and Williamson, ix.

[187] Hunter, Saunders and Williamson, x.

[188] Hunter, Saunders and Williamson, ix.

[189] Hunter, Saunders and Williamson, ix.

[190] Hunter, Saunders and Williamson, ix.

nature of regulation. They attempt to describe pornography in its own terms and as an historically specific discursive practice that was – and is – the result of historical conditions and interactions, rather than typical studies in which pornography is analysed "as a by-product of history, a phenomenon possessed only of a half-existence and that due solely to the malfunctioning of more fundamental forces and mechanisms".[191]

The main difference between our projects is that while mine is devoted to what they call literary erotics, they devote only one chapter to this issue, focussing mainly on the emergence and descent of obscenity law. Problematically, they commence this chapter by suggesting that it was only in late eighteenth and early nineteenth centuries that "a significant development occurred" when "[s]erious literary works" became an object of legal regulation.[192] It is unclear to whom this development was significant, and the significance of this development is implied to be the restriction of "serious literary works". Hunter, Saunders and Williamson define serious literature "in a value-neutral manner to refer to those works appropriated by the educated in pursuit of various kinds of cultivation".[193] However, it is not value-neutral to assume that the "educated" pursue "cultivation" through literature; this seems to reflect rather than critique the dominant discourses of the time. The categorization of literature as serious more closely reflects an aesthetic distinction rather than a close consideration of historical conditions pertaining to obscene literature. Tracing such problematic and historic assumptions about what counts as (obscene) literature – and who gets to read what – is an integral part of this project, and the means of doing so is further developed in the following two chapters.

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[191] Hunter, Saunders and Williamson, x.

[192] Hunter, Saunders and Williamson, 92.

[193] Hunter, Saunders and Williamson, 250n1.

Conclusion

This chapter considered (criminological) conventions and reflected on the sometimes taken for granted components of a project, including the influence of disciplinary conventions on selecting objects of study such as literature. In this project, obscene literature is not merely an object of study, but is also a means of theorizing and reflecting on criminology and its conventions, as well as the concepts of literature and obscenity. I also emphasized the importance of (recognizing) choice throughout the whole process of research. These methodological choices highlight the implication of both the research and the researcher in particular historical conditions and relations.

Given my interest in *Fanny Hill* and the apparent changes of obscene literature and the responses to it over time, an historical approach seemed to be an appropriate choice for this project. Through the lens of the novel *Fanny Hill*, I want to better understand how the historical contexts and conditions, agents and institutions, converged and diverged over time, establishing and altering discourses and practices pertaining to obscenity, and how these shaped the constitution and regulation of *Fanny Hill* as obscene literature. In other words, this project identifies historical conditions pertaining to obscenity, the agents and institutions involved in the (re)production and regulation of obscenity, and how these transformed over time in order to map or make sense of the emergence and descent of the concept of obscenity. Rather than trying to define obscenity, or judge a book for its legal status, literary value or social harm, this project reveals the complex and contingent nature of the concept of obscenity and how it is implicated in historical material conditions, discourses and practices, as well as in the present. In other words, this project conducts a genealogy of obscenity (via obscene literature) through a case study of *Fanny Hill*.

CHAPTER II

Archaeology and Genealogy as Methodology

Another History of Sexuality

I briefly discuss Foucault's *The History of Sexuality* as a way into the methodological discussion of my approach to obscenity.[194] My project adds empirically to what Foucault admits was an uncertain sketch by conducting a history of obscene literature, rather than sex or sexuality more generally.[195] Beyond sharing a similar method (i.e. genealogy) and object of study (i.e. obscenity specifically rather than sexuality generally), I discuss Foucault's project in order to position this one and set up the remaining chapters. Specifically, I discuss Foucault's *The History of Sexuality* in order to point to the methodological considerations of that text, which are mobilized in this project.

In *The History of Sexuality*, Foucault rejects the dominant discourse on sexuality, or sexuality's taken for granted history, in which a golden era of sex and sexuality was replaced in the seventeenth century with the silencing or repression of sex and sexuality. In contrast to this apparent historical transformation from sexual freedom to sexual repression, Foucault makes significantly different points and draws significantly different conclusions from those presented in the following excerpt.

> For a long time, the story goes, we supported a Victorian regime, and we continue to be dominated by it even today. Thus the image of the imperial prude is emblazoned on our restrained, mute, and hypocritical sexuality.
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> At the beginning of the seventeenth century a certain frankness was still common, it would seem. Sexual practices had little need of secrecy; words were said without undue

[194] Michel Foucault, *The History of Sexuality*, vol. 1, *An Introduction*, trans. Robert Hurley (New York: Pantheon Books, 1978).

[195] Foucault, *The History of Sexuality*, 81.

> reticence, and things were done without too much concealment; one had a tolerant familiarity with the illicit. Codes regulating the coarse, the obscene, and the indecent were quite lax compared to those of the nineteenth century. It was a time of direct gestures, shameless discourse, and open transgressions, when anatomies were shown and intermingled at will, and knowing children hung about amid the laughter of adults: it was a period when bodies 'made a display of themselves.'
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> But twilight soon fell upon this bright day, followed by the monotonous nights of the Victorian bourgeoisie. Sexuality was carefully confined; it moved into the home. The conjugal family took custody of it and absorbed it into the serious function of reproduction. On the subject of sex, silence became the rule.[196]

With this passage, Foucault establishes the historical existence of a theory of repression, or the "repressive hypothesis",[197] rather than the historicity of sexual repression itself. In other words, he distinguishes between the repression of sexuality and discourse about the repression of sexuality. His intent is to problematize the latter rather than to establish as true or false the former. To be clear, when Foucault questions the repressive hypothesis, he does not argue that *in fact* the past was actually or truly tolerant toward sex or sexuality in the Victorian or any other historical period. Nor does he argue the opposite. Instead, he reinserts the repressive hypothesis as one (dominant) discourse existing within other historical discourses on sex, and underscores the effects of power generated by this discourse.[198] Thus, rather than focusing on the repression of sex as an issue of historical record or not, Foucault shifts attention to consider the productive nature of discourses on sex and repression. He argues that instead of the repression of sex and sexuality, there was actually an historical "incitement to discourse", or a proliferation of institutionalized discourses on sex.[199] This incitement to discourse transformed sex into

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[196] Foucault, 3.

[197] Foucault, 15.

[198] Foucault, 10-13.

[199] Foucault, 18-35.

something that could be managed or regulated.[200] In other words, sex became a discourse object and was subject to intervention (or moral regulation, discussed in Chapter 3).[201]

Methodologically, Foucault points to the apparent historical supports of the repressive hypothesis, problematizing the common sense appeal of such explanations. He suggests that instead of being fact or truth, the repressive hypothesis is an after-the-fact explanation that links the development and continuation of capitalism and the bourgeois order to the imperative of repressing sex.[202] In other words, the capitalist need to ensure productivity and the bourgeois desire to establish the nuclear family necessitated the repression of sex and sexuality. Foucault, however, rejects the idea that the prudish bourgeoisie were a dominant socio-economic class who imposed various measures to repress sexuality (including, for example, prohibitions on obscene literature).[203] Foucault writes that "anything can be deduced from the general phenomenon of the domination of the bourgeois class".[204] Instead of focusing on *who* (e.g. "the powerful", or the dominant bourgeoisie) made literature obscene and thereby illegal, for example, in *The History of Sexuality* Foucault refocuses analytic attention on *how* power was exercised and with what effects. Instead of focusing on the establishment of a particular dominant group and the imposition of its values, Foucault directs attention to the institutionalized constitution of particular kinds of subjects. In other words, *how* the effects of power constituted normalized and

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[200] Foucault, 24.

[201] Foucault, 26.

[202] Foucault, 5-6.

[203] Michel Foucault, "Two Lectures," in *Power/Knowledge: Selected Interviews and Other Writings 1972-1977*, ed. Colin Gordon, trans. Colin Gordon, Leo Marshall, John Mepham and Kate Soper (New York: Pantheon Books, 1980), 100-101.

[204] Foucault, "Two Lectures," 100.

normative standards of behaviour (vis-à-vis sexuality, for example) and excluded others is, for Foucault, a more significant focus of analysis than *who* (arguably) exerted power over others.

Additionally, Foucault discusses the consequences or effects of the repressive hypothesis (beyond the constitution of subjects). Foucault refers to what he calls the "speaker's benefit", or the popularity or politics of a deliberate transgression of the taboo of sex and sexuality through discourse.[205] Seemingly subversive or transgressive calls for sexual freedom, or discourse that runs counter to the apparent repression of sex, is seductive to a number of speakers. Foucault likens the speaker's benefit to a quasi-religious phenomenon, in that there is a "prophetic" belief that "[t]omorrow sex will be good again".[206] He argues that there is a political interest in maintaining the repressive hypothesis in order to loudly or fervently counter it with a discourse of, for example, (sexual) rights and freedoms.[207] Thus, he implicates knowledge of sex and sexuality within relations of power.

The History of Sexuality demonstrates that the common sense or commonly received history of sex and sexuality can be problematic and that it can be problematized. Foucault challenges the received (repressive) history of sexuality with a history of the present, via genealogy. In this chapter, I begin by discussing some of the problems of historical research that are implied by Foucault's *The History of Sexuality*. I then explicate a genealogical approach, including the implicit use of archaeology, which responds to or addresses these problems in order to set out this project's methodology. In the next chapter, I draw links between genealogy and moral regulation scholarship; the latter draws from and builds on Foucault's genealogical

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[205] Foucault, *The History of Sexuality*, 6.

[206] Foucault, 7.

[207] Foucault, 8.

concerns, particularly pertaining to power and knowledge. As I said, however, I begin this process of developing a methodology by problematizing conventional history.

Problematizing Conventional History: The Problem of the Annex

One book that I found extremely helpful, insightful, and relevant was consigned to the library's annex. While the annoyance of repeatedly having to request access to this and other books drove me to drink tea due to its alleged calming effects, the experience provides an analogy for the social scientist or a metaphor for the literary scholar for the problematic of conducting historical research. Books are generally put in the annex due to a lack of resources, such as space, but what other factors limit or shape the archive that is available to the researcher? On what grounds was that particular book, rather than another book, put in the annex? Was it because of its age and, by extension, presumed irrelevance? Because tracking software suggests that it was not read enough? Because a librarian exercised judgement according to current professional guidelines?

The problem of the annex illustrates some of the questions associated with historical research. Can we locate historical knowledge, and if so, where? What factors affect the knowledge that is or is not accessible to the researcher? How do we access the past, not just materially, but also analytically? Finally, what justifies all that effort to retrieve a musty, dusty book from the annex (or knowledge from the past)?[208] This section discusses the problematization of conventional history as being itself an historical trend (i.e. post-

[208] Historical knowledge includes both knowledge *from* the past as well as knowledge *of* the past; while these are distinct, they cannot be considered separately. For example, knowledge *from* the past could include the historical tax records of people and goods. When accessed from the position of the present, these records can provide insight into the habits, records, government, populations, goods, trade, etc. *of* the past.

structuralism). Subsequently and in light of post-structuralist concerns, the location and accessibility of historical knowledge is discussed in order to excavate some of the problems associated with historical research. The purpose of this section is to problematize historical research and to present (in subsequent sections) a Foucaultian genealogy as a way to respond to these problems, to provide a means of conducting an historical analysis, and to give insight into why historical research remains a useful practice.

A Brief Overview of Post-Structuralism

This subsection sets out a general overview of an historical trend in scholarship within which subsequent subsections (which critique the conventional documentary approach to history and reveal the problems associated with the use of archival documents as sources of historical knowledge) are located. This subsection is informed by post-structural feminists,[209] Marxists,[210] and social historians[211] who reconsidered history's objects, methods, and effects.

Post-structuralism was a reaction against humanism, which neglected to consider power; post-structuralists problematized history as a means of (re)producing authorized knowledge.[212] Post-structuralists rejected the use of historical investigation that bypassed theoretical problems

[209] E.g. Riley, '*Am I that Name?'*; Joan Wallach Scott, *Gender and the Politics of History* (New York: Columbia University Press, 1988).

[210] E.g. Bennington and Young, "Posing the Question."

[211] E.g. Mariana Valverde, *The Age of Light, Soap, and Water: Moral Reform in English Canada, 1885-1925*, with a new introduction (Toronto: University of Toronto Press, 2008).

[212] Paul A. Bové, "The End of Humanism: Michel Foucault and the Power of the Disciplines," in *Michel Foucault: Critical Assessments*, vol. 2, ed. Barry Smart (New York: Routledge, 1994), 313-314, 318.

instead problematizing and theorizing historical investigation itself.[213] In other words, rather than being conceptualized "simply" as a method, history itself became implicated in the production of knowledge. This problematization of history involved rethinking the assumptions, practices, and rhetoric of the discipline; questions were raised about whether history could "faithfully document lived reality", whether archives were "repositories of facts", and whether historical categories were "transparent".[214] As part of this problematizing process, seemingly ahistorical concepts – such as obscenity – became a focus of investigation; for example, Armstrong problematized gender, sexuality and the novel.[215]

Feminists, Marxists, and social historians (and others) (re)considered how concepts are constituted and subject to transformation. For example, Scott writes that both the concept of gender and knowledge about gender are produced and can be explained; history helps to explain the concept, but also produces knowledge that helps to constitute the concept of gender (including in the present).[216] Rather than turning to documents to tell them truthfully or straightforwardly or factually about the past, therefore, post-structuralists instead asked how documents related to and constituted, for example, gender or class. In other words, post-structuralists tried to make sense of historical documents as having political and ideological implications, and as being implicated in broader social and political processes in the past as well

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[213] Mark Cousins, "The Practice of Historical Investigation," in *Post-Structuralism and the Question of History*, ed. Derek Attridge, Geoff Bennington and Robert Young (New York: Cambridge University Press, 1987), 127-128.

[214] Scott, *Politics of History*, 2.

[215] Nancy Armstrong, *Desire and Domestic Fiction: A Political History of the Novel* (New York: Oxford University Press, 1987).

[216] Scott, *Politics of History*, 2-3.

as in the present; analytic attention no longer focused on the text or its context, but on politics and relations of power, and on the constitution of concepts and subjects.[217]

The linguistic turn associated with post-structuralism introduced doubt to the social sciences and this project benefits from a productive skepticism that results in a reflexive project and a search for ways to resolve issues creatively and consciously. While skepticism and reflexivity are helpful in revisiting the importance of conceptualization as social science practice, and in implicating the researcher in the social science project, I reject a relativist argument. The inability to know everything does not mean we can know nothing.[218] Keeping this brief overview of post-structuralist concerns in mind, the following subsection describes some of the problems of a documentary approach to history.

The Problems of the Documentary Approach to History

Thinking about where we can locate and access historical knowledge potentially concretizes the past as if it is a distinct destination (the archive!). History privileges documentary knowledge as the primary and perhaps only reliable or truthful way of knowing the past. Since both material artefacts (including but not limited to documents) and immaterial artefacts (e.g. conventions of behaviour, religious or cultural traditions) provide evidence of the past, the privilege of documentary sources deserves further scrutiny.

Sayer provides a thoughtful analysis of the language-knowledge link and the role of researchers in perpetuating a particular relation to, and understanding or ordering of, linguistic

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[217] E.g. Tony Bennett, "Texts in History: The Determinations of Readings and Their Texts," in *Post-Structuralism and the Question of History*, ed. Derek Attridge, Geoff Bennington and Robert Young (New York: Cambridge University Press, 1987), 67-80.

[218] See Miles Fairburn, *Social History: Problems, Strategies and Methods* (New York: St. Martin's Press, 1999), 6.

knowledge. According to Sayer, linguistic knowledge (including documentary knowledge, which is made up of language) is privileged or prioritized; researchers, due to material and/or symbolic capital, have a recognized relationship to knowledge and privilege the contemplative modes of speaking and writing.[219] Because of their own relationship to knowledge, researchers prioritize and even project those same characteristics (i.e. the privilege of linguistic knowledge) onto those they study, thereby affirming the language-knowledge link.[220] Sayer suggests that this uncritical acceptance of the place of linguistic knowledge permeates the research process, extending even to the act of "writing up" the findings.[221] Abrams in particular is critical of the use of narrative in historical accounts, suggesting that while narrative is well-suited to describing a process of events in chronological order, it also requires us "to look a little more closely at what is going on when historians tell stories".[222] In other words, historians tell *a* story, rather than *the* truth. The traditions and conditions of researchers and their relations to particular forms of (linguistic) knowledge influence knowledge production. While this attention to linguistic knowledge is problematic in that it excludes other forms of knowledge, the following example points to the challenges of making sense of historical knowledge.

In a disorienting passage, McDonald, who researches medieval obscenity, discusses a badge (a medieval type of brooch) that is now called *Pussy Goes A 'Hunting'*; *Pussy* is a

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[219] Sayer, *Method in Social Science*, 15.

[220] Sayer, 15.

[221] Sayer, 258.

[222] Philip Abrams, *Historical Sociology* (Ithaca, NY: Cornell University Press, 1982), 303.

crowned vulva with an arrow and a whip riding on a horse.[223] McDonald writes that, "[f]aced with a vulva on horseback, for instance, our ability to analyse its function and meaning is severely impeded by our real difficulty in finding an appropriate vocabulary with which to discuss it, let alone one that might accurately reflect the kind of discursive – or visual – register in which (we can only imagine) it was originally understood".[224] She suggests that while *Pussy* might be considered obscene today, there is no evidence that would allow the historian to attribute the original ownership, purpose, or significance to the object.[225] In discussing *Pussy*, McDonald raises key problems associated with making sense of historical artefacts, whether they are non-traditional or linguistic/documentary.

First, there is the problem of positionality, since the researcher writes from or in the present. As a result, one answer to the question – "Where do we locate historical knowledge?" – is necessarily going to be "In the present!". As LaCapra writes, "the past is not simply a finished story to be narrated but a process linked to each historian's own time of narration".[226] He suggests that those engaged in historical work are engaged in a dialogic process that moves between understanding the past and the present and the implications of both for each.[227] This idea of history as a dialogue, rather than simply a reconstruction or documentation of the past, situates the researcher as an active participant who engages with particular "facts" from a particular position, and who creates a conversation for and with a particular audience; history is

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[223] McDonald, "Introduction," 3.

[224] McDonald, 9.

[225] McDonald, 10-11.

[226] Dominick LaCapra, *Rethinking Intellectual History: Texts, Contexts, Language* (Ithaca, NY: Cornell University Press, 1983), 18.

[227] LaCapra, *Rethinking Intellectual History*, 61.

not neutral or objective. Second, the idea of an adequate, credible, reliable, valid, etc. record or historical evidence is also problematic because historians tend to rely on certain types of sources (e.g. a linguistic/documentary record). *Pussy* is as much evidence as a document, but evidence of what exactly is difficult to establish because of its unfamiliarity. In discussing the problem of *Pussy*, McDonald disrupts the obviousness of the historical artefact as knowledge and the researcher as knowledgeable.

In addition to problematizing the typical reliance on documentary sources as obvious or self-evident pieces of evidence, Cousins critically considers the use of certain documents over others in historical investigation. He questions why a "primary" source, such as a trial transcript, is privileged over a "secondary" source, such as a newspaper article that reports on an obscenity trial, because of its apparent proximity to the event and therefore to truth, thus challenging the assumed link between event and truth.[228] Cousins suggests that history has structured ways of looking at the past, but this event-truth link fails to question both "the facts" as well as what they are believed to represent.[229] LaCapra also problematizes the presumed factual nature of history, suggesting that texts and documents are not simply repositories of facts that are nearer to or further from an event and therefore to truth, but are implicated in the creation and recreation of (an understanding of) reality.[230] This suggests that the documents typically used in historical investigations are not neutral objects, but are complicated and ordered by issues of tradition and ideas of truth.

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[228] Cousins, "Historical Investigation," 131.

[229] Cousins, 131, 134-135.

[230] LaCapra, *History and Criticism*, 11.

I have discussed the privilege of and reliance on documentary sources of knowledge, and in particular primary sources, as they pertain to historical investigations. The historical knowledge from the past that does exist – whether it is documentary or not, or primary or not – tends to suffer from two problems: (1) it is generally produced by elites and (2) it is often fragmentary.[231] What does it mean that knowledge is produced by "elites"? Perhaps too simply, it means that those in positions of authority influence the knowledge that dominates, circulates, and is preserved. For example, feminists such as Daly and Chesney-Lind suggest that historically in Western thought (as they call it), white, privileged men have depicted men's and women's natures and experiences; consequently, men's views of women and men's natures and experiences not only predominate, they also dominate.[232] Additionally, hegemonic forms of knowledge, such as legal knowledge, tend to be better preserved and are therefore more likely to be utilized in research. Extant historical knowledge from the past, therefore, is unbalanced and incomplete, making conclusions about the past likewise unbalanced and incomplete.

In addition to the elite and fragmented corpus of historical knowledge from the past, the researcher herself can influence or limit what historical information is accessible. In 2008, Valverde revisited one of her best-known works, *The Age of Light, Soap, and Water: Moral Reform in English Canada, 1885-1925*. She retrospectively regrets that she highlighted sexuality in a way that was not consistent with the priorities of those she studied,[233] calling this an error of

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[231] Fairburn, *Social History*, 8.

[232] Kathleen Daly and Meda Chesney-Lind, "Feminism and Criminology," *Justice Quarterly* 5, no. 4 (1988): 499, https://doi.org/10.1080/07418828800089871.

[233] Valverde, *Light, Soap, and Water*, 12.

presentism.[234] For her research on the purity movement, Valverde's own interests caused her to focus on knowledge pertaining to sexuality and to exclude knowledge relating to temperance.[235] This suggests that the researcher's positioning or preferences are among the barriers to accessing historical knowledge.

All of these problems – the privilege of linguistic knowledge, the challenge of making sense of non-linguistic knowledge, the difficulties inherent in ranking the truthfulness of types of historical knowledge, the impossibility of presenting a complete and truthful account from elite and fragmentary sources, and the influence of the researcher's interests – suggest that the researcher cannot simply retrieve archival facts and documents from the past in order to (re)present (knowledge of) the past. Instead, in historical investigations, researchers are trained to look in certain places (i.e. the archive) for certain types of knowledge (i.e. documents), and to present this knowledge in certain ways (i.e. as factual or truthful as well as a complete and balanced narrative). However, this traditional documentary approach to history, with its reliance on or confidence in the archive, is increasingly being questioned.

The Problems of the Archive

In a traditional documentary approach to history, the goal of research is to discover "hard" facts (i.e. from archival documents) and the result is a narrative account that fills "gaps in

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[234] See Fairburn, *Social History*, 203-204. Fairburn describes several types of presentism, including material, values, belief and concept presentism. Material presentism occurs when past actors are presumed to have had the same material resources to solve problems as in the present. Values presentism occurs when historians study a past people as if they had or should have had modern values (e.g. morals, desires, ambitions, preferences, tastes). Belief presentism occurs when the historian projects ontological and epistemological beliefs onto past people. Concept presentism occurs when current meanings ascribed to natural and social phenomena are ascribed to past peoples.

[235] Valverde, *Light, Soap, and Water*, 12.

the record" or throws "new light" on a phenomenon.[236] In other words, the documentary approach attempts to reconstruct the past "in its own terms" based on documents from the past.[237] As Valverde suggests, however, the "traditional tasks of gathering facts and reconstructing the past are . . . somewhat illusory" given some of the problems previously identified.[238] She suggests that history and social theory faced a "crisis of confidence" as a result of the linguistic turn, or the incorporation of linguistic theory, discourse analysis, and the sociology of knowledge into these and other disciplines.[239] Given the resultant lack of confidence in documents-as-facts (because historical facts are generated and given meaning both at the time of creation and subsequently by those studying or utilizing them), the traditional documentary approach to history that relies on or has confidence in the historical archive is increasingly recognized as problematic.

Recent scholarship critically considers how researchers negotiate, interpret and contribute to the archive.[240] Osborne describes the archive as a material place in which historical artefacts are deposited and preserved for interpretation, as well as an abstract concept that performs certain authorizing or legitimating functions.[241] In what follows, I describe some of the problems or implications of a material and a conceptual archive for historical research.

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[236] LaCapra, *History and Criticism*, 18.

[237] LaCapra, 19-20.

[238] Valverde, *Light, Soap, and Water*, ix.

[239] Valverde, ix.

[240] See Marlene Manoff, "Theories of the Archive from Across the Disciplines," *Portal: Libraries and the Academy* 4, no. 1 (2004): 9-25, https://doi.org/10.1353/pla.2004.0015.

[241] Thomas Osborne, "Ordinariness of the Archive," *History of the Human Sciences* 12, no. 2 (1995): 52-53, 58, https://doi.org/10.1177/09526959922120243.

Problems associated with the materials of the archive (i.e. documents) have already been discussed; there are also problems associated with the material archive itself. For example, access to the material archive is organized or regulated. Historical documents and artefacts are typically, after discovery, stored in archives which may be private, public, or some combination thereof. Even public archives restrict access, whether it is through hours of operation, by requiring evidence of membership, or through other means. If access to the archive is granted, certain protocols must be observed; this may involve wearing gloves to prevent the deterioration of sources, maintaining silence, copying only with permission or using certain approved methods of copying, etc. The material archive, like places of worship, utilizes objects, symbols and rituals of membership and cleanliness; the rituals of the archive serve in some ways to venerate the past, sacralising knowledge for a few rather than circulating it. The effect of the material archive is that knowledge or sources of knowledge are not necessarily available or accessible even to the researcher. While the restrictions and regulations of the material archive are of interest, and certainly have effects on historical research, the authorizing or legitimating functions of the archive as a concept are of greater import to this project.

Foucault, in his discussion of his archaeological approach to social analysis, defines both what the archive is ("the set . . . of discourses actually pronounced")[242] and what it does (it "is first the law of what can be said").[243] Or as Sheridan writes, the archive is not "an inert depository of past statements preserved for future use. It is the very system that makes the

[242] Michel Foucault, "The Archaeology of Knowledge," in *Foucault Live (Interviews, 1966-84)*, ed. Sylvère Lotringer, trans. John Johnston (New York: Semiotext(e), 1989), 45.

[243] Foucault, *The Archaeology of Knowledge*, 129.

emergence of statements possible".[244] Foucault reconceptualizes the archive, suggesting that it does not function (at least primarily) as a material storage facility; instead, at particular times and places in history, the archive authorizes and excludes certain discourses.[245] To put it differently, Foucault argues that the archive both contains and shapes (or constrains) the knowledges and practices of a particular group of people (i.e. a population) in a given period.[246] This concern with the conditions of possibility, or with the "historical conditions that account for what one says or of what one rejects",[247] is radically different from the traditional documentary approach. Instead of trying to grasp the historical document's meaning in order to reconstruct the past, instead Foucault directs attention to how a discourse emerged as dominant instead of another, as well as the implications of this emergence for and in the present. Rather than backward-looking history, therefore, Foucault is concerned with a history that informs the present, implicating the past within the present in order to resist domination and enable struggle.

In addition to allowing and disallowing discourses, Foucault suggests that the archive is fragmentary, rather than orderly, unified or coherent.[248] While the archive does order statements according to rules, relations and/or regularities (e.g. medical statements are grouped together and are distinct from legal statements), the archive does not organize statements into unities; the fragments contained within the archive include contradictions that prevent any kind of ultimate

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[244] Alan Sheridan, *Michel Foucault: The Will to Truth* (New York: Tavistock, 1980), 102.

[245] Michel Foucault, "The Birth of a World," in *Foucault Live (Interviews, 1966-84),* ed. Sylvère Lotringer, trans. John Johnston (New York: Semiotext(e), 1989), 58.

[246] Michel Foucault, "The Order of Things," in *Foucault Live (Interviews, 1966-84),* ed. Sylvère Lotringer, trans. John Johnston (New York: Semiotext(e), 1989), 1-2.

[247] Foucault, "Birth of a World," 58.

[248] Foucault, *The Archaeology of Knowledge,* 129-131.

unification of knowledge.[249] Foucault rejects the possibility of ever fully unifying or even comprehending the archive; he suggests that we are limited in what we can think about the archive and/or its contents because we exist within the realm (i.e. the rules, relations and regularities) of the archive.[250] Again, this is quite different from a traditional approach to history which assumes that fragments of the past can be woven into a narrative whole (in the present), and that positions history as being behind us rather than with us today.

The archive not only organizes (some of) the material evidence from the past, how (some of) the past can and cannot be thought about, and how (some) statements are categorized, Osborne suggests that the archive also confers truth and credibility on historical research and on the researcher.[251] Thus, the archive not only provides information from and of the past, it also legitimizes these functions.

The implications of this discussion on the archive impact how we think about and do history. Access to the archive is regulated; the archive regulates knowledge and practices; the archive organizes statements according to taken for granted rules; and the archive confers legitimacy on both the research and researcher. Taken together, this suggests that instead of being a neutral (and material) repository of historical fact and knowledge (and ultimately truth), the archive is itself an historical invention in that it emerges from and is implicated in historical conditions and is a *dominant* way of preserving, organizing and utilizing history *with effects in the present*. The following section continues this discussion of the archive by turning to Foucault's archaeology.

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[249] Foucault, 129-131.

[250] Foucault, 129-131.

[251] Osborne, "Ordinariness of the Archive," 53-54. See also Manoff, "Theories of the Archive," 19.

The Relationship Between Archaeology and Genealogy

It is necessary to consider archaeology before or in addition to genealogy because, as Frauley reminds us, genealogy implies archaeology.[252] Gutting suggests that archaeology *describes* "the discursive rules that constitute bodies of knowledge", while genealogy *explains* changes in discursive practice through and in history.[253] Foucault differentiated between archaeology and genealogy by suggesting that the accumulation of discourse exists within the archive, while genealogy describes and traces the emergence and descent of discourse.[254] This suggests that understanding archaeology is key to understanding genealogy; accordingly, this section describes Foucault's archaeology in terms of its scope and approach to sources in order to distinguish it from the documentary approach to history, as well as to lay the groundwork for the subsequent discussion of genealogy.[255]

Archaeology is a way of doing history that rejects or at least differentiates itself from documentary histories because it neglects the search for causes and rejects progressive narratives in favour of describing continuities, transformations, and differences.[256] Foucault premises archaeology on the idea that neither the history of a concept (such as obscenity) nor history itself

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[252] Jon Frauley, "The Expulsion of Foucault from Governmentality Studies: Toward an Archaeological-Realist Retrieval," in *Critical Realism and the Social Sciences: Heterodox Elaborations*, ed. Jon Frauley and Frank Pearce (Toronto: University of Toronto Press, 2007), 265-266.

[253] Gary Gutting, *Michel Foucault's Archaeology of Scientific Reason* (New York: Cambridge University Press, 1989), 6-7.

[254] Michel Foucault, "The Discourse of History," in *Foucault Live (Interviews, 1966-84)*, ed. Sylvère Lotringer, trans. John Johnston (New York: Semiotext(e), 1989), 25.

[255] See Appendix A for a glossary of analytic terms discussed in Chapters 2 and 3.

[256] Gavin Kendall and Gary Wickham, *Using Foucault's Methods* (Thousand Oaks: Sage, 1999), 24.

are about progress and/or continuity.[257] Instead, archaeology considers particular moments in time, rather than over time; this disrupts the inevitability or progressive aspect of history in which one moment logically, inevitably, causally, and/or progressively flows into the next. Archaeology looks at particular moments in time without considering moments that came before or after (either as cause and effect or as precedence and consequence).

Despite the use of the term archaeology, Foucault explains that he does not try to excavate "relations that are secret, hidden, more silent or deeper than the consciousness of men"; instead, he tries "to make visible what is invisible only because it's too much on the surface of things".[258] Foucault makes visible or explicit the discourses of the archive and studies these discourses for themselves.[259] This is a significant divergence from the documentary approach to history, which tries to reconstruct the past from, and/or the true meaning of, historical documents. Consistent with his ideas about the scope of history (i.e. the focus on moments in time), Foucault extends the idea of "rupture" to the discourses he studies; he considers discourses in isolation to what precedes, surrounds or follows them.[260] This is distinct from the history of ideas approach that tries to reconstruct discourses within a totality or a unified history or that tries to determine the meaning behind the discourse or the intention that animated it.

When considering the singular focus and approach to sources adopted by archaeology, and in particular this idea of rupture, or disjointed or isolated moments in time, the key difference between archaeology and genealogy becomes evident. Koopman characterizes the

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[257] Foucault, *The Archaeology of Knowledge*, 4.

[258] Foucault, "The Archaeology of Knowledge," 46.

[259] Gutting, *Michel Foucault's Archaeology*, 231.

[260] Foucault, *The Archaeology of Knowledge*, 4, 139.

primary difference as one of existence versus emergence; while archaeology focuses on a single moment in history (i.e. a moment of existence), genealogy traces multiple temporalities (i.e. moments of emergence and transformation).[261] In an excellent summary of the relationship between archaeology and genealogy, Koopman writes that,

> the historiographical category of emergence brings into focus the distance between the archaeology of rupture and the genealogy of transformation. If Foucault's genealogical work is oriented toward a study of the historical conditions that have enabled and disabled certain forms of power and knowledge, then it is fair to characterize this work as a study of the emergence of forms of power and knowledge. Archaeology, by contrast, is not a study of emergence but rather of existence. Archaeology asks about what has existed in the past, and without concern for how that which existed came into being. Genealogy asks how that which existed emerged into being in the first place. In this sense, genealogy is additive to, rather than substitutive for, archaeology. The genealogist studies the unstable emergence into being of the various forms of stabilized being that the archaeologist describes. Genealogy discerns transformations while archaeology discerns targets of transformations. Archaeology seems to be necessary but not sufficient for genealogy.[262]

In other words, the archive contains evidence of a problematic concept, while a genealogy traces how the concept became problematic. While archaeology introduces the idea that history is discontinuous and ruptured, it neglects to consider the process of transformation, or why one moment in history is distinct from another and how this happened; genealogy, however, is premised on the idea that history, while not necessarily continuous, undergoes transformation or moments of rupture. If archaeology is static, focusing on a moment in time and making its discourses visible, then genealogy is dynamic, considering the transformations in discourses and practices over and in time. Having discussed the relations between archaeology and genealogy, the following section describes genealogy as a particular kind of history: a history of the present.

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[261] Colin Koopman, *Genealogy as Critique: Foucault and the Problems of Modernity* (Bloomington: Indiana University Press, 2013), 39-40.

[262] Koopman, *Genealogy as Critique*, 39-40.

A History of the Present: A Brief Introduction to Genealogy

Having drawn attention to and critically discussed the reliance on archival documents in historical research, it is important to note that this project does not resolve the problems outlined. This project relies exclusively on documentary knowledge from the past; these documents, however, are not analysed to better understand the past, but rather to problematize the present. In other words, this project is a history of the present.

Given the problems outlined thus far, including the problems with the traditional documentary approach to history and the problems of the archive, Foucault is among those who call for a radically different approach to doing history. Foucault rejects the possibility of finding the truth either from or of the past in historical documents. He writes that,

> it is obvious enough that ever since a discipline such as history has existed, documents have been used, questioned, and have given rise to questions; scholars have asked not only what these documents meant, but also whether they were telling the truth, and by what right they could claim to be doing so, whether they were sincere or deliberately misleading, well informed or ignorant, authentic or tampered with. But each of these questions, and all this critical concern, pointed to one and the same end: the reconstitution, on the basis of what the documents say, and sometimes merely hint at, of the past from which they emanate and which has now disappeared far behind them. . .[263]

Thus, Foucault rejects the possibility of reconstructing an accurate, truthful or faithful representation of the past based on documents from a material archive. Instead of a documentary approach to history, Foucault develops genealogy as an alternative way of doing and thinking about history. Instead of a history of the past, Foucault advocates doing a history of the present that is purposeful and that has some potential to contest dominant discursive practices.

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[263] Foucault, *The Archaeology of Knowledge*, 6.

Foucault explains that he became interested in the past "because I saw in [it] ways of thinking and behaving that are still with us".[264] However, instead of writing traditional histories that explain why the present is the way it is, or histories that provide information or insight into the past, Foucault writes histories of the present, or histories that have implications for and are implicated in the present.[265] Dean defines a history of the present as the "use of historical resources to reflect upon the contingency, singularity, interconnections, and potentialities of the diverse trajectories of those elements which compose present social arrangements and experience".[266] Similarly, Mahon writes that histories of the present question truth, including taken for granted concepts and histories, in order to separate ourselves from the received history of who we are and who we are becoming and to "reveal the contingent, practical, and historical conditions of our existence".[267] A history of the present provides an historical awareness of the present, in which our present is not considered to be progressive or inevitable or necessary, but is instead understood to be contingent and therefore open to change.[268]

To be clear, a history of the present insists that the present is itself historical, but it does not suggest that the historical present is a necessary or inevitable consequence flowing from the

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[264] Michel Foucault, "Rituals of Exclusion," in *Foucault Live (Interviews, 1966-84)*, ed. Sylvère Lotringer, trans. John Johnston (New York: Semiotext(e), 1989), 63.

[265] Michel Foucault, *Discipline and Punish: The Birth of the Prison*, trans. Alan Sheridan (New York: Vintage Books, 1979), 31.

[266] Mitchell Dean, *Critical and Effective Histories: Foucault's Methods and Historical Sociology* (New York: Routledge, 1994), 21.

[267] Michael Mahon, *Foucault's Nietzschean Genealogy: Truth, Power, and the Subject* (Albany: State University of New York Press, 1992), 2.

[268] Michel Foucault, "The Subject and Power," in *Power*, vol. 3 of *Essential Works of Foucault, 1954-1984*, ed. James D. Faubion, trans. Robert Hurley and others (London: Allen Lane, 2001), 327.

past. Instead, the goal of a history of the present is to unsettle the historical present by revealing its contingency, or those accidents and events that led to its constitution.[269] By undermining or problematizing the idea of a natural or progressive history in favour of a contingent one, there is a possibility for change. Thus, instead of a traditional documentary approach to history, which presents its narrative as a faithful and truthful representation of the past, a history of the present *functions* quite differently in that it is intended to produce effects in the present, rather than provide an account of the past. The means of doing such a history of the present is through genealogy.

Genealogy

Entire books have been written on genealogy, including those by Minson, Mahon, Visker, and Koopman.[270] I do not attempt to provide an in-depth critique of genealogy. Instead, throughout the rest of this chapter I develop a methodology that addresses the problems of historical research outlined earlier (i.e. the problems of the traditional documentary approach to history and the problems of the archive), and that is consistent with the genealogical projects of, for example, Dean on pauperism,[271] Walters on unemployment,[272] and Reuter on agoraphobia.[273]

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[269] Dean, *Critical and Effective Histories*, 21.

[270] Jeffrey Minson, *Genealogies of Morals: Nietzsche, Foucault, Donzelot and the Eccentricity of Ethics* (New York: St. Martin's Press, 1985); Mahon, *Foucault's Nietzschean Genealogy*; Rudi Visker, *Michel Foucault: Genealogy as Critique*, trans. Chris Turner (New York: Verso, 1995); Koopman, *Genealogy as Critique*.

[271] Dean, *The Constitution of Poverty.*

[272] Walters, *Unemployment and Government*.

[273] Shelley Z. Reuter, *Narrating Social Order: Agoraphobia and the Politics of Classification* (Toronto: University of Toronto Press, 2007).

In discussing genealogy, I refer primarily to Foucault, although he is certainly not the only genealogist. Foucault suggests that his works are inconclusive and fragmented rather than authoritative; he writes that they are "merely lines laid down for you to pursue or to divert elsewhere, for me to extend upon or re-design as the case might be".[274] In that spirit of exploration, I develop genealogy in a way that draws from and builds on Foucault's approach.

Foucault defines genealogy as "the union of erudite knowledge and local memories which allows us to establish a historical knowledge of struggles and to make use of this knowledge tactically today".[275] This definition points to the consistency between what a genealogy is and what it does. Genealogy *is* a form of history (i.e. a history of the present) and it *does* an insurrectionary form of history that challenges traditional histories as well as the implications of history in the present. Genealogy is not, however, simply reactionary to traditional history. Instead, it is productive or effective.[276]

An effective history is accomplished by rejecting ahistorical concepts and instead demonstrating their historicity.[277] Mahon writes that genealogy focuses on and disrupts "what we typically hold to be ahistorical, self-evident, and substantial in order to reveal its rootedness in history".[278] In other words, genealogy rejects the belief or possibility that concepts like

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[274] Foucault, "Two Lectures," 78-79.

[275] Foucault, 83.

[276] Michel Foucault, "Nietzsche, Genealogy, History," in *Language, Counter-Memory, Practice: Selected Essays and Interviews*, ed. Donald F. Bouchard, trans. Donald F. Bouchard and Sherry Simon (Ithaca, NY: Cornell University Press, 1977), 154.

[277] Michel Foucault, "Truth and Power," in *Power/Knowledge: Selected Interviews and Other Writings 1972-1977*, ed. Colin Gordon, trans. Colin Gordon, Leo Marshall, John Mepham and Kate Soper (New York: Pantheon Books, 1980), 117.

[278] Mahon, *Foucault's Nietzschean Genealogy*, 108.

obscenity (or the archive, for that matter) are universal and constant; instead of eternally *being*, concepts like obscenity are implicated in historical processes of *becoming*.[279] It is important to note that while a genealogical approach disrupts prevalent ideas about concepts like obscenity, the purpose of such a genealogy is *not* to demonstrate that obscenity does not *in fact* exist, but instead it is to demonstrate how firmly rooted obscenity is in history.[280] A history of the present or a genealogy or an effective history, therefore, is concerned with disrupting knowledge from and of the past that pertains to seemingly ahistorical concepts, such as obscenity, in order to provide alternative knowledges that can potentially be used to contest normative and normalized standards of judgment and behaviour that (continue to) exist in the present.

Foucault suggests that this process of doing history is not just about dismantling the historically narrated or authorized past; effective histories are also, and perhaps more importantly, critically aware of the historical constraints (i.e. the archive) within which the researcher-historian and her research exist.[281] Part of this critical awareness includes recognizing the limitations of knowledge and knowledge production, such as the reliance on documentary knowledge, or the elitist and fragmentary nature of historical knowledge, and emphasizing rather than ameliorating the problematic nature of extant knowledge. Further, the production of a history of the present that is itself fragmented – in the sense of producing *a* knowledge rather than a completed narrative – is methodologically consistent. Foucault suggests that genealogies should be fragmented and disordered in order to emancipate subjugated knowledges and to make

[279] Mahon, 112-113.

[280] See Riley, '*Am I that Name?'*, 5.

[281] Foucault, "Nietzsche, Genealogy, History," 156-157.

them capable of opposing unities.[282] This is in contrast to traditional documentary histories which, despite knowing that there are holes in the archives (e.g. documents and other knowledges that were lost or destroyed), continue to build unities from fragments.

The process of doing critical and effective history, or genealogy, is developed in the rest of this chapter. Briefly, however, genealogy can be considered both a recognition of and a response to the problems of historical knowledge outlined thus far. Instead of conceiving of knowledge as conveniently stored in or easily retrieved from archives, genealogy is premised on the idea that knowledge must be discovered or uncovered and critically considered. Instead of looking for documentary evidence from and of the past, a genealogical approach looks for evidence of struggle in order to develop a history of the present. Instead of despairing over elitist or fragmentary knowledge, genealogy interrogates the connection between power and domination on the one hand and the production and application of knowledge on the other, and it seeks to be purposefully fragmented in order to prevent incorporation into dominant narratives. Instead of looking to the archive to authorize or make knowledge credible, a genealogy attempts precisely the opposite; that is, it attempts to disrupt knowledge that is authorized and question what is credible. Another way of putting this is that genealogy "problematizes".

Problematization

Although there is not a single grand theory of genealogy, problematization is characteristic of genealogy.[283] Problematization has two main parts, which Koopman calls

[282] Foucault, "Two Lectures," 85.

[283] Michel Foucault, "The Concern for Truth," in *Foucault Live (Interviews, 1966-84)*, ed. Sylvère Lotringer, trans. John Johnston (New York: Semiotext(e), 1989), 295-296.

complexity and contingency.[284] Complexity refers to the networks in which concepts (such as obscenity) are, at a particular point in history, problematized or made problematic through systems of knowledge (e.g. clerical or legal discourses) and institutional practices (e.g. procedures of the Church or legal system).[285] Thus, genealogy describes and makes visible both the complex conditions and relations that constitute the problem of obscenity and that subsequently respond to obscenity-as-problem.[286] The contingent part of problematization refers to the implications of the problematized concepts, discourses, and practices for and in the present, demonstrating "that what is, does not have to be, what it is".[287] Problematization reveals or challenges the contingent rather than necessary conditions of the present (and the obscene within the present) and opens up space for change. In summary, problematization reveals and challenges both the historical emergence and continuing presence of problems and also critically considers taken for granted concepts such as obscenity.

To be clear, problematization does not involve the judgment of concepts, discourses or practices, such as whether they are right or wrong, truthful or false. Instead, problematization is intended to allow for a critical consideration of the historical conditions – discursive, material, moral, social, economic – that make discourses and practices possible.[288] Genealogy does not attempt to derive or define truth, but instead creates doubt and raises questions that make

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[284] Koopman, *Genealogy as Critique*, 47-48.

[285] Foucault, "The Concern for Truth," 295.

[286] See Koopman, *Genealogy as Critique*, 98.

[287] Michel Foucault, "How Much Does It Cost For Reason to Tell the Truth," in *Foucault Live (Interviews, 1966-84)*, ed. Sylvère Lotringer, trans. John Johnston (New York: Semiotext(e), 1989), 252.

[288] Koopman, *Genealogy as Critique*, 24.

alternatives thinkable and possible.[289] Problematization is not simply disruptive or contentious; it is a purposeful practice intended to reveal how and why concepts like obscenity came to be and continue to be, and with what effects, and to make space for transformation. Having described genealogy as a purposeful or effective means of doing history that problematizes concepts (by pointing to their complexity and contingency) that continue into the present, I now turn more specifically to the concerns of genealogy, including discourses, practices and events.

Discourses

Genealogy considers three interrelated components, including discourses, practices, and events; the latter two are described in subsequent sections. Mills explains that "a discourse is not a disembodied collection of statements, but groupings of utterances or sentences, statements which are enacted within a social context, which are determined by that social context and which contribute to the way that social context continues its existence".[290] This is a useful starting point for a discussion of discourse, since it points to what discourse is (groups of statements), where it exists (within a discursive formation), and also its effects (the maintenance of socio-historical conditions). In this section, I conceptualize statements, rules of formation and exclusion (or how some statements come to be formed instead of others), and finally the role of subjugated knowledges in challenging dominant discourses.

[289] Koopman, 60.

[290] Sara Mills, *Discourse: The New Critical Idiom*, 2nd ed. (New York: Routledge, 2004), 10, ProQuest Ebook Central.

Statements

Statements are the units of discourse. Sheridan distinguishes between sentences, propositions and statements in order to divorce the statement from grammar and linguistics.[291] Kusch explains that statements refer to objects or states of affairs;[292] in other words, statements exist or are true or meaningful only in relation to their referential, or to the objects or states of affairs to which they refer.[293] This project looks for statements that refer to obscenity in general and to *Fanny Hill* in particular, and considers those statements in order to reconstitute the thought or discourse objects in terms of their intersubjective meaning (i.e. how we collectively make sense of them through frames of meaning and within material frameworks).

Having identified statements that relate to obscenity and/or to *Fanny Hill*, the next step is to describe the statement. Foucault is not interested in trying to rediscover or uncover the intention of the statement's author or the meaning of the statement itself.[294] Instead, Foucault writes that,

> we must grasp the statement in the exact specificity of its occurrence; determine its conditions of existence, fix at least its limits, establish its correlations with other statements that may be connected with it, and show what other forms of statement it excludes. We do not seek below what is manifest the half silent murmur of another discourse; we must show why it could not be other than it was. . .[295]

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[291] Sheridan, *The Will to Truth*, 99-100.

[292] Martin Kusch, *Foucault's Strata and Fields: An Investigation into Archaeological and Genealogical Science Studies* (Boston: Kluwer Academic, 1991), 61.

[293] Gutting, *Michel Foucault's Archaeology*, 240.

[294] Foucault, *The Archaeology of Knowledge*, 27-28.

[295] Foucault, 28.

Mahon suggests that Foucault's study of discourse is "an analytics as opposed to an analysis".[296] What he means is that Foucault focuses more on the statement's referential, or the historical conditions and relations that account for the emergence and existence of the referent (e.g. obscenity), rather than the referent itself.[297] In other words, Foucaultian discourse analysis pays attention to the specificity of statements or discourses not to understand or make sense of their particular meanings or even to understand or make sense of the concepts or states of affairs to which they refer, but in order to make visible the specific rules and conditions that led to their emergence and functioning (and also transformation). Hook also points to this distinguishing methodological feature, arguing that rather than moving toward the interior of discourse (i.e. its meaning or true essence), discourse analysis moves outward toward the external conditions that enable its emergence and existence.[298]

Discourse analysis or analysis of groups of statements, therefore, is not about who says what and what was really meant, but about the relations between institutional and historical contexts or conditions and the constitution, continuation and circulation of groups of related statements. Again, Foucault is *not* concerned with the meaning of discourse, but is interested in discourse itself "as a practice that obeys certain rules".[299] This attention to the materiality of discourse (i.e. the historical conditions from which discourse emerges and within which it

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[296] Mahon, *Foucault's Nietzschean Genealogy*, 123.

[297] Mahon, 123.

[298] Derek Hook, *Foucault, Psychology and the Analytics of Power* (New York: Palgrave Macmillan, 2007), 127-128.

[299] Foucault, "The Archaeology of Knowledge," 46.

functions) is quite different from the history of ideas approach that considers discourse as allegory, or questions or analyses "what was being said in what was said".[300]

As Foucault writes, instead of exchanging error for truth, he is interested in "what *governs* statements, and the way in which they *govern* each other so as to constitute a set of propositions which are scientifically acceptable, and hence capable of being verified or falsified by scientific procedures".[301] In other words, Foucault's discourse analysis sidesteps the problem of the truth or falsity (or reality or fiction) of concepts such as the obscene, and instead reveals or makes visible the material historical conditions that allow groups of statements (i.e. discourses) about obscenity to be considered "*in terms of* truth and falsehood".[302] This means that this project on obscenity does not determine the real or true essence of obscenity's existence as determined by historical documents (nor does it challenge obscenity's existence); instead, by considering discourse, this project reveals the conditions that made obscenity's emergence in statements and in history possible. This project also considers how obscenity came to be considered a real, true or verifiable or falsifiable concept.

It is this approach to revealing the contingency of truth that frequently leads to charges of relativism. Hunt and Wickham explain that discourses create truth claims which marginalize or exclude other truths.[303] Truth is not conceived in universal or absolute terms, but as a practical

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[300] Foucault, *The Archaeology of Knowledge*, 28.

[301] Foucault, "Truth and Power," 112.

[302] Mahon, *Foucault's Nietzschean Genealogy*, 123.

[303] Alan Hunt and Gary Wickham, *Foucault and Law: Towards a Sociology of Law as Governance* (Chicago: Pluto Press, 1994), 11.

exercise that is implicated in and sustained by relations of power.[304] Similarly, Hook addresses the problem of relativism, explaining that instead of an anything goes attitude, genealogy looks for "a carefully delineated set of conditions of possibility under which statements come to be meaningful and true",[305] or those historical conditions that give rise to ideas of truth (about obscenity and purity, for example). For Foucault, statements are not more or less true, but are dominant or subjugated.[306] In other words, power relations confer truthfulness on some statements at the expense of others (a process that is discussed further throughout this chapter and the next).

This project, therefore, describes groups of statements or discourses pertaining to obscenity and *Fanny Hill* in the historical moment and conditions in and from which they emerge. These statements are not examined for their intrinsic meaning or truth, but for the historical relations that permit, sustain and reproduce ideas of truth and meaning regarding obscenity and *Fanny Hill*. The genealogical consideration of statements requires specificity in accounting for those statements that exist and those statements that are excluded. Statements, therefore, must be considered as operating according to the rules of formation and rules of exclusion, which are described in the following subsections.

Rules of Formation

I began the last subsection by indicating that statements are the units of discourse. Again, it is important to emphasize that discourse is not a random sentence that I might say or you might

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[304] Hunt and Wickham, *Foucault and Law,* 11.

[305] Hook, *Analytics of Power,* 105.

[306] Foucault, "Two Lectures," 81-82.

read; instead, historical conditions and rules allow some statements to be made (and form discourses) and prohibit or exclude others.[307] This subsection considers the rules that permit the formation of discourses.

Foucault writes that when there is a regularity or correlation between statements, objects, or concepts, a discursive formation exists.[308] A discursive formation is not unified by its content (i.e. by its constituent statements), but (to a certain extent) by the rules that govern the formation of statements.[309] It is these rules of formation that act as the conditions that function to permit or make possible the production of discourse.[310] Discursive formations are constituted by four interrelated elements: "the *objects* its statements are about, the kinds of cognitive status and authority they have (what Foucault calls their *enunciative modality*), the *concepts* in terms of which they are formulated, and the *themes* (theoretical viewpoints) they develop".[311] These four elements are discussed in turn in order to develop an understanding of discursive formations, including the rules by which they form and according to which they function.

First, I describe the *rules for the formation of objects*, or the rules that govern the emergence and identification of problematic objects, such as obscenity. A discourse object is formed through the interactions of surfaces of emergence, authorities of delimitation, and grids of specification. Surfaces of emergence are those social and cultural spaces from which a discourse object emerges; to put it differently, they are the places in which obscenity was sought

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[307] Foucault, *The Archaeology of Knowledge*, 27-28.

[308] Foucault, 38.

[309] Gutting, *Michel Foucault's Archaeology*, 232.

[310] Foucault, *The Archaeology of Knowledge*, 38; Kusch, *Foucault's Strata and Fields*, 59-60; Sheridan, *The Will to Truth*, 97.

[311] Gutting, *Michel Foucault's Archaeology*, 232.

and found.[312] Authorities of delimitation are those who have the authority to decide or designate a discourse object; these authorities (e.g. priests, judges, or scholars) speak from particular institutional sites (e.g. the Church, legal court, or university) that authorize or enable them to constitute discourse objects.[313] Grids of specification refer to the process of classifying objects according to symptoms or properties so that it is "obvious" that something is obscene (e.g. because a book contains explicit sexuality it is obviously a crime).[314] The point of identifying surfaces of emergence, authorities of delimitation and grids of specification is not to understand the history of the discourse object, but to grasp the discourse object as "the result of a group of relations that exist within and between surfaces, authorities and grids".[315] In other words, we can understand obscenity as the result of specific historic relations that constitute it as a problematic discourse object.

This project, therefore, considers literature within an historical social and cultural context that deviates sufficiently from accepted standards and is categorized as obscene by institutional authorities and/or according to classification schemes or standards and is therefore constituted as a problematic discourse object. In other words, the surfaces of emergence (e.g. religion or criminal law) are identified; the authorities of delimitation (e.g. those occupying positions within the Church or the legal courts) who judge or deem literature to be obscene are identified; and finally the grids of specification (e.g. religious/moral or legal standards of classification or

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[312] Foucault, *The Archaeology of Knowledge*, 41; Gutting, *Michel Foucault's Archaeology*, 234; Kusch, *Foucault's Strata and Fields*, 65; Sheridan, *The Will to Truth*, 97.

[313] Foucault, *The Archaeology of Knowledge*, 41-42; Gutting, *Michel Foucault's Archaeology*, 234; Kusch, *Foucault's Strata and Fields*, 65.

[314] Foucault, *The Archaeology of Knowledge*, 42; Gutting, *Michel Foucault's Archaeology*, 234-235; Kusch, *Foucault's Strata and Fields*, 65.

[315] Kusch, *Foucault's Strata and Fields*, 66.

definition) are identified in order to analyse literary obscenity as a problematic object (that requires regulation).

In addition to the rules of the formation of (problematic obscene) objects, the *rules for the formation of enunciative modalities* (or the ways in which statements are expressed), must be considered. Statements can be expressed by those who have the right, privilege or ability to use a given mode of speech (e.g. priests are authorized to make religious sermons and judges can make legal rulings or verdicts).[316] The ability of these speakers to make statements depends on the institutional site or source of their statement (e.g. the Church or the legal court).[317] A final consideration in the expression of statements is the relative position of the subject making the statement about discourse object (e.g. whether a judge pronounces a sentence-statement or a journalist reports on the judge's sentence-statement).[318] The rules for the formation of enunciative modalities are key in identifying the relations of power that constitute discourse and discourse objects.

This project, therefore, considers the expression of statements on obscene literature, particularly in relation to *Fanny Hill*. Those who are able to speak authoritatively, or make authoritative statements about obscene literature (e.g. bishops or judges) are identified. The particular language of the statement is traced to its authorizing institution (e.g. the judge uses legal language to make statements about obscenity, while the institutional authority of the legal

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[316] Foucault, *The Archaeology of Knowledge*, 50-51; Gutting, *Michel Foucault's Archaeology*, 235.

[317] Foucault, *The Archaeology of Knowledge*, 51-52; Gutting, *Michel Foucault's Archaeology*, 235.

[318] Foucault, *The Archaeology of Knowledge*, 52-53; Gutting, *Michel Foucault's Archaeology*, 235.

court provides both space and force for this language). Finally, the distance of the speaker to the discourse object is considered in order to determine the force of the statement.

Having discussed the rules for the formation of discourse objects and the rules for the formation of enunciative modalities, next are the *rules for the formation of concepts*. As with the previous rules, this category contains numerous components which are (unfortunately for those who are trying to map this out) also described as rules.[319] First are the logical or methodological rules that establish the relations of order among statements; these are the rules that we (generally unconsciously) follow in order to make definitive statements about an object's essential properties or characteristics.[320] Second are the rules that establish attitudes of acceptance or rejection toward groups of statements; these rules define a range of statements within a discursive formation that are accepted, rejected, or contested, statements from other discursive formations that are active in a discursive formation, and statements that are no longer accepted but have historical connections to current statements.[321] Third, there are rules specifying the procedures of intervention; these rules relate to the production of new statements that are rewritten, transcribed or translated from existing statements.[322] The point of these rules is to express or determine the general consensus regarding statements that pertain to a discourse object, and also to reveal the range and transformation of groups of statements pertaining to a problematic discourse object such as obscenity.

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[319] Again, refer to Appendix A for a helpful glossary of analytic terms.

[320] Gutting, *Michel Foucault's Archaeology*, 236.

[321] Gutting, 236.

[322] Gutting, 236-237.

This project, therefore, considers the "truth regimes", or those historically specific types of discourses that are accepted and which function as true (i.e. which constitute literature as obscene).[323] This project considers how statements are accepted and function as true.[324] To put it differently, this project considers the politics of truth statements by looking for those "truth practices", or those rules that make certain discourses appear to be and function as true.[325] For example, the process of determining whether literature is sinful or immoral can be established through divine revelation (which is revealed by a priest and through the *Bible* or Church doctrine). Alternatively, the process of the legal trial and the ritualistic determination of guilt are significant methodological steps in determining the obscenity of literature. These processes produce truth claims about obscenity (i.e. whether it is immoral or illegal). This project also considers, in addition to the dominant (truth) statements and processes that exist within a discursive formation, alternative statements and processes that are not as definitive or that are rejected and which are in opposition to extant truth regimes. For example, the aesthetic claims made about literature deemed to be obscene were introduced in legal courts long before they were accepted as legal arguments and finally as a legitimate defence against a charge of obscenity. Statements must be considered, therefore, as falling within a range of acceptance that is subject to transformation. Finally, this project considers how statements are translated, for example from legal language ("legalese") to the language of a popular or academic journal in order to sustain and reproduce a discourse. These translations are of particular interest for what they suggest about how populations collectively read and express ideas about obscenity.

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[323] See Lorna Weir, "The Concept of the Truth Regime," *Canadian Journal of Sociology* 33, no. 2 (2008): 368, https://www.jstor.org/stable/canajsocicahican.33.2.367.

[324] See Foucault, "Truth and Power," 112.

[325] Weir, "Truth Regime," 368.

Finally – in addition to the rules of the formation of objects, enunciative modalities, and concepts – there are the *rules for the formation of themes*. These rules refer to specific theories or themes that develop within a discursive formation,[326] such as the theory that individual moral or sexual purity leads to collective social purity. The range of theories possible within a discursive formation are determined by points of diffraction, or those points when otherwise equivalent statements (i.e. statements that are equally authorized and permitted by the discursive formation's rules) are incompatible.[327] While points of diffraction exist, they are limited by authorities (who prefer or mobilize certain statements over others) and by practices (which necessarily limit statements that do not support or sustain them).[328] The rules for the formation of themes provide reasons for collective beliefs pertaining to the problematic nature of discourse objects but may also be supplanted or subjugated.

This project, therefore, identifies these points of diffraction in order to demonstrate the contingency of discourses about obscenity and the transformation in dominant theories or themes about obscenity over time. In particular, this project considers those points in time when there was overlap between transformative discourses that hinged on points of diffraction. For example, there was a significant overlap between the moral and legal discourses, but legal discourse on obscenity came to be dominant. The discursive formation allowed the statements of both, but they became increasingly incompatible and eventually legal discourse merged with aesthetic discourse. Tracing out these points of diffraction, both within and between discourses, points to the changing and contingent nature of (statements about) obscenity.

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[326] Gutting, *Michel Foucault's Archaeology*, 237.

[327] Gutting, 237.

[328] Gutting, 237-238.

To summarize, this project considers the formation of distinct thought objects referred to and problematized as obscenity, including the historical social and cultural spaces, authorities, institutional sites and classificatory schemes that constitute obscenity's existence as such. Subsequently, this project considers the ways in which statements about obscenity are expressed, and in particular the ability of certain speakers within certain institutions to speak authoritatively about obscenity as a problematic discourse object. This project also considers the methodological processes that enable literature to be collectively (with a certain level of agreement as well as disagreement) understood as obscene. Finally, this project considers the significant theories or ideas about obscenity (and purity, for example) that animate or give collective social and cultural meaning to statements about obscenity and that govern our changing responses to the obscene. This encapsulates the rules of formation and their relevance to this project on obscene literature.

Rules of Exclusion

While the previous subsection discussed the *formation* of discourses, there are also rules about the *exclusion* of discourses. Foucault writes that "in every society the production of discourse is at once controlled, selected, organized and redistributed according to a certain number of procedures".[329] In other words, discourse is subject to controls, and some of these controls function to exclude the possibility or admissibility of knowledges. These rules of exclusion ensure the appearance of uniformity, truth and consensus in discursive formations. This subsection describes these rules of exclusion – which are divided into external and internal rules – and how this project identifies rules of exclusion pertaining to the obscene.

[329] Foucault, *The Archaeology of Knowledge*, 216.

The first external rule of exclusion is *prohibition*, which functions to limit certain expressions. As Foucault notes, "[w]e know perfectly well that we are not free to say just anything, that we cannot simply speak of anything, when we like or where we like; not just anyone, finally, may speak of just anything".[330] Expressions relating to sexuality and politics – and obscene literature touches both of these areas – are particularly subject to prohibition.[331] This project looks for objects deemed taboo, or for those things that cannot or should not be spoken of (or read), the circumstances that prohibit speech about such objects, and finally the privileged or exclusive right of the speaking subject, or those who may under certain circumstances speak of such things (e.g. the lawyer may speak of the obscene in the role of prosecutor).[332] This project, therefore, considers *Fanny Hill* as a particular tabooed and obscene object that may not be read or spoken of, the circumstances under which speech about *Fanny Hill* is enabled and forbidden (e.g. certain types of denunciatory discussion about *Fanny Hill* are permitted in the courts and in newspapers), and which speakers are enabled and forbidden to speak about *Fanny Hill* (e.g. lawyers and journalists versus women and youth).

A second type of external control is known as *division and rejection*; it refers to the creation of oppositions, such as obscenity and purity or the profane and the sacred, that lead to the acceptance of one and the rejection of the other.[333] Foucault notes that we do not necessarily reject discourses outright, or silence them absolutely; instead, sometimes we create alternative,

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[330] Foucault, 216.

[331] Pamela Major-Poetzl, *Michel Foucault's Archaeology of Western Culture: Toward a New Science of History* (Chapel Hill: University of North Carolina Press, 1983), 28.

[332] Foucault, *The Archaeology of Knowledge*, 216; Sheridan, *The Will to Truth*, 122.

[333] Major-Poetzl, *Michel Foucault's Archaeology*, 28.

specialized spaces to listen to them.[334] For example, Foucault describes how hospitals and other institutions were established, in which doctors and psychoanalysts listened to the mad, whose discourses were rejected.[335] This project looks for statements and practices that evidence this division and which serve to (re)produce this division between obscenity and purity or other such oppositions. The project also considers spaces (e.g. in the libraries of the wealthy and "well-adjusted") in which obscenity was allowed because it was constituted as having no "real" or "true" effect (e.g. on the moral purity of the upper class male).

The third type of external control, called the *opposition between true and false*, pertains to Foucault's will to truth.[336] Foucault suggests that the idea or belief that truth lies in knowledge, and the institutionalization of this belief "tends to exercise a sort of pressure, a power of constraint upon other forms of discourse".[337] In other words, certain types of knowledge, such as scientific knowledge, are recognized as authoritative and truthful, while other types of knowledge, such as fiction, are disregarded. This project considers forms of truthful knowledges and their struggles for dominance and describes the processes by which knowledge of the "truth" of the obscene was verified, or came to be considered truthful, as well as those knowledges that were excluded or falsified. In particular, the competition and contestation of religious/moral, commercial, legal and scholastic forms of knowledge are examined.

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[334] Foucault, *The Archaeology of Knowledge*, 217.

[335] Foucault, 217.

[336] Foucault, 217-219.

[337] Foucault, 219.

In addition to the above-mentioned external rules of exclusion, there are also internal rules of exclusion that act within discourse to ensure the appearance of uniformity. The first type of internal rule is called *commentary*; this refers to the process of relating discourse back to an original and authoritative "true" text that authorizes some discourses and limits alternatives.[338] An original text derives its importance from its seeming permanence and status; these texts are generally religious, legal, or literary, and are sometimes scientific (e.g. the *Bible* or *Koran*, the *Magna Carta* (1215), a "classic" by Charles Dickens or a work like Charles Darwin's *On the Origin of Species* (1859)).[339] Additionally, an original text is always capable of being "brought up to date" due to the "multiple or hidden meanings with which it is credited, the reticence and wealth it is believed to contain".[340] In other words, original texts are authoritative and limit discourse to what was "*finally*" said within the text.[341] In the process of commentary, multiple or hidden meanings are attributed to an original text that potentially make new discourses possible, but these discourses speak definitely, silencing other knowledges.[342] This project identifies original texts that pertain to obscenity and to *Fanny Hill*, such as the *Bible* and archetypal legal indictments and verdicts, in order to consider how "the truth" was authoritatively read and reread in or from these original texts.

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[338] Foucault, 220.

[339] Sheridan, *The Will to Truth*, 124-125.

[340] Foucault, *The Archaeology of Knowledge*, 221.

[341] Foucault, 221.

[342] Sheridan, *The Will to Truth*, 124-125.

The second type of internal rule refers to the *position of the author*, in which the author is considered to be a unifying principle.[343] The idea that an individual authored a statement implies that a unified discourse is produced when in fact an individual may have fragmented ideas. This project considers how the ideas and position of the author influence the apparent unity and integrity of discourse, for example in regards to the authorship by a judge of a legal decision or by a literary critic on obscenity.

The third type of internal rule involves what Major-Poetzl calls *distinctions between disciplines*, and functions by classifying discourse according to disciplinary boundaries that in turn limit the possibility for thinking and critiquing a discourse.[344] In other words, each discipline provides systems of truth, propositions, rules, definitions, techniques and instruments that limit what can and cannot be proposed.[345] This project considers the role that disciplines such as history, literary studies, and legal studies (and criminology) play in determining what questions can be asked of the obscene and how these questions can be answered.

In summary, this project considers the exclusion of alternative discourses about obscenity through the prohibition of certain tabooed objects that silences discourse completely, or permits only certain kinds of discourse (e.g. condemnatory discourses). Additionally, this project considers the division of discourses about obscenity and how we come to accept some and reject others. This project also considers how certain authoritative or dominant types of knowledge are considered to speak the truth about obscenity while other knowledges are rejected (or subjugated). Finally, this project considers the internal rules that function to exclude alternative

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[343] Foucault, *The Archaeology of Knowledge*, 221-222; Major-Poetzl, *Michel Foucault's Archaeology*, 29.

[344] Major-Poetzl, *Michel Foucault's Archaeology*, 29.

[345] Foucault, *The Archaeology of Knowledge*, 222-223; Sheridan, *The Will to Truth*, 126.

knowledges, including the importance of original texts in authoring and authorizing discourses both new and old, the idea of the author as a unifying principle, and the role of disciplines in constraining how discourses are thought about and critiqued, all of which limit what can be said or thought about obscenity. This encapsulates the rules of exclusion and their relevance to this project on obscene literature.

Enough with the Bloody Rules Already! What's the Point of All This?

While the rules of formation and exclusion seem definitive (perhaps because of their designation as rules), Foucault calls a discursive formation "a space of multiple dissensions".[346] Thus, while these rules potentially function to create the appearance of unified discourse, unified discourse is an impossibility because the concepts that discourse describes (e.g. obscenity) are constituted rather than constant, and the historical conditions from which discourse emerges and in which it exists are likewise subject to change.[347] Instead of unities (and despite all the rules!), discourses and discursive formations contain gaps, differences, and transformations.[348]

In addition to points of diffraction which have already been discussed (recall that these refer to competing statements that are equally authorized by a discursive formation), a range of competing and even contradictory statements may also exist when one discourse is substituted for another, since the emerging discourse is not necessarily fully formed, nor does the preceding discourse necessarily fully disappear.[349] For example, the discourses of immorality and illegality

[346] Foucault, *The Archaeology of Knowledge*, 155.

[347] Foucault, 32-33.

[348] Foucault, 37.

[349] Foucault, 173.

pertaining to obscenity could and did overlap and intertwine to a certain extent and in certain conditions. This occurs because transformations in discourse are rarely sudden and complete, but may be staggered by time, place and implementation.[350] Foucault's decision to use the word archaeology has been discussed for its shortcomings, including by Foucault himself;[351] however, the actual process of conducting an archaeological study seems remarkably pertinent here. The researcher engages in excavating or uncovering historical layers of "sediment" or archival material, looking for "artefacts" or evidence of discourses and practices. In certain layers of sediment (which denote the same time period and historical conditions), there may be overlapping discourses and practices that indicate substitution and transformation. There could also be layers that indicate cataclysmic or abrupt transformation.

The idea that discourses (and the concepts to which they relate) are not unified, complete or unchanging is important to grasp because the genealogist avoids the imperative to explain away differences or controversies or conflicts, and instead focuses analytic attention on revealing these differences, controversies, conflicts or struggles for what they can tell us about the conditions of emergence and existence and to problematize what is presented as a uniform and coherent system of knowledge and practice. This suggests a radically different approach to that of traditional history; instead of trying to overcome or explain away contradictions, genealogy highlights these discrepancies.[352] This focus on multiplicity within discursive formations also lends itself to one of the goals of genealogy, which is to reveal subjugated knowledges that can be utilized in struggles for change. The purpose of considering all these rules is not to arrive at

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[350] Foucault, 175.

[351] Foucault, "The Archaeology of Knowledge," 46.

[352] Foucault, *The Archaeology of Knowledge*, 150-151.

The Answer, but to point to struggles and thereby trace relations of power that are contingent and changeable, in part by uncovering subjugated knowledges.

Subjugated Knowledges

While the previous subsections described the rules by which dominant discourses are formed and excluded as part of this genealogical project, describing groups of statements is insufficient as genealogy also works to uncover subjugated knowledges. The goal of this section is to develop an initial understanding of subjugated knowledges as they exist in relation to dominant discourses. I revisit and further develop subjugated knowledges in the following chapter, particularly in relation to power and knowledge.

Foucault describes two kinds of subjugated knowledges: "the buried knowledges of erudition and those disqualified from the hierarchy of knowledges and sciences".[353] The first includes historical content, particularly content pertaining to struggle, that is overlooked or disguised, perhaps as a result of the tendency within the discipline of history to write ordered, unified and progressive narratives.[354] The second form of subjugated knowledge refers to popular knowledge that is disqualified because it is not recognized as being as credible or authoritative as scientific knowledge.[355] For example, Charles Dickens wrote about the sociological issues of his time, but in fictional form, which is not considered "scientific". This kind of knowledge is not what might be called "common sense", but is instead a form of local knowledge that is not recognizable in comparison to, and is not recognized by, dominant

[353] Foucault, "Two Lectures," 82.

[354] Foucault, 81-82.

[355] Foucault, 82.

knowledge systems.[356] These subjugated knowledges,[357] therefore, are not readily available or accessible and must be intentionally sought out.

Foucault describes how and where these subjugated knowledges can be found; they are found by genealogy and in existing documents. Foucault writes that "[g]enealogy is gray, meticulous, and patiently documentary. It operates on a field of entangled and confused parchments, on documents that have been scratched over and recopied many times".[358] This suggests that subjugated knowledges are not found in new or better or different documents (or archives). Instead, subjugated knowledges are found by reconsidering and questioning dominant, totalizing, traditional, authorized, credible knowledge (or statements) contained in the documents of the authorized archive. This points to something significant – subjugated knowledges exist in relation to and not independently of dominant knowledge, or the statements of the discursive formation. In other words, these subjugated knowledges bear a striking resemblance to those knowledges that are prohibited, rejected, and falsified by the rules of exclusion.

The goal of a genealogy is (to struggle) to liberate subjugated knowledges, which are evidence of historical struggles, and to enable transformative opportunities in the present.[359] Foucault suggests that a genealogy is a struggle against "the tyranny of globalising

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[356] Foucault, 82.

[357] I am always faintly surprised when my automatic spell-checker highlights "knowledges". "Knowledge" exists in English language – and perhaps in English thought – as a singular, unified entity, underscoring Foucault's point.

[358] Foucault, "Nietzsche, Genealogy, History," 139.

[359] Foucault, "Two Lectures," 83.

discourses".[360] The purpose of a genealogy, therefore, is not to counter discourses with truthful empirical facts, but to reveal and critique through subjugated knowledges the unity, claims, hierarchies and truths of discursive formations.[361] To put it differently, the goal is to conduct an effective history that disrupts the ahistorical and the self-evident,[362] which is accomplished in large part by revealing these subjugated knowledges in order to oppose unities.[363]

Ransom suggests that the work of a genealogy is to liberate subjugated knowledges from (the idea or appearance of) unitary discourse; he immediately cautions, however, that these subjugated knowledges can be reworked into dominant discourse.[364] Foucault advocates a particular form of autonomous, discontinuous, particular and local criticism (in contrast to totalizing theories), or knowledge production "whose validity is not dependent on the approval of the established régimes of thought".[365] Local critique, then, is not intended to provide knowledge for others (as in the Marxist attempt at demystification), but to counter the truth regime that disqualifies or subjugates local forms of knowledge. Foucault writes that,

> what I want to do, and here is the difficulty of trying to do it, is to solve this problem: to work out an interpretation, a reading of a certain reality, which might be such that, on one hand, this interpretation could produce some of the effects of truth; and on the other hand, these effects of truth could become implements within possible struggles. Telling the truth so that it might be acceptable. Deciphering a layer of reality in such a way that the lines of force and the lines of fragility come forth; the points of resistance and the

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[360] Foucault, 83.

[361] Foucault, 83.

[362] Mahon, *Foucault's Nietzschean Genealogy*, 107-114.

[363] Foucault, "Two Lectures," 85.

[364] John S. Ransom, *Foucault's Discipline: The Politics of Subjectivity* (Durham, NC: Duke University Press, 1997), 98-99, https://doi.org/10.1215/9780822382065.

[365] Foucault, "Two Lectures," 81.

> possible points of attack; the paths marked out and the shortcuts. It is the reality of possible struggles that I wish to bring to light.[366]

Instead of trying to determine what is true or even what is good or better, the goal of a genealogy is to provide an analysis that allows for curiosity and change rather than certainty and closure, and which detects, resists or contests forms of power and domination (discussed further in the next chapter). Or, in Foucault's words, "[t]he work of the intellect is to show that what is, does not have to be, what it is".[367] To put it differently, Foucault's subjugated knowledges do not offer either the truth of obscenity or a solution to it; instead, a genealogy identifies how and why obscenity became problematic, and problematizes the processes of becoming and of existence in order to contest its obviousness and to potentially make space for different ways of conceptualizing and responding to such literature.

To conclude this lengthy section, which described discourse, the rules of formation and exclusion, and subjugated knowledges, I remind the reader why discourse analysis is useful. Discourses are sanctioned statements that have institutionalized force; the importance of studying discourse, therefore, goes beyond an analysis of what was said and how it came to be said, and extends to the *effects* of discourses on the constitution of subjects. The next section considers the relations between discourses and practices.

Practices

The guiding problematic of Foucault's genealogical research is to understand how at particular points in time and place particular discourses and practices emerge and come to

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[366] Michel Foucault, "Clarifications on the Question of Power," in *Foucault Live (Interviews, 1966-84)*, ed. Sylvère Lotringer, trans. John Johnston (New York: Semiotext(e), 1989), 189.

[367] Foucault, "How Much Does It Cost," 252.

dominate.[368] Foucault seeks to identify discourses and practices in a given period, the relationship between these discourses and practices, and the transformations of these discourses and practices over time.[369] He explains that he wants to make sense of how certain discourses and practices have effects on subjects.[370] This section describes what practices are, how they function, and at whom they are directed.

Veyne suggests that we often fail to conceptualize practices properly; practices, we generally assume, are responses or reactions to a problematic concept or discourse object rather than integral to the constitution as well as maintenance of a concept.[371] In fact, practices function to constitute or reify concepts such as obscenity.[372] It is important to point out that Veyne does not take a relativist approach; he does not suggest that obscenity (for example) does not in fact exist, although he does not affirm its existence either. Instead, he focuses attention on what he calls the objectivization, or the creation as fact or truth, of concepts such as obscenity, which extends beyond attitudes, opinions or beliefs and is concretized or given form in practices.[373] Veyne goes on to specifically address the issue of relativism, pointing out that "a relativist judges that men have held different views, over the centuries, of the *same* object";[374] he

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[368] Foucault, "Birth of a World," 58.

[369] Foucault, 59.

[370] Foucault, *Discipline and Punish*, 23-24.

[371] Paul Veyne, "Foucault Revolutionizes History," in *Foucault and His Interlocutors*, ed. Arnold I. Davidson, trans. Catherine Porter (Chicago: University of Chicago Press, 1997), 153-155, 161.

[372] Veyne, "Foucault, Revolutionizes History," 161.

[373] Veyne, 168-169.

[374] Veyne, 175.

suggests that discourse objects (such as obscenity) are *not* the same from time to time and place to place. Since a concept like obscenity does not stay the same over time, and there may even be multiple obscenities at one time, the discursive practices associated with a concept like obscenity are likewise subject to change and must be considered as historically specific.[375] Instead of looking at practices as the inevitable result of problematic concepts or discourse objects (such as obscenity), or as logical responses to the problem of obscenity, the historical practices that constitute and maintain obscenity and which are not necessarily the same as the practices that respond to it must be considered.

Given that discourses and practices emerge together from the same historical conditions or discursive formations outlined earlier, this project focuses on discursive practices that constitute and respond to obscenity as a problem. Law is an example of a discursive practice that does both; it proscribes literature according to and through legal standards and measures, and also punishes infractions of these standards and measures. Practices of law, in other words, problematize some literature as obscene and also offer a way to resolve the problem. While these discursive practices are related, they are not identical and employ different techniques (e.g. proscription versus punishment). This attention to the specificity of discursive practices not only facilitates a better understanding of practices themselves, but also provides insight into the problem of obscene literature, its constitution, and the effects of its regulation on the constitution of subjects and social orders (discussed in Chapter 3).

In summary, this project considers practices in close conjunction with discourses. The specific tactics and techniques of practices are considered for their role in the constitution of and response to problematic discourse objects. The discussion of discourse and practice thus far,

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[375] Veyne, 160-161.

however, is so broad as to include potentially anything and everything in this project on obscene literature. The following section narrows the analytic and empirical focus of this project.

A Genealogy of (Obscene) Events and Struggles

Genealogy provides "descriptions of beginnings and sequences" pertaining to discourses and practices;[376] the genealogical project seeks to trace the historical emergence and descent of discursive practices in order to make sense of how the obscene is conceptualized.[377] But what exactly – or empirically – does a genealogy focus on? Foucault describes two key interrelated foci: events and struggles.

For Foucault, events are not simply what happened, or are not an historical recital of facts; instead, events emerge from the historical conditions that make them possible, and exist in the historically specific moment in which discursive practices are produced, repeated, contested and transformed.[378] The significant point of this formulation (at least empirically for this project) is the notion of transformation. For this project, events are the historical moments of domination and struggle, characterized by transformation, from which the genealogist can trace discursive practices and their effects. Abrams, an historical sociologist, defines an event as "a portentous outcome; it is a transformation device between past and future; it has eventuated from the past and it signifies for the future".[379] There is a similarity between his conception of an event and Foucault's; events signal moments of significant change or transformation. While

[376] Foucault, "The Discourse of History," 25.

[377] See Foucault, "Nietzsche, Genealogy, History," 144-148.

[378] Foucault, *The Archaeology of Knowledge*, 28.

[379] Abrams, *Historical Sociology*, 191.

Foucault traces the emergence of the event, Abrams focuses critical attention on the conceptualization of history as eventful, and the resulting influence on how we understand social structures and processes.[380] The event, he suggests, is not a straightforward concept; instead, the event is – like any object of study – constituted, and relevant details or facts are selected for analysis or description.[381] This is consistent with a Foucaultian scepticism of truth or fact; the event cannot be assumed, but must be established. Struggles, meanwhile, are described by Foucault as clashes that pertain to the social body, such as political or economic clashes.[382] In other words, struggles have particular historical sites that involve and challenge or contest dominant or extant subjectivities and social orders. In particular, struggle is evidenced by and implicated in the intensification, introduction, or transformation of practices.[383] This project seeks out events as historical moments of transformation that are characterized by struggle, and in particular looks for changing discursive practices that pertain to obscenity.

An event is conceived by Foucault as being singular, particular and contingent rather than being a necessary part of an ongoing temporal progression.[384] In other words, events are specific to history and historical conditions, but they are not part of a progressive or even logical part of a grand history. Sayer provides an illustration; a piece of earth and a person exist independently of one another and therefore their relation is contingent, even when the two objects may affect one

[380] Abrams, 191-192.

[381] Abrams, 193-194.

[382] Foucault, "Question of Power," 188.

[383] Foucault, "The Subject and Power," 347.

[384] Foucault, "Nietzsche, Genealogy, History," 139-140.

other, for example if the person digs a hole or is buried.[385] A necessary relation, in contrast, is one in which the objects depend on their relations to each other, as in the case of a teacher and a pupil.[386] Therefore, when Foucault suggests that events are contingent rather than necessary, he is not saying that events are random or unconnected from material relations. Instead, he rejects the inevitability and common sense progression of history as a necessary chain of events. In the case of obscenity, this involves questioning the history of obscenity as one that became prudishly repressive and then increasingly liberal and progressive, and in which the decriminalization of most literature is seen as a victory for personal freedom and taste.

Foucault suggests that genealogy "deals with events in terms of their most unique characteristics, their most acute manifestations".[387] These unique characteristics and acute manifestations are struggles (rather than decisions, treaties, battles, etc.), or what Foucault calls "the reversal of a relationship of forces, the usurpation of power, the appropriation of a vocabulary turned against those who had once used it".[388] In other words, the empirical or analytic importance of the event is not, for example, a legal decision on obscenity itself, but rather the struggle and transformation of existing practices of law in that historical moment, the effects of these struggles on subjects and social orders, as well as the implications for and in the present (including for the conceptualization of obscenity). This process demonstrates that history is contingent, and that what happened in the past was but one possibility. Genealogy

[385] Sayer, *Method in Social Science*, 89.

[386] Sayer, 89.

[387] Foucault, "Nietzsche, Genealogy, History," 154.

[388] Foucault, 154.

effectively problematizes by pointing to the "the events of history, its jolts, its surprises, its unsteady victories and unpalatable defeats".[389]

Examples of events that this project considers include the publication of *Fanny Hill* (initially in London in 1748-1749 and subsequently in various editions and locations) and the related responses (i.e. discursive practices), including state, religious, economic, legal, artistic and academic statements and/or sanctions. These comprise the sets of statements and (institutionalized) systems of knowledge as well as the practices that produced the concept of the obscene, rendered the obscene problematic, and formulated responses to the problem. The following section describes the data sources, or those documents that contain statements and (re)produce practices, that are considered in this project.

Reading Data Sources

This section identifies what documents were read for this project (i.e. this project's data sources) and subsequently explains how these documents were read.

Documents Read for this Project

This subsection describes the types of documents that this project considers, including letters, court documents, state records and reports, newspaper articles, academic publications and fiction. It also briefly reflects on how reading formations constitute dominant ways of reading and making sense of these documents.

This project considers letters pertaining to *Fanny Hill* and the obscene that were written by authors (e.g. Cleland, as well as others who were publicly and/or privately involved in

[389] Foucault, 144.

discussions of obscene literature), those involved in the publishing business, and the general public (who wrote to government officials and newspapers). According to Dobson, while letters suggest a certain level of intimacy and insight into personal thoughts, there are actually many types of letter-writing, ranging from business correspondence, to letters to newspaper editors, to exchanges between thinkers, writers, politicians, or friends.[390] Further, Dobson points out that letters, far from being personal, might be read aloud, copied, circulated, and even printed.[391] Instead of providing a window into a person's thoughts, Dobson argues that letter-writers articulate their thoughts according to reader expectations as well as the conventions of letter-writing; rather than accurately reflecting a person and her innermost being, letters construct a version of the letter-writer in relation to particular circumstances and readers.[392] Further, when letters are written to public figures (as in the case of many letters pertaining to *Fanny Hill*), these letters reflect less on the personal self than on the position of a particular self (e.g. the impoverished gentleman, the martyred artist, or the outraged citizen).[393] These letters to public figures highlight most clearly the general function of letters; that is, letters are expected to garner a response or to have an effect. One final point to consider, which Dobson does not discuss, is the practice of preserving letters. Many of the letters associated with *Fanny Hill* were preserved because they were sent to state officials (and thereby preserved as a matter of protocol) or were published (e.g. as letters to the editor or in historical biographies). The preservation of letters is

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[390] Miriam Dobson, "Letters," in *Reading Primary Sources: The Interpretation of Texts from Nineteenth- and Twentieth- Century History*, ed. Miriam Dobson and Benjamin Ziemann (New York: Routledge, 2009), 57, ProQuest Ebook Central.

[391] Dobson, "Letters," 57.

[392] Dobson, 64.

[393] Dobson, 64.

not straightforward and to a certain extent implies a measure of worth. In summary, letters are a seemingly intimate form of correspondence intended to create an effect and their preservation indicates a certain privilege.

In addition to letters, this project considers indictments, trial transcripts and verdicts pertaining to *Fanny Hill* in both Britain and the United States. Verhoeven reminds us that the point of the judicial court is to prove that something did or did not happen (and by implication that something is or is not illegal); as a result, opposing parties present distorted or at least different versions of "the truth" that are nevertheless incorporated into a single and authoritative courtroom text.[394] Verhoeven emphasizes the dialogic nature of courtroom documents, and the ways in which competing narratives are told (and should be read), rather than the more typical reading of the final verdict that glosses over conflict to establish a definitive truthful reading.[395] Similarly, Maltz suggests that judicial opinions are generally the means by which the public is alerted to judicial decisions; these opinions, however, do not take into account the history or narrative (or conflict) preceding the decision or their legitimizing effects.[396] In addition to considering a conflictual rather than authoritative reading of trial texts, of particular interest for this project is how judicial opinions were read (or translated) both by judges (e.g. as obscenity doctrines were interpreted over time) as well as by the public (e.g. in newspaper reports).

This project also considers state publications, focusing in particular on political debates, commissions and reports that are relevant to *Fanny Hill* and the obscene. Readman notes that

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[394] Claudia Verhoeven, "Court Files," in *Reading Primary Sources: The Interpretation of Texts from Nineteenth- and Twentieth- Century History,* ed. Miriam Dobson and Benjamin Ziemann (New York: Routledge, 2009), 92, ProQuest Ebook Central.

[395] Verhoeven, "Court Files," 95.

[396] Earl M. Maltz, "The Function of Supreme Court Opinions," *Houston Law Review* 37, no. 5 (2000): 1395-1396, HeinOnline Law Journal Library.

before 1909, *Hansard* (the British parliamentary record) was not a verbatim account; instead, it was largely compiled from newspapers, only included in full the speeches of front-benchers and ministers, and corrected grammatical errors before publication.[397] Additionally, it was common practice to send proofs of speeches to members of Parliament for correction before publication.[398] The result of these practices is not less interesting for having been edited or modified (and therefore made more or less "accurate"); instead, *Hansard* can be thought of as a record of what ideas were considered to be particularly worthwhile or relevant, and how these ideas were ideally (rather than actually) expressed. As Readman notes, speeches were the means by which politicians communicated ideas and tried to convince others about various policies.[399] *Hansard* and its publishers were intimately involved in this process, which was clearly selective. This project therefore considers the expressed and reported views of government officials intended to persuade audiences or populations about obscenity.[400]

This project also considers newspaper articles relevant to *Fanny Hill* and the obscene. Vella suggests that newspapers let us know what events were publicized (rather than what was "really" going on in the world), as well as how journalists and editors thought about their world – and encouraged their readers to think about it – through techniques of organization and

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[397] Paul Readman, "Speeches," in *Reading Primary Sources: The Interpretation of Texts from Nineteenth- and Twentieth- Century History*, ed. Miriam Dobson and Benjamin Ziemann (New York: Routledge, 2009), 214, ProQuest Ebook Central.

[398] Readman, "Speeches," 214.

[399] Readman, 217.

[400] I consulted the digitised editions of the Commons and Lords *Hansard* (1803-2005), using the search terms "Fanny Hill" and "obscen" (in order to catch both "obscene" and "obscenity").

omission.[401] In other words, newspapers actively shape the views of readers by providing a framework for making sense of events that are determined to be "newsworthy"; this process is influenced by commercial considerations.[402] Vella also suggests that newspapers respond to and compete with each other;[403] comparing different newspapers provides insight into how issues were differently portrayed within the context of improving circulation. This project therefore considers newspapers as reputedly objective sources of information (e.g. on obscenity) that are influenced by commercial and competitive factors.[404]

Interestingly, the text that I consulted for this brief consideration of types of historical sources (*Reading Primary Sources: The Interpretation of Texts from Nineteenth- and Twentieth-Century History* (2009), edited by Dobson and Ziemann) does not include academic publications. Academic publications are generally not considered to be data sources, but are instead thought to be about, or provide insight into, data sources. The University of Ottawa's library search engine brought up 2240 search results for "Fanny Hill"; these not only provide more or less insight into *Fanny Hill*, but they also contribute significantly to the genealogy of *Fanny Hill*. In addition to

[401] Stephen Vella, "Newspapers," in *Reading Primary Sources: The Interpretation of Texts from Nineteenth- and Twentieth- Century History*, ed. Miriam Dobson and Benjamin Ziemann (New York: Routledge, 2009), 192, ProQuest Ebook Central.

[402] Vella, "Newspapers," 192, 194.

[403] Vella, 200.

[404] In addition to the generic University of Ottawa library search engine (which included relatively recent newspaper articles), I consulted the Old Fulton New York Postcards database (which contains a large variety of historical New York State newspapers) and the British Newspapers 1600-1950 database (which includes the 17th and 18th Century Burney Collection and 19th Century British Library Newspapers Digital Archive). The search term "Fanny Hill" brought up thousands of entries in each database, all of which were read.

these 2240 sources (some of which were not available despite being listed, were not relevant,[405] or were duplicates), I compiled (and considered) a comprehensive list of academic data sources by going through reference lists and footnotes in order to identify those books, chapters and articles about *Fanny Hill*,[406] as well as other academic works that were frequently mentioned in relation to obscenity (and therefore are presumably influential). These academic publications are read in this project as data sources that are an integral part of a genealogy of obscenity because they produce knowledge of the obscene; they do not "simply" provide knowledge and insight into obscenity.

Finally, fiction, including but not limited to *Fanny Hill*, is an important data source for this project. Fictional works that incorporate, draw on, or rework *Fanny Hill* were considered to be valuable data sources, both contributing to and contesting dominant discourses. I do not exclude such data sources because they are not "scientific" or "true"; instead, I suggest that fiction sometimes points to, constitutes and/or contests regimes of truth pertaining to the obscene – as do the other data sources mentioned above.

How Documents Were Read within this Project

Having described the types of documents or data sources this project considers, without going into detail or depth, I should say that there are numerous extant reading typologies, or ways to read texts or data sources. For example, LaCapra describes four general ways of reading, including *synoptic* reading (which focuses on the content or theme of a text in order to

[405] For example, a ski hill in Colorado, several horses, a location in Scotland, a rock album, a Wisconsin inn and dinner theatre, and a transport ship from the 1800s were named Fanny Hill. Also, newspaper announcements about women named Fanny Hill were common.

[406] See Appendix B for a comprehensive list of scholarly books, chapters in anthologies, and articles pertaining to *Fanny Hill*.

summarize or derive information or meaning from it), *deconstructive* reading (which pays attention to the signifier and not the signified), *redemptive* reading (which looks for meaning in and through interpretation), and *dialogic* reading (which reads text and context in interactive ways).[407] Another way of devising a reading strategy is to rely on disciplinary traditions and techniques. For example, literary criticism is generally associated with the search for meaning. In contrast, historians may be interested in understanding how a text was read and received in its time. Other reading strategies are dependent on ontological orientations. For example, Potter describes realist criticism as a creative or productive process that is nevertheless grounded in reality; this creative process is neither spontaneous nor relative, but is the result of interaction with the text which both enables and constrains reader creativity.[408] Instead of selecting a typology, a disciplinary approach, or an ontological perspective, this project reads texts in a way that is consistent with a Foucaultian genealogy.

Foucault does not provide a step-by-step method for reading documents or discourses, and Valverde cautions against the formulaic application of Foucault's work; instead, she suggests that scholars should be inspired by him and that his ideas should be used strategically.[409] I draw upon the previous discussions in order to derive a series of questions that can be asked of a document, and that enable it to be read genealogically.[410] These questions

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[407] Dominick LaCapra, *History and Reading: Tocqueville, Foucault, French Studies* (Toronto: University of Toronto Press, 2000), 34-72.

[408] Garry Potter, "Truth in Fiction, Science and Criticism," *Journal of Literary Semantics* 27, no. 3 (1998): 181-182, https://doi.org/10.1515/jlse.1998.27.3.173.

[409] Mariana Valverde, "Specters of Foucault in Law and Society Scholarship," *Annual Review of Law and Social Science* 6 (2010): 54, https://doi.org/10.1146/annurev-lawsocsci-102209-152951.

[410] Included as Appendix C.

point to the complexity and contingency of discursive practices pertaining to the obscene, locating obscenity in relation to systems of knowledge and institutional practices and also highlighting that the way things are and the way things were are not necessarily the way things have to be.

QUESTIONS TO GUIDE GENEALOGICAL READING

A. Rules of Formation

Recall that rules of formation act as the conditions of existence that function to permit or make possible the production of discourse.

#1. Formation of Objects:

- What is the problematic discourse object?
- What is its surface of emergence, or in what space is the discourse object sought and found?
- Who are the authorities of delimitation, and what institutional site (and attendant institutional knowledge) authorizes the constitution of the discourse object?
- What are the grids of specification (or those interlinked concepts through which something is viewed), or by what symptoms or properties is the object classified and made problematic?

#2. Formation of Enunciative Modalities:

- In what ways are statements expressed? How are they formulated (e.g. as an authoritative, expert, scientific, etc. discourse)?
- Who (or what category of person) has the right, privilege or ability to use a given mode of speech?
- What is the institutional site or source of statements?
- What is the relative position of the subject making the statement about the discourse object?

#3. Formation of Concepts:

- What is the general level of consensus among statements pertaining to the discourse object?
- What are the rules, logics or methods that are followed in order to make definitive statements about a discourse object's essential properties or characteristics? What are the procedures by which "truthful" knowledge and understanding are produced, and other forms of knowledge and understanding excluded?

- What is the range of statements within a discursive formation that are accepted, rejected, or contested? What statements from other discursive formations are active? What statements are no longer accepted but have historical connections to current statements?
- What procedures allow for statements to be rewritten, transcribed or translated?

#4. Formation of Themes:

- What specific themes develop within a discursive formation?
- What are the points of diffraction, or those points when otherwise equivalent statements are incompatible?
- How are these points of diffraction limited by authorities and practices?

B. Rules of Exclusion

Recall that certain discourses are excluded in order to ensure the appearance of uniformity, truth and consensus in discursive formations.

External Rules of Exclusion

#1. Prohibition:

- What is prohibited? What cannot or should not be spoken of (or read)?
- What circumstances prohibit speech about such discourse objects?
- Who is the privileged speaking subject, or who may under certain circumstances speak about the prohibited discourse object?

#2. Division and Rejection:

- What oppositions pertaining to the discourse object exist?
- How is the discourse object divided into oppositions in such a way that one is accepted and one rejected?
- Are there specialized spaces in which rejected statements can be heard?

#3. Opposition Between True and False:

- What knowledge is recognized as authoritative and true, and what knowledge is recognized as false or is disregarded?

Internal Rules of Exclusion

#1. Commentary:

- What original, authoritative, and/or "true" text authorizes discourse?
- Is the original text brought up-to-date or reread to redefine discourse?

#2. Position of the Author:

- Who is identified as the author?

- How does the idea of an author suggest the discourse is unified rather than fragmented?

#3. Distinctions Between Disciplines:

- What evidence is there of disciplinary boundaries influencing the possibility for thinking about or critiquing a discourse?
- Do certain disciplines lay claim to certain discourses?
- How do these disciplines influence the questions that can be asked and answered about the discourse object?

C. Subjugated Knowledges and Struggle

Recall that discursive formations contain multiple dissensions.

- What gaps, differences, substitutions or transformations exist within a discursive formation?
- What competing or contradictory statements exist within a discursive formation?
- To what extent do these statements suggest gradual substitution or abrupt change?
- What evidence is there of subjugated knowledges? What historical knowledge is overlooked, disguised, or considered anomalous? What popular knowledge is disqualified because it is not recognized as credible or as authoritative as scientific knowledge?
- How are these subjugated knowledges linked to (or evidence of) specific struggles? How are these struggles framed?
- How do subjugated knowledges problematize the discourse object?
- How do subjugated knowledges problematize ways of thinking and behaving, or dominant discourse and practice?

D. Discursive Practice

Recall that discursive formations do not just produce ideas, knowledge, opinions, etc., but also material practices.

- How do practices constitute and maintain a discourse object?
- How do practices respond to the problematic discourse object?
- How are practices institutionalized?
- What evidence is there that dominant ways of thinking and behaving are challenged? Is there an extension and intensification, introduction or transformation of practices?

NOTE: These questions are intended as a *guide*, focusing attention on dominant and subjugated knowledges in order to identify struggles. Given the level of detail, it was impractical to read each data source against it; nor did I count or code data, which would have had the effect of "scientizing". Instead, I read groups of data sources against this guide. Specifically, I read data sources chronologically, geographically and by type; for example, I read British newspaper articles from the early to mid- twentieth century (focusing in particular on statements both preceding and following the events of the *Gold* (1964) case that pointed to struggle, including the

intensification and transformation of discursive practices), as well as *Hansard* debates and trial documents from the same period. The groupings of data occurred organically, as events and struggles were accompanied by an incitement to discourse that was evidenced in explosions of data (e.g. hundreds of newspaper articles in the 1950s and 1960s compared to dozens in the preceding decades). I also read types of data (e.g. newspaper articles and trial transcripts) against each other in order to consider dominant and subjugated knowledges, and the competition and contestation among regulatory agents and institutions. Through these readings and with the help of this guide, I was able to identify patterns of statements (e.g. statements that were repeated and reproduced) that pointed to dominant discursive practices, as well as anomalous statements that pointed to subjugated knowledges.

Conclusion

This chapter discussed what I called the problem of the annex, or the problem of making sense of the past in a way that recognizes the implications of the archive for and in the present. This chapter also described an historical means of making sense of the concept of (or a concept like) obscenity. In contrast to a traditional history, a discontinuous, fragmented and critical genealogy was described as a response to the problems of historical research, including locating and accessing historical knowledge. Genealogy is a means of conducting a descriptive historical analysis that problematizes discourses, practices and events, introducing struggle both historically and in the present.

Foucault retrospectively commented on *Madness and Civilization* (1964), suggesting that in this work he considered "how and why madness, at a given moment, had been problematized through a certain institutional practice and a certain apparatus of knowledge".[411] This captures the elements of the genealogical project, which focuses analytic attention on *events* (i.e. the given moment in history), *discourses* (i.e. systems of knowledge), and *practices* (i.e. institutional procedures), all of which are interrelated, and *problematizes* them. Rewriting this archaeological problematic genealogically, *this project considers how and why, at particular historical*

[411] Foucault, "The Concern for Truth," 295.

moments, obscenity was (re)problematized through and in particular discursive practice(s) and with what effects, and problematizes the ways that these discourses, practices and effects continue into the present.

Rather than thinking of the past as a finished document stored in an archive, Foucault encourages us to consider those "ways of thinking and behaving that are still with us".[412] In other words, since we continue to live in and by the rules of the archive, by understanding the complex and contingent past the present becomes open to transformation. Negotiating the archive therefore becomes crucial not only in terms of good scholarship, but in terms of effecting transformation in the present. This project on obscene literature, therefore, is envisioned not only as "a negotiation with, an interpretation of, and a contribution to the archive",[413] but also as a way of revealing and re-envisioning the implications of obscenity for and in the present.

This chapter argued that an analysis of the concept of obscenity is less important than an analysis of the concept's constitution and circulation, or its emergence and existence, in discourses, practices and events. To be very clear about the uniqueness or difference of a genealogical approach, genealogy does *not* try to make sense of the history of the referent, or the meaning of obscenity at a particular point in time; instead, genealogy tries to discover how concepts like obscenity emerge and become a problem that can be spoken about (i.e. discoursed on) and resolved (i.e. through practices or governance).[414] Thus, instead of mapping out obscenity and its meaning or expression, genealogy maps out the emergence in time and place of certain regularities – the rules of formation and exclusion – that produce and reproduce the

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[412] Foucault, "Rituals of Exclusion," 63.

[413] Manoff, "Theories of the Archive," 13.

[414] Foucault, *The Archaeology of Knowledge*, 47-48.

concept of obscenity, the discourse of obscenity, and associated practices that subjectify. Foucault reiterates that he tries to make visible what is already visible, but not yet apparent or obvious.[415] Thus, Foucault is concerned with the conditions that make certain discourses and practices thinkable and normal, and disrupts their obviousness. This project excavates or makes visible the emergence and descent of discursive practices pertaining to obscenity in particular moments of struggle (characterized as events) and problematizes them.

Having problematized a truth-oriented approach to obscenity potentially poses a significant challenge for this project. If there is no ultimate truth about obscenity and if it is an historically constituted phenomenon, then how can I convincingly argue that different historical conceptualizations of obscenity have anything at all in common? In other words, if I argue that the object of study is constituted (i.e. by discursive practice within a discursive formation), then how can I possibly know that I am talking about the same object in and over time? What if the documents and events that I consider are oddities or absurdities?

I propose that *Fanny Hill*, as a single material text, provides an excellent opportunity to trace the emergence and descent of obscenity through history. The novel *Fanny Hill* did not change in content (except of course in the expurgated versions), but the regulatory discursive practices surrounding the novel changed considerably over time. This project traces the multiple obscenities (and the multiple *Fanny Hill*s) that were constituted in history, as well as their attendant discursive practices and their implication in events. The enduring preoccupation with *Fanny Hill* and the recurring yet varying efforts to regulate it as an object and populations as subjects within social orders ensures that this project contributes valuable knowledge pertaining to the ongoing regulation of *Fanny Hill* and obscenity.

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[415] Foucault, "The Archaeology of Knowledge," 46.

In order to introduce the following chapter and the rest of this project, I briefly describe the format of my subsequent analysis. I identified three distinct historical periods with corresponding discursive formations pertaining to obscenity; each is described in an analytic chapter (Chapters 4 to 6). In these chapters, I conduct a detailed descriptive analysis according to the plan laid out in this chapter. I identify and describe the discursive formations from which groups of statements (i.e. discourses) emerged according to certain rules; I consider the rules and processes that governed the emergence of these statements and that conferred truthfulness on some statements and excluded others. Within these descriptive analyses I also identify and describe contradictions, dissensions and/or subjugated knowledges that existed within the discursive formations; I look for gaps, differences, substitutions and transformations not to explain them away but to focus analytic attention on these differences and controversies for what they can tell us about the conditions of emergence and existence. These subjugated knowledges are mobilized to problematize what are presented as uniform and coherent systems of knowledge and practices (i.e. as it pertains to the concept of obscenity and its regulation). I consider and describe events as moments of struggle and transformation in which discursive practice is (re)produced, contested and transformed; these events are considered for the ways in which they point to the extension, intensification, introduction or transformation of discursive practices. The transformations that I trace are not necessarily complete, but may indicate multiple structures and rationalities that are contained in an historical moment. The purpose of this detailed descriptive analysis is to point to the ways in which historically specific discursive practices pertaining to obscenity were – and are – implicated in the constitution of certain subjectivities and social orders.

Following the descriptive analyses in each chapter, a critical consideration of the descriptive analysis (the framework for which is developed in Chapter 3) is provided; this section (re)considers the descriptive analysis in order to make sense of the effects of discursive practice. In other words, following the descriptive analysis, I consider the effects of discursive practices on the constitution of subjects and social orders, as well as the contestation or continuation of such dominant relations in particular socio-historical moments; I consider the means by which discursive practices pertaining to obscenity operate(d) and with what effects. In doing so, I effectively trace and reconstruct the categories through which obscenity was – and is – conceptualized and acted on.

To be absolutely clear (and to summarize this project in one short paragraph), Chapters 4 to 6 contain descriptive analyses that describe the emergence (according to certain rules) of discursive practices pertaining to obscenity within discursive formations, the existence of which were subsequently reproduced, contested and/or transformed in historical events or moments of struggle. In addition to tracing the emergence of discursive practices, I also consider the effects of such discursive practices on the constitution of subjects and social orders. In order to make sense of the effects of discursive practices on the constitution of subjects and social orders, in the next chapter I turn to moral regulation scholarship to further develop an interpretive framework that pays attention to relations of power and knowledge, a significant genealogical concern.

CHAPTER III

Governance and Moral Regulation as an Interpretive Framework

Introduction

The previous chapter laid out genealogy and archaeology and how the two work together to trace the emergence and existence of discursive practice. It was established that conducting a genealogy requires painstaking recovery and detailed description of the production of discourse through rules of formation and exclusion which ensure uniformity or the appearance of truth and consensus. In addition to this historical work, there is a second component to genealogy that involves problematizing history, or the effects of historical discursive practice. This chapter synthesizes moral regulation scholarship and concepts – including state and subject formation, normalization and moralization, domination and struggle – as an adjunct to genealogical study, connecting key concepts and procedures in order to critically consider discursive practice and its effects. I argue that *moral regulation projects* are the discursive practices that are of substantive concern to genealogies. Further, *moral regulation as a methodology* problematizes the effects of discursive practices or moral regulation projects, focusing in particular on the constitution of subjects and social orders as outworkings of relations of power and knowledge (or power-knowledge). Thus, moral regulation provides a way to critically consider – or to produce subjugated knowledges about – relations of domination, processes of subjectification, and evidence of struggle pertaining to the regulation of objects and targets within social orders both in the past and the present. To begin this process of drawing out and linking key elements of moral regulation and genealogy, I consider how moral regulation has been conceptualized.

Conceptualizing Moral Regulation

Moral regulation is a concept that scholars continue to develop theoretically.[416] Given the ongoing and sometimes contested development of the concept, this section highlights the differences between what are generally termed socialist or neo-Marxist and post-structuralist or Foucaultian conceptualizations of moral regulation, as well as more recent convergences between the two. Before I do so, I should mention that moral regulation has been taken up by many disciplines, resulting in a diverse and fragmented scholarship. For example, geographers have considered moral regulation projects in terms of how certain places (and the populations presumed to be in or that are associated with those places) are regulated through processes of exclusion and inclusion, and selective regulation or enforcement.[417] Psychology, meanwhile, is concerned mainly with processes of self-regulation, for example through proscriptive and prescriptive techniques.[418] In this chapter, I consider moral regulation scholarship emerging primarily from sociology and social history that developed in the context of Foucault's work on

[416] Alan Hunt, "Moral Regulation and Making-Up the New Person: Putting Gramsci to Work," *Theoretical Criminology* 1, no. 3 (1997): 275-276, https://doi.org/10.1177/1362480697001003001; Hannu Ruonavaara, "Moral Regulation: A Reformulation," *Sociological Theory* 15, no. 3 (1997): 277, https://www.jstor.org/stable/223307; Amanda Glasbeek, "Introduction," in *Moral Regulation and Governance in Canada: History, Context and Critical Issues*, ed. Amanda Glasbeek (Toronto: Canadian Scholars' Press, 2006), 1-5.

[417] E.g. Philip Howell, "Afterword: Remapping the Terrain of Moral Regulation," *Journal of Historical Geography* 42 (2013): 193-202, https://doi.org/10.1016/j.jhg.2013.01.018.

[418] E.g. Ronnie Janoff-Bulman, Sana Sheikh and Sebastien Hepp, "Proscriptive Versus Prescriptive Morality: Two Faces of Moral Regulation," *Journal of Personality and Social Psychology* 96, no. 3 (2009): 521-537, https://doi.org/10.1037/a0013779.

power, knowledge and discourse.[419] In particular, I draw on the work of Alan Hunt, who worked to rigorously explicate and theorize moral regulation.

Corrigan and Sayer were the first to develop moral regulation systematically and theoretically; they describe moral regulation as the normalized and routinized processes of state agencies and activities that encourage certain social orders while suppressing others.[420] Corrigan and Sayer conceptualized moral regulation as "a project of normalizing, rendering natural, taken for granted, in a word 'obvious', what are in fact ontological and epistemological premises of a particular and historical form of social order".[421] Thus, their work was aimed at making visible and problematizing complex and contingent historical modes of moral regulation and their effects (i.e. on the formation and continuation of the state). Corrigan and Sayer's work on moral regulation is consistent with genealogy; both methodologies are concerned with historical descriptions that are problematized to reveal the effects of the exercise of power and processes of regulation by which states (or social orders) and subjects are formed.[422] However, the focus on the state and processes of state formation and regulation in Corrigan and Sayer's work led to critiques, most notably by Dean.[423]

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[419] See Glasbeek, "Introduction," 2.

[420] Philip Corrigan and Derek Sayer, *The Great Arch: English State Formation as Cultural Revolution* (New York: Basil Blackwell, 1985), 4.

[421] Corrigan and Sayer, *The Great Arch*, 4.

[422] E.g. Corrigan and Sayer, 180, 191-197.

[423] Mitchell Dean, "'A Social Structure of Many Souls': Moral Regulation, Government, and Self-Formation," *Canadian Journal of Sociology* 19, no. 2 (1994): 145-168, https://www.jstor.org/stable/3341342.

Dean decentres the state, critiquing Corrigan and Sayer's neglect of processes of subject formation, including self-formation, outside of state regulation.[424] Rather than considering state formation or those normalizing processes that constitute a social order, Dean draws on Foucaultian scholarship (i.e. governmentality) in order to consider those non-state discursive practices that encourage, marginalize, shape and regulate subjects according to certain norms.[425] Dean identifies two processes of subjectification, including governmental self-formation, whereby "various authorities and agencies seek to shape the conduct, aspirations, needs, desires, and capacities of specified categories of individuals, to enlist them in particular strategies and to seek defined goals", and ethical self-formation, which "concerns practices, techniques, and discourses of the government of the self by the self, by means of which individuals seek to know, decipher, and act on themselves".[426] Thus, Dean is concerned primarily with the techniques that constitute the subject, rather than cultural processes that reproduce the state; the influence of Foucault can be seen in this decentring of the state and the emphasis on processes of governing, which are diffuse (rather than centralized) and productive.

From the initially distinct scholarly positions of these foundational readings, scholars considered both bodies of work in order to make sense of processes of moral regulation and the effects of such projects. For example, Ruonavaara comments on the work of Corrigan and Sayer as well as Dean; he suggests that while the state is not the only agent of moral regulation, Dean's

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[424] Dean, "'A Social Structure of Many Souls'," 147.

[425] Dean, 148; cf. Alan Hunt, "Law, Politics and the Social Sciences," in *Sociology After Postmodernism*, ed. David Owen (Thousand Oaks: Sage Publications, 1997), 116; Joan Sangster, "Incarcerating 'Bad Girls': The Regulation of Sexuality through the Female Refuges Act in Ontario, 1920-1945," in *Moral Regulation and Governance in Canada: History, Context, and Critical Issues*, ed. Amanda Glasbeek (Toronto: Canadian Scholars' Press, 2006), 192-193.

[426] Dean, "'A Social Structure of Many Souls'," 156.

criticisms do not necessitate the abandonment of moral regulation (i.e. in favour of governmentality) as a useful means of analysis.[427] Hunt goes further, linking Foucaultian governance with moral regulation, calling the terms "almost interchangeable".[428] Like Dean, Hunt considers the process of "making-up people", or processes of subjectification whereby aptitudes and capacities are produced through social action, but he does so using moral regulation rather than governmentality.[429] Thus, Hunt's work points to the commonalities between governance and moral regulation.

Relatedly, Curtis asks whether it is possible to conceptualize moral regulation in a way that acknowledges the concerns of both socialists and post-structuralists, or that makes sense of the formation of social orders *and* subjects.[430] Without overemphasizing the importance of state regulation and categories like class (which contrasts with Foucault's more generic "population"),[431] Curtis cautions against ignoring the fact that the state as well as other agents and institutions are implicated in relations of "organized domination and exploitation".[432] Hunt's studies of sumptuary law and masturbation represent early attempts to problematize the

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[427] Ruonavaara, "Moral Regulation," 283.

[428] Alan Hunt, *Governance of the Consuming Passions: A History of Sumptuary Law* (New York: St. Martin's Press, 1996), 5.

[429] Hunt, "Making-Up the New Person," 276.

[430] Bruce Curtis, "Reworking Moral Regulation: Metaphorical Capital and the Field of Disinterest," *Canadian Journal of Sociology* 22, no. 3 (1997): 303-304, https://www.jstor.org/stable/3341624.

[431] See Hunt, *Consuming Passions*, 7.

[432] Curtis, "Reworking Moral Regulation," 304.

formation and moral regulation of both social orders and subjects;[433] he considers the governance of others and the self through, respectively, state and non-state processes. Particularly in his later work, Hunt bridges and blends socialist and post-structuralist moral regulation, demonstrating the promise of moral regulation as a means of making sense of complex state and non-state processes that are externally regulative and internally constitutive.[434]

In addition to the work of those mentioned above, the conceptualization of moral regulation is indebted to the concerns and work of feminist scholars; feminists both drew from and problematized Foucaultian governmentality. For example, Sangster contests Foucault's notion that power is diffuse and everywhere,[435] insisting instead that some populations (such as women) experience more repressive regulation than others.[436] Likewise, Bunting is critical of Foucault's analyses of power, given that he does not explain how power is "concentrated and exercised to the detriment of certain groups in society, including women".[437] For Whitebread, moral regulation is responsive to these concerns, since it enables a consideration of the ways that

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[433] Hunt, *Consuming Passions*; Alan Hunt, "The Great Masturbation Panic and the Discourses of Moral Regulation in Nineteenth- and Early Twentieth- Century Britain," *Journal of the History of Sexuality* 8, no. 4 (1998): 575-615, https://www.jstor.org/stable/3840411.

[434] Alan Hunt, *Governing Morals: A Social History of Moral Regulation* (New York: Cambridge University Press, 1999), 14-16.

[435] E.g. Foucault, *The History of Sexuality*, 93.

[436] Joan Sangster, "Introduction to Regulating Girls and Women," in *Moral Regulation and Governance in Canada: History, Context, and Critical Issues*, ed. Amanda Glasbeek (Toronto: Canadian Scholars' Press, 2006), 33. See also Carolyn Strange and Tina Loo, *Making Good: Law and Moral Regulation in Canada, 1867-1939* (Toronto: University of Toronto Press, 1997), 9.

[437] Annie Bunting, "Feminism, Foucault, and Law as Power/Knowledge," *Alberta Law Review* 30, no. 3 (1992): 833, HeinOnline Law Journal Library.

social orders are reinforced or reproduced to the advantage of some populations and the disadvantage of others.[438]

The concerns about the differential experience of relations of power and domination meant that moral regulation scholarship increasingly considered the constitution and contestation of gender, class and race through or in relation to processes and projects of moral regulation.[439] For example, Little conceptualizes moral regulation as a process of ordering social life through practices of normalization (consistent with Foucaultian discipline) in ways that may reinforce class, gender, and race interests (consistent with the concerns of socialists).[440] At the same time, moral regulation scholarship increasingly focused on the processes by which "bad" or "harmful" objects and behaviours – especially pertaining to sex and sexuality – were problematized, and how the regulation of these objects and behaviours moralized subjects (or made them "good") and reproduced social orders characterized by domination through processes that were political rather than neutral.[441] For example, Mawani considers the moral regulation of venereal disease through public health initiatives that were "necessary not only for educating individuals, but also for (re)shaping their sexual desires and their inner selves to mirror a 'moral subject' who was

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[438] Charles H. Whitebread, "'Us' and 'Them' and the Nature of Moral Regulation," *Southern California Law Review* 74, no. 1 (2000): 362-363, HeinOnline Law Journal Library. See also Corrigan and Sayer, *The Great Arch*, 4; Alan Hunt, *Explorations in Law and Society: Toward a Constitutive Theory of Law* (New York: Routledge, 1993), 325.

[439] E.g. Valverde, *Light, Soap, and Water*, 105, 166.

[440] Margaret Hillyard Little, "'Manhunts and Bingo Blabs': The Moral Regulation of Ontario Single Mothers," in *Moral Regulation and Governance in Canada: History, Context, and Critical Issues*, ed. Amanda Glasbeek (Toronto: Canadian Scholars' Press, 2006), 218-219.

[441] E.g. Strange and Loo, *Making Good*, 3-11; Hunt, *Governing Morals*, 6-7.

white, middle-class, heterosexual, married, and monogamous".[442] Thus, moral regulation scholarship came to be concerned with the exercise of power on the formation of good subjects and social orders, and focused on an increasingly specific range of objects and targets (i.e. pertaining to sex and sexuality) in order to problematize the effects of such moral regulation projects.

The conceptualization of moral regulation as a means of making sense of the formation of both social orders and subjects and as a method of problematizing relations of power pertaining in particular to the regulation of sex and sexuality was increasingly formulated in terms of nation-building.[443] Valverde and Weir develop the notion of nation-building, whereby moralized subjects are regulated through state and non-state procedures that reproduce dominant social orders.[444] Significantly, Valverde, Weir and others focus analytic attention both on the processes through which norms are produced and how these normative and normalizing processes are contested as part of the project of nation-building;[445] moral regulation is a means of theorizing

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[442] Renisa Mawani, "Regulating the 'Respectable' Classes: Venereal Disease, Gender, and Public Health Initiatives in Canada, 1914-35," in *Moral Regulation and Governance in Canada: History, Context, and Critical Issues*, ed. Amanda Glasbeek (Toronto: Canadian Scholars' Press, 2006), 151.

[443] See Valverde, *Light, Soap, and Water*, 16.

[444] Mariana Valverde and Lorna Weir, "The Struggles of the Immoral: Preliminary Remarks on Moral Regulation," in *Moral Regulation and Governance in Canada: History, Context and Critical Issues*, ed. Amanda Glasbeek (Toronto: Canadian Scholars' Press, 2006), 77.

[445] E.g. Strange and Loo, *Making Good*; Franca Iacovetta, "Recipes for Democracy? Gender, Family, and Making Female Citizens in Cold War Canada," in *Moral Regulation and Governance in Canada: History, Context, and Critical Issues*, ed. Amanda Glasbeek (Toronto: Canadian Scholars' Press, 2006), 169-187; Mawani, "Regulating the 'Respectable' Classes," 145-167; Deana Heath, *Purifying Empire: Obscenity and the Politics of Moral Regulation in Britain, India and Australia* (New York: Cambridge University Press, 2010).

the production of subjects and social orders through relations and practices characterized by domination and struggle rather than control.

Rather than conceptualizing moral behaviour and its governance as issues of social control, moral regulation scholars are concerned with identifying the knowledges or truths that mobilize agents and institutions to problematize objects like obscene literature, and that respond to these problems with projects that encourage normative literature as well as subjects and social orders.[446] This attention to processes of moralization, or to the constitution of social objects such as literature as moral problems (i.e. as obscene) that have implications for subjects and social orders,[447] links moral regulation with Foucault's concern for power-knowledge. Foucault explains that "power and knowledge directly imply one another; that there is no power relation without the correlative constitution of a field of knowledge, nor any knowledge that does not presuppose and constitute at the same time power relations".[448] Thus, knowledge of the obscene (for example) as bad or harmful is required before it can be regulated through law; conversely, the regulation of obscenity through techniques of law – conceived as the exercise of power – reinforces the truth of obscenity as bad or harmful.

For Foucault, power and knowledge are not only interconnected, but the exercise of power has effects, such as the production of docile bodies, or bodies "that may be subjected, used, transformed and improved".[449] Similarly, Foucault explains that the exercise of power

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[446] See Hunt, *Explorations*, 314.

[447] See Hunt, "Making-Up the New Person," 280-281.

[448] Foucault, *Discipline and Punish*, 27. See also Gerald Turkel, "Michel Foucault: Law, Power, and Knowledge," *Journal of Law and Society* 17, no. 2 (1990): 178-179, https://www.jstor.org/stable/1410084.

[449] Foucault, *Discipline and Punish*, 136.

functions as "'a conduct of conducts' and a management of possibilities".[450] This means that the regulation of the obscene through techniques of law (for example) must be considered not only for the production of truth (i.e. that the obscene exists and is bad or harmful), but also for the effects of the regulation of the obscene on the constitution of subjects. The regulation of the obscene through techniques of law constitutes the publisher or seller of the obscene as criminal, for example, and the knowledge and threat of law encourages subjects to be good or moral by avoiding purchasing or reading the obscene. Although Foucault focuses on the constitution of subjectivities, the same basic processes, or relations of power-knowledge and their effects, can be – and are within moral regulation scholarship – extended to the production of good or moral social orders or nations.[451] Thus, the truth of obscenity extends to and beyond the bodies of those who write, publish, sell or even read the obscene; they are criminals whose literature contributes to the moral decay of the nation (for example).

When Hunt describes moral regulation as "a distinctive form of discursive and political practice",[452] he points to the relations of power-knowledge that constitute and regulate problematic objects and targets. Moral regulation scholarship is concerned with the production of moralizing discourses or knowledges that are implicated in relations of power; power is exercised in practices or projects that have effects on the objects and targets of regulation (i.e. on the formation of subjects and social orders). Thus, moral regulation projects are attempts to "conduct conduct", positioning subjects to choose from a range of possible, acceptable or

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[450] Foucault, "The Subject and Power," 341.

[451] E.g. Alan Hunt, "The Purity Wars: Making Sense of Moral Militancy," *Theoretical Criminology* 3, no. 4 (1999): 411-412, https://doi.org/10.1177/1362480699003004002.

[452] Hunt, *Governing Morals*, ix.

authorized behaviours, and also reproduce or reinforce dominant social orders.[453] The study of such moral regulation projects is one means of studying relations of power-knowledge and the effects of power or the "techniques and tactics of domination";[454] projects of moral regulation are conceptualized in this project as being constituted by historically specific relations of power-knowledge that (attempt to) produce disciplined, normalized or moralized subjects and reproduce dominant social orders.

While power is frequently associated with domination in moral regulation scholarship, it is not immutable; Foucault writes that "[w]here there is power, there is resistance".[455] Similarly, Foucault writes that "[i]t would not be possible for power relations to exist without points of insubordination that, by definition, are means of escape".[456] Hunt suggests that moral regulation projects are characterized by "attempts"; these projects are often partially realized or fail, and result in new attempts.[457] Conceiving moral regulation projects as attempts enables us to effectively implicate them in struggle, or in relations of domination and resistance.[458] Because these moral regulation projects and their effects are political rather than natural or neutral, they

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[453] Hunt, *Governing Morals*, 4-11; Sangster, "Regulating Girls and Women," 39-41.

[454] Foucault, "Two Lectures," 102.

[455] Foucault, *The History of Sexuality*, 95.

[456] Foucault, "The Subject and Power," 347.

[457] Hunt, *Consuming Passions*, 3-4. See also Strange and Loo, *Making Good*, 37, 147; Mariana Valverde, *Diseases of the Will: Alcohol and the Dilemmas of Freedom* (New York: Cambridge University Press, 1998), 10-11.

[458] See Kevin Walby, "Contributions to a Post-Sovereigntist Understanding of Law: Foucault, Law as Governance, and Legal Pluralism," *Social and Legal Studies* 16, no. 4 (2007): 557, https://doi.org/10.1177/0964663907082735.

can frequently become a site of struggle.[459] While evidence of struggle is important, the focus of moral regulation – as with genealogy – is not on the victory or defeat of certain projects; instead, the aim is to critically consider the effects of moral regulation projects (i.e. pertaining to the formation of subjects and social orders).[460] Even as attempts, such projects are productive, or have effects.[461]

In addition to being concerned with struggle, moral regulation scholarship is concerned with history. From the beginning, Corrigan and Sayer insisted that the state needed to be understood historically (i.e. as part of the processes of formation);[462] the majority of subsequent sociological studies of moral regulation are characterized by their descriptive and historical qualities.[463] These studies problematize history or projects of moral regulation, revealing and producing subjugated knowledges and tracing transformations and continuities in order to make sense of how the practices and effects of moral regulation continue into the present.[464] Thus, as a methodology, moral regulation – like genealogy – is an effective history or is a form of local criticism that contests truth regimes and reveals subjugated knowledges as part of struggle.

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[459] Corrigan and Sayer, *The Great Arch*, 6-7; Hunt, *Explorations*, 316; Sangster, "Incarcerating 'Bad Girls'," 191-193.

[460] Hunt, "Making-Up the New Person," 283.

[461] Hunt, "The Great Masturbation Panic," 583.

[462] Corrigan and Sayer, *The Great Arch*, 3-7.

[463] E.g. Strange and Loo, *Making Good*; Hunt, "The Great Masturbation Panic," 575-615; Mary Louise Adams, "Almost Anything Can Happen: A Search for Sexual Discourse in the Urban Spaces of 1940s Toronto," in *Moral Regulation and Governance in Canada: History, Context, and Critical Issues*, ed. Amanda Glasbeek (Toronto: Canadian Scholars' Press, 2006), 233-250; Iacovetta, "Recipes for Democracy?" 169-187; Mawani, "Regulating the 'Respectable' Classes," 145-167; Sangster, "Incarcerating 'Bad Girls'," 189-216; Valverde, *Light, Soap, and Water*; Heath, *Purifying Empire*.

[464] See Hunt, *Governing Morals*, 2-3.

For example, Hunt suggests that rather than being an "absurd or doomed" form of regulation, an historic investigation of sumptuary laws provides insight into the ways that these persistent attempts at regulation were productive;[465] further, such an investigation reveals continuities in processes of governance pertaining to the regulation of luxury as a personal and social evil today.[466] This and like studies produce critical histories or genealogies in order to point to the normalization and naturalization of processes of regulation and their effects, fulfilling Foucault's admonition to be cognizant of history's implications in the present.[467] In doing so, moral regulation – like genealogy – contests dominant systems of knowledges as well as the effects of power-knowledge.[468] Thus, I argue that moral regulation, like genealogy, is an attempt "to emancipate historical knowledges from that subjection, to render them, that is, capable of opposition and of struggle against the coercion of a theoretical, unitary, formal and scientific discourse".[469]

This section considered how moral regulation has been conceptualized and highlighted links between moral regulation and Foucaultian scholarship in particular. Major concepts discussed included state formation and the formation of social orders, subject formation, normalization and moralization, and domination and struggle. These concepts are further explicated and developed in the following sections as integral to a moral regulation interpretive framework that fulfills the purpose of genealogy as a critical or effective history. Moral

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[465] Hunt, *Consuming Passions*, x-xiv.

[466] Hunt, xiv, 9, 79.

[467] Foucault, "The Subject and Power," 327.

[468] See Foucault, "Two Lectures," 83-85.

[469] Foucault, 85.

regulation is developed as a means of theorizing the constitution and regulation of the obscene through relations of power-knowledge, the effects of such moral regulation projects on the formation of subjects and social orders, and the ways in which such norms and normative processes are contested.

Moral Regulation as an Interpretive Framework

As an interpretive framework, moral regulation provides a way to analyse objects of regulation (i.e. obscene literature), modes of regulation (conceived as the exercise of power in conjunction with systems of knowledge), and the constitution of subjects and social orders (through relations of power-knowledge) that are implicated in domination and struggle, and to problematize these historical relations including their continuity into the present. This section further strengthens the links between moral regulation and Foucaultian scholarship by explicating the formation of subjects and social orders through processes governance and discipline.[470]

Garland explains that Foucault was concerned with two poles of governance, or "the forms of rule by which various authorities govern populations, and the technologies of the self through which individuals work on themselves to shape their own subjectivity".[471] Similarly, Tadros explains that discipline works to shape particular subjects or individuals, while

[470] See Hunt, *Consuming Passions,* 11-12, 181.

[471] David Garland, "'Governmentality' and the Problem of Crime: Foucault, Criminology, Sociology," in *Moral Regulation and Governance in Canada: History, Context, and Critical Issues,* ed. Amanda Glasbeek (Toronto: Canadian Scholars' Press, 2006), 357.

governance shapes populations;[472] thus, individuals are subjectified while populations are governed.[473] The way that these processes operate is through the collection of knowledge via certain practices – hierarchical observation, normalizing judgments, and examination – and the exercise of techniques of power; discipline and governance are means of exercising power-knowledge with effects on the formation of subjects.[474] Ransom adds to this basic conceptualization by suggesting that these processes respond to a social need and work toward "managing, controlling, and ultimately directing masses of people that . . . pose a threat to social stability" or the extant social order, and also reproduce power relations that maintain the social order.[475]

The relations between moral regulation and discipline have been explored, including by Rousmaniere, Delhi, de Coninck-Smith and others in *Discipline, Moral Regulation, and Schooling: A Social History*.[476] Rousmaniere, Delhi and de Coninck-Smith explain that discursive practices produce disciplined individuals who are shaped as types of persons or subjects (e.g. "good" citizens); they call this normalizing practice moral regulation.[477] In considering the links between schooling and the formation of disciplined and normalized

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[472] Victor Tadros, "Between Governance and Discipline: The Law and Michel Foucault," *Oxford Journal of Legal Studies* 18, no. 1 (1998): 78, https://www.jstor.org/stable/764723.

[473] Garland, "'Governmentality'," 358.

[474] Foucault, *Discipline and Punish*, 170.

[475] Ransom, *Foucault's Discipline*, 41.

[476] Kate Rousmaniere, Kari Dehli and Ning de Coninck-Smith, ed., *Discipline, Moral Regulation, and Schooling: A Social History* (New York: Routledge, 1997).

[477] Kate Rousmaniere, Kari Dehli and Ning de Coninck-Smith, "Moral Regulation and Schooling: An Introduction," in *Discipline, Moral Regulation, and Schooling: A Social History*, ed. Kate Rousmaniere, Kari Dehli and Ning de Coninck-Smith (New York: Routledge, 1997), 3.

subjects, families and nations, they suggest that such moral regulation studies enable a consideration of the constitution of subjects and social orders through relations of power-knowledge.[478] Similarly, Hunt describes moral regulation as the attempt "to instill complex and demanding norms, habits and discipline" so that subjects function within a social order.[479] Thus, moral regulation projects can be conceptualized as a form of discipline, and the (genealogical) study of such processes reveals relations of power-knowledge as well as their effects, including the formation of subjects as well as social orders.

Briefly, Foucault describes three ways that disciplinary power is exercised within modern institutions: hierarchical observation, normalizing judgments, and examination.[480] Hierarchical observation conducts conduct or shapes subjectivities through surveillance, or by making visible the actions of subjects and populations in order to discourage misconduct and encourage proper conduct.[481] Normalizing judgments function to make "the slightest departures from correct behaviour subject to punishment";[482] norms of behaviour, activity, speech, the body and sexuality are established through discursive practices including projects of moral regulation, deviation from which indicates non-conformity and invites correction.[483] This normalization, or this establishment and reproduction of norms and the encouragement to adhere to these norms, involves the ranking of behaviours as better or worse, encouraging the former and discouraging

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[478] Rousmaniere, Dehli and de Coninck-Smith, "Moral Regulation and Schooling," 7.

[479] Hunt, "Making-Up the New Person," 286.

[480] Foucault, *Discipline and Punish*, 170.

[481] Foucault, 170-171.

[482] Foucault, 178.

[483] Foucault, 178-179.

the latter often through extra-legal processes.[484] Examination combines both surveillance and observation and normalizing judgments in order to constitute the individual subject who is surveilled, normalized and examined, or as one who is knowable and can be disciplined.[485]

While moral regulation scholarship could potentially consider any of these disciplinary practices – for example, Little considers the disciplinary effects of surveillance as a technique of moral regulation practiced on single mothers receiving governmental assistance[486] – normalizing judgments are the most prevalent concern for moral regulation scholarship. Even the surveillance of single mothers receiving governmental assistance, for example, was prompted by a deviation from the norm; these women were constituted as abnormal because they existed outside the nuclear family and were not productive workers and therefore they required regulation. Together or separately, these techniques of discipline tie into power-knowledge; they make the subject knowable – through the collection of information, in comparison to standards of norms, and through procedures of examination – and an object that can be disciplined or regulated through the exercise of power.[487]

Discipline, governance or projects of moral regulation are implicated in the formation of subjects through the exercise of power in conjunction with systems of knowledge. Heath, who has written about the moral regulation of obscenity in the context of empire, explains that "the

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[484] Foucault, 184. For example, employees are encouraged to be "good" and disciplined workers; they are penalized for late attendance (e.g. pay is docked or fewer shifts are awarded) and rewarded for perfect attendance at work (e.g. with a bonus or gift). Or, students are encouraged to achieve good grades through processes of recognition (e.g. awards or scholarships) and are sanctioned for failing to meet standards or deadlines (e.g. with detention or extra homework).

[485] Foucault, 184.

[486] Little, "'Manhunts and Bingo Blabs'," 217-232.

[487] Foucault, *Discipline and Punish*, 194.

concept of governmentality has become central to understanding power not simply as repression, but as an epistemological (practical and discursive) phenomenon that normatively produces subjects".[488] These relations of power-knowledge work to constitute or form subjects who are capable of making choices that are aligned with the objectives of governing authorities.[489] This process is called subjectification (or subject formation), and involves the use of technologies of the self that are adopted by willing individuals and/or technologies of domination that are coercive or disciplining of others, resulting in the formation of selves or subjects that are shaped or produced in "improving directions".[490] I emphasize that these relations of power-knowledge are productive rather than repressive, even when they are coercive. While many moral regulation projects encourage self-formation, others are coercive or involve technologies of domination.[491] Even when moral projects are coercive, however, they cannot be conceived as uni-directional, or as being imposed on certain targets; agents of regulation and populations not specifically targeted by projects of regulation might experience the effects of the exercise of power and be engaged in processes of self-formation.[492] Subjectification, therefore, is not the same as subjection.

Not only do projects of moral regulation function to subjectify individuals, but they also produce social orders, often through processes of distinction. Distinction is a theme in many studies of moral regulation, but it is not explicitly developed in moral regulation scholarship.

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[488] Heath, *Purifying Empire*, 8.

[489] Garland, "'Governmentality'," 358-359.

[490] Heath, *Purifying Empire*, 8.

[491] Hunt, "Making-Up the New Person," 281.

[492] Strange and Loo, *Making Good*, 6; Hunt, "Making-Up the New Person," 281-282.

For example, in Hunt's history of sumptuary law, social appearance is argued to be implicated in conceptions of social visibility or recognition; dress was implicated in processes of class and gender distinction, making the hierarchy visible and appear natural, and reinforcing or reproducing the hierarchical social relations that dominated.[493] Valverde makes a similar claim in her discussion of finery, which served as a visible means of moral and economic distinction; the socio-economic and moral status of a woman, or whether she was a lady or a maid, for example, determined whether or not a woman in finery was "fallen".[494] Iacovetta's discussion of nutrition and food campaigns points to a distinction between good and healthy (normalized) choices and the culinary practices of immigrants; she suggests that as projects implicated in nation-building, these campaigns focused on the political and social organization of "difference" that ranked (i.e. according to normalizing judgments) everyday eating practices on the basis of ethnicity.[495] Rojek considers the moral regulation of leisure; conceptions of proper pleasures were cultivated in relation to distinctions between the working class (who did not choose proper pleasures) and the bourgeois (who chose character-building or normalized pleasures) in ways that reinforced the capitalist hegemonic order.[496] Heath discusses the suppression of obscene literature, which was not about prohibiting a certain type of sexual material *per se*, but about excluding certain types of immoral, impure or uncivilized citizen-subjectivities and maintaining

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[493] Hunt, *Consuming Passions*, xii-xiii, 118-132.

[494] Mariana Valverde, "The Love of Finery: Fashion and the Fallen Woman in Nineteenth-Century Social Discourse," *Victorian Studies* 32, no. 2 (1989): 168, 170, https://www.jstor.org/stable/3827615.

[495] Iacovetta, "Recipes for Democracy?" 169.

[496] Chris Rojek, "'The Eye of Power': Moral Regulation and the Professionalization of Leisure Management from the 1830s to the 1950s," *Society and Leisure* 15, no. 1 (1992): 369-370, https://doi.org/10.1080/07053436.1992.10715422.

an empire built on moral (and often racial and classed) distinction; colonizers and colonized were distinguished by their moral legitimacy, which corresponded to their reading materials.[497] These examples of moral regulation studies all point to the normalization of hierarchical distinction along class, gender and racial or ethnic lines.[498] They also suggest that such distinctions were the fault lines of struggles.

The importance of producing distinction through procedures of moral regulation in the process of nation-building (or the reproduction of a particular social order) is captured by Sangster, who critiques "the processes whereby some behaviors, ideals, and values were marginalized and proscribed while others were legitimized and naturalized" in ways that created distinctions between subjects and that reinforced relations of dominance within social orders.[499] I argue that distinction is a thread running through moral regulation scholarship, and one which points to the harms that moral regulation projects constituted and ostensibly guarded against. I do not suggest that distinction was necessarily the intended effect of moral regulation projects, or of the exercise of power in conjunction with systems of knowledge; nevertheless, identifying the processes that contribute to distinction provides insight into the exercise and effects of power pertaining to the formation of subjects and social orders.

The chapters that follow consider projects of moral regulation that involve both the regulation of others (coercive or not) and of the self, and exemplify the links between moral regulation projects and processes of discipline or governance as relations of power-knowledge that have effects on the formations of distinctive subjects and social orders in ways that are

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[497] E.g. Heath, *Purifying Empire*, 1, 13, 21, 48, 53.

[498] See also Strange and Loo, *Making Good*, 9; Valverde, *Light, Soap, and Water*, 105, 166.

[499] Sangster, "Incarcerating 'Bad Girls'," 191.

sensitive to struggle. The following section considers law as a particular technique of regulation that has been conceptualized as both coercive and disciplinary, and that is problematized within Foucaultian scholarship.

Foucault, Law and Moral Regulation

The scholarship on Foucault and law often situates law in relation to Foucault's discussions of sovereign (negative or repressive) and disciplinary (positive or productive) modes of power. While there is a significant body of scholarship on Foucault and law, there is no consensus as to the place or importance of law in Foucaultian studies; I briefly discuss the scholarship – focusing on the expulsion of law and law as normalization theses – in order to situate this project's understanding of the place of law within genealogy and in conjunction with moral regulation. Such a consideration is necessary because of the prevalence of law as a technique of moral regulation generally;[500] specifically, for over one hundred years, the dominant way of conceptualizing obscenity was as a legal category, pointing to the central place of law in a history of obscenity. This section works to conceptualize law in relation to the exercise of sovereign and/or disciplinary power, or its coercive and/or normalizing effects, constituting law as *one* relation of power-knowledge. This is consistent with the approach of Hunt, for example, who considers the ways in which law is used or excluded as a strategy of moral reform;[501] like him, I do not privilege law as the only or the most important technique of moral regulation. Further, rather than considering the effects of law to be inevitable or natural, law is

[500] See Strange and Loo, *Making Good*, 4-5.

[501] Hunt, *Governing Morals*, 11-12.

conceptualized as a site of struggle, or of domination and resistance.[502] This section discusses scholarship that specifically addresses the relationship between law and the work of Foucault, and subsequently considers law as a technique of moral regulation that exercises effects on individuals and populations.[503]

I begin by summarizing Foucault's contributions to the theorization of law generally. Litowitz suggests that Foucault rejects the idea of moral or legal progress and the classical juridical theory whereby power is conceptualized *only* in terms of state or sovereign power, and posits that rather than "natural" individuals, subjects are produced through discipline.[504] Litowitz argues that rather than rejecting the relevance and prevalence of law, Foucault rejects an understanding of law as the exercise of power which is held by the state over individuals and outside of which individuals are essentially free.[505] Instead, law is conceptualized as an expression of disciplinary power.[506]

While Litowitz suggests that for Foucault, law is becoming more disciplinary, Hunt and Wickham were most influential in asserting that Foucault associated law with sovereign power, or conceptualized law as a system of commands and prohibitions.[507] They suggest that Foucault believed law was no longer relevant in a modernity characterized by disciplinary power, or by the pervasive exercise of power through diverse sites and means that encourage normative

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[502] Hunt, *Explorations*, 90-91; Walby, "Post-Sovereigntist Understanding of Law," 557.

[503] See Tadros, "Between Governance and Discipline," 79.

[504] Douglas Litowitz, "Foucault on Law: Modernity as Negative Utopia," *Queen's Law Journal* 21, no. 1 (1995): 4, HeinOnline Law Journal Library.

[505] Litowitz, "Foucault on Law," 5-8.

[506] Litowtiz, 24.

[507] Hunt and Wickham, *Foucault and Law*.

subjectivities.[508] Thus, they promulgate what is known as the "expulsion of law thesis", whereby Foucault expelled law as an object of study or a significant relation of power-knowledge.[509] Hunt and Wickham reject this expulsion of law and argue that since laws continue to exist and exert influence, they cannot be ignored as only or merely a pre-modern practice.[510] Further, rather than associating law only with sovereign power, Hunt and Wickham contend that law functions as a form of disciplinary power, or as a normalizing practice.[511] In other words, law functions not only to prohibit (as an expression of sovereign power), but also to discipline and normalize.[512]

Scholars, however, have contested Hunt and Wickham's expulsion of law thesis and have reconsidered Foucault's work in relation to law.[513] For example, in Beck's review of Hunt and Wickham's work, he rejects the expulsion of law thesis and reconsiders law in relation to discipline and power-knowledge.[514] Likewise, Munro rejects Hunt and Wickham's attempts to read Foucault as contrasting law and discipline;[515] instead, she argues for a differentiation between the juridical and the disciplinary rather than between the legal and non-legal and

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[508] Hunt and Wickham, 55-58.

[509] Hunt and Wickham, 55-56.

[510] Hunt and Wickham, 59.

[511] Hunt and Wickham, 65-68.

[512] Hunt and Wickham, 66-67.

[513] E.g. Tadros, "Between Governance and Discipline," 75-103; Ben Golder and Peter Fitzpatrick, *Foucault's Law* (New York: Routledge, 2009).

[514] Anthony Beck, "Foucault and Law: The Collapse of Law's Empire," *Oxford Journal of Legal Studies* 16, no. 3 (1996): 489-502, https://www.jstor.org/stable/764604.

[515] Vanessa Munro, "Legal Feminism and Foucault: A Critique of the Expulsion of Law," *Journal of Law and Society* 28, no. 4 (2001): 553-554, https://www.jstor.org/stable/3657960.

suggests that law can be both juridical (or associated with sovereign power) and disciplinary.[516] While these scholars read law as potentially an exercise of sovereign or disciplinary power, it was the latter conceptualization that required theorization.

Law is conceptualized as a relation of power-knowledge that produces truth and also shapes normalized or moralized subjects and social orders.[517] In other words, law is a practice of domination that produces regimes of truth and renders subjects amenable to discipline.[518] Smart suggests that law authoritatively functions (i.e. as "the law") to produce, circulate and maintain dominant discursive practices that establish truth (e.g. through the trial).[519] For Valverde, law does not simply produce knowledge of crime, but knowledge or truth of, for example, vice and virtue, normative and deviant behaviour, sex and the obscene.[520] Or, in Smart's words, "law extends itself beyond uttering the truth of law, to making such claims about other areas of social life",[521] the effects of which can be seen in the normalization or moralization of subjects within social orders. Thus, as Hunt and other moral regulation scholars suggest, law operates to

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[516] Munro, "Legal Feminism and Foucault," 563-565. See also Carole Smith, "The Sovereign State v Foucault: Law and Disciplinary Power," *Sociological Review* 48, no. 2 (2000): 283-306, https://doi.org/10.1111/1467-954X.00216.

[517] See Turkel, "Law, Power, and Knowledge," 178-187.

[518] Carol Smart, *Feminism and the Power of Law* (New York: Routledge, 1989), 9-14; Turkel, "Law, Power, and Knowledge," 187; see also Mariana Valverde, *Law's Dream of a Common Knowledge* (Princeton, NJ: Princeton University Press, 2003), 1-15.

[519] Smart, *Power of Law*, 10.

[520] Valverde, *Law's Dream*, 1-2.

[521] Smart, *Power of Law*, 13.

maintain and reproduce dominant social orders through the transmission of attitudes, values and theories of society.[522]

Moral regulation scholarship consistently suggests that law is a significant mode of normalization,[523] and is one form of discipline, governance or regulation that "involves the suppression, marginalization, or repudiation of alternative ways of being, whist encouraging or promoting other realities".[524] Likewise, Foucaultian scholars including Ewald and Lincoln, for example, suggest that normalization is often accompanied by legislation and that a normative society is an increasingly prescriptive society.[525] Golder and Fitzpatrick similarly suggest that many or even most techniques of disciplinary power depend, both for their constitution and exercise, on law.[526] They argue that discipline draws on law to form norms or standards of judgment, and relies on law to punish subjects who resist discipline.[527] Tadros's argument is similar; he suggests that law may function as a means of discipline and/or a mechanism of governance,[528] thus affecting the formation of specific subjects (or those who transgress law's boundaries) and populations (who are governed by law's normative standards). Law, therefore,

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[522] Hunt, *Explorations*, 17, 25. See also Strange and Loo, *Making Good*, 3-7.

[523] E.g. Strange and Loo, *Making Good*, 4-8; Sangster, "Regulating Girls and Women," 32-39.

[524] Hunt, "Law, Politics and the Social Sciences," 116.

[525] François Ewald, "Norms, Discipline, and the Law," *Representations* 30 (1990): 138, https://www.jstor.org/stable/2928449; Lissa Lincoln, "Law, Literature, Morality: Michel Foucault and the Problem of Judgment," in *Re-reading Foucault: On Law, Power and Rights*, ed. Ben Golder (New York: Routledge, 2013), 90-91.

[526] Golder and Fitzpatrick, *Foucault's Law*, 61.

[527] Golder and Fitzpatrick, 61.

[528] Tadros, "Between Governance and Discipline," 78-79.

is a relation of power-knowledge and a site of domination and struggle, the effects of which include the formation, disciplining and normalization of subjects within social orders.

Although Holland, for example, distinguishes between technologies of the self and technologies of domination,[529] moral regulation scholarship does not necessarily make such a distinction when it comes to law. Whether law is considered to be coercive or is associated with sovereign power, or whether law is considered to be normalizing or is associated with disciplinary power, law is understood to be productive, in that it has effects on the formation of subjects and social orders.[530]

To be clear, moral regulation scholarship does not ignore other relations of power-knowledge; in fact, many moral regulation studies consider techniques of regulation that accompany law. For example, Mawani considers public health education in conjunction with legislation aimed at the regulation of venereal disease; law was used to punish "bad" behaviour while prescriptive literature advocating monogamous marriage was directed at the population in an effort to shape moral subjectivities, encourage decency and fight the spread of venereal disease.[531] Thus, law was one technique of a moral regulation project that educated and punished individuals in order to shape subjectivities in accordance with a dominant social order.

Ultimately, I argue that there is common ground between Foucault and moral regulation scholarship in terms of law. Certainly, laws are prohibitive, creating binaries of acceptable and unacceptable behaviour; however, laws are also productive, and when conceptualized as

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[529] Nancy J. Holland, "'Truth as Force': Michel Foucault on Religion, State Power, and the Law," *Journal of Law and Religion* 18, no. 1 (2002): 81, https://www.jstor.org/stable/1051495.

[530] E.g. Strange and Loo, *Making Good*, 6-7.

[531] Mawani, "Regulating the 'Respectable' Classes," 146-147.

relations of power-knowledge and as techniques of moral regulation, the exercise of power and its effects can be more fruitfully considered.

Considering Moral Regulation Projects and Their Components

This chapter conceptualized moral regulation as a methodology concerned with problematizing relations of power-knowledge, the exercise of which (in projects of moral regulation) has normalizing and moralizing effects on subjects and implications for dominant social orders. Substantively, moral regulation scholarship is concerned with identifying moral regulation projects, conceived as discursive practices or as the exercise of power in conjunction with systems of knowledge, that are implicated in events and struggles. This section points to the components of moral regulation projects in order to facilitate the identification, analysis and problematization of such projects and their effects. More specifically, this section enables a consideration of how those projects of moral regulation select and constitute problematic objects – such as the obscene – so that they can be acted on in accordance with knowledges and practices that attempt to induce, restrain, limit, direct and shape subjects and social orders.[532]

In *The History of Sexuality*, Foucault writes that sexuality became an object or target of regulation "only because relations of power had established it as a possible object; and conversely, if power was able to make it as a target, this was because techniques of knowledge and procedures of discourse were capable of investing it".[533] This vocabulary is remarkably similar to the elements that Hunt consistently identifies as being part of moral regulation projects; he discusses the constitution of *objects* of regulation, *agents* who regulate the object

[532] See Hunt, *Consuming Passions*, 3.

[533] Foucault, *The History of Sexuality*, 98. See also Foucault, "Two Lectures," 100-102.

with particular *techniques* and according to particular *knowledges* that make the object amenable to regulation, and which constitute the *targets* of regulation, forming subjects and social orders.[534] Somewhat similarly, Strange and Loo consider the scope, subjects, and techniques of regulation, as well as their emergence, existence and effects.[535] These components of analysis are not intended to be studied piecemeal, but as projects that deploy moral discourses that constitute moralized subjects and objects that are acted on through moralizing practices.[536]

Objects of regulation correspond to Foucault's discourse objects. According to Hunt, "[t]here are no natural or ready-made social objects and hence no ready-made objects of regulation. Their existence is always the outcome of some active process that creates that which is to be regulated".[537] In this project, the emergence of the object – or where it was sought and found – is considered in conjunction with the rules for the formation of objects. Surfaces of emergence (or those social and cultural spaces from which obscenity emerged, such as religion or law), authorities of delimitation (or those who had authority to designate a discourse object like obscenity, based on their institutional position such as the Church or legal courts), and grids of specification (or the process of classifying objects according to properties, so that it was obviously immoral or illegal) that made possible the emergence and identification of obscenity as problematic object are considered.

Hunt suggests that objects of regulation, such as obscene literature, are frequently created as a result of the "discovery" of a social problem; he also suggests that objects of regulation are

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[534] Hunt, *Governing Morals*, 7, 28; Hunt, "Law, Politics and the Social Sciences," 116-117. See also Walby, "Post-Sovereigntist Understanding of Law," 558.

[535] Strange and Loo, *Making Good,* 6-8.

[536] Hunt, "Making-Up the New Person," 280.

[537] Hunt, *Explorations*, 316.

created in a political process (or through relations of power-knowledge) that can be or become a site of struggle.[538] In terms of the discovery of a social problem, Hunt suggests that harm (or risk or danger) is frequently attributed to the problematic object;[539] moral regulation projects consist of the "linkages constructed among their discourses, practices and their imputed social consequences",[540] linking discourses, practices and the idea of harm. Similarly, Hunt explains that "[m]oral discourses link a moralized subject with some moralized object or practices in such a way as to impute some wider socially harmful consequences unless subject and practices are subjected to appropriate regulation".[541] This process of attributing harm as a means of problematizing an object of regulation is not neutral, but is a means of mobilizing knowledge and exercising power with effects on the constitution of subjectivities and social orders.

Although I do not want to go too far off track, I should mention that perceptions or conceptualizations of harm differ significantly among moral regulation scholars. For example, Hunt's socialist work tends to focus more on economic dominance or disparity,[542] while the work of other scholars likewise reflects personal or political commitments; for example, Sangster's work is feminist and considers harm to women.[543] In this project, I follow Valverde,

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[538] Hunt, 316.

[539] Hunt, *Governing Morals*, 7.

[540] Hunt, "Making-Up the New Person," 281.

[541] Hunt, 280.

[542] E.g. Hunt, 275-301.

[543] E.g. Sangster, "Incarcerating 'Bad Girls'," 189-216.

who rejects looking at "interests" like capitalism or patriarchy,[544] so as to focus on and problematize specific techniques of governance and their effects. While I cannot simply depend on regulatory agents or historical documents to tell me what was really going on or why obscenity was "really" harmful at any time, it is not my goal to discover what was "really" going on below the surface of moral regulation projects. Instead, I consider moral regulation as particular transformative practices in order to point to the contingency and complexity of the production of multiple and sometimes conflicting (harmful) objects (as well as subjects and social orders) at particular moments in history.

In addition to identifying harmful and problematic objects of regulation, a moral regulation framework directs attention to *regulatory agents*, or those who regulate the problematic object. Hunt refers to regulatory agents who have certain responsibilities that ensure the (continued) regulation of the object, and who mobilize institutional means to regulate the problematic object.[545] Agents of regulation are considered in conjunction with the rules for the formation of enunciative modalities; this project considers statements pertaining to obscenity that are expressed by authoritative agents, or those who have the right, privilege or ability to use a given mode of speech (e.g. priests are authorized to make religious sermons and judges are enabled to make legal rulings or verdicts). The authority of agents is understood to derive from their institutional association; for example, judges are considered to be authoritative in determining legal obscenity because of their position within the legal system. Further, agents refer to institutional standards or rules (which derive from systems of knowledge) in order to

[544] Mariana Valverde, "The Harms of Sex and the Risks of Breasts: Obscenity and Indecency in Canadian Law," *Social and Legal Studies* 8, no. 2 (1999): 182, https://doi.org/10.1177/096466399900800202.

[545] Hunt, *Explorations*, 316.

assess the problematic objects or actions, as well as the sanctions or punishments that might result; for judges, this would require referencing case law or statutes to arrive at verdicts and sentences, for example. Thus, agents are conceptualized as particular kinds of subjects that are engaged in practices of truth production that reproduce both their field or discursive formation as well as the discourse object.

Regulatory knowledges and *techniques of regulation* are integral to the constitution of the object of regulation, the (processes of) regulation of the object, as well as the formation of subjects and social orders. Knowledge is integral to the constitution of an object of regulation (e.g. as being immoral or illegal), as well as its regulation (e.g. by agents and practices of Church or law); such knowledge production is political or is implicated in relations of power.[546] This means that the production of knowledge, including the formation of concepts or themes pertaining to the obscene, for example, reproduces the conditions in which regulatory techniques can be mobilized to exclude literature conceptualized as obscene in particular ways or with institutionally authorized techniques. This involves a consideration of truth regimes, or those historically specific types of discourses that are accepted and which function as true within a discursive formation. Thus, if obscene literature is conceptualized as a thought object and is constituted by regulatory knowledges as immoral and as causing harm by leading to "impure" sexual conduct, for example, then regulatory techniques are rendered natural and necessary in order to limit the circulation of obscene literature through practices of law and by promoting the consumption of "pure" literature with the associated benefits of "good" reading.

This project considers the knowledges or truths that mobilize agents and institutions to problematize objects like obscene literature, and that respond to these problems with projects that

[546] Hunt, "Law, Politics and the Social Sciences," 117; Hunt, *Governing Morals*, 28.

encourage normative literature as well as subjects and social orders. Thus, knowledge of the obscene that constitutes it as bad or harmful is required before the obscene can be regulated through law (for example); conversely, the regulation of obscenity through techniques of law reinforces the badness or harmfulness of obscenity. Practices or techniques of regulation are conceived not simply as responses or reactions to a problematic concept or discourse object, but rather as integral to the constitution as well as maintenance of a concept.

When regulatory knowledge is given normative content and agents mobilize techniques or practices act on that normative content, relations of power-knowledge produce moralized *targets*.[547] Power is exercised to guide and constrain subjects or targets, positioning them to choose from a range of possible, acceptable or authorized behaviours; power produces disciplined or normalized subjects. As Hunt explains, moral regulation "should be understood as ongoing contestations that involve a continuous, and more or less coercive, suppression of some identities and forms of life and the encouragement and enhancement of preferred forms".[548] Subjectification occurs through governmental self-formation (whereby authorities and agencies shape the conduct, desires, capacities of people) and ethical self-formation (whereby people seek to know and act on selves); this project is concerned with the governance of others and the self, or with those knowledges and techniques that are externally regulative and/or internally constitutive. While this project considers in particular the processes of conducting conduct, especially of those targets who violate normative standards, targets of regulation may also include regulators and the general population who may be involved in processes of self-formation.

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[547] Hunt, *Governing Morals*, 7.

[548] Hunt, 15.

Moral regulation scholarship is concerned with the processes of formation of both subjectivities and social orders through modes of regulation that emerge from historic conditions and work to reproduce dominant social orders and to constitute moralized subjects and to exclude or disadvantage other social orders and subjectivities.[549] The atomization of moral regulation projects described above does not imply that such projects are coherent or unified;[550] instead, these projects should be understood as attempts and as ongoing processes that are transformed through partial failures and realizations.[551] Nor do I conceptualize these projects of moral regulation as intentional or functional; I do not argue, for example, that the regulation of the obscene was intended to "uphold patriarchy" or "legitimate heteronormativity", even though its regulation may very well have been gendered or it might have contributed to the normalization of heterosexuality. Instead, I focus on the emergence of moral regulation projects as discursive practices that have effects on political rather than natural social orders and subjectivities, implicating these projects in struggle and problematizing their continuation into the present.[552]

Conclusion

This chapter synthesized moral regulation scholarship and concepts – including state and subject formation, normalization and moralization, domination and struggle – and linked them to Foucaultian scholarship (from which moral regulation scholarship emerged) in order to develop

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[549] Hunt, *Explorations*, 325; Hunt, *Consuming Passions*, 6-7; Hunt, *Governing Morals*, 8-11.

[550] Hunt, *Consuming Passions,* 180.

[551] Hunt, 3-4.

[552] See Hunt, 180-183.

an interpretive framework capable of conducting an effective history. Moral regulation scholarship incorporates and develops Foucault's concerns with power-knowledge, enabling the consideration of substantive moral regulation projects or discursive practices and also problematizing the effects of such projects. In particular, moral regulation scholarship highlights processes of distinction that naturalize and legitimize hierarchical ordering or the differential experience of the exercise of power; thus, a consideration of the reproduction and maintenance of gender, class and race distinctions through projects of moral regulation points to the normalization of political rather than natural or neutral social arrangements and experiences. This concern with the constitution of normalized and moralized subjects and social orders problematizes relations of power-knowledge that are implicated in relations of domination and subjectification. Moral regulation scholarship makes room for multiple conceptualizations of power (i.e. as sovereign and/or as disciplinary), as moral regulation projects work to govern the self and others in ways that can be coercive and/or normalizing. This emphasis on the productive effects of power is particularly evident in the many moral regulation studies that consider law as a coercive and/or normalizing technique of moral regulation. Rather than determining the essential properties of law, attention is directed toward the effects of law (as an exercise of power) on the formation of "good" subjects and social orders.

In conclusion, I argue that moral regulation is very well suited as an interpretive framework to work with the archaeological and genealogical methodology employed in this project. Moral regulation as a methodology problematizes systems of knowledge and the exercise of power by conducting a history of the present, revealing dominations that continue today and enabling struggle.

Chapter IV

The Formation of Obscenity:

Constituting Obscene Literature as a Public Problem and the Publication of *Fanny Hill*

Introduction

On November 21, 1748, London's *General Advertiser* contained a notice advertising the first volume of *Memoirs of a Woman of Pleasure*.[553] Thus, the first recorded mention of *Fanny Hill* was in a newspaper comprised primarily of advertisements and secondarily of news content; *Fanny Hill* was an object for public sale. However, this was not an entirely straightforward commercial notice. The advertisement listed G. Fenton as the publisher, when in fact Ralph Griffiths published the volume. The notice did not list an author, referring only to a "'PERSON of QUALITY'";[554] John Cleland, the person of quality in question, was at that time in Fleet Prison for debt. From this first published document, it is possible to begin tracing the general concerns with unruly print matter from which *Fanny Hill* first emerged and became problematic.

In this chapter, I consider distinct discursive formations that vied to constitute and secure obscenity as a problematic discourse object. While the two analytic chapters that follow each describe a single dominant discursive formation, it was impossible to categorize the discursive formations described in this chapter so neatly. Instead, I trace how the state, commercial market, judiciary and religion constituted and contested multiple problematic discourse objects called by the same name – obscenity – and instituted particular discursive practices (or projects of moral regulation) pertaining to their respective objects of regulation, thereby constituting different

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[553] In Foxon, *Libertine Literature*, 52.

[554] Quoted in Foxon, 52.

subjects and social orders. I suggest that these discursive formations, while distinct and despite having distinct conceptualizations of obscenity, overlapped to an extent and through processes of contestation and moments of struggle they constituted the obscene as a problem that threatened the morality of the population in general and the sexual morality of women in particular. This chapter begins by considering how the Crown, commercial market, courts and Church, with their own procedures, methods, techniques, and tactics for producing and reproducing knowledge and truth and exercising power, constituted the obscene as a problematic object of regulation that threatened public order and personal morality, and concludes by considering the effects of these moral regulation projects on the constitution of social orders and subjects.

Publishing and the Public: A Problem of State and Government

This section locates *Fanny Hill* as having emerged within the general historical constellation of concerns over unregulated print matter; these concerns were expressed by state authorities, including an absolute monarch, an extra-judicial court, and two Parliaments over a two hundred year period. The purpose of this section is to trace the historical institutions concerned generally with print matter and its regulation. This section demonstrates that print matter was consistently a concern for the state (often in conjunction with the Church), and that the imagined effects of publishing on the public (and in particular on the "simple" subject) necessitated regulatory measures.

Concerns about unregulated print matter were included in the *Royal Proclamation* (1538) of King Henry VIII of England.[555] The king was concerned about "wrong teaching and naughty

[555] Henry VIII, "Prohibiting Unlicensed Printing of Scripture, Exiling Anabaptists, Depriving Married Clergy, Removing St. Thomas à Becket from Calendar," in *Tudor Royal*

printed books" that were "contrary to the true faith".[556] While true or authoritative religious teachings were historically formulated and disseminated by the Church, Anabaptists and other religious groups of the Reformation contributed to a new and unauthorized dissemination of ideas in and through print. The "fanatical opinions" of Anabaptists were constituted as having a problematic effect, in which the king's "loving simple subjects have been induced and encouraged, arrogantly and superstitiously, to argue and dispute in open places, taverns, and alehouses".[557] The unregulated and unsanctioned circulation of ideas – particularly religious ideas – through print matter was constituted as problematic because it caused public dissension and disorder. Print matter was constituted as affecting public behaviour, making the public less amenable to the authority of the Church and the Crown, and therefore less governable.

The *Royal Proclamation* (1538) required that English language books, both imported and domestic, must be licensed and/or receive royal consent before they became publicly available. The problematic discourse object was, specifically, religious books written in English that contained opinions contrary to the teachings of the Church and the will of the king (who had established himself, rather than the pope, as head of the Church in 1534). More broadly, the problematic discourse object was the circulation of ideas in print form and in a language that was widely understood (if still not widely read), and which was thought to extend into public thought (e.g. of the "simple" people) and public areas (e.g. taverns). What was at stake was the royal and

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Proclamations, vol. 1, *The Early Tudors (1485-1553)*, ed. Paul L. Hughes and James F. Larkin (1538; New Haven, CT: Yale University Press, 1964), 270-276.

[556] Henry VIII, "Prohibiting Unlicensed Printing," 270. This edition modernized the spelling of the original document.

[557] Henry VIII, 271.

ecclesiastical monopoly on truth – including true rulership and true doctrine – and the challenge to authority posed by unruly printed matter.

The *Royal Proclamation* (1538) (re)established the authority of both the Crown and the Church regarding print matter; the ability to regulate and designate what could and could not be printed, published and read was constituted as a royal privilege. The *Royal Proclamation* (1538) was an expression of royal will and royal authority; it definitively asserted that the king and his counsel, as well as the bishops, were permitted to discourse authoritatively on religion. Of course, this was contested; the *Royal Proclamation* (1538) was necessitated by the contrary beliefs and actions (or publications) of those like the Anabaptists, whose fundamental religious beliefs were incompatible with established institutions and authorities. For example, Anabaptists (forerunners of the Amish and Mennonites) believed in the personal interpretation of the *Bible*, as well as in the complete separation of religious and secular matters. The *Royal Proclamation* (1538), issued by King Henry VIII as both head of state and Church, was an authoritative act to limit points of diffraction regarding legitimate alternatives to the existing state of things, both religious and secular.

One hundred years later, in 1637, the Star Chamber issued a decree on printing.[558] As with the *Royal Proclamation* (1538), the decree identified a problem: "divers Abuses have . . . been practised by the Craft and Malice of wicked and evil disposed Person, to the prejudice of the Publick; and divers Libellous, Seditious and Mutinous Books have been unduly printed, and other Books and Papers without License, to the Disturbance of the Peace of the Church and

[558] "The Star Chamber on Printing, 1637," in *Historical Collections of Private Passages of State*, vol. 3, *1639-40*, by John Rushworth (London: D. Browne, 1721), 306-316, http://british-history.ac.uk/rushworth-papers/vol3/pp306-316.

State. . .”[559] Again, there was a concern pertaining to seditious and schismatic writings that respectively threatened the authority of the Crown and/or the Church, as well as “offensive” writings,[560] all of which were constituted as having negative effects on the public. Significantly, this decree gave two courts authority to deal with violations: the Star Chamber Court and the Court of High Commission. The Star Chamber Court was composed of Privy Counsellors and common law judges; listed in the introduction of the decree were the Attorney General, the Lord Keeper of the Great Seal of England, the Lord Archbishop of Canterbury, the Lord Bishop of London, the Lord Treasurer of England, the Lord Chief Justices, and the Lord Chief Baron, on whose authority the decree was published. The Star Chamber Court punished actions that were morally problematic, but were not illegal. The Court of High Commission was the highest ecclesiastical court in England. This suggests that problematic – seditious, schismatic or offensive – print matter was constituted as a moral or religious issue to be dealt with by the Star Chamber Court or the Court of High Commission, rather than as a legal issue to be dealt with by legislation or common law institutions. To put it differently, at this time, print matter was not formulated either in discourse or in practice as being illegal; instead, it was constituted as an offence against religion and/or to a lesser extent public decency.

In addition to establishing jurisdiction over problematic print matter, the Star Chamber decree (1637) also implemented a system that institutionalized the regulation of print matter, as well as hindered the proliferation of problematic print matter; specifically, pre-publication licensing and registration were implemented. All print matter, both secular and religious, was required to be first licensed by an authorized agent and subsequently registered with the

[559] “Star Chamber on Printing, 1637,” first paragraph.

[560] “Star Chamber on Printing, 1637,” Imprimis I.

Stationers' Company. The decree detailed who had the institutional authority to grant a license; works of law were licensed by the Lord Chief Justices and Lord Chief Baron, works of history were licensed by the Secretaries of State, works of heraldry were licensed by the Earl Marshal, and works of divinity, the body, philosophy, poetry, etc. were licensed by the Archbishop of Canterbury or the Bishop of London, or by the Chancellors or Vice Chancellors of the Universities of Cambridge or Oxford in more limited cases. Each licensing agent was required to ensure "that there is nothing in that Book or Books contained, that is contrary to Christian Faith, and the Doctrine and Discipline of the Church of *England*, nor against the State or Government, nor contrary to good Life, or good Manners".[561] The Stationers' Company, with which licensed print matter must be registered, was a pre-existing guild or trade association that since 1557 had had a Royal Charter granting them a monopoly over the publishing industry. The decree, therefore, gave certain institutional positions the right, privilege, and ability to speak authoritatively about certain topics; the decree made a space for the specification and specialization of authoritative knowledge. From the *Royal Proclamation* (1538) to this decree, it is possible to see that new jurisdictions or specialized fields of knowledge were constituted and guarded; there was both a diffusion and at the same time a concentration of knowledge among institutions and institutionalized positions. A much broader institutional involvement in the systematic regulation of print matter mirrored broader concerns pertaining to print matter; religious as well as secular print matter was regulated through this system of pre-publication licensing and registration.

[561] "Star Chamber on Printing, 1637," Item IV.

Following the *Royal Proclamation* (1538) and the Star Chamber decree of 1637, an act of Parliament was passed during the English Civil War.[562] *An Ordinance for the Regulating of Printing* (1643) was concerned with "suppressing the great late abuses and frequent disorders in Printing many false, forged, scandalous, seditious, libellous, and unlicensed Papers, Pamphlets, and Books to the great defamation of Religion and Government".[563] The inability of the Stationers' Company to effectively regulate printers and printing presses was of sufficient concern to be reiterated and reinforced by an act of Parliament; the act described such a magnitude of unregulated and unlicensed print matter "that no industry could be sufficient to discover or bring to punishment all the several abounding Delinquents".[564] This statute reiterated that all print matter must first be approved and licensed by appropriate institutional authorities and registered with the Stationers' Company.

Compared to the Star Chamber decree (1637), the statute contained few significant changes in the regulation of print matter, although the Stationers' Company was given the authority to search and seize, and those found to be printing or selling unlicensed or unregistered books could be brought before either of the houses of Parliament or the Committee of Examinations (rather than the Star Chamber Court or the Court of High Commission) for punishment. The concern over the limited or utter lack of control over the circulation of print matter remained a consistent problem for diverse state authorities; similarly, the problematic effects of unregulated print matter on the public (or the population) and on the ability of

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[562] "June 1643: An Ordinance for the Regulating of Printing," in *Acts and Ordinances of the Interregnum, 1642-1660*, ed. C. H. Firth and R. S. Rait (London: His Majesty's Stationery Office, 1911), 184-186, http://british-history.ac.uk/no-series/acts-ordinances-interregnum/pp184-186.

[563] "June 1643: An Ordinance for the Regulating of Printing," first paragraph.

[564] "June 1643: An Ordinance for the Regulating of Printing," first paragraph.

authorities to govern effectively remained constant. This statute suggests an increasingly institutional and formal approach to the regulation of print matter (and the ideas, knowledges or truths contained therein that were constituted as affecting public behaviours).

The last document examined for its effects on the constitution of historical discursive practices concerning the regulation of print matter is the *Licensing Act* (1662) (or, *An Act for Preventing the Frequent Abuses in Printing Seditious Treasonable and Unlicensed Bookes and Pamphlets and for Regulating of Printing and Printing Presses*),[565] enacted under King Charles II during the Restoration.[566] According to the *Licensing Act* (1662), the regulation of print matter was a "matter of Publique care and of great concernment".[567] In particular, the printing, importing and publishing of heretical, schismatic, blasphemous, seditious and treasonable print matter were constituted as "unlawfull and exorbitant practice to the high dishonour of Almighity God the endangering the peace of these Kingdomes and raising a disaffection to His most Excellent Majesty and His Government".[568] The *Licensing Act* (1662) reiterated many of the same prohibitions and regulations in the Star Chamber decree (1637) and *An Ordinance for the Regulating of Printing* (1643) (e.g. that print matter must be licensed by the appropriate institutional authorities and registered with the Stationers' Company), although it also reduced

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[565] "Charles II, 1662: An Act for Preventing the Frequent Abuses in Printing Seditious Treasonable and Unlicensed Bookes and Pamphlets and for Regulating of Printing and Printing Presses," in *Statutes of the Realm*, vol. 5, *1628-80*, ed. John Raithby (s.l: Great Britain Record Commission, 1819), 428-435, http://www.british-history.ac.uk/statutes-realm/vol5/pp428-435.

[566] Following the English Civil War and the execution of King Charles I, England was briefly a republic. Charles II, the son of the deposed king, was eventually restored to the monarchy (thus, the term Restoration). This perhaps explains the two quite similar acts of Parliament which were separated by approximately twenty years, but came from very different Parliaments.

[567] "Charles II, 1662: An Act for Regulating Printing and Printing Presses," Recital.

[568] "Charles II, 1662: An Act for Regulating Printing and Printing Presses," Recital.

and limited the number of printing presses permitted to operate in London and contained more formal arrangements for dealing with transgression. For the first time, law courts and punishments were specifically named in the increasingly defined (and increasingly legalistic) process pertaining to the regulation of print matter; for example, punishment for a first offence was three years' suspension from printing, while a second offence resulted in a permanent ban and a fine, imprisonment and/or corporal punishment that could be meted out by a variety of courts.[569] The *Licensing Act* (1662) consolidated the legislative regulation of print matter and crystallized structures of process and punishment.

From the *Royal Proclamation* (1538) to the *Licensing Act* (1662), the development of a veridical discursive formation within which unauthorized publishing was constituted as a threat to public peace (i.e. by affecting the normative standards and normalized behaviours of the population) can be traced; specifically, discourse linked unruly print matter with unruly subjects, which was constituted as dangerous to the functioning of the state and of true religion. The discourses constituting unauthorized print matter as problematic first emerged from a monarchical government in which the authorities of delimitation were the Crown aligned with the Church. Grids of specification differentiated between true and approved doctrine and false and subversive print matter. In terms of enunciative modalities, only the king, as head of both state and Church, had the right or ability to determine what was and was not permissible for his subjects to read; only the king could issue a royal proclamation. At this early stage, the king did not only rely on the authority derived from his institutional position (i.e. as monarch); the formation of concepts also mobilized the authority of the established Church of which he was head. In other words, the Crown backed by the Church ensured the production of a greater level

[569] "Charles II, 1662: An Act for Regulating Printing and Printing Presses," XV.

of truth and consensus. The themes that developed within this veridical discursive formation pertained to obedient or governable subjects whose print matter was ordered and ordained by their sovereign and divinely authorized ruler. Anabaptist ideas and materials were excluded through prohibition and by associating unauthorized print matter with sedition; this was accomplished through division and rejection, whereby loyal subjects read what the king approved while disloyal subjects went against the king whom God ordained, and relatedly through the opposition between true and false, whereby only the king could determine what was true and what was treason. It was the position of the king as God's representative on earth that served to unify this early discourse in which print matter was constituted as dangerous to the established social order. Thus, those knowledges that were not authorized by the king as God's representative and ruler were subjugated and the unity and truth of the king as head of state and the Church was (re)produced through the regulation of authorized print matter.

In a little over one hundred years, however, discourse pertaining to unruly print matter was reproduced not by an absolute monarch, but by diverse forms of state, including the Star Chamber and Parliament. The concerns and controls over unruly print matter expanded; initially, unauthorized religious print matter was prohibited by proclamation, but all unlicensed print matter was increasingly subject to regulation and punishment. The problematic discourse object was constituted less on the basis of content, religious or otherwise, than on the unauthorized and unregulated aspect of print matter that might disturb the peace, religion, or decency. In other words, rather than any particular problematic content, what was constituted as problematic was the existence of unauthorized and therefore illegitimate print matter and knowledge. The development of institutional and (quasi-) judicial regulations governed what could be thought and said – in print matter – regarding the state, Church, and social life

generally. Social life could not be freely imagined or disseminated through print matter, but could become permissible only by following proper licensing procedures authorized by the state and Church, and to a lesser extent by universities.

These documents established and reproduced discursive practices pertaining to the regulation of print matter; specifically, they constituted a link between problematic publishing and the public and in particular the effects of print matter on the governability of populations. For over two hundred years before *Fanny Hill* was published, concerns about the problem of unregulated print matter were expressed authoritatively by the Crown, Church, and Parliament, such that publications were believed to impact good government, truthful religion, and public peace and decorum. These concerns were broadly expressed; only the earliest document, the *Royal Proclamation* (1538), defined problematic content, which was religious in nature rather than "obscene" or sexual. As the regulation of print matter was increasingly institutionalized, there was a decrease in the attention given to the specific content of print matter; the problematic discourse object shifted from being a specific form of unruly print matter (e.g. Anabaptist doctrine) to any unauthorized print matter. The implementation and institutionalization of procedures for regulating print matter and punishing and preventing unregulated print matter was of primary concern. Thus, discourses – including those expressed in proclamations, decrees, and acts – constituting the problematic effects of print matter on the governability of the population led to the institution of practices that broadly governed any print matter that disrupted state rule, religious authority and/or decency.

It was within this historical context of ungovernable publications and concerns about the effects of print matter on the public that *Fanny Hill* was published. The following section takes a closer look at the emerging discourses on unruly "literature" (as opposed to "print matter"), and

in particular Grub Street literature (of which *Fanny Hill* was considered to be a part), in order to make sense of the emergence and reception of *Fanny Hill* in the mid- to late eighteenth century.

Literature, Vice and the Commercial Market

> Novel reading was one of the practices that eighteenth-century Western Europeans presented as representative of the character of their age. For eighteenth-century readers and writers who were self-conscious about their engagement with the form, the novel offered an ideal means of 'forcibly' transmitting a moral 'precept' through example. At the same time, the novel might dangerously persuade weaker minds that 'illusion' was a more enthralling and seductive world to inhabit than reality.[570]

Fanny Hill emerged after pre-publication licensing, discussed in the previous section, was permitted by Parliament to lapse in 1695. Beginning in the eighteenth century, the general concern about unregulated print matter transformed into a specific concern about "literature"; not only the public availability, but also the quality of print matter – characterized as literature – came to be of concern. This concern was produced largely by eighteenth century writers and others involved in the print trade, and, due to increasing literacy rates and numbers of printers, this discourse on literature (which circulated within literature) was carried on quite publicly. This section positions *Fanny Hill* within an emerging discourse pertaining to vice in literature in order to better understand the eighteenth century response to *Fanny Hill* as a novel.

Alexander Pope's *Dunciad*,[571] which remains well-known today, is a satire about the commercialization of literature.[572] The lengthy poem is about the goddess Dulness, who reigned

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[570] Pamela Cheek, *Sexual Antipodes: Enlightenment Globalization and the Placing of Sex* (Stanford, CA: Stanford University Press, 2003), 12.

[571] Alexander Pope, *The Dunciad: An Heroic Poem* (London: A. Dodd, 1728), https://archive.org/details/dunciadanheroic00popegoog.

[572] Pope was a well-known public figure of the time, and was particularly at enmity with bookseller and publisher Edmund Curll. Curll is discussed later in this chapter for his role in the

supreme before the classical era of literature (i.e. before the Greek and Roman classics), and whose powers were regaining strength through the effects of the commercialization of literature. Pope was critical of "all the *Grubstreet* race",[573] as well as the still-extant Stationers' Company for their roles in the perceived degradation of literature. Pope wrote,

> With authors, stationers obey'd the call;
> The field of glory is a field for all;
> Glory, and gain, th' industrious tribe provoke,
> And gentle *Dulness* ever loves a joke.[574]

Through literature, rather than through a proclamation, Pope critiqued the effects of the industrialization of print matter on the quality of literature. He suggested that instead of ensuring a standard of literary quality or merit (rather than doctrinal truth, for example), the Stationers' Company registered any writer who could afford the fee, thus ensuring copyright. Copyright had been introduced by the *Statute of Anne* in 1710 and contributed to a significant shift in the understanding and conceptualization of knowledge in written form;[575] print matter became tied directly to profit. Written knowledge was no longer commonly held or shared, but owned and sold, impacting how knowledge itself was understood, managed, regulated and disseminated. According to Pope, the industrialization of literature, or the increasing quantity of print matter for profit, led to a decrease in the quality of literature (or to "dull" literature).

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legal development of literary obscenity; he was the first person to be punished via common law for publishing obscene literature. As an aside, in an interesting case of appropriation or subversion, on several occasions Griffiths, the publisher of *Fanny Hill*, advertised his location as being at the Dunciad in St. Paul's Church-Yard.

[573] Pope, *The Dunciad*, 3. Grub Street was a place in London known for its high concentration of hack writers, or writers who were paid (poorly) to turn out what we might call pulp fiction; the reference to Grub Street pertains less to the physical location than to the (in Pope's opinion) problematic phenomenon.

[574] Pope, 16.

[575] *Statute of Anne*, 1710, 8 Ann. c. 19

It is well documented that there was an increase in the volume of print matter during the eighteenth century. When Parliament allowed pre-publication licensing to lapse in 1695, increasing numbers of newspapers and magazines were published.[576] In 1712 there were twelve papers in London, by mid-century there were eighteen, and by 1790 there were twenty three, including dailies and weeklies.[577] While taxes made them relatively expensive, newspapers circulated in coffee houses, inns and barber shops, and by mid-century it is estimated that about a quarter of Londoners read newspapers.[578] The book trade also expanded; from the beginning to the end of the eighteenth century, the number of book printers quadrupled.[579] In addition to the increasing volume of print matter, ways of obtaining print matter were also increasingly available. With the shift from a patronage to a consumer system, even modest wage earners could afford books.[580] Private and circulating libraries, which required annual subscription fees, were also increasingly available and accessible. Thus, the development of capitalism impacted book making and distribution; instead of the patronage system which rewarded certain individuals of merit (at least ostensibly), the commercial market required volume rather than "quality".

Coincidental with this exponential rise in the quantity of print matter, there was also an increase in both literacy and leisure time, enabling more people to read more print matter. While

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[576] Roy Porter, *Flesh in the Age of Reason* (New York: W. W. Norton, 2004), 113.

[577] David Lemmings, "Introduction: Law and Order, Moral Panics, and Early Modern England," in *Moral Panics, the Media and the Law in Early Modern England*, ed. David Lemmings and Claire Walker (New York: Palgrave Macmillan, 2009), 6.

[578] Lemmings, "Law and Order," 6.

[579] Peakman, *Mighty Lewd Books*, 22.

[580] Elaine M. McGirr, *Eighteenth-Century Characters: A Guide to the Literature of the Age* (New York: Palgrave Macmillan, 2007), 16-17.

literacy estimates vary, by 1750 (around the time of the publication of *Fanny Hill*), most middle class men and about half of lower class men were literate, while about forty percent of women were literate.[581] Another estimate similarly suggests that there was nearly universal literacy for men of the middle classes by the late seventeenth century, while by 1750 women and lower class men had a literacy rate of about forty percent.[582] In America, both literacy and the availability of literature were on the rise, as evidenced by the founding of hundreds of social libraries toward the end of the eighteenth century.[583] In fact, it has been suggested that New England, the site of the first American legislation and trials for obscene literature, was the most literate place in the world during the eighteenth century.[584]

While this is interesting information about increasing volumes of print matter, readership, and literacy, it is perhaps more important to consider the discourses that emerged with these trends and which problematized their effects. For the purposes of this genealogy, I do not argue that obscene literature emerged because of these developments. Instead, the increasing circulation of print matter, both in terms of volume and accessibility, created the conditions in which literature generally and obscene literature specifically *could* be problematized. While the previous section described concerns pertaining to unruly print matter and the governability of subjects, the concerns that emerged from this discursive formation, the commercial market, were quite different.

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[581] Jacqueline Pearson, *Women's Reading in Britain 1750-1835: A Dangerous Recreation* (New York: Cambridge University Press, 1999), 11.

[582] Peakman, *Mighty Lewd Books*, 33.

[583] Cathy N. Davidson, *Revolution and the Word: The Rise of the Novel in America*, rev. ed. (New York: Oxford University Press, 2004), 88.

[584] J. Paul Hunter, *Before Novels: The Cultural Contexts of Eighteenth-Century English Fiction* (New York: W. W. Norton, 1990), 66.

In considering the discourse on literature that emerged in the eighteenth century, I begin by looking at Henry Fielding's preface to his novel, *Joseph Andrews*, which was originally published in 1742.[585] Fielding was a magistrate in mid-eighteenth century London; he helped to found the Bow Street Runners. He was also one of the so-called fathers of the sentimental novel, along with Samuel Richardson, Tobias Smollett and Laurence Sterne. Fielding's first novel, *Shamela*, was an anti-Pamela novel published in 1741, a year after Richardson's *Pamela*. Quite a lot has been written on the subject of *Pamela* and anti-Pamela (as they are commonly called) works;[586] to avoid a lengthy digression, I will only say that what was at issue was the perception and reception of virtue as portrayed in literature. Richardson intended to write a moral conduct novel; in a 1741 letter, Richardson wrote that *Pamela* "might possibly introduce a new species of writing, that might possibly turn young people into a course of reading different from the pomp and parade of romance-writing, and . . . might tend to promote the cause of religion and virtue".[587] However, *Pamela* was criticized and/or satirized by those who perceived it to be less than virtuous. Numerous anti-Pamela works, or literature that satirized *Pamela*, were published almost immediately; Fielding's *Joseph Andrews*, a novel about Pamela's brother, is one such

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[585] Henry Fielding, author's preface to *The History of the Adventures of Joseph Andrews and of His Friend Mr. Abraham Adams* (1742; London: J. M. Dent and Sons, 1910), xxvii-xxxii. https://archive.org/details/josephandrews00fielrich.

[586] E.g. J. Paul Hunter, "'Peace' and the Augustans: Some Implications of Didactic Method and Literary Form," in *Studies in Change and Revolution: Aspects of English Intellectual History 1640-1800*, ed. Paul J. Korshin (Menston, UK: Scolar Press, 1972), 161-189; Thomas Keymer and Peter Sabor, Pamela *in the Marketplace: Literary Controversy and Print Culture in Eighteenth-Century Britain and Ireland* (New York: Cambridge University Press, 2005).

[587] Samuel Richardson to Aaron Hill, 1741, in *Selected Letters of Samuel Richardson*, ed. John Carroll (Oxford: Clarendon Press, 1964), 41.

novel. These novels and their novelists, however, were concerned with the same issue as Richardson: the relationship between novel-reading and virtuous behaviour.

As both a public figure and a writer, Fielding participated in the emerging discourse that produced concerns about how readers could and should read the novel. In his preface, Fielding wrote that he was concerned that the "reader may have a different idea of romance from the author of these little volumes, and may consequently expect a kind of entertainment not to be found, nor which was even intended".[588] As a result, he provided an extended explanation of "this kind of writing, which I do not remember to have seen hitherto attempted in our language".[589] In other words, Fielding expressed concerns about how readers would interpret or interact with what he understood to be a new form of writing (i.e. the novel). His preface provided the reader with an explanation of the novel in order to guide (or govern) the proper response to this new form of literature. For Fielding, the key distinction between previous forms of literature and the novel was that the former focused on ideal characters of high rank (e.g. princesses and knights) in fantastical settings, while the latter was much more realistic or natural in terms of characters, plots and settings. Fielding suggested that the realistic novel was truthful, because it was true to life or realistic, as well as instructive.[590]

This preface was perhaps necessitated by the fact that, for Fielding, both virtue and vice were realistic or natural; the inclusion of depictions of vice within the novel had to be justified

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[588] Fielding, author's preface to *Joseph Andrews*, xxvii.

[589] Fielding, xxvii.

[590] Fielding, xxviii.

and the reader instructed on proper responses to such depictions.[591] Fielding contributed to a discourse that suggested that literature, and in particular the realistic novel, *could* influence the reader's moral behaviour and *should* influence the reader to virtue, or at least it should not encourage vice by portraying it in a positive or enticing way. In other words, Fielding contributed to an emerging discourse, which I refer to as *vice in literature*, that constituted the novel as "good" when it mimicked nature (or reality and truth) and also induced the reader toward virtue and away from vice. For Fielding, print matter in the novel form was problematic only when it departed too much from nature and from proper instruction.

Fielding thus constituted novel-reading as integrally related to public civility and personal morality. Significantly, he shared a concern elaborated in the *Royal Proclamation* (1538) for the simple people and provided instruction in order to prevent their moral corruption or seduction to vice. Unlike the concerns that problematized unruly print matter, this discourse originated not from the Crown or Parliament, which seemingly abdicated responsibility for the regulation of print matter by allowing the *Licensing Act* (1662) to lapse, but from a writer who had a personal and financial stake in how this new form of literature was received.

Fielding constituted the novel as well as its reading as a moral endeavour, and he was not alone in his suggestion that the realistic novel, unlike fantastical romances, transmitted moral behaviour or influenced conduct.[592] Discourse on the purpose and function of literature was

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[591] Fielding defended the inclusion of depictions of vice within this new form of literature on five grounds. First, he argued that it was impossible to have a realistic story without vice. Second, he portrayed vice as human frailty rather than as habitual. Third, he portrayed vice as detestable rather than admirable or imitable. Fourth, vice was not attributed to principal characters. Finally, vice never triumphed over virtue. Fielding, xxxii.

[592] There is extensive scholarship dealing with this phenomenon. See for example Clifford Siskin, *The Work of Writing: Literature and Social Change in Britain, 1700-1830* (Baltimore, MD: John Hopkins University Press, 1998); Pearson, *Women's Reading in Britain*;

carried on in public forums, and in particular in magazines and reviews. In 1750, Samuel Johnson wrote in his magazine, *The Rambler*, about fiction.[593] Like Fielding, he believed that the new form of writing showed "life in its true state, diversified only by accidents that daily happen in the world, and influenced by passions and qualities which are really to be found in conversing with mankind".[594] Johnson also suggested that responsible and learned authors should not simply copy from nature, but should instruct readers toward virtue. The reason for this was that novels, in Johnson's opinion,

> are written chiefly to the young, the ignorant, and the idle, to whom they serve as lectures of conduct, and introductions into life. They are the entertainments of minds unfurnished with ideas, and therefore easily susceptible of impressions; not fixed by principles, and therefore easily following the current of fancy; not informed by experience, and consequently open to every false suggestion and partial account.[595]

Johnson was concerned about the danger of imitation by those constituted as particularly susceptible to immoral influences; literature was conceptualized as dangerously seductive to certain populations. For this reason, Johnson argued that only the best of nature should be included in literature in order to prevent imitations of vice.[596] Further, he urged that depictions of vice "should always disgust".[597] In summary, Johnson was concerned that the new form of

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McGirr, *Eighteenth-Century Characters*; Carrie Shanafelt, "Vicarious Sex and the Vulnerable Eighteenth-Century Reader," *Literature Interpretation Theory* 24, no. 4 (2013): 261-277, https://doi.org/10.1080/10436928.2013.843116.

[593] Samuel Johnson, "Samuel Johnson in *The Rambler*: No. 4, 31 March 1750," in *Tobias Smollett: The Critical Heritage*, ed. Lionel Kelly (New York: Routledge and Kegan Paul, 1987), 42-46.

[594] Johnson, "*The Rambler*: No. 4, 31 March 1750," 42.

[595] Johnson, 43.

[596] Johnson, 44.

[597] Johnson, 46.

fiction too easily mixed vice with virtue without distinguishing, or at least sufficiently condemning, vice, thus influencing behaviour particularly among certain vulnerable populations.

A review of Smollett's *The Adventures of Peregrine Pickle* (1751) in the *Monthly Review* that is attributed to Cleland, the author of *Fanny Hill*, also contributed to this discourse about vice in realistic novels.[598] It was quite a lengthy review, but I focus here on how fiction was understood as a means of entertainment that also instructed. Cleland wrote, "[h]ow many readers may be taught to pursue good, and to avoid evil, to refine their morals, and to detest vice, who are profitably decoyed into the perusal of these writings by the pleasure they expect to be paid with for their attention".[599] In other words, people were believed to be more likely to read for pleasure than for instruction, and yet good books would concomitantly provide good instruction. Cleland likened fiction to pilot's charts that helped the reader to navigate through events that occurred throughout the course of life and suggested that in this way novels were "public benefits".[600] This is seemingly a significant transformation from the discourse discussed in the previous section, in which unregulated print matter was constituted as a public danger or disturbance. Because pre-publication licensing no longer existed, standards of taste were instituted to guide readership and purchases in the commercial market. The development of the commercial market, with its explosion of print matter, enabled the conditions in which standards of taste and ideas of public civility could (attempt to) regulate such purchases. These discourses encouraged readers to purchase, read and subsequently act wisely, decently and virtuously.

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[598] [John Cleland], "Unsigned Review of *Peregrine Pickle*: March 1751," in *Tobias Smollett: The Critical Heritage*, ed. Lionel Kelly (New York: Routledge and Kegan Paul, 1987), 51-57.

[599] [Cleland], "Review of *Peregrine Pickle*," 52.

[600] [Cleland], 52.

As mentioned, Cleland suggested that subjects could be guided into reading and responding to novels properly. He likened novels to maps and suggested that "objections that the number may bewilder, or the falsity, or insufficiency of them mislead him [i.e. the reader], are of little or no comparative avail, to the utility which may redound from them".[601] Cleland defended the novel in general and despite depictions of vice because what was found in the novel was derived from life and was therefore useful for instruction; literature itself was not necessarily constituted as problematic, since fiction could guide people into moral behaviour, or help them navigate through the vicissitudes of life. Extending the metaphor, Cleland suggested that the existence of some poorly made maps or charts (i.e. bad novels) should not result in the condemnation of all such tools; instead "[s]omething in all productions of this sort must be left to judgement".[602] The fact that some "fools" lacked judgment and were led astray (i.e. into vice) by what they read did not, in Cleland's opinion, reflect on the genre or the author.[603] Instead of putting the onus on the author to write virtuous novels as Johnson did, Cleland suggested that the reader must exercise judgment in what was read, the lessons derived, and how these lessons were applied. Thus, in the absence of state regulation and as part of an effort to encourage and justify a type of writing and also to guide the reader in the reading of it, the reader was responsibilized into reading and acting virtuously. I suggest that the reader was responsibilized through particular techniques, which included prefaces and postscripts.

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[601] [Cleland], 53.

[602] [Cleland], 53.

[603] [Cleland], 53.

Moll and Fanny: Prostitutes with a Preface and a Postscript

As mentioned, readers were encouraged to respond properly to literature that included sometimes extensive depictions of vice. This subsection considers Daniel Defoe's preface to *Moll Flanders* (1722) and the postscript conclusion in *Fanny Hill* in order to draw out the disciplinary techniques and concerns of authors as expressed in fiction. As a fictional biography of a prostitute (a genre known as the whore biography), *Moll Flanders* has at least a surface resemblance to *Fanny Hill*. I discuss *Moll Flanders* to demonstrate that including prefaces or postscripts was not an uncommon practice; they were often incorporated into novels in order to justify or explain the inclusion of vice and to guide the proper response of the reader to such descriptions of vice.

Moll Flanders is the story of a prostitute "who was born in Newgate [Prison] . . . was twelve year a whore, five times a wife (whereof once to her own brother), twelve year a thief, eight year a transported felon in Virginia, at last grew rich, lived honest & died a penitent".[604] In the preface, Defoe, writing as if he edited Moll's story after her death, wrote that "as the best use is made even of the worst story, the moral 'tis hoped will keep the reader serious".[605] In other words, the vice portrayed in the story (i.e. prostitution, bigamy, incest, and theft) was subverted by the moral (i.e. Moll died a penitent). Consistent with what was discussed earlier, Defoe insisted that his novel encouraged virtue and discouraged vice, and that the serious or reasoned reader would not attempt to imitate Moll.[606] However, the quite lengthy novel is devoted to

[604] Daniel Defoe, *Moll Flanders* (1722; New York: Knopf, 2008), title page.

[605] Defoe, *Moll Flanders*, 4.

[606] Defoe, 4-6.

telling Moll's life of vice, and only the last few pages to her penitence. Addressing this point, Defoe wrote that,

> [i]t is suggested that there cannot be the same life, the same brightness and beauty, in relating the penitent part as in the criminal part. If there is any truth in that suggestion, I must be allowed to say, 'tis because there is not the same taste and relish in the reading, and indeed it is too true that the difference lies not in the real worth of the subject so much as in the gust and palate of the reader.
>
> But as this work is chiefly recommended to those who know how to read it, and how to make the good uses of it which the story all along recommends to them, so it is to be hoped that such readers will be more pleased with the moral than the fable, with the application than with the relation, and with the end of the writer than with the life of the person written of.[607]

I do not speculate on Defoe's "real" intentions here (i.e. his "true" beliefs about the inclusion of vice within his novel), nor do I cover again the same ground as the last section (i.e. that readers should or would be able to properly read such a novel). Instead, I emphasize an important point: Defoe wrote his preface, defending or justifying the inclusion of vice within it, despite the fact that literature was *not* at the time subject to state or legal regulation. Recall that problematic literature had historically been formulated as unruly print matter, but that pre-publication licensing as a mode of regulation had ended; with the effects of capitalism and innovations in forms of literature, new regulatory processes emerged to produce similar concerns about the possibly adverse (moral) effects of literature (i.e. the effects on simple subjects who did not properly understand how to read about and respond to depictions of vice and virtue). There was no obvious or pressing necessity to provide any kind of defence or justification of the novel, yet Defoe still chose to do so. For this reason, Defoe's work must be considered in light of regulatory pressures that contributed to the practice of preface writing.

I suggest that preface writing can be understood as a practice that affirmed the discourse pertaining to vice in literature regardless of the actual or perceived content of novels, and that

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[607] Defoe, 4.

also justified as well as mitigated such content. In other words, preface writing was employed as a technique by authors whose content was possibly problematic (for example, in its depiction of vice) in order to divert or defuse criticism and to inculcate proper practices of reading. These techniques were employed even before there was a common law offence called obscenity,[608] suggesting that the discourse on vice in literature was pervasive enough, and the realistic novel problematic enough, to necessitate preface writing.

In *Fanny Hill*, meanwhile, the affirmation of the vice in literature discourse and the justification and mitigation of the depictions of vice in the novel appeared as a sort of postscript. By the end of the novel, having experienced voyeurism, masturbation, defloration, flagellation, orgies, and other sexual experiences as a mistress and a prostitute, Fanny is reunited with her first love(r) and is married. At the end of her second letter to Madam,[609] Fanny recalls that,

> at length, I got snug into port, where, in the bosom of virtue, I gather'd the only uncorrupt sweets: where, looking back on the course of vice, I had run, and comparing its infamous blandishments with the infinitely superior joys of innocence, I could not help pitying, even in point of taste, those who, immers'd in a gross sensuality, are insensible to the so delicate charms of VIRTUE, than which even PLEASURE has not a greater friend, nor than VICE a greater enemy. . . .
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> You laugh perhaps at this tail-piece of morality, express'd from me by the force, of truth, resulting from compar'd experiences: you think it, no doubt, out of place; out of character: possibly too you may look on it as the paultry finesse of one who seeks to mask a devotee to Vice under a rag of a veil, impudently smuggled from the shrine of Virtue. . . But, independent of my flattering myself that you have a juster opinion of my sense, and sincerity, give me leave to represent to you, that such a supposition is even more injurious to Virtue, than to me: since consistently with candour and good-nature it can have no foundation but in the falsest of fears, that its pleasures cannot stand in comparison with those of Vice. . .

[608] In fact, in *R. v. Read*, (1708) 11 Mod. Rep. 142, discussed later, it was affirmed that obscene literature was *not* an offence punishable at common law.

[609] *Fanny Hill* is written in the form of two letters, or is an example of an epistolary novel.

> If you do me then justice, you will esteem me perfectly consistent in the incense I burn to virtue: if I have painted vice in all its gayest colours, if I have deck'd it with flowers, it has been solely in order to make the worthier, the solemner sacrifice of it, to virtue.[610]

In this excerpt we again see Cleland's navigation metaphor, as Fanny ultimately made her way toward virtue and affirmed that virtue was more attractive and pleasing than vice. In so doing, the depiction of (sexual) vice was justified or mitigated by the virtuous ending. Yet, as with Defoe, there is some doubt that the reader would believe the good intentions of the author, or the good intended by the novel. These doubts and concerns continued to exist and be expressed throughout the rest of the eighteenth century, and are traced in subsequent sections. For now, I simply wish to state that there was a discourse, produced primarily by authors or writers, that affirmed the value of literature as both entertainment and instruction, notwithstanding realistic depictions of vice. In the absence of pre-publication licensing, authors produced prefaces and postscripts as protections against personal and professional (moral) criticisms.

Vice in Literature and the Commercial Discursive Formation

In summary, the thread running through this discourse on vice in literature was that the more realistic the literary form and the more vice included in the novel, the more danger there was of inculcating vice in vulnerable readers. Literature, and in particular the novel, was constituted as being particularly problematic because it could potentially rewrite virtue and vice in popular understanding and thereby behaviour. Yet this vice in literature discourse did not so much prohibit vice (in literature or in the novel) as it encouraged virtue because it was not "realistic" to suppress all vice. There was general agreement that when vice was portrayed, it should be portrayed in such a way to as to encourage disgust and thereby discourage imitation of

[610] Cleland, *Fanny Hill*, 211-213.

such behaviours. While the previous section was concerned with the effects of unruly print matter on public behaviour, the concern elaborated in this section was less about the governability of the population than about virtuous self-governance; both the author and the reader were encouraged to make virtuous judgments pertaining to literature and life, according to standards of taste. There was no incitement to implement state regulation to prevent, regulate or punish the inclusion of vice in fiction; instead, commercial pressures and processes mobilized those involved in the literary trade to regulate or govern themselves and their readers by employing reason to achieve virtue and in order to sell more novels. One of the primary means of encouraging virtue was through the technique of the preface or postscript.

There are seemingly significant differences between the two discursive formations described thus far, but I suggest that there was both transformation and continuity. With the end of pre-publication licensing, the state seemed to have relinquished its regulation of problematic print matter, allowing discursive practice to be formed by and within the commercial market. However, both discursive formations (i.e. the veridical and the commercial) constituted discursive practices that were implicated in the regulation of literature and of the reading public or social body. Within this commercial discursive formation, a link between reading (print matter or literature) and behaviour continued to be couched in terms of danger or risk of harm, primarily to public civility, or to the morality of certain vulnerable populations. Rather than conceptualizing this danger as having implications for the state, however, this commercial discursive formation was concerned for the vulnerable moral subject.

The surface of emergence from which literature emerged as problematic was public civility; the problematic discourse object was constituted not as unlicensed print matter, but as licentious literature that adversely affected vulnerable populations. The authorities that

constituted – and contested – this problematic discourse object were commercial writers who elaborated grids of specification whereby the new form of literature (i.e. the novel) could be understood as virtuous or as leading to virtue for the reasonable person. I demonstrate in the following section that the force of statements made by writers and others involved in the commercial literary market held significantly less force than agents of state institutions (i.e. common law). This was possibly due to the "investment" of writers in the conceptualization of the problematic discourse object (i.e. as writers worked to maximize profit). While concepts pertaining to literature associated the novel with vice and virtue, there were a range of statements (e.g. those expressed by Johnson versus those by Cleland) pertaining to the responsibility of the writer to produce virtuous literature and/or the responsibility of the reader to read and behave "reasonably" or as guided by reason. Perhaps most significant is the development of themes of vice and virtue within, and as a result of, literature; these themes developed from those mentioned in the previous section, but rather than positing a relation between good reading and good (i.e. obedient or governable) subjects, reading was constituted as producing virtuous (i.e. moral) subjects. Within this period, rules of exclusion worked to prohibit civil and moral degradation through literature by establishing divisions between vice and virtue, and moral and immoral reading and behaviour. Internal rules of exclusion were particularly important as, in the absence of pre-publication licensing, authors constituted statements that linked back to the discourses and concerns expressed in the *Royal Proclamation* (1538), for example, but were translated by the language of the commercial market and the consumer's responsibility to become a moral subject and to participate responsibly in the market. As intimated, however, the boundaries of vice and virtue and the functions of literature were not as well-defined as Fielding suggested. It is only within this brief period between state regulation and common law

regulation (discussed in the next section) that discourse on literature was constituted, within the commercial discursive formation, as being the reasonable subject's responsibility.

Before moving on to the next section, I should also say that I focused on *Moll Flanders* and *Fanny Hill* not particularly (or at least not only) because of surface similarities (i.e. they are both whore biographies written by men), but because they were written on opposite sides of 1727, the date that obscene literature became a common law offence. Both novels contributed to a discourse on vice in literature and virtue in life, or the relations between literature and civil conduct. That both *Moll Flanders* and *Fanny Hill* contained such similar notions, regardless of their actual content, suggests that the introduction of obscene literature as a common law offence was not necessarily a significant event. As I argue in subsequent sections, *Fanny Hill*'s emergence and the response to the novel demonstrates that the conceptualization of obscene literature was not irrevocably established by a common law decision in 1727; the legal constitution of obscene literature was not at all straightforward or inevitable.

Obscene Literature and Common Law

This section considers two court cases, *Read* (1708)[611] and *Curl* (1727)[612] in order to trace the reestablishment of the regulation of print matter and populations by state institutions through common law practices. These cases, however, also demonstrate the contingency of such regulation. Further, this section traces how these cases came to be reread by the early nineteenth century, providing insight into why *Fanny Hill* was not prosecuted immediately upon publication, but became increasingly subject to prosecution around the turn of the century.

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[611] *R. v. Read*, (1708) 11 Mod. Rep. 142

[612] *R. v. Curl*, (1727) 1 Barn. K.B. 29; 93 E.R. 849

In 1708, James Read was indicted for publishing an obscene book, *The Fifteen Plagues of a Maidenhead* (1707). However, in a *per curiam* decision, or a decision by a judge, it was decided that an obscene book was not indictable by way of common law; instead, the judge ruled that an obscene book could only be punished in an ecclesiastical court. At issue, therefore, was whether an obscene book was a criminal act under the jurisdiction of the common law courts or a religious issue subject to the ecclesiastical courts. At this point in time, or at least in this court room, obscene writing was classified by a judge's decision as a religious matter. This decision neither negated nor affirmed that an "obscene" book was problematic, nor did it define obscenity; instead, the case settled the question of jurisdiction. At that time, the regulation of "obscene literature" was not considered to fall under secular state jurisdiction.

Beyond the brief *per curiam* decision, which stated that writing an obscene book was not indictable, the report of Thomas Bayly Howell (of whom more is discussed later) added significantly more information about the *Read* (1708) case.[613] Chief Justice Holt was recorded as saying, "'There are ecclesiastical courts: why may not this be punished there? If we have no precedent we cannot punish. Shew me any precedent'".[614] Similarly, Justice Powell said, "'If there is no remedy in the Spiritual court, it does not follow there must be a remedy here. There is no law to punish it: I wish there were; but we cannot make law. It indeed tends to the corruption of good manners, but that is not sufficient for us to punish'".[615] Powell went on to refer, in

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[613] "The Case of Edmund Curll, Bookseller, in the King's-Bench, for Publishing a Libel: I George II. A.D. 1727," in *A Complete Collection of State Trials and Proceedings for High Treason and Other Crimes and Misdemeanors from the Earliest Period to the Year 1783* [. . .], vol. 17, compiled by T. B. Howell (London: T. C. Hansard, 1816), 153-160, https://babel.hathitrust.org/cgi/pt?id=hvd.hxj2er;view=1up;seq=91.

[614] "The Case of Edmund Curll," 157.

[615] "The Case of Edmund Curll," 157.

accordance with precedential reasoning, to an earlier common law case as justification of the decision. At the risk of digression, I briefly discuss the *Sedley* (1663) case to which he referred because it reappears regularly in legal reasoning pertaining to obscenity.

Sir Charles Sedley was fined and given probation "for shewing himself naked in a balkony, and throwing down bottles (pist in) vi & armis among the people in Convent Garden, contrà pacem, and to the scandal of the Government".[616] *Vi et armis*, meaning by force and arms, is a tort that implies the offence is injurious to person or property and accomplished by a degree of force. The inclusion of this phrase suggests that the bottles of urine thrown down into the crowd, rather than public nudity, was the issue. This view was supported by the concept of *contra pacem regis*, or an act against the king's peace, which required some form of trespass. From *Sedley* (1663), therefore, the legal problem of obscenity was originally interpreted by Powell as a physical trespass against the king's peace through violent public actions. Powell was recorded as saying, "'As to the case of sir Charles Sedley, there was something more in that case than shewing his naked body in the balcony; for that case was *quod vi et armis* he pissed down upon the people's heads'".[617] Thus, obscenity was formulated in common law and understood at this time as a forceful action against the public peace, rather than a passive sexual display (i.e. of nudity). In *Read* (1708), judges determined that based on *Sedley* (1663) (i.e. as common law precedent), morally objectionable literature could not be regulated or punished by common law, even if it disturbed the public peace, because there was no force involved.

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[616] *Sir Charles Sydlyes Case*, (1663) 1 Keb. 620. See also *R. v. Sedley*, (1663) 1 Sid. 168

[617] "The Case of Edmund Curll," 157.

However, in 1725, a directive was issued to prosecute Edmund Curll for "'publishing foul, lewd and obscene books tending to corrupt the morals of his Majesty's subjects'".[618] Recall that Curll was mentioned earlier in this chapter in relation to his conflicts with Pope. As was his habit, Curll turned this situation into a potentially profitable one by publishing *The Humble Representation of Edmund Curll, Bookseller and Citizen of London, Concerning Five Books, Complained of to the Secretary of State*.[619] This lengthy pamphlet summarized (or advertised) and defended all five books; I focus only on the first defence because it is representative of Curll's arguments.[620]

Curll claimed that the *Treatise on the Use of Flogging in Physical and Venereal Affairs* (n.d.) was written to the Bishop of Lubeck and Privy-Councellor to the Duke of Holstein by John Henry Meibomius, M.D., and was a translation from Latin.[621] The translator's preface, which comprised Curll's first defence, was consistent with the vice in literature discourse discussed in the previous section (i.e. in the commercial discursive formation). It discussed and dismissed the perils of vice in literature and framed the work as instructive toward virtue for the reasonable person. The preface read in part:

> Books which treat upon Subjects of this curious Nature, being as liable to the Censure of the Injudicious, as to the Praise and Admiration of the Truly-knowing, it may not be amiss to premise some Observations to the Reader, in Defence of this Work.

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[618] PRO, SP, 35/55/102, quoted in Peakman, *Mighty Lewd Books*, 40.

[619] Edmund Curll, *The Humble Representation of Edmund Curll, Bookseller and Citizen of London, Concerning Five Books, Complained of to the Secretary of State* [London, 1725?]. Gale Eighteenth Century Collections Online.

[620] Throughout the pamphlet, Curll argued that another reputable person had published the same, similar or worse type of work, the work was anti-Catholic (and therefore acceptable), people of good sense would not be corrupted, and/or the work was scientific, edifying or natural.

[621] Curll, *The Humble Representation*, 1-2.

> The Author himself was a Man of great Reputation, an eminent Physician, and an excellent Philologer; and had he foreseen any ill Effect from a Treatise of this Sort, he would have hardly risquéd his Fame and Practice, by suffering it to be published.
>
> A Bishop desired him to write it, and took care to spread it into as many Hands as Printing could; and it was attended with the Improvements of Two eminent Physicians in the last Edition. But it may be objected, that it was wrote in a Language only familiar to the Learned, so that it could do no harm in that Tongue, as if Learning was a charm for human Infirmities, and *Latin* and *Greek* could conjure down the Vices and Passions of Mankind. Alas! we find neither Learning nor learned Ornaments are Proof against Humanity, and there is no more sanctifying Quality in a Coat of one Colour than another. The Devil of the Flesh works in *Black* as well as *Red*.
>
> In Fact it is true, the Fault is not in the subject Matter, but the Inclination of the Reader, that makes these Pieces offensive. He who will deter People from Vice, must make it odious by explaining its Consequences, which is effectually done in this Treatise. The chastest Ear in the World is not polluted. . .[622]

There is quite a lot to consider in this defence. First, I briefly want to draw attention to the suggestion that these types of works were written in the public's best interests. Being curious about what I suspect to be an imaginary author, I discovered that "Meibomius" is a loose Latin translation conveying the sense of one who acts for the public good; this idea of public interest versus public harm is significant. Curll, with and through this pamphlet, made for himself a place to speak of and for those public interests. As a bookseller, Curll dealt literally in words, and was both in trouble because of those words and privileged to speak to those words. He did so not from a position authorized by the state, but as someone literally invested in the literary market. Curll called on nature, religion, and respectable trades (e.g. doctors and bishops) to situate this work and to give him a space to write and speak *to* the public and *in* the public interest on matters pertaining to public civility. With an articulate voice, Curll disputed that the state or Church were authoritative in determining how books were or could be understood; instead, he argued (as did Cleland and others) that the inclinations of the reader and the use of reason determined the response to vice in literature. Curll marshalled arguments in print and for

[622] Curll, 2-3.

profit, and for the (idea of) public good. The very act of selling this pamphlet suggests that there was a market for such ideas – and of course the commercial market helped to further circulate these ideas or knowledges.

Through his defence, Curll problematized the possibility of making definitive statements about the essential properties and characteristics of print matter (e.g. as obscene); however, his laborious defence and ultimately his common law conviction suggest that the print matter itself was not the only thing under consideration. Instead, the history, association and purpose of print matter (e.g. whether it edified, corrupted and/or profited an individual) contributed toward an understanding of literature as harmful or not, or obscene or not. At this point, obscenity was not *only* associated with the (sexual) content of a material object, such as a novel, but was also tied to various relations and networks that constituted the material object as problematic and obscene (e.g. when it was sold by a disreputable bookseller like Curll).

In *Curl* (1727), the question to be determined was "[h]ow far the speaking against religion is an offence against the common law".[623] While Curll's defence pamphlet mentioned five books, only two (including the treatise mentioned above) were at issue in the legal case. Curll made a motion in arrest of judgment, arguing "that this was not an offence within the cognizance of the common law".[624] In other words, and as determined by *Read* (1708), there was no law or common law precedent that indicated legal jurisdiction or that permitted the interdiction of sexual, objectionable and/or obscene print matter. Yet less than twenty years after *Read* (1708), with the case of *Curl* (1727), public morals became the surface of emergence for the common law constitution of obscene literature.

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[623] *R. v. Curl*, (1727) 1 Barn. K.B. 29

[624] *R. v. Curl*, (1727) 1 Barn. K.B. 29

> But after solemn deliberation, the Court held it to be an offence properly within its jurisdiction; for they said, that religion was part of the common law; and therefore whatever is an offence against that, is evidently an offence against the common law. Now morality is the fundamental part of religion, and therefore whatever strikes against that, must for the same reason be an offence against the common law. The case of *The King and Taylor*, 1 Vent. is to this very point.[625]

What follows is an extended discussion not only of the legal verdict, provided above, but more importantly the legal reasoning process, which potentially reflected a transformation in concerns with unregulated print matter and vice in literature as obscene literature was specified in and made punishable by common law.

The court engaged in "solemn deliberation" in order to determine its own jurisdiction or authority as it pertained to obscene literature; using the language of proof and the standard of evidence, the court extended its authority to include obscene literature, which was "evidently" against law, religion and morality. Of course, this decision was by no means evident or inevitable or even obvious, despite the seemingly unified, authoritative and certain verdict of the court. Instead, knowledge of literature as obscene *and* as illegal was produced through legal systems of knowledge and practices; in this case, knowledge was produced and verified through reference to common sense and legal precedent. That prior to *Curl* (1727) obscene literature was *not* a common law offence did not stand as an argument; the court rejected traditional precedential reasoning on the grounds that it was always possible and the prerogative of the court to (re)consider obscene literature. The court confirmed in *Curl* (1727) what was or *should* already have been known and accepted as true pertaining to the illegality of obscene literature.

This is quite an interesting verdict, given that it was contrary to precedential reasoning, a primary mechanism of the institutionalization of law; the court not only set a new precedent, it rewrote a pre-existing one (i.e. *Read* (1708)). In rewriting the precedent pertaining to obscene

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[625] *R. v. Curl*, (1727) 1 Barn. K.B. 29

literature, the ecclesiastical court was not mentioned because it no longer had a role to play;[626] the court recast itself as upholding and defining morality and religion through common law. This is a significant development in the constitution of obscenity. Not only did this decision constitute obscene literature as illegal, it also explicitly linked obscenity to immorality. The court constituted the obscene in a particular way; it was illegal *because* it was immoral. Obscene literature therefore not only emerged from law, but also from religious standards of morality.

An examination of Howell's report provides more insight into the reasoning behind and the implications of the court's decision. Curll's defence lawyer made a case in arrest of judgment, arguing that "[w]hatever tends to corrupt the morals of the people, ought to be censored in the Spiritual Court, to which properly all such causes belong".[627] Further, he pointed to a long history of obscene writings that did not meet with prosecution, and also referenced the *Read* (1708) case and the opinion of Chief Justice Holt that obscene literature was not a matter for temporal courts.

The prosecutor countered by arguing that "this is an offence at common law, as it tends to corrupt the morals of the king's subjects, and is against the peace of the king. Peace includes good order and government, and that peace may be broken in many instances without an actual force".[628] Counter to the *Sedley* (1663) decision and interpretation involving *vi et armis*, or the use of force *contra pacem regis*, the prosecutor argued that the king's peace could be broken

[626] As mentioned earlier, however, ecclesiastical courts never seemed to have a particular interest in the regulation of sexual or obscene literature. Instead, prohibitions by the Church were directed primarily at heretical, rather than immoral, works.

[627] "The Case of Edmund Curll," 153.

[628] "The Case of Edmund Curll," 154.

with or without force by acts against the state, against religion, *or against morality*.[629] For each point, he cited particular case references. The instance pertinent to this case, according to the prosecutor, was morality; Curll offended by breaking the king's peace through an offence to morality. The prosecutor also referred to Holt (of the *Read* (1708) case) who "used to say, Christianity is part of the law: And why not morality too? I do not insist that every immoral act is indictable, such as telling a lie, or the like: But if it is destructive of morality in general; if it does, or may, affect all the king's subjects, it then is an offence of a public nature".[630] He then referred to the *Sedley* (1663) case, which established that the court was the *custos morum*, or guardian of morals, of the king's subjects.[631]

The same types of arguments were marshalled both against and for the inclusion of obscene literature as indictable and punishable under common law; lawyers referred to legal history, precedent and opinion. Three of the four judges who heard the case likewise referred to legal history, precedent and opinion. Chief Justice Raymond said that "if it were not for the case of the Queen *v.* Read, I should make no great difficulty in it" (i.e. finding obscenity to be a punishable offence at common law) since he believed it reflects on religion, virtue or morality and "it tends to disturb the civil order of society".[632] Similarly, Justice Reynolds was recorded as saying that "[i]t is much to be lamented, if this is not punishable".[633] He also referred to *Read*

[629] "The Case of Edmund Curll," 154.

[630] "The Case of Edmund Curll," 155.

[631] "The Case of Edmund Curll," 155-156.

[632] "The Case of Edmund Curll," 159.

[633] "The Case of Edmund Curll," 159.

(1708), suggesting he "should not have been of that opinion",[634] and *Sedley* (1663), suggesting that *Curl* (1727) was a more serious case because people could have chosen to look at or avoid the naked Sedley, "whereas this book goes all over the kingdom".[635] While this last point might not seem entirely logical – after all, people could choose not to read Curll's books – I believe that Reynolds was referring to the magnitude of the problem and the potential for a book to insidiously corrupt (the morals of) populations. Justice Fortescue, in disagreement with the other three judges, said,

> I own this is a great offence; but I know of no law by which we can punish it. Common law is common usage, and where there is no law there can be no transgression. At common law, drunkenness, or cursing and swearing, were not punishable; and yet I do not find the Spiritual Court took notice of them. This is but a general solicitation of chastity, and not indictable. . . . To make it indictable there should be a breach of the peace, or something tending to it, of which there is nothing in this case. A libel is a technical word at common law; and I must own the case of the Queen *versus* Read sticks with me, for there was a rule to arrest the judgment *nisi*. And in sir Charles Sedley's case there was a force, of throwing out bottles upon the people's heads.[636]

The case of *Read* (1708) and the differing legal opinion of Fortescue prevented an immediate decision. Fortescue alone refrained from assuming temporal jurisdiction over morality and rejected the idea that obscene literature represented a breach of the peace, since no force was employed. The disagreement among the judges resulted in a waiting period to hear further argument, during which time Fortescue was replaced by another judge. "And in two or three days, they gave it as their unanimous opinion, That this was a temporal offence".[637] The very brief record of this decision indicates that the relevant precedent from *Sedley* (1663) was

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[634] "The Case of Edmund Curll," 159.

[635] "The Case of Edmund Curll," 160.

[636] "The Case of Edmund Curll," 159.

[637] "The Case of Edmund Curll," 160.

that the court was *censor* or *custos morum*, or guardian, of the king's peace and the (moral) behaviour of the king's subjects, and that the judges would have ruled differently in *Read* (1708).[638]

In summary, the majority of judges involved in the *Curl* (1727) case believed that obscene literature was or *should* be a common law offence. Obscene literature, in their legal opinions, was constituted as an offence against morality that affected the public for whom they were responsible (or for which they assumed responsibility) and deserved punishment. The constitution of "the public", "the public good" and "public morals" enabled the common law constitution of obscenity as a problematic illegal object that threatened public morals. Recall that unruly print matter was constituted as problematic because it offended the king or the Church, and interfered with the ability of the state to properly rule simple subjects or to properly interpret doctrinal truth. Subsequently, writers were concerned that good literature should contain proper instruction so that the reasonable individual could behave properly and virtuously. In *Curl* (1727), in the absence of specific direction or intervention from a state authority (such as the king or Parliament), the common law court and its judicial agents took responsibility for the administration of the king's peace and the regulation of the moral behaviour of the public. The governance of the population (and the population's morals) came under the institutional regulation of common law. This is remarkable; not only did the court assume jurisdiction over obscene literature, but *also* for the morals of the public. This ruling on obscene literature not only made certain books illegal, but also extended the regulatory influence of the court to issues pertaining to morality.

[638] "The Case of Edmund Curll," 160.

With this common law decision, obscene literature was constituted as a problematic discourse object that was increasingly specified as a particular type of unruly and problematic print matter. The surface of emergence from which this problematic discourse object emerged was public morality; judges constituted obscene literature as a problematic discourse object through common law precedent, which served as a grid of specification, linking obscene literature to problematic behaviours already prohibited by law and/or religion. In terms of the formation of enunciative modalities, judges were enabled to produce authoritative verdicts or determinations because of their institutional (judicial) position. Obscene literature was conceptualized as irreligious and immoral, and as affecting public morality, and was therefore illegal. Themes constituted the public as requiring protection from dangerous or harmful immoral literature by the state and its common law institutions. Points of diffraction were settled by legal precedent, in which the most recent common law ruling was the most authoritative, and which excluded or rewrote previous contrary rulings, such as *Read* (1708). Common law constituted a division between legal and illegal literature, and provided for the punishment of obscene literature. Common law, as an institution authorized by the state, excluded or subjugated the vice in literature discourse of writers; the suggestion that readers could be responsible for their own market purchases and reading materials, as well as their own moral behaviours, was rejected. The references to *Sedley* (1663) were particularly significant as a form of commentary, in which discourse was related back to the original and authoritative "true" text that authorized the process of making literature obscene. Common law, rather than the commercial market, and judges, rather than writers, produced a legal-moral discourse based on the rules and procedures of law.

State institutions reasserted procedures for the governance of print matter/literature and public morality; however, it is important to note that many of the writers discussed in the previous section (including Fielding, Johnson and Cleland) continued to constitute writing and reading as a matter of self-governance rather than state or legal governance *after* the *Curl* (1727) case was decided. This points to the contingency of a single common law decision, and suggests that a dominant discourse pertaining to obscenity was not yet established. However, the common law decision did re-initiate the processes of state regulation.

This emergent form of common law governance was not the same as that which was constituted by the earlier proclamations, decrees, and statutes; in the *Curl* (1727) decision, the king's peace did not refer literally to the ability of the king to govern docile subjects. Instead, the king's peace was constituted as pertaining to the moral well-being of the population, as derived from religious standards of morality. While subjects were previously constituted as being unable to distinguish between true and false doctrines circulating in unregulated print matter, at this time subjects were constituted as being unable to make responsible moral decisions within a commercial market of literature that contained vice. In both instances, the unregulated availability of problematic print matter/literature and the effects on the governability of subjects were problematized. In both instances, state institutions asserted jurisdiction of the problem and instituted procedures to regulate the problematic discourse object, whether constituted as unruly print matter or as obscene literature.

It is important to highlight that, between *Read* (1708) and *Curl* (1727), the legal determination of obscene literature was not natural or inevitable; the supremacy of common law over decisions and interpretations, as well as over the historical jurisdiction of the spiritual courts, was by no means obvious or guaranteed. Further, a significant struggle continued even

after *Curl* (1727), as writers such as Fielding, Johnson, Cleland and others continued to constitute reading as a matter of self-governance rather than legal regulation. Further, the *Curl* (1727) case was contested with both sides appealing to legal precedents for support, one of which was directly contradictory to the case at hand. *Sedley* (1663) was reread as authorizing a determination of obscenity (i.e. as part of the responsibility of the court as guardian of public morals), while *Read* (1708) was reread so that it did not disqualify or hinder the new verdict (i.e. *Read* (1708) became a subjugated knowledge; it was anomalous and not credible). The conflict over the temporal jurisdiction of obscene literature by common law courts was resolved only when Fortescue was replaced and original texts (i.e. *Sedley* (1663) and *Read* (1708)) were brought up-to-date to rewrite legal history and discourse. If Fortescue had not been replaced, or if one of the other judges had been replaced, a very different outcome *could* have been possible. At minimum, this decision regarding obscene literature was a contingent result. The decision, however, extended the authority of the temporal common law court and constituted obscene literature as an offence against public morality. Obscene literature was constituted as a particular form of unruly print matter that was subject to specific institutional regulation; it was illegal because it was immoral and because of its perceived effects on public morality and was therefore subject to punishment by common law.

Before continuing to the next section in which *Fanny Hill* is problematized, I briefly want to comment on my references to Howell in this section; Thomas Bayly Howell was a lawyer who compiled numerous volumes of *A Complete Collection of State Trials and Proceedings for High Treason and Other Crimes and Misdemeanors*. He was a useful and interesting source to consult, not only for the added detail of his records (as compared to the law reports), but also because he wrote at the time which I argue marks a significant transformation in the discursive

practice pertaining to obscene literature (i.e. the early nineteenth century). As a source, his work both consolidated and to an extent rewrote obscenity history in law as logical, inevitable and progressive rather than contingent. For example, Howell records that "since this case of the King *v*. Curll, the Court of King's-bench without hesitation exercises jurisdiction over such publications, and over other offences *contra bonos mores* [against good morals], which are not attended with breach of the peace".[639] The verdict, however, was not so definitive; this can be inferred generally from the continuation of the vice in literature discourse (or subjugated knowledge), as well as specifically from the fact that the Secretary of State gave directions to prosecute *Fanny Hill* with no results.[640]

Fanny Hill emerged at a time when obscene literature was established by common law verdict, but not by consistent discursive practice. Given that print matter was previously licensed (and thus all licensed materials were good and all unlicensed materials were bad/immoral/punishable), there was a period of time in which writers constituted a discourse whereby literature could be understood as morally instructive, even when it contained realistic depictions of vice. This discourse, which was necessitated by the pressures of capitalism and public concerns about morality, was contested. The self-regulation of authors and readers was constituted as inadequate and the common law courts increasingly assumed responsibility for the regulation of (moral) literature and public morals (or moral subjects). This assumption of responsibility, however, was not instantaneous but rather emerged as practices (i.e. common law precedents and criminal doctrines) were gradually developed and applied. The contingency and

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[639] "The Case of Edmund Curll," 158.

[640] On April 12, 1750, the Attorney General was directed by the Secretary of State to apprehend the author, printer and publishers of *Fanny Hill*; however, there is no further record of any legal action taken. SP/44/134/28, in Foxon, *Libertine Literature*, 58.

tenuousness of the establishment of obscene literature as a common law offence problematizes the significance of *Sedley* (1663), *Read* (1708) and *Curl* (1727) as foundational or authoritative monuments in the "history" of obscene literature. Instead, throughout the remainder of the eighteenth century, the problem of obscene literature and the problem of *Fanny Hill* were contested. Only gradually, as I argue in the following section, did *Fanny Hill*, as a symbol of obscene literature, become problematic.

Fanny Hill Becomes Problematic

This section considers the publication of *Memoirs of a Woman of Pleasure* and the expurgated *Fanny Hill* in order to demonstrate that the incorporation of obscene literature into common law did *not* have significant immediate effects on eighteenth century discursive practice. Instead, the knowledges pertaining to vice and virtue in literature continued to circulate, and perhaps minimized state or common law regulation of obscene literature.

In the February 14-16, 1749, edition of the *London Evening-Post*, the second and final volume of *Memoirs of a Woman of Pleasure*[641] was advertised.[642] The notice was not significantly different from the first (described in the introduction of this chapter), except that no mention was made of the author and an address was provided for the publisher, still listed as G. Fenton rather than Ralph Griffiths. *Memoirs* was constituted as a marketable commodity that was publicly available for sale rather than problematized as obscene literature that was harmful to public morals.

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[641] In this instance, I refer to *Fanny Hill* as *Memoirs* to avoid confusion, since *Fanny Hill*, the title of the single-volume expurgated version, was not yet published. It was common practice to publish a novel in multiple volumes.

[642] In Foxon, *Libertine Literature*, 52.

On November 7, 1749, Cleland's pamphlet, entitled *The Case of the Unfortunate Bosavern Penlez,* was published.[643] The lengthy pamphlet criticized the recent execution of the sailor Bosavern Penlez; Cleland tied the execution to the problems of public prostitution in the city of London. This is an interesting pamphlet for many reasons, including the coincidental timing of Cleland's arrest (the day after its publication), as well as the contrasting treatment of prostitution in *Bosavern Penlez* compared to *Fanny Hill*.

In brief, according to Cleland, the sailor Penlez visited a bawdy house in the Strand where he was robbed and subsequently beaten when he asked for the return of his money. He returned with his crew, who demolished the house and set its contents on fire in the street while onlookers cheered. When Guards (an early form of police) belatedly arrived, they arrested no one. The next night the crew repeated their actions on another house and again the Guards arrived well after the fact. Penlez subsequently became intoxicated and was arrested not only for rioting, but also for theft, which he denied. Cleland concluded that the additional charge of theft, and ultimately the testimony on which the decision to execute rested, was supplied by a malicious witness – a procurer whose house had been destroyed. Cleland portrayed Penlez as a victim of the ills of prostitution in London and of institutional injustice.

Because of the subject matter, it is perhaps of interest to summarize Cleland's thoughts on prostitution in *Bosavern Penlez*. Cleland wrote sympathetically about the hardships prostitutes faced, including the likelihood of contracting disease, as well as being subject to a madam or pimp (whom he referred to as "tyrants") who consumed the profits and kept

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[643] [John Cleland], *The Case of the Unfortunate Bosavern Penlez* (London: T. Clement, 1749), https://babel.hathitrust.org/cgi/pt?id=njp.32101037689765;view=1up;seq=5. For a timeline of these events, see Gladfelder, *Fanny Hill in Bombay*, x-xi.

prostitutes indebted and obliged to work and/or turn to crime in order to pay their debts.[644] Cleland pointed to a cycle of poverty and abuse that prostitutes experienced and to the general "corruption" of both body and mind through lewdness and drink.[645] He also discounted the pleasurable aspect of prostitution, writing that, "any, who have their Reason not entirely swallow'd up by Passion, might easily read through this outward Shew in her wild distracted Looks, how little she is affected with the Man she hugs, kisses, and embraces, whilst his Money is her only Aim; and that, very often, not so much out of a mercenary View, as to satisfy the Exactions of the House upon her".[646] Cleland suggested that prostitutes deserved compassion rather than blame, particularly since women rarely had other economic options available to them, and concluded that they were living in an age of passion rather than reason.[647]

It is difficult, if not impossible, to surmise what Cleland "really" thought about prostitution and passion based on *Bosavern Penlez* and/or *Memoirs*. However, from a genealogical perspective, Cleland's intentions are irrelevant. My goal is not to reconcile or make sense of Cleland's oeuvre; I do not assume that it is or needs to be unified. However, I do suggest that *Memoirs* and *Bosavern Penlez* share common concerns consistent with the vice in literature discourse. Both *Memoirs* and *Bosavern Penlez* advocate for the concept of reasoned passion, rather than unbounded or oppressive passion. Consistent with what was discussed earlier, Cleland introduced the themes of vice and virtue in both the novel and the pamphlet; he associated truth, reason and justice with virtue, and unreasoned passion and injustice with vice.

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[644] [Cleland], *Bosavern Penlez*, 8-10.

[645] [Cleland], 10.

[646] [Cleland], 11.

[647] [Cleland], 13-14.

Following this logic, Cleland argued that what happened to Penlez was neither just nor reasonable, but passionate.

The day after the publication of *Bosavern Penlez,* Secretary of State Newcastle issued a warrant to seize the author, printer, and publisher of *Memoirs*.[648] In confinement at a Messenger's house, Cleland wrote a letter to Undersecretary Andrew Stone, a former schoolmate.[649] Messengers were state agents responsible for detecting unauthorized publications (e.g. those publications which were not registered with the Stationers' Company). Cleland was subject to a specialized form of detention; he was *not* immediately subject to common law or its practices. Instead, vestiges of the extra-judicial mechanisms for the regulation of unruly print matter that continued to exist were mobilized.[650]

In his letter to Stone, Cleland deplored his confinement and the attention that such regulation garnered, warning that there could be a revival of interest and sales.[651] Interestingly, Cleland did *not* address the problem for which he was arrested – the obscene novel – but rather the problems he personally experienced and the problems that such an arrest *might* give rise to in socio-economic terms. In other words, Cleland did not dispute that *Memoirs* was (or was not) a problematic object. In fact, it is unclear why *Memoirs* actually *was* considered problematic at that moment (hence the speculation about the significance of *Bosavern Penlez*).

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[648] Foxon, *Libertine Literature*, 53.

[649] PRO, SP 36/111/151, in Epstein, *John Cleland*, 67, 75-76.

[650] To clarify, while pre-publication licensing ceased to exist in 1695, registration with the Stationer's Company continued, although it was not closely followed. For example, penny publications and other ephemera were rarely registered because the cost of registration was commercially prohibitive. Registration continued, however, at least partially as a mechanism of ensuring copyright (which you will recall was established in 1710).

[651] PRO, SP 36/111/151, in Epstein, *John Cleland*, 67, 75-76.

Not having received a response to his letter to Stone, Cleland wrote another letter to law clerk Lovell Stanhope on November 13, 1749, which read in part:

> This [i.e. *Memoirs*] I never dreamt of preparing for the Press, till being under confinement in the Fleet . . . when, on showing it to some whose opinion I unfortunately preferred to my own, and being made to consider it as a ressource, I published the first part. And not till near four months after the Second: which had been promised, and would most surely have never been proceeded to had I been in the least made sensible of the first having given any offence: and indeed I now wonder it could so long, escape the Vigilance of the Guardians of the Public Manners, since, nothing is truer, than that more Clergymen bought it, in proportion, than any other distinction of men.
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> And such at least was my tenderness of adding the fault of prophaneness, to that of wantonness, that in the second Volume, where the Story of the Flagellant is told, and which I fished for in actual life, I substituted a Lay-character, to that of a Divine of the Church of England. . .
>
> In short, my offence was really of itself a very severe punishment: condemned to seek relief, not only from the meanness of writing for a bookseller, but from becoming the author of a Book I disdain to defend, and wish, from my Soul, buried and forgot.
>
> This too would probably be the Case, if the pious indignation of my Lords the Bishops will give them leave to consider that they can take no step towards punishing the Author that will not powerfully contribute to the notoriety of the Book, and spread what they cannot wish suppress more than I do. To say nothing of its giving occasion for this very natural question: why slept this zeal so long? and waked not till the Book had had its run, and is dying of itself, unless they choose to give it new life? . . .
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> But it is really little more than Justice to acquitt, and deliver from longer confinement those poor People now under punishment for *my* fault: as they certainly were deceived by my avoiding those rank words in the work, which are all that they Judge of obscenity by, and made them think the Line was drawn between them, and all danger of Law whatever.[652]

This is an interesting document because in it, for the first time, obscenity is mentioned in connection with *Memoirs* and further insight is given into how obscenity was popularly understood; specifically, Cleland avoided using obscene language (i.e. "rank words") but admitted that he wrote a wanton, although not profane, novel. This suggests that while Cleland was – perhaps – aware of a "line" between the acceptable and the obscene (or of obscenity law), and that the obscene was associated with the sexual, this was by no means a universal distinction. In other words, there was a murky grid of specification regarding obscenity, in which language

[652] PRO, SP 36/111/157, 158, quoted in Foxon, *Libertine Literature*, 54-55.

itself rather than sexual subject matter was thought to be problematic. This murkiness was compounded by the belated response of the Guardians of the Public Manners (which was not an actual organization), including the Lord Bishops (who had been involved in the regulation of unruly print matter since the Star Chamber decree (1637)) and the representatives of law (i.e. judges who had established themselves as guardians of public morals with *Curl* (1727)). This suggests that at the time that *Memoirs* was published (more than twenty years after *Curl* (1727)), obscenity was still emerging as a legal concept and in common law procedure within a nexus of old and new agents and institutions. That obscenity was tied to wantonness, or sexual representation, however, suggests that a new kind of knowledge regarding obscenity (at least since *Sedley* (1663)) was slowly consolidating. Obscenity was increasingly tied to sexuality, or to sexual representations in literature, and to public morality. Cleland specifically distinguished between profaneness and wantonness, suggesting an emerging distinction between religious and secular conceptions of morality generally and obscenity specifically.

Also on November 13, 1749, Griffiths (the publisher) provided a statement to Stanhope.[653] This document is interesting primarily for the way in which it was written. The phrase, "the said" is repeated throughout, as the law clerk established "the facts" about who was responsible for writing, printing and publishing the problematic *Memoirs*. For example, "'the second Volume of the said Work was published by his said Brother [Fenton Griffiths] about Seven Months since'".[654] The phrasing implies that what was said was not necessarily true, which in this case is probably accurate since there is no evidence that a Fenton Griffiths – or a G. Fenton – ever existed. Instead, truth would be produced in a court of law. The purpose of the

[653] PRO, SP 36/111/159, in Foxon, 53.

[654] PRO, SP 36/111/159, quoted in Foxon, 53.

recorded examination was to gather the pertinent information for a potential legal case. In other words, this document contained the "relevant" *legal* facts, which would be proven as truthful or not in court. This was an institutional document, in formula, language, and purpose; as part of the legal regulation of the obscene, a law clerk of the Secretary of State's Office followed an established process to establish the groundwork for a determination of legal guilt or innocence.[655]

On November 24, 1749, Stanhope wrote on behalf of the Secretary of State's Office to John Sharpe of the Attorney General's Office, enclosing recognizances for appearance at the Court of King's Bench for Cleland and Griffiths.[656] On March 8, 1750, the *General Advertiser* contained a notice for the publication of the *Memoirs of Fanny Hill*, a one volume expurgated version of *Memoirs of a Woman of Pleasure*.[657] A similar advertisement was also included in the *Whitehall Evening Post* for March 6-8, 1750, and read:

> *This Day is published,*
> Compleat in ONE VOLUME,
> (Price 3s. bound in CALF)
> MEMOIRS of FANNY HILL.
> 'If I have painted Vice in its gayest Colours; if I have
> 'deck'd it with Flowers, it has been solely in order to make the
> 'worthier, the solemner Sacrifice of it to Virtue.
> Printed for R. Griffiths, at the Dunciad in St. Paul's Church-Yard.[658]

Griffiths, having already been in trouble for the publication of *Memoirs* a few months earlier, openly advertised (this time under his own name) the expurgated *Fanny Hill* edition with an epigram on vice and virtue that was borrowed from the previously discussed postscript. We do

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[655] As a matter of interest, during his examination, Griffiths claimed that only sixty sets of *Memoirs* had been sold. PRO, SP 36/111/159, in Foxon, 53.

[656] SP 44/85/161, in Foxon, 56.

[657] In Foxon, 56.

[658] "Advertisements and Notices," *Whitehall Evening Post* (London), March 6-8, 1750, http://tinyurl.galegroup.com/tinyurl/4G3yr5.

not know why this epigram was included, although it is possible to speculate that it was to titillate as much as to defend the work; ultimately, however, what is of interest is the consistency and persistence of the discourse on vice in literature, as well as the renewed effort to publish for profit (recall that the Dunciad was a reference to Pope's concerns about the commercialization of literature). In other words, despite the possibility of legal sanctions or the precedent of *Curl* (1727), Griffiths went ahead with the publication of *Fanny Hill*, confident in the understanding of the novel's readership and the probability of profit.

In response to the publication of the expurgated *Fanny Hill*, on March 15, 1750, the Bishop of London wrote a complaint to Secretary of State Newcastle. Recall that the ecclesiastical court did not have any official role in the regulation of print matter, as determined by *Curl* (1727). Recall also that obscene or sexual literature was never a significant historical concern for ecclesiastical courts (compared to heretical texts). Nevertheless, the Bishop of London wrote the following:

> Your Grace ordered a prosecution against the Printer and publisher of the *Memoires of a Lady of Pleasure*. The same Bookseller . . . has published within a few Days a Book called *Memoires of Fanny Hill*, the Lewdest thing I ever saw; It is, I am told, the same with the other, after leaving out some things, which were thought most liable to the Law. . . But if there is not Law enough in the Country to reach this vile Book after all the pretence to correct it, we are in a deplorable condition.
>
> I beg of your Grace to give proper orders, to stop the progress of this vile Book, which is an open insult upon Religion and good manners, and a reproach to the Honour of the Government, and the Law of the Country.[659]

This letter points to the establishment of a belief that common or criminal law was the only means of dealing out punishment for the obscene to both writer and publisher, and that law must be able to reach the lewd and vile book to correct it, and to redeem religion, good manners, and the honour of the state. *Fanny Hill*, being vile and lewd in content, also reflected on – or

[659] SP 36/112/139, quoted in Foxon, *Libertine Literature*, 56-57.

was tied to – religion, manners, the state and law. In other words, *Fanny Hill* was dangerous to the functioning of state institutions, governance, and morality, reproducing knowledge as far back as the *Royal Proclamation* (1538). While this letter therefore reflects both transformation and continuity among discursive formations, I emphasize how interesting – and contingent – it was for the Bishop of London to suggest that lewdness and vileness should be subject to law.

Recall that the Bishop of London historically had a role in the regulation of print matter as a pre-publication licensing agent, stemming generally from the time of the *Royal Proclamation* (1538) and as specified in the Star Chamber decree (1637). However, while historically it was his role to be part of the regulation of print matter, in this instance he wrote as a religious figure impotent to stop the publication of obscene books without the force of law. Law was put forward as the *only* means of governing, regulating and punishing obscene literature; yet at the same time, the bishop suggested that law was not able to adequately respond to the threat of obscene literature since *Fanny Hill* had been published and publicly advertised.[660]

The same day that the Bishop of London sent his complaint, a warrant was issued to arrest the author, printer and publisher of *Fanny Hill*.[661] This pattern of public complaint and official action would emerge in the early nineteenth century as the primary means of regulating obscene literature. In other words, law was responsive rather than proactive to public concerns and complaints pertaining to obscene literature and common law was not actively used to

[660] I return to this notion in the following subsection and suggest that, contrary to the precedent set in *Curl* (1727) and alluded to by Cleland – specifically, the constitution of the obscene as sexual and secular – in a later publication the Bishop of London constituted the obscene as a significant religious concern and mobilized ancillary or extra-legal modes of regulation.

[661] Foxon, *Libertine Literature*, 57.

prosecute obscene literature *except* in such cases where the public (which common law was supposed to guard) was mobilized.[662]

As mentioned, a warrant was issued to arrest the author, printer and publisher of *Fanny Hill*. The *Whitehall Evening Post*, which had earlier carried the advertisement for that volume, contained a notice of the arrest that read: "Last Friday the Author and Publishers of the Memoirs of Fanny Hill were taken into Custody by his Majesty's Messengers, and all the Copies seized".[663] Whether or not this action was a direct result of the bishop's intervention, action was taken by the Messengers. Obscene literature continued to exist in the margins between judicial and extra-judicial institutions, as the viability of common law as a regulatory response was somewhat in doubt, perhaps as a result of the competing discourse produced by authors, and/or because of the contrasting decisions in *Read* (1708) and *Curl* (1727).

On March 20, 1750, Griffiths again provided a statement to Stanhope.[664] In this statement, Griffiths indicated that he had requested that Cleland "'strike out the offensive parts'" of *Memoirs* and claimed that there was no "'harm'" in the novel.[665] He also suggested that if the Messengers had cautioned him, he would have cancelled the edition.[666] While these arguments were similar to those made by Cleland and Griffiths during their first confinement, in that there

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[662] This phenomenon is discussed further in Chapter 5.

[663] "London Intelligence," *Whitehall Evening Post* (London), March 17-20, 1750, http://tinyurl.galegroup.com/tinyurl/6TcJq3. As evidence that this was (still) a newsworthy event in London, almost the exact same notice appeared in a different newspaper a week later. "London," *Read's Weekly Journal or British Gazetteer* (London), March 24, 1750, http://tinyurl.galegroup.com/tinyurl/6TcKN5.

[664] SP 36/112/145, in Foxon, *Libertine Literature*, 57.

[665] SP 36/112/145, quoted in Foxon, 57.

[666] SP 36/112/145, in Foxon, 57.

was a murkiness as to what constituted obscene literature and obscenity law, what I want to focus on is the seemingly ongoing consolidation of a conception of obscenity, which was constituted as both *giving* offence and *being* a legal offence. As an offence, obscenity was constituted as causing harm to public morals or virtue. Griffiths, however, disputed the harm in the book and thus the harm that could stem from the book, which was consistent with the vice in literature discourse. Again, according to this discourse, harm would not come to the reasonable person who was properly instructed on how to interpret depictions of vice.

This is an interesting argument not because it is true or false, but because it is possible to trace further developments in the conceptualization of obscene literature. Cleland admitted in an earlier letter that obscenity was not simply tied to obscene language. Here, Griffiths acknowledged that there were offensive parts in *Memoirs*, which he seemed to equate with certain undesirable scenes or sexual representations and which were struck out in the expurgated version; in other words, Griffiths believed that a sexually explicit whore biography was not in itself offensive or obscene. The publisher and author thought – or at least argued – that *Memoirs* was overall not offensive or legally objectionable except for a few scenes. Instead, sex and sexuality were argued to be harmless to the reasonable reader. This was not entirely unreasonable, even despite *Curl* (1727); recall that of the five pieces of literature with which *Curl* (1727) was charged, only two were brought to trial. I suggest that the association of obscenity with sexual or sexually explicit writing occurred not in law, but rather emerged as a result of the actions of various "Guardians of Public Manners", such as the Bishop of London, who problematized obscene literature, prompted legal responses to it, and *also* affected the constitution of obscene literature as sexual representation in literature. The following subsection

considers the actions of the Bishop of London in more detail in order to trace an emerging conceptualization of obscene literature and the proper (legal-regulatory) response to it.

More on the Bishop of London, the Church, and the Conceptualization of Obscenity

In addition to his letter to the Secretary of State's Office, Bishop of London Thomas Sherlock wrote and published a three pence pamphlet, *A Letter from the Lord Bishop of London, to the Clergy and People of London and Westminster; On Occasion of the Late Earthquakes*.[667] The pamphlet took the form of an open letter addressed to the clergy and inhabitants of London and Westminster. The bishop, as an authority of delimitation within the discursive formation of religion, was concerned with the spiritual state of London and Westminster, and in particular with "the Wickedness and Corruption that abound".[668] The surface of emergence identified in this pamphlet was public morality, including sexual morality. He wrote that two earthquakes, occurring on February 8 and March 8, 1750 (the latter date coinciding with the publication of the expurgated *Fanny Hill*), were "Signs and Tokens" of impending divine judgment.[669] He wrote that the earthquakes were a "Summons, from God, to Repentance".[670] Thus, scriptural grids of specification were mobilized to categorize obscene literature in particular as sinful. Although we know from his earlier letter that the bishop was concerned with *Fanny Hill*, in the pamphlet, he

[667] [Thomas Sherlock], *A Letter from the Lord Bishop of London, to the Clergy and People of London and Westminster; On Occasion of the Late Earthquakes* (London: John Whiston, 1750), https://babel.hathitrust.org/cgi/pt?id=mdp.39015068557118;view=1up;seq=3.

[668] [Sherlock], *Letter from the Lord Bishop of London*, 3.

[669] [Sherlock], 4.

[670] [Sherlock], 4.

took care not to mention this or any other book by name; he wrote, "there is no need for it; the Thing is notorious".[671]

I take some time to consider this document, not only because of its relation to *Fanny Hill* and its relevance to the emerging constitution of obscene literature as sexual literature and as a public harm under common law as well as within religion, but also because it has been identified as the most published topical pamphlet in English history, selling 105 000 copies.[672] I should also mention, however, that *Modest Remarks upon the Bishop of London's Letter Concerning the Late Earthquakes*, also published in 1750, disputed the bishop's concerns about divine judgment and the threat of obscene literature and went into numerous editions.[673] That this latter pamphlet was written by a Quaker indicates that knowledge emerging from religion and pertaining to the formation of concepts regarding obscenity was contested. However, I suggest that the differential relations between a bishop and a Quaker allowed the former to exclude or minimize the statements of the latter. I focus on the statements of the bishop and will simply say that the arguments of the Quaker, while subjugated in this instance, were consistent with the vice in literature discourse; rather than utilizing law to regulate obscene literature, "good" books were promoted as the best way to encourage "good" behaviour.

The Bishop of London's pamphlet was a form of discursive practice; it was a pastoral call to repentance, or a religious practice that responded to a problematic discourse object by presenting proper standards, attitudes, and behaviours. The bishop was concerned with sin or

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[671] [Sherlock], 6.

[672] Ian Watt, *The Rise of the Novel: Studies in Defoe, Richardson, and Fielding* (Berkeley: University of California Press, 1957), 36.

[673] [Joseph Besse], *Modest Remarks upon the Bishop of London's Letter Concerning the Late Earthquakes*, 6th ed. (London: T. Howard, 1750), Gale Eighteenth Century Collections Online.

wickedness generally, but specifically referenced lewd books, pictures, and plays, as well as gaming, blasphemy/imprecations, lewdness, debauchery, brothels, and violence. The problematic discourse objects emerged from the Church as opposed to the common law court. Truthful knowledge – or wisdom – came from the scriptures that the bishop obliquely referenced. In other words, the standard of moral living was provided absolutely by the scriptures and described by ordained agents such as the bishop, who excluded other sources of truth and knowledge.

The bishop was concerned about books against religion, which was a consistent historical concern; in particular, he was concerned about the popular reception of these books and the profit made from them.[674] In addition to books against religion, the bishop was also concerned that "Histories or Romances of the vilest Prostitutes [have] been published, intended merely to display the most execrable Scenes of Lewdness; Lewdness represented without Disguise, and nothing omitted that might inflame the corrupt Passions of the Youth of the Nation".[675] The bishop was concerned that obscene literature would lead to the moral corruption or sexual immorality of vulnerable youth. This was consistent with what has been previously discussed (i.e. the possibility that vice in literature could lead to immoral behaviour among vulnerable populations).

While in his letter to Secretary of State Newcastle the bishop indicated that only law could effectively prohibit and punish the circulation of obscene literature, in this pamphlet, the Bishop of London identified three agents and institutions that could be mobilized to regulate the problem of public wickedness and moral corruption stemming from obscene literature. First, he

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[674] [Sherlock], *Letter from the Lord Bishop of London*, 6-7.

[675] [Sherlock], 9.

suggested that the clergy could "awaken the People, to call them from the Lethargy in which they have too long lived, and make them see their own Danger".[676] Second, he addressed state officials who were responsible for the welfare of the public, and encouraged them to enforce extant law. Specifically, he wrote that,

> Books for the Instruction of the Unexperienced in all the Mysteries of Iniquity have been publickly cried in our Streets; had not the Laws, and the Guardians of the Laws, been asleep? – But surely it is high Time to awake; and to let People once more know, (what seems to be almost forgotten) that Laws are made for the *Punishment of Wickedness and Vice, and for the Maintenance of true Religion*.[677]

Finally, he called on the family to reform itself, or to ensure proper instruction in moral reading in order to prevent the need for legal punishment.[678] The bishop, as an agent authorized by the institution of the Church, constituted sexual morality as central to the conceptualization of obscenity and as an issue of public morality; this was in line with the common law conceptualization. However, he also encouraged the mobilization of extra-judicial regulatory agents and techniques to respond to the problem.

What is interesting to focus on here is the breakdown of his exhortation, which pointed to the interlinking of clergy, state officials and families to prevent vice through particular regulatory techniques. Respectively, the Bishop of London encouraged a clerical exhortation to repentance, judicial application of law, and patriarchal instruction. The association of secular and religious authority was united in the *Royal Proclamation* (1538), separated in *Read* (1708) and brought together again – to an extent – in *Curl* (1727) (i.e. because immorality was made illegal). The bishop complained that agents of law neglected their duty to religion and morality; while *Curl*

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[676] [Sherlock], 12-13.

[677] [Sherlock], 13-14.

[678] [Sherlock], 16-17.

(1727) potentially set a precedent, by mid-century common law procedure was not particularly dominant in practice. However, the effects of the precedential decision were evident; having established through *Curl* (1727) temporal jurisdiction over obscene literature, the Church was ostensibly able to exhort but not to act or punish. Perhaps as a result of this inertness of law, the Bishop of London responsibilized the clergy, judiciary, and family to regulate obscene literature. In other words, there was some tension over jurisdictional boundaries and practices. While *Curl* (1727) seemed to establish temporal jurisdiction, ecclesiastical intervention was not entirely circumscribed. Instead, the Church mobilized diverse agents to continue to constitute and respond to obscenity as a public morality problem. This mobilization became increasingly central to the regulation of obscenity and is discussed in the next chapter. For now, I reiterate that common law was responsive rather than proactive regarding obscenity and that obscenity was increasingly conceptualized by the discursive formation of religion as sexual representation requiring secular (i.e. legal and patriarchal) as well as religious regulation. The following section describes how *Fanny Hill* was publicly received beyond (but perhaps as a result of) the Bishop of London.

Reception of *Fanny Hill*

Two months after the publication of the expurgated *Fanny Hill*, in a letter from Sir Horace Mann to Horace Walpole on May 8, 1750, it was reported that the Margrave of Baden Dourlach, in Florence, "under the pretence of a cold he laid in bed to read the *Memoirs of a Woman of Pleasure*".[679] Why exactly was (or is) this significant? What made this event

[679] Horace Mann to Horace Walpole, Florence, May 8, 1750, in *Horace Walpole's Correspondence with Sir Horace Mann, IV,* ed. W. S. Lewis, Warren Hunting Smith and George

noteworthy enough for two prominent Whig politicians (the first American and the second English) to take note of it? What exactly was implied in that brief mention? How did *Fanny Hill* get to Italy so quickly and despite the Bishop of London's efforts? This section does not answer these questions; instead of providing answers, this section demonstrates that as the eighteenth century progressed, *Fanny Hill* was received in ambiguous ways that reflected or derived from the fragmentation of or struggle between the discursive formations discussed above. This section considers literary reviews and fictional works that relate to *Fanny Hill* in order to problematize the ambiguous, rather than authoritative, constitution(s) of *Fanny Hill*. I suggest that as a result of these circulating documents and fragmented knowledges, it was difficult to formulate definitive statements – or dominant discursive practices – that resolved what *Fanny Hill* (and obscene literature more generally) was, what it did, and what should be done about it.

Reviews

In 1750, the March edition of Griffiths's London periodical, the *Monthly Review*, included a review of *Fanny Hill*, which read in part:

> Though this book is said to be taken from a very loose work, printed about two years ago, in two volumes, and on that account a strong prejudice has arisen against it, yet it does not appear to us that this performance, whatever the two volumes might be, (for we have not seen them) has any thing in it more offensive to decency, or delicacy of sentiment and expression, than our novels and books of entertainment in general have. . .
>
> The author of *Fanny Hill* does not seem to have expressed any thing with a view to countenance the practice of any immoralities but meerly to exhibit truth and nature to the world, and to lay open those mysteries of iniquity that, in our opinion, need only to be exposed to view, in order to their being abhorred and shunned by those who might otherwise unwarily fall into them. . . .

L. Lam. Vol. 20 of *The Yale Edition of Horace Walpole's Correspondence*, ed. W. S. Lewis (New Haven, CT: Yale University Press, 1960), 149.

> As to the step lately taken to suppress this book, we really are at a loss to account for it. . .[680]

While this defence might seem self-interested (which I do not deny), given that Griffiths published both *Fanny Hill* and the *Monthly Review*, I focus here on the fact that this review was consistent with the vice in literature discourse, most often expressed by writers. According to this review article, there was no problematic object because vice, while represented in *Fanny Hill*, was ultimately denounced in favour of virtue. *Fanny Hill*, it was argued according to the logic of the vice in literature discourse, was a moral tale that taught taste and virtue. Instead of countenancing, teaching or encouraging vice (i.e. sexual immorality), the author portrayed a realistic or truthful example of nature in order to discount and discourage vice. In the review, the natural world (rather than scripture, for example) was held up as the standard of truth and moral living. In other words, *Fanny Hill* was realistic, true to life, and by implication should not be censured because it was not false or fanciful. This is a very different grid of specification than that formulated by religion or law; *Fanny Hill* was justified in this article by being true to nature. The review article also compared *Fanny Hill* to other literature available, suggesting that it was not more offensive than other novels. The review did not attempt to argue that *Fanny Hill* was inoffensive, but that relative to what else was available on the commercial market, it was not worse. In other words, the standard by which the publisher judged was other books, rather than either religion or law. This linking of truth to reality and to the commercial market indicates competing knowledges; the standard of truth was conceived as pertaining to what was real and marketable rather than what was revealed by God or prohibited by common law.

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[680] "Art. CXXXII: *Memoirs of* Fanny Hill," *Monthly Review*, 2 (March, 1750): 432, https://books.google.ca.

In another *Monthly Review* article attributed to Smollett,[681] Cleland's *Memoirs of a Coxcomb* (1751) (his second novel, which was more or less a gender reversal of the *Fanny Hill* plot) was reviewed.[682] I mention this review because it provides insight into what a contemporary and well-known author thought of Cleland as well as obscene literature. Smollett wrote that, "we meet with nothing so surprising, as that an author of merit should attempt to entertain the public with a species of writing which is of late so justly grown into disrepute, on account of the many wretched productions it hath brought forth".[683] While this seems condemnatory, Cleland was called "an author of merit" based on only one previous work of fiction: *Fanny Hill*. While Smollett suggested that sexual writing was *becoming* disreputable, it is not clear whether the work was disreputable according to legal or religious standards. I suggest that the author expressed a general sentiment in which books containing sexual representation were increasingly recognized as problematic, although the exact constitution of the problem or the obscene – perhaps due to the competing discursive practices of the state, commercial market, law and religion – was still unclear (or rather, was not dominant).

This review was written within the commercial market and with the intent to sell the book; the influence of commerce and capitalism on emerging and existing discourses pertaining to obscene literature was significant. In writing these types of reviews, commercial agents were trying to sell novels, whether virtuous or not. These reviews contributed to the confusion or profusion of knowledges; they said many things in many ways (for example, although ostensibly condemning the plot, Smollett went on to describe it in detail and concluded his review

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[681] Shinagel, "Pornography," 211-212.

[682] [Tobias Smollett], "Art. XLVI: *Memoirs of a Coxcomb*," *Monthly Review*, 5 (October 1751): 385-387, https://babel.hathitrust.org/cgi/pt?id=mdp.39015078843938;view=1up;seq=403.

[683] [Smollett], "Art. XLVI: *Memoirs of a Coxcomb*," 385.

favourably) in order to appeal to many readers, including buyers and critics and even persecutors or prosecutors (e.g. as a form of defence). These reviews did not make definitive statements, or perhaps a better way to phrase it is that they made a multitude of competing and contradictory statements and functioned in much the same way as prefaces and postscripts; they legitimated potentially problematic literature. Within these reviews, a range of statements was acceptable, framing the novels that they described and publicized so that they were read and received in a favourable and profitable way.

In addition to these reviews, William Rider included Cleland in his 1762 publication, *An Historical and Critical Account of the Lives and Writings of the Living Authors of Great-Britain*.[684] Rider aimed to critique or review the merits of authors "with the utmost Candour and Impartiality".[685] Rider described himself as impartial, as opposed to the critics who had a certain interest in how a work was portrayed to the public (e.g. those discussed above). He remarked that it was the business of critics "to direct the Judgment of Readers" but suggested that instead they "made it their Endeavour to mislead their Sense, as Nothing can be more evident than that in the Judgments which they pass upon Books, they are but too often influenced by the Name of the Author or the Publisher".[686]

In Rider's review, Cleland was described as:

> A Gentleman of no mean Abilities for Composition, whether in Verse or Prose. He is Author of the *Memoirs of a Coxcomb* – a Romance wrote with some Elegance; and of the *Memoirs of a Woman of Pleasure*; which tho' justly censured by Men of rigid Morals,

[684] [William Rider], *An Historical and Critical Account of the Lives and Writings of the Living Authors of Great-Britain* [. . .] (London: William Rider, 1762), https://books.google.ca.

[685] [Rider], *Living Authors of Great-Britain*, title page.

[686] [Rider], 3.

> must be allowed to be the best executed and the most picturesque of any Work of the Kind. . .[687]

This critic upheld *Fanny Hill* as a piece of meritorious literature, while also being justly censured by "Men of rigid Morals". The language he used suggests that *Fanny Hill* was received as good literature that was somewhat problematic according to moral grids of specification. Not everyone was so generous in their appraisal, however, suggesting that the disrepute of *Fanny Hill* was increasingly established over the latter part of the century. For example, in 1772, James Boswell recorded in his diary that he met Cleland, "in his youth the author of the *Woman of Pleasure*, that licentious and inflaming book".[688]

What these reviews ultimately have in common is that they were themselves opinions available for sale and circulation on the commercial market. In December of 1752, *Fanny Hill* was listed as being for sale at three shillings in Griffiths's *Monthly Review*.[689] This indicates that not only was *Fanny Hill* still publicly available for sale despite directions to prosecute and the ire of the Bishop of London, but it also gives an idea of the variety of the print matter amongst which it existed; the issue contained works ranging from translations of Latin classics to nature to philosophy to sensational accounts of murder and disease to treatises on religion and the family, among others. There is a danger when thinking of obscene literature to bracket it off from other types of print matter, which is a faulty way of conceptualizing it. *Fanny Hill* was not separate from the larger market of print matter or literature, nor was it of particular importance or significance to the bookseller. Instead, it was an object for sale.

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[687] [Rider], 16.

[688] James Boswell, *Boswell for the Defence 1769-1774*, ed. William K. Wimsatt, Jr. and Frederick A. Pottle (Toronto: McGraw-Hill Book, 1959), 81.

[689] "Books Printed For, and Sold by R. Griffiths, at the Dunciad in St. Paul's Church-Yard," *Monthly Review*, 7 (December 1752): 2, ProQuest British Periodicals.

Satires

Not only was *Fanny Hill* implicated in the commercial market, however; it became increasingly significant as obscene literature and, in some cases, *within* literature constituted as obscene. This process began with the likely pseudonymous Adam Eden's pamphlet, entitled *A Vindication of the Reformation, on Foot, among the Ladies, to Abolish Modesty and Chastity, and Restore the Native Simplicity of Going Naked*, which was published by Griffiths in 1755.[690] As the title suggests, this is a satirical pamphlet; it is included here because it contains an interesting reference to *Fanny Hill* (or at least to whore biographies): "I have always thought it an Instance of Tyranny, in Fathers, Husbands, and Brothers, to keep from the Fair the luscious Poems of my Lord *Rochester*, and the Novels and Memoirs of Women of Pleasure, that have been the Business of us young Fellows, to read over and over".[691] This suggests that within a few short years, *Fanny Hill* was well-known enough to be recognizable to achieve the author's purposes, given that it was paired with perhaps the most famous libertine writer of nearly one hundred years earlier (i.e. John Wilmot, Earl of Rochester). More significantly, this use of satire suggests that despite the apparent legal and religious condemnation of obscene literature generally (e.g. in the *Curl* (1727) case) and *Fanny Hill* specifically (e.g. by the Bishop of London), discourse was not so authoritative as to entirely suppress or exclude subversive or ironic (and competing) statements.

The pamphlet continued in a rather interesting way; the author explained in detail a plan of seduction to be used on a modest and chaste lady. This involved taking her to tragic and then

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[690] Adam Eden, *A Vindication of the Reformation, on Foot, among the Ladies, to Abolish Modesty and Chastity, and Restore the Native Simplicity of Going Naked* [. . .], 2nd ed. (London: R. Griffiths, 1755), Gale Eighteenth Century Collections Online.

[691] Eden, *Vindication of the Reformation*, 36.

comic theatre and providing her with novels (including the previously mentioned *Pamela* and *Joseph Andrews*). Of these novels, he wrote that "tho' the main Design is to excite Virtue, there are many amorous Adventures interspersed, which were they to be told beforehand to the Ladies, they could not consistent with Modesty read them over".[692] Subsequently, the woman was taken to bawdy plays and then she would be "properly prepared for the Memoirs of a Woman of Pleasure. But as I was determined to give her all the fair Play possible, and to keep myself clear of Suspicion, I disposed those Books, in such a Manner, that she might steal them from me, and imagine herself unsuspected of having them".[693]

This pamphlet is significant because it was the first time, outside of state or religious processes, that *Fanny Hill* was portrayed as contributing to seduction and/or moral corruption. Because the pamphlet is both satirical and explicit, it is difficult to conclude whether it should be read as problematizing obscene literature or as contributing to it. In other words, this pamphlet confuses, conflates and complicates vice and virtue, as well as the vice in literature discourse. Instead of consensus, this pamphlet allows multiple possibilities or points of diffraction and truths about vice in literature. This pamphlet demonstrates that what was ostensibly prohibited was not in fact prohibited. This satirical trend, blending and blurring dominant and subjugated knowledges in a complex arrangement, continued throughout the rest of the century.

In 1767, *The Sale of Authors* expressed many of Pope's concerns about the decline of literature.[694] The premise of the work was that Apollo and Mercury needed money and decided to capture and auction off authors. Apollo and Mercury discussed the "goods" at length; coming

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[692] Eden, 43.

[693] Eden, 43-44.

[694] [Archibald Campbell], *The Sale of Authors, a Dialogue, in Imitation of Lucian's Sale of Philosophers* (London, 1767), Gale Eighteenth Century Collections Online.

under particular criticism as worth less (or worthless) were anonymous authors, including "News-gatherers, Magazine-mongers, Museum-compilers, Dictionary-writers, Miscellany-brokers, Index-Makers, Reviewers, Journalists, French-translators, and Poets of all sorts, sizes, and denominations" (e.g. Grub Street writers).[695] The problem described and satirized was the prostitution of writers; they wrote low and anonymous works for profit. This is an interesting work because the author claimed to be writing directly against (moralist) writers like Johnson, or at least against "their manner of writing, and expressing themselves on all subjects, and the pompous affected style used by them".[696] In other words, this satire was a direct response to the moralization of writing and reading; instead of affecting morals, writing was framed as being affected by economic considerations. The author was ostensibly critical of the practice "when the Authors of real merit are dismissed without being offered to sale at all".[697]

More pertinent is the discussion of Cleland. In *The Sale of Authors*, the Bucks and Bloods (a group of hedonistic and privileged young men) wanted Cleland and Harris (discussed later in this section) to be exhibited together.[698] They described Cleland as having "a most luscious pen, he possesses infinite *Powers*, he describes the thing so feelingly: in short, we must have him and will give you any money for him. Surely such an Author could not escape you".[699] In fact, Cleland, after being found in a bawdy house "engaged with half a dozen Girls; fine jolly,

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[695] [Campbell], *The Sale of Authors*, 3.

[696] [Campbell], iv.

[697] [Campbell], iv-v.

[698] [Campbell], 137-138.

[699] [Campbell], 139.

buxom, Wenches" did escape from Mercury.[700] That Cleland was worth quite a lot at auction, and that he slipped away from the gods – perhaps an allusion to his ability to deflect legal trouble – is interesting. More significant is the continued high valuation and prominence in literature of Cleland and his novel, albeit in a satirical publication.

In 1783, the satirical *Advice to the Officers of the British Army* introduced a slightly different and much less subversive note.[701] The title page included a Latin inscription from Horace which, translated, means ridicule often settles matters of importance better and with more effect than severity.[702] In a more pronounced way, this satire actively discouraged rather than slyly encouraged readership of problematic literature. In the section directed toward young officers, the author suggested that,

> [i]t will also be perfectly needless for you to consult any treatises of military discipline, or the regulations for the army. Dry books of tactics are beneath the notice of a man of genius, and it is a known fact, that every British officer is inspired with a perfect knowledge of his duty, the moment he gets his commission. . . If you have a turn for reading, or find it necessary to kill in that manner the tedious hours in camp or garrison, let it be such books as warm the imagination and inspire to military atchievements, as, *The Woman of Pleasure, Crazy Tales, Rochester's Poems*. . .[703]

While this satire did not "truly" encourage the reading of *Fanny Hill*, the primacy of *Fanny Hill* as a symbol of obscene literature remained constant.

Another work treated *Fanny Hill* as an instruction manual of immorality. A 1796 article entitled *Ironical Advice to Merchants, Manufacturers, Shopkeepers, and Master Tradesmen* suggested that the chamberlain, who gave a *Bible* to every apprentice, should instead give young

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[700] [Campbell], 140.

[701] [John Williamson], *Advice to the Officers of the British Army*, 4th ed. (London: W. Richardson for G. Kearsly, 1783), Gale Eighteenth Century Collections Online.

[702] [Williamson], *Advice to the Officers*, title page.

[703] [Williamson], 76-77.

female apprentices, daughters, and servants a copy of *Fanny Hill*, which "would contribute more to the reformation of our youth, in a few years; and, consequently, establish the glorious principles of liberty and equality, than all the other authors that ever presumed to instruct mankind".[704] This work was in same the vein as the advice to young officers, although the limit was pushed further, in that it was fifteen year old girls who were (not) encouraged to be exposed to *Fanny Hill*.

The import of these works of satire, existing in the space between literature and political writing, cannot be overlooked. Satire made space for multiple possibilities, and incorporated knowledge of the obscene from each of the discursive formations identified. While the reviews demonstrated that the commercial market affected the reputability of the author, these satires show that there was a space for social comment both through and on literature; literature was an arena both of and for struggle.

Fiction

In 1758, *A New Atalantis, for the Year One Thousand Seven Hundred and Fifty-eight* was published. *Atalantis* was made up of episodic chapters, including one entitled "Tonzenie",[705] which was about the sexual learning and experience of a woman from nursery games, observing animals, instructive books, masturbation and lesbian acts, to the seduction of a young servant and eventually intercourse with a soldier. In this sense, it is somewhat similar to the satire *A Vindication of the Reformation* described earlier, in which sexual corruption was portrayed as

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[704] "Ironical Advice to Merchants, Manufacturers, Shopkeepers, and Master Tradesmen," *Tomahawk or Censor General* (London), January 15, 1796, http://tinyurl.galegroup.com/tinyurl/4G8957.

[705] "Tonzenie," in *A New Atalantis, for the Year One Thousand Seven Hundred and Fifty-eight*, 2nd ed. (London: M. Thrush, 1758), 48-70, Gale Eighteenth Century Collections Online.

progressively learned behaviour. Within this fictional work, *Fanny Hill* again played a significant role in a woman's seduction to vice.

> Having soon after reached her teens, and by the means of her chamber-maid got a translation of Ovid's Art of Love, Rochester's works, and the Memoirs of a Woman of Pleasure, all her doubts about her inward feelings vanished; she was convinced what use she was designed for, and made acquainted with the canal thro' which it was to be admitted; which, with her new-disciplined fingers, she used to frequently explore: whose capacity and wants encreasing daily, one of the middle-sized dildo-tribe was procured for her private amusement; through it her French maid, well skilled in such practices, would in the moment of rapture, dart a warm injection; nay, sometimes artfully gird it to her loins, and act the man with her young mistress, who grown too sensible of the inefficacy of all such weak representations, was determined to enjoy the essence ere long.[706]

This fictional work more clearly than anything yet discussed linked *Fanny Hill* not to vice or virtue generally, but specifically to the sexual acts of women. As with *A Vindication of the Reformation*, this work dealt with *Fanny Hill* in a way that problematized the novel for contributing to sexual corruption.

This trend continued in the 1761 *Genuine Memoirs of the Late Celebrated Jane D****s*,[707] a fictionalized whore biography.[708] In the first chapter, there was a justification and explanation of the manner in which vice in literature should be read and understood (functioning like a preface, as discussed earlier).[709] Within this memoir, *Fanny Hill* was mentioned as one of the books in Jane's library, from which "the reader may form a judgment of the manner, in

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[706] "Tonzenie," 52-53.

[707] *Genuine Memoirs of the Late Celebrated Jane D****s* (London: J. Simpson, 1761), Gale Eighteenth Century Collections Online.

[708] There was a London brothel keeper named Jane Douglas, however this titillating biography should be read with some scepticism.

[709] *Genuine Memoirs of the Late Celebrated Jane D****s*, 6-7.

which Jane chose to be edified in the hours which she consecrated to study".[710] While this work could be considered another contribution to the vice in literature discourse, it also seemingly contributed to the constitution of *Fanny Hill* as a problematic and sexually corrupting object. Specifically, this whore biography, like other works previously mentioned, contributed to the idea of learned sexual behaviour through novels. It is interesting that no explanation of what Jane did in her hours of study was required; this confirms that *Fanny Hill* was well-known enough to be a referent or touchstone that clearly intimated sexual behaviour or immorality.

Similarly, in the 1766 *Genuine Memoirs of the Celebrated Miss Maria Brown*,[711] *Fanny Hill* was incorporated in two ways. First, the publisher (listed as the improbable I. Allcock) indicated that the work was written by the author *Memoirs of a Woman of Pleasure*.[712] This false attribution of authorship was likely intended not only to ensure sales through association, but to signal the expected content of the book; in other words, *Fanny Hill* provided a shorthand sign for a certain type of sexual writing. Second, *Miss Maria Brown* included a passage in which a madam discusses how young women were secured to become prostitutes through various means, including financial duress and/or rewards, violence, deceit, etc.[713] In the madam's experience,

> there have been but three escaped without doing business, two of them had turned their brains with reading Pamela and the whole Duty of Woman; and the last was so formed by nature that she was never intended to be made a woman of. But I have taken care to remove all such bad books out of their way, and, in their stead, I generally leave the Memoirs of a Woman of Pleasure with cuts; or such lascivious prints for those who

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[710] *Genuine Memoirs of the Late Celebrated Jane D****s*, 84.

[711] *Genuine Memoirs of the Celebrated Miss Maria Brown* [. . .], vol. 2 (London: I. Allcock, 1766), Gale Eighteenth Century Collections Online.

[712] *Genuine Memoirs of the Celebrated Miss Maria Brown*, title page.

[713] *Genuine Memoirs of the Celebrated Miss Maria Brown*, 154-156.

> cannot read, as may tend to inflame their passions. When they are once broke in, I fail not to give them the best instructions for their future conduct. . .[714]

Beyond contributing to the constitution of *Fanny Hill* as a (problematic) technique to seduction, this is an interesting passage because it discusses the issues raised by Cleland in *Bosavern Penlez*, although admittedly to a different effect. This passage also confirms (or at least strongly suggests) that *Fanny Hill* was readily available and that prints of sexual scenes in the novel were not only for the wealthy, but served to "educate" the illiterate. In this work, there is an ostensible conformation to the vice in literature discourse that condemns the effects of literature on the virtuous conduct of women, but there is also a confusion or subversion due to the sexual explicitness of the text.

In summary, *Fanny Hill* was incorporated into fiction primarily as an object that contributed to learned sexual behaviour, and especially to the seduction of women. *Fanny Hill* was clearly – or explicitly – associated with sex and seduction. *Fanny Hill* was transformed in these works of fiction, becoming or emerging as a means to, and a symbol of, (sexual) vice. Within these works of fiction, sexual vice was not particularly prohibited; instead, *Fanny Hill* was a means to signify, sell and seduce the reader. Thus, within a remarkably short time after its publication, *Fanny Hill* was taken up in fiction in ways that (re)produced it as sexual, as a seduction to vice, and as a moral or obscene problem. These discourses contained in fiction were not necessarily condemnatory, however, referring to *Fanny Hill* in order to be profitable, as if *Fanny Hill* was an erotic shorthand for writers. In summary, writing practices in fiction became increasingly important to the conceptualization of *Fanny Hill* as a sexual object.

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[714] *Genuine Memoirs of the Celebrated Miss Maria Brown*, 156-157.

Other Works

Much like the reviews, satires and fiction discussed above, the 1785 publication of *The Trial of Mrs. Harriet Errington* referred to *Fanny Hill* as a seductive instruction manual.[715] *Mrs. Harriet Errington* was a trial report, or a form of writing in which adultery cases in particular were published for entertainment purposes; the pamphlet gives a good summary of this type of writing: "The Whole of the Depositions, and Interrogations, of the several Witnesses, fully describing the critical, amorous, and humorous Scenes in this unparelleled Trial".[716] The case in question was a divorce proceeding of George from Harriet Errington on the grounds of adultery. The lengthy pamphlet provided details of rendezvous with multiple men; evidence was provided by a number of people, including servants and others associated with the household. The statement of witness Phebe Lush, who worked as a servant in the house where Harriet was a boarder for a time, is of particular interest.

> That she used frequently to talk very loosely to the deponent; and in the absence of her said master and mistress she several times shewed the deponent a book which she said was the Woman of Pleasure; and she told the deponent she had taken it out of Mr. Clarke's pocket; that there were a great many indecent pictures in such book, which she seemed to take a pleasure in shewing the deponent; and she used sometimes to read a little of it to her; and this deponent hath more than once seen the said Mrs. Errington shewing the pictures in the said book to Mr. Branston's daughter, a child about nine years old. . .[717]

This is quite an explicit document, but because it dealt with a legal procedure and with legal testimony, providing examples of explicit and illicit actions was authorized. It was possible to talk in explicit detail about sexual acts and innuendos because the legal trial framed the

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[715] *The Trial of Mrs. Harriet Errington* [. . .] (London: R. Randall, [1785?]), Gale Eighteenth Century Collections Online.

[716] *The Trial of Mrs. Harriet Errington*, title page.

[717] *The Trial of Mrs. Harriet Errington*, 49.

proceedings and lent them truthfulness. It is significant that in this trial report, in which "real life" was sold as entertainment, *Fanny Hill* remained known and in circulation, and also that it continued to signify "something" – in this case the moral corruption and sexual ungovernability of women and youth. Statements were formulated as true, being witnessed by impartial and intimate observers; the document was an ironic act of voyeurism both in and through the trial report medium. While *Mrs. Harriet Errington* was *about* a trial, and therefore the legally established truth, the form of the document was, significantly, not a trial transcript; while the document was authorized by the court, it existed outside of it. In other words, the court and law did not have the exclusive or final say over how obscene literature (and adulterous activity) were interpreted, but the court *was* an institution that functioned in this instance to constitute the illicit and obscene literature. This document represents one of those specialized spaces in which what was prohibited or rejected (e.g. sexual activities that included obscene literature) could be heard.

Not all eighteenth century texts were strictly "literary" entertainment, however. In 1789, *Harris's List of Covent-Garden Ladies*,[718] a publication of significant circulation that listed and described prostitutes (including their physical appearance and sexual habits or inclinations) working in the Covent Garden area, included the following:

> Miss W—d, No. 55 *Wells Street, Oxford Road*
>
> Although she has not been nine months upon the *pavé de Londres* (having received a complete boarding school education, where she not only learnt to dance and speak French, but also was initiated into all the mysteries of the cyprian school, having read *les Bijoux* Indiscrets; the *Woman of Pleasure*; *Rochester's Poems*); she is *au fait de tout*. Add to this, she has often viewed with rapture all *Aretin's* postures, and longed for the practice, as well as the theory.[719]

[718] Recall that Harris (likely a pseudonym) was requested by the Bucks and Bloods to be sold along with Cleland in *The Sale of Authors*.

[719] Quoted in Thomas, *A Long Time Burning*, 336.

In this instance, *Fanny Hill* was literally a manual for a prostitute; Miss W—d went to Cyprian school and read all the "classics", including *Fanny Hill*. *Fanny Hill* was both titillating and informative; it was the sign of a sexually knowledgeable woman. In this entry it is again possible to see the influence of the market on discourse, as *Fanny Hill* was employed to sell a woman/prostitute. Having read and viewed these classics, Miss W—d was portrayed as eager for the practice of theory. This conformed to the discourse that literature could lead to vice; it confirmed that reading something was not the same as doing it, although reading could lead to certain sexual desires and practices.

Fanny Hill not only circulated in written, but also in visual mediums. In James Gillray's print, *A Sale of English-beauties, in the East Indies* (1786),[720] English courtesans arrived in Calcutta and are being auctioned. By the auctioneer is a box – inscribed as being "For the Amusement of Military Gentlemen" – which contains numerous titles, including "Fanny Hill", suggesting that *Fanny Hill* was easily and visually recognizable. It is interesting to consider the recurring themes with which *Fanny Hill* was associated, including military gentleman, the auction, and prostitution.

Before concluding this section, I should say that while discussions and fictions in which *Fanny Hill* was implicated continued through the latter half of the century, *Fanny Hill* itself continued to circulate. Perhaps most notably, in 1766 Hubert-François Gravelot, a well-known engraver, created thirty two engravings to accompany a two volume edition of the unexpurgated *Memoirs*. The 1766 publication was likely quite costly, given that in 1743-1744, Gravelot received three hundred pounds for the engravings that accompanied a comparable Shakespeare

[720] James Gillray, *A Sale of English-beauties, in the East Indies*, 1786, print, British Museum, London, http://www.britishmuseum.org.

collection.[721] This suggests that it is impossible to think of *Fanny Hill* and obscene literature as "merely" pulp or low literature; the work was illustrated more than fifteen years after publication by a well-known engraver. This suggests that *Fanny Hill* was not a straightforwardly problematic discourse object in itself; there was significant struggle between the commercial market's vice in literature discourse, as well as the legal and religious discursive formations. In other words, sexual knowledge conveyed in novels and prints was not universally constituted or condemned as problematic.

In summary, in the latter half of the eighteenth century, the reception and problematization of *Fanny Hill* was complex and contested. Rather than suggesting that obscene literature or sexuality was repressed or problematized (i.e. by common law and/or religion), or alternatively that it was accepted (i.e. as leading to virtue or legitimate business), this section demonstrated that a universal or definitive statement about *Fanny Hill* was impossible to make. There were simply too many spaces, particularly in the commercial market of literature, including in satire, fiction, and other works, that allowed for gaps, differences, substitutions, and transformations. The justification or condemnation of vice or sexual representation in literature was an ongoing and unsettled matter throughout the eighteenth century.

Analysis of Moral Regulation Projects

This chapter allowed us to see that instead of there being one distinct object called "obscenity" that changed over time there were several problematic objects called by the same name. In brief, I have shown that there were distinct discursive formations including the state,

[721] Lena Olsson, ed., "Engravings for Memoirs of a Woman of Pleasure, by Hubert-François Gravelot (1766)," in *The Prostitute's Life: Sally Salisbury and Fanny Hill*, vol. 4 of *Eighteenth-Century British Erotica II*, ed. Alexander Pettit and Patrick Spedding (London: Pickering and Chatto, 2004), 363-364.

commercial market, common law courts and religion from which emerged these distinct yet overlapping regulatory objects called, respectively, unruly print matter, vice in literature (sometimes called obscene literature), obscene libel, and obscene, wicked, vile and lewd (and/or other adjectives) literature. This section reconsiders the structures and dynamics of these discursive formations in order to better make sense of and problematize projects of moral regulation, including, in particular, their effects on the formation of subjects and social orders, as well as those elements of moral regulation projects that continue today and that are essential to conducting a history of the present.

Veridical Discursive Formation

Within the veridical discursive formation, the *object* of regulation was unruly or unauthorized print matter containing what was conceptualized through existing regulatory and doctrinal standards and laws to be seditious, schismatic or indecent content that had a harmful effect on simple subjects. Both the object of regulation and its imputed harm or social consequences were reproduced by *agents* of regulation including the king, officials of the state, Church, and university, members of Parliament, and the Stationers' Company's agents. Keeping in mind that I later discuss the religious discursive formation, I argue that within this discursive formation there was a tight elision between state and Church in the regulation of print matter; there was an accord between the institutions, perhaps symbolized by the position of the king as head of state and Church, that the perpetuation of both true knowledge and religion produced good political citizens rather than pious subjects. While each institution guarded and reproduced its own knowledges, the regulation of print matter was nevertheless largely secular rather than religious in its procedures and effects.

Print matter that was unauthorized (i.e. unlicensed or unregistered) by these state or Church agents, and therefore was contrary to received truth, knowledge or doctrine, was constituted as harmful to simple subjects and disruptive to peaceable rule or the *status quo*. Thus, print matter became a problematic object of government, as the unrestrained circulation of knowledges was constituted as harmful or contrary to good – or extant – government. The harm posed by such unregulated print matter was constituted through *knowledges* of regulation that were (re)produced in authoritative state proclamations, decrees and statutes and which derived from and reproduced political-religious truths pertaining to such ideas as divine right or the natural(ized) social order. Against these authoritative standards of knowledge and truth, derived largely from scriptural interpretation and political doctrine, unruly print matter was constituted as a rebellion against God and the (or His) appointed state governors.

The *techniques* of regulation, ranging from pre-publication licensing and registration to statutory measures, provided institutionalized standards or rules for the production of authorized print matter and the prevention or exclusion, as well as punishment, of unauthorized print matter. Particular institutions and associated agents were charged with the production and regulation of knowledge in print form. These techniques functioned to unify knowledge and produce a single or dominant truth against which other knowledges – which contested the authority and hierarchy of the extant social order – could not emerge or were excluded. These techniques also functioned to produce governable and obedient political citizens; simple subjects were encouraged not only to accept the authority of state and Church agents in determining what print matter was acceptable, but also to demonstrate obedience to and acquiescence of the extant hierarchical social order. Thus, the *targets* of regulation were political citizens. Processes of regulation, including pre-licensing, registration, and a variety of legal and extra-legal sanctions,

disciplined this population and encouraged docility whereby subjects were trained to accept authorized knowledge and truth and thereby rule. A hierarchical social order characterized by the supremacy and infallibility of the state and Church and in which a few ruled as a result of their relation to truth – or as a result of their successful production of their relation to truth – was reproduced by these relations of power-knowledge.

Simple or political citizens were produced as well as governed through the regulation of print matter. Likewise, distinctions between authorized or unauthorized knowledges and obedient or subversive subjects (e.g. readers of unauthorized materials, or booksellers who did not license or register print matter) reproduced and reaffirmed the social order, in which the king as head of the state in alignment with the Church and later with Parliament were the ultimate political, social and moral authorities. These regulatory knowledges and techniques not only created a distinction between legitimate and illegitimate writings (and truths and knowledges), but also between the rulers and the ruled, or those who could determine and disseminate truth and knowledge and those who could and should accept it. Thus, this moral regulation project involved a degree of domination in the governance of others; the regulation of unruly print matter involved the exercise of power by governing officials in ways that modified the reading habits or choices and thereby (at least presumably) the behaviours of the governed. The normalization of the regulation of print matter by state and Church agents, as well as the constitution of norms pertaining to acceptable and authorized print matter, encouraged the formation of docile and obedient political citizens content within and accepting of the ordained (literally) social order; at the same time, the production, circulation and regulation of authorized knowledges reinforced the extant political and religious hierarchy, and also normalized divisions

between the rulers and the ruled. The moral regulation of unruly print matter, therefore, contributed to, or reinforced, a project of paternalistic nation-building.

While it might seem that today is far removed from this type of moral regulation project, whereby our reading materials are no longer determined by an authority and a standard of truth and enforced by threat of punishment, I argue that the relations constituted between problematic "print matter" (broadly conceived) and problematic public behaviour persists. For example, consider ongoing concerns with *Grand Theft Auto* (1997) or other violent video games and the phenomenon of "copycat crimes"; although the medium is different, concerns about the dangerous effects of private pleasures on the behaviours of simple subjects such as youth continue, and knowledge is produced by authorities, such as physicians or scholars, as to the truth or reality of this harm. Likewise, books continue to be banned from libraries because they are conceptualized as inappropriate, untruthful or harmful to simple subjects (e.g. youth) or social orders (e.g. based on controversial content pertaining to race, religion or sexuality). There continues to be an association between problematic – or problematized – print matter and its imagined harmful effects on simple subjects, typically conceived as youth who are constituted as being unable to successfully mature into decent citizens when exposed to such materials. Thus, authorities (again, broadly speaking) continue to produce knowledges about the harmful effects of materials on certain populations and work to restrict access (e.g. through censorship or parental controls) in order to better produce normative or moralized citizens within a paternalistic framework.

Commercial Discursive Formation

Following the veridical discursive formation, I discussed the commercial discursive formation which continued to produce knowledge of print matter – or literature – as problematic, albeit in moral rather than political terms. Instead of producing a concern about the effects of seditious or schismatic writings on the obedience of simple political citizens that consequently affected the maintenance of a hierarchical social order, there was a concern about the effect of literature containing vice on vulnerable populations and a moral social order.

The *object* of regulation was the realistic novel, or the novel that contained representations of vice as well as virtue; it was problematized because it was conceptualized as potentially "rewriting" moral standards. Thus, the harm attributed to the realistic novel was constituted as an incorrect or immoderate interaction with literature; novels were conceptualized as adversely affecting or corrupting the morals of vulnerable populations that were, as a result of changing economic conditions, increasingly able to access and read them. These knowledges were both produced and contested or mitigated by writers and other *agents* of regulation within the commercial market, such as writers, booksellers and publishers. These agents, while acknowledging the potential for harm, produced knowledges and made truth claims that advocated for self-regulation, or for the responsibilization of the consuming subject (or reader) who could use reason to avert the problem of passion or the seduction to vice. Thus, the *targets* of regulation, reasonable consumers, were constituted as being able to read novels containing vice without harm and for moral instruction. To this end, *knowledges* of regulation pertaining to the function of literature, proper reading habits, and the transmission of moral behaviour were produced by commercial agents through *techniques* of regulation that included prefaces, postscripts and literary reviews; these techniques discouraged imitations of vice and encouraged

standards of morality that coincided with or complemented standards of taste. To put it differently, prefaces and postscripts produced norms against which the reasonable consumer could interpret literature and orient moral behaviour.

In the absence of state regulation following the end of pre-publication licensing, those involved in the literary trade worked to govern themselves – and sell more novels – by justifying realistic writing containing representations of vice and guiding the reading or consuming subject into virtue. Thus, while vice in literature was normalized, so too was moral behaviour; there was an incitement to virtue through the production of norms transmitted through prefaces and postscripts. The novel was an object for sale in the commercial market and it was "marketed", or knowledge pertaining to it was produced, as being both desirable and beneficial to the moralized consumer. Within the commercial market, the realistic novel was constituted as valuable both morally and financially, and the knowledges and techniques that guided reading choices and encouraged the purchase of novels (e.g. through advertisements and reviews) enabled the reproduction and growth of a capitalist social order, as well as a moral or virtuous nation state.

Even in service of a free market, however, there was no intimation that literature could be freely chosen or vice freely acted on; instead, prefaces, postscripts and reviews produced (knowledge of) normative standards of taste and moral behaviour to which virtuous consumers could or should conform. It is significant to note, however, that the production of virtuous subjects was directed unequally at consumers. Consumer subjects were not conceptualized as a generalized population, as in the case of the simple subjects of the veridical discursive formation; instead, concerns about particular vulnerable populations – including youth, women and the working class – were produced as a result of the effects of industrialization, which made literature increasingly available to these populations. The sexual imagination and behaviours of

certain populations – and especially of women – were problematized; women were constituted as less able to successfully self-regulate and as sexually vulnerable and morally corruptible. This points to the constitution of an emergent subjectivity beyond the reasonable consumer; the commercial discursive formation constituted a distinction between the morally pure and the sexually corrupt woman, who was produced in and by literature.

In addition to this emergent gendered regulation, I argue that it is possible to see another subtle form of distinction within this discursive formation. Those who purchased "literature", or engaged in the commercial market, were constituted as reasonably desiring virtue in literature as well as in life. This knowledge pertaining to vice and virtue in literature and life, however, pertained to those who were able to participate financially in the market. While it would be too much to say that virtue could be purchased within the commercial discursive formation, I argue that virtue was most closely associated not only with men, but also with the wealthier classes who had disposable income that allowed them to purchase novels as opposed to penny prints, for example. In this way, virtue was more accessible to, or was associated with, those who could afford "good" books as opposed to the less virtuous and increasingly problematized Grub Street literature of the working class. Thus, while consumers were responsibilized to make good reading choices, financial constraints meant that the working class were implicitly constituted as less virtuous by reason of their more limited access to literature constituted as "good".

This moral regulation project inculcated within the consuming reader the desire and ability to self-regulate, or to become an agent of her own literary and moral regulation. The knowledges and techniques of the commercial discursive formation guided readers to chose literature responsibly and to read and subsequently act virtuously, according to moral standards. Consumers were responsibilized or moralized through reading practices; the practice or

technique of preface writing, for example, was disciplinary in its effects as the reader was guided into virtuous behaviour (e.g. by reading about vice in order to avoid it). The knowledges and techniques of the commercial discursive formation encouraged ethical self-formation, whereby consumers sought to know and act on their moral (or moralized) selves through their interactions with literature; the reasonable consumer was expected to purchase, read and respond to literature responsibly or virtuously without state, legal or religious regulation, but rather by practicing self-restraint or self-governance. Thus, rather than producing a simple political citizen subject who could be governed effectively by authorities, the regulatory knowledges and techniques of the commercial discursive formation encouraged self-formation and self-governance and constituted frames of meaning whereby literature could be constituted as a "profitable" means of inculcating virtue.

This reasoning, or these forms of knowledge and techniques of regulation, continue today for all who participate in the commercial market. Perhaps most obviously, we are encouraged to purchase self-help books through which we can gain insightful knowledges and modify our behaviours in order to become "better" selves. More subtly, we continue to distinguish between "good" (or virtuous) literature and "trash". The latter is frequently constituted as a "waste" of money, pointing to the continuation of the influence of commercial knowledges in our reading choices and the value placed on literature as edification rather than "merely" entertainment. "Trashy" novels or magazines are constituted as being for the credulous (or unreasoned) and as appealing to baser (or more passionate) natures; they are constituted as a "low" form of entertainment, as opposed to literature that enriches the reader. Thus, the commercial discursive formation continues to produce knowledges pertaining to the benefits of good literature and its uplifting effects on the virtuous and reasonable consumer.

Judicial (Common Law) Discursive Formation

In the judicial discursive formation, which at this time was limited to the common law courts and which emerged more or less coincidentally with the commercial discursive formation, the *object* of regulation was the crime of obscene libel. The harm of obscene literature, or the social consequences of sexually explicit reading materials, was constituted as detrimental to public morals and the moral social order; in order to both constitute and reinforce the idea of social cohesion, or the adherence to normative moral standards of behaviour, deviation from these standards was penalized through criminal sanction.

Immorality and illegality were linked through the crime of obscene libel; *knowledges* of regulation pertaining to the obscene were derived from both religious and legal grids, but were affirmed and reproduced by judicial practices (e.g. verdicts). Knowledge of the obscene as bad, harmful, or immoral was required in order to regulate it through law; conversely, the regulation of obscenity as a crime though the techniques of law reinforced the truth of obscenity as bad or harmful. *Agents* of regulation, who were at that time primarily judges, normalized the criminalization of sexual representation through common law *techniques*, including the legal trial and the ritualistic determination of guilt that authoritatively determined obscene literature to be a crime. Additional techniques included legal precedent, from which legal authority was derived and reproduced, and punishment, which similarly affirmed and reproduced the authority of common law verdicts. These processes, enacted by judges who pronounced judgment and sentence, reproduced the truth and harm of obscenity as a crime.

Through the practices of common law, sexual and public morality were encouraged through the prohibition and punishment of obscene literature. The *targets* of regulation included criminals, or those who wrote, published or sold obscene literature, as well as the moral public or

the law-abiding citizen who accepted the authority of legal knowledges and techniques to regulate what could and could not be read. The criminal subject was constituted through practices of punishment that were applied to those who deviated from the moral norm and violated legal standards. In contrast, moral citizen subjects accepted legal determinations or prohibitions and/or were guided by the threat of legal punishment to read "good" literature (and more generally were encouraged to be good). The social order, meanwhile, was constituted as essentially moral and threatened by criminals who deviated sufficiently from normative standards of behaviour that were established and reproduced by common law. Thus, while the commercial discursive formation encouraged consumer subjects to (learn to) be good through realistic literature, within the judicial discursive formation, moral citizens required protection from obscene literature and associated criminals. Judges, as guardians of public morals who mobilized common law, were constituted as protecting and preserving a moral or Christian social order from moral harm or badness; the criminalization of that which was constituted as deviant or immoral was normalized as the knowledges and techniques of common law successfully problematized obscene libel as a threat to the moral nation.

Within the judicial discursive formation, sexual representation in literature was constituted as both immoral and illegal and as inherently bad or harmful. However, the distinction between the legal and the illegal was not easily determined; the circumstances of publication, including the reputation of the author, publisher and/or seller (and possibly the imagined reader) affected ideas or standards of goodness and badness. Those like Curll who were constituted as selling only for profit were guilty and their literature bad, while those like Fielding, who could successfully mobilize the vice in literature discourse of the commercial discursive formation or who could argue that their literature ultimately led to virtuous behaviour,

were less likely to be censured. Distinctions between good and obscene literature, therefore, referred not only to a material object which could be measured against legal criteria or standards, but also incorporated socio-economic considerations as the "moral" standing of the subject was considered in relation to legal proceedings. Thus, we can see that once again classed notions of virtue enabled the reputable bookseller (for example) to escape moral censure and legal sanction while the disreputable or industrious (e.g. rather than genteel) labourer could not. This suggests that while common law was seemingly an authoritative determinant of good and bad, harmful and harmless, and provided standards by which subjects could orient themselves and judge the obscene, it did not effectively exclude competing knowledges (i.e. from the commercial discursive formation). While the verdict was intended to silence opposing arguments and provide an authoritative and final claim to truthful legal knowledges, common law verdicts, perhaps because of their conflicted beginnings, did not effectively dominate what could be thought about literature and its effects on subjects.

While today it might seem that we are liberated from the "repression" of precedent and judicial edict, and many books once deemed legally obscene have since been declared classics, the effects of this discursive formation continue. It was within this judicial discursive formation that the sexual, or sexual representation, was successfully or authoritatively constituted as both immoral and illegal and thus required prohibition (e.g. rather than reason, as in the commercial discursive formation). The significance of this cannot be understated, nor its effects underestimated. We continue to see debates about what knowledge can be disseminated to youth through sexual education programs, for example; the continuing concern is that sexual knowledge and behaviours are linked and are problematic. Whether the behaviours that students might participate in are illegal or not, the "marriage" of sexual knowledge and behaviour and the

possible harm that might result indicates an ongoing association between the sexual (as knowledge or representation) and the immoral. Sexual knowledge is still constituted in some instances or by some populations as morally corrupting and as requiring prohibition, even as some sexual behaviours continue to be regulated by laws.

Religious Discursive Formation

The religious discursive formation emphasized the problem of immorality pertaining to obscene literature and affirmed that law was the best way to mitigate the harm; however, the religious discursive formation mobilized its own agents to assist in the regulation – legal and otherwise – of obscene literature. The *object* of regulation was literature that was sinful due to its sexual and (therefore) immoral content. The imputed harm was to the soul of the reader and to a moral or Christian social order that was threatened by the consequences of sexual literature, constituted as a seduction to vice or sin. *Agents* of regulation included members of the Church hierarchy, including bishops, who exhorted priests as well as secular agents from the institutions of law and the family to vigorously prevent the dissemination or consumption of obscene literature through legal prohibition and moral teaching and example. Drawing on religious scriptures and teachings, *knowledges* of regulation pertaining to the harm of the obscene and the duty of the patriarch (whether religious or secular) were reproduced in order to encourage moral or Christian ways of living and being and to suppress others. *Techniques* of regulation included sermons and calls to repentance that depended on or drew from scriptural knowledge and authority. Through cycles of confession and exhortation, sinners were encouraged to live good Christian lives with the help of priests-as-shepherds and according to religious standards provided by Church doctrine. *Targets* of regulation, therefore, were the flock generally and the

sinner specifically; moral regulation projects produced Christian or pious subjects who were encouraged or exhorted to chose biblically correct and Church-sanctioned behaviours (and reading materials), reinforcing and reproducing the Church as a dominant moral authority. These pious subjects were encouraged or formed through techniques of regulation that governed others (e.g. sermons directed at the flock) as well as techniques that governed the self (e.g. confession and abstention). Thus, pious subjects were formed through diverse means that included elements of (patriarchal) domination, as well as techniques that encouraged them to know and act on their selves, or to choose literature and pleasures rightly according to scriptural or doctrinal standards.

This religious discursive formation produced a distinctive gendered hierarchy as patriarchs (i.e. priests and heads of families) were encouraged by the authority of the Church to ensure the moral behaviours of themselves and others; men (rather than judges as in the judicial discursive formation) were constituted as the guardians of moral virtue. Through the regulation of obscene literature, a patriarchal religious social order was affirmed, and the reading materials of women and youth were problematized to the extent of requiring governance to prevent sin. This not only constituted men as having moral authority, but also contributed to the process of moral or Christian nation-building; the Christian nation was to be distinguished by the virtue and morality of its pious subjects and assured by the actions of men authorized and mobilized by the Church. Thus, while the Church seemingly surrendered some of its authority to law – e.g. by arguing for vigorous prosecution in order to prevent the spread of sin and moral corruption – the Church did not surrender its "moral authority" or its jurisdiction over moral behaviour. Instead, the Church extended its authority into the everyday secular reading habits of its flock.

It is this discursive formation that is perhaps most readily conceived today in association with the concept of obscene literature. When parental or religious groups seek to ban books from schools or libraries, for example, religious association and conservative moral standards are often formulated as the reason for their actions. Yet this religious discursive formation was certainly not dominant in comparison to the other three discursive formations discussed. In terms of the governance of others, it competed with the judicial discursive formation over jurisdiction of moral authority, and in terms of the governance of self it competed with the commercial discursive formation over standards of right living. I argue, therefore, that any understanding of obscenity as only a religious issue is inconsistent with the genealogy traced thus far; further, in instances where there seems to be continuity, elements of the religious discursive formation need to be considered in all of their complexity and contingency.

Discussion of Discursive Formations and their Significance

Why does it matter that there were four distinct discursive formations that conceptualized, problematized and regulated obscenity in distinct ways? Rather than suggesting that obscene literature or sexuality was repressed by the veridical, judicial or religious discursive formations (e.g. on moral grounds), or alternatively that it was accepted in the commercial discursive formation (i.e. as leading to virtue or legitimate business), this chapter demonstrated that there was not a universal or definitive conceptualization of the obscene. Discursive formations competed for dominance in the regulation of the obscene; the authority of agents and institutions, the relations between thought objects and material systems, and the effects on subjects and social orders was at stake. Multiple and sometimes competing projects of moral regulation were aimed at “obscenity”, pointing to the contingency and complexity of its (or their)

emergence, existence and effects. Perhaps the best example of this competition and contestation among the discursive formations occurred when Griffiths published the expurgated version of *Fanny Hill* for moral and financial profit, which was in line with the discursive practices of the commercial discursive formation. In response to the act of publication, a nexus of mechanisms of regulation, including confinement by the Messengers (a remnant of the veridical discursive formation), directions from the Secretary of State to prosecute (a common law action), and denunciation by the Bishop of London (an authoritative agent of the religious discursive formation), formed a complicated interaction in the regulation of the novel. At this and other historical moments previously described, the state, commercial market, common law court and Church constituted and contested problematic discourse objects called "the obscene", as well as the best means to regulate the object, through and with distinct systems of knowledge and institutional practices. This understanding of the obscene and its regulation as complex and contingent and as a matter of contestation or struggle enables us to trace both continuity and transformation in the discursive formations that followed, and helps us to question common sense or commonly received understandings of obscenity. These competing discursive formations contributed to ruptures and necessitated new attempts in the regulation of the obscene that are discussed in Chapters 5 and 6.

Conclusion

This chapter demonstrated that obscene literature cannot be thought of as a single concept, problem, or object of regulation. Nor was the process of constituting the obscene progressive, natural or inevitable; instead, this chapter demonstrated that the emergence of obscene literature and its problematization were both constituted and contested by multiple

discursive formations, even as practices to regulate obscene literature became increasingly institutionalized, particularly by law. By describing the emergence of obscenities as a result of interactions among the discursive formations identified, the effects of the transmission of knowledge and norms pertaining to the obscene through relations of power were considered. By considering the complexity and contingency of the constitution and regulation of the obscene, I ultimately pointed to those relations of power-knowledge that emerged, transformed and re-emerged in subsequent discursive formations and that continue into the present – and which continue to constitute subjects and social orders – thus conducting an effective history.

As I began this chapter with the discussion of a royal proclamation, so I end with a discussion of the *Royal Proclamation* (*for the Encouragement of Piety and Virtue, and for Preventing and Punishing of Vice, Profaneness, and Immorality*), issued by King George III in 1787.[722] This proclamation is an excellent summary for what went before (and was discussed throughout this chapter), and also sets up what is to come in terms of regulatory discursive practices. As the title suggests, the king aimed to encourage virtue and to prevent and punish vice, profaneness and immorality. Vice was both associated with *and* differentiated from profaneness and immorality. Likewise, the obscene was constituted as both secular (and subject to common law regulation) and religious (and subject to religious regulation). In other words, the concept of vice, developing in relation to print matter and the concept of the obscene, emerged in the late eighteenth century as a secular and more specifically, sexual concern, increasingly separate from religious strictures and institutions. Yet the secular institution of law – which itself turned to religious standards of morality to establish its jurisdiction over the

[722] George III, "A Proclamation, for the Encouragement of Piety and Virtue, and for Preventing and Punishing of Vice, Profaneness, and Immorality," in *Gentleman's Magazine* (London), June 1787, 534-535, https://books.google.ca.

obscene – engendered doubt as to its ability to regulate or effectively prevent and punish vice. The *Royal Proclamation* (1787) was written in the context of these concerns about vice and the effectiveness of existing and emerging (legal) regulation, such as those concerns expressed by the Bishop of London. In fact, this *Royal Proclamation* (1787) is prescient regarding the regulatory mechanisms, or discursive practices, that emerged in the next century (and which are described in the next chapter).

The *Royal Proclamation* (1787) began by problematizing vice – including impiety, licentiousness, profaneness and immorality – as observable or publicly visible.[723] Vice was not considered to be a private or an individual matter (i.e. a matter for reasoned self-determination), but one that affected the public body or public civility and which impinged on religious and secular authority and moral thoughts and actions. Further, vice was increasingly specified, or conceived as being of various types. Within this specification, obscene literature emerged as a type of vice within primarily judicial and also religious discursive formations as a problem that affected the morality of the public and was consequently deserving of legal (if not divine) judgment.

As a result, leading authorities were required or encouraged to provide good or virtuous examples so that people would be shamed into imitating them. These examples were required because common law alone seemed unable to prevent the deterioration of moral behaviour. In the words of the proclamation, organized social pressure was required "that the visible displeasure of good men towards them [i.e. dissolute and debauched persons], may (as far as it is possible) supply what the laws (probably) cannot altogether prevent".[724] I suggest that a

[723] George III, "A Proclamation," 534.

[724] George III, 534.

particular form of moral regulation – distinct from proclamations, decrees, laws or religious exhortations – emerged as an effective means to govern virtuous behaviour. Doubting that the extant laws could effectively prevent vice, the king mobilized leaders and authorities (in much the same way as the Bishop of London) in order to act collectively and to influence others to virtue. In other words, the king did not rely on the effectiveness of common law pertaining to vice and to obscenity, but required that there be a certain influential coming together to reform and protect public morals. This reform, an integral part of the transformation described in the next chapter, was organized. In fact, one organization – the Proclamation Society – involved in projects of moral regulation derived both its name and mission from this *Royal Proclamation* (1787).

To encourage piety and virtue, the king called for his subjects to attend Church. However, the bulk of the *Royal Proclamation* (1787) was directed toward the prevention and punishment of vice, profaneness and immorality; specifically, those within the legal institution, primarily civil but also ecclesiastical, were directed to actively discover, prosecute and punish a litany of public order or morality offences, including "all loose and licentious prints, books and publications".[725] What is particularly interesting is that in the list of immoral offences, only obscene literature was singled out as having a particular effect on a particular population; namely, obscene literature was constituted as "poison to the minds of the young and unwary".[726] This idea of social poison emerged and developed more fully in the following century. For now, suffice it to say that the king mobilized the civil authorities (i.e. legal agents) to actively prosecute and punish these as crimes and the Church (i.e. including religious agents) to

[725] George III, 534.

[726] George III, 534.

disseminate warnings. In summary, this *Royal Proclamation* (1787) allied the concerns of the state and Church and mobilized their respective institutions in an attempt to regulate sexual and immoral literature on behalf of public morals, and in particular on behalf of the vulnerable (including women and youth).

CHAPTER V

The Judicial Discursive Formation:

Establishing the Legal Regulation of Obscenity and Prosecuting *Fanny Hill*

Introduction

In the last chapter we left John Cleland in some difficulty; he had landed in debtor's prison and to escape he had written *Memoirs of a Woman of Pleasure*, only to find himself confined in a Messenger's House. There is no evidence that Cleland or Ralph Griffiths were ever prosecuted for the publication of either volume of *Memoirs* or the expurgated one volume *Fanny Hill*. Unfortunately for Cleland, this chapter begins with his obituary, which mentioned "those loose principles which, in a subsequent publication, too infamous to be particularised, tarnished his reputation as an author".[727] Commenting on the circumstances that led to this infamous publication, the obituary recorded that, "one of those booksellers who disgrace the profession, offered him a temporary relief for writing the work above alluded to, which brought a stigma on his name, which time has not obliterated, and which will be consigned to his memory whilst its poisonous contents are in circulation".[728] The publication "too infamous" to be named was *Fanny Hill*; the novel also apparently made Cleland infamous. Thus, while Cleland escaped criminal prosecution, he did not escape moral censure.

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[727] "Obituary of Considerable Persons; with Biographical Anecdotes," *Gentleman's Magazine* (London), February 1789, 180, http://babel.hathitrust.org/cgi/pt?id=mdp.39015010955014;view=1up;seq=9.

[728] "Obituary of Considerable Persons," 180.

Others, however, were not so fortunate. In 1757, Samuel Drybutter was – perhaps – sentenced to the pillory for selling copies of *Fanny Hill*.[729] For over two centuries, it was believed that Drybutter was responsible for inserting the particularly problematized sodomitical scene; due to a lack of documentation, it is unclear whether this attribution contributed to or stemmed from his time in the pillory. In 1798, John Cole was convicted for publishing, among other works, *Fanny Hill*; he was required to find sureties to come up for sentence if and when summoned, but there is no record of any sentence.[730]

While criminal (both common and later statutory) and regulatory laws attempted to suppress *Fanny Hill* and even obituaries tried to silence discussion about it, I suggest that within this period *Fanny Hill* emerged – as part of an incitement to discourse – as *the* symbol of obscenity. For example, the following article problematizes the actions of a bookseller, but rather than naming the obscene pamphlet for which he was indicted, *Fanny Hill* is mentioned.

> In the court of king's bench, Aldridge, a scoundrel booseller [sic], like some of those who sell the *chastity* of Rochester, and of Fanny Hill in this country, was indicted for publishing an obscene pamphlet. . . Justice Grose expatiated with great warmth, upon the infamy of those, who from SORDID MOTIVES of GAIN, thus circulated poison. The sentence passed upon this literary pander to lust was a fine of six marks to the king, and hard labour in the house of correction, for the space of twelve calendar months.[731]

Aldridge was morally and legally condemned for publishing a book that was compared to *Fanny Hill*, which was seemingly a notorious standard of obscene literature. I argue that *Fanny Hill* (and more broadly the obscene) was made illegal but not unimaginable; it was made punishable

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[729] For more on the problematic historical accounts pertaining to Drybutter, see Thomas, *A Long Time Burning*, 85; Peter Sabor, "From Sexual Liberation to Gender Trouble: Reading *Memoirs of a Woman of Pleasure* from the 1960s to the 1990s," *Eighteenth-Century Studies* 33, no. 4 (2000): 563, 571, https://www.jstor.org/stable/30054163.

[730] PRO, KB, 28/387/2, in Thomas, *A Long Time Burning*, 120.

[731] "Political Synopsis," *Port-Folio* (Philadelphia), August 8, 1801, 255, ProQuest American Periodicals.

but not impossible. Criminal and regulatory laws were utilized to authorize ways of conceptualizing and responding to obscenity and to exclude other ways, but commercial and aesthetic pressures and knowledges contested the dominance and efficacy of the legal regulation of the obscene, eventually leading to a rupture.

This chapter builds on the previous one, which described the contingent and not at all assured establishment of the common law jurisdiction over obscene writing. I suggested that common law emerged as a discursive practice that had little force or effect throughout the eighteenth century, perhaps as a result of the contradictory rulings in *Read* (1708) and *Curl* (1727). I described how obscene literature in particular was increasingly conceptualized as a moral problem, or as a threat to public morals, not only in practices of law, but also within the discursive formation of religion. In this chapter, I describe how processes of legal regulation emerged as the dominant response to the problem of the obscene. These practices of regulation initially depended on the combined efforts of organized vice societies and common law enforcement agents and institutions; subsequently, however, state-initiated legal practices became dominant and part of the intensification of the regulation of the obscene. At that point, the conceptualization of obscenity was distinguished from religious-moral considerations and was constituted in terms of secular – and especially sexual – morality or public civility.

The commercial discursive formation contested both the conceptualization and regulation of the obscene, as critics and writers produced knowledge of the aesthetic (object) in line with the art for art's sake movement and argued for the responsibilization of the individual who should be "free" or have the "right" to make her own (reading) choices. While these knowledges were subsumed during moments of intensification, or were incorporated into statutes and precedents, the judicial discursive formation became less able to successfully reproduce

knowledge pertaining to the harms of the obscene. Given the competing knowledges produced by "literary experts" and reproduced by some judges and parliamentarians, the obscene was reconceptualized in law as a sexual object that was in and of itself bad, immoral and illegal. This conceptualization of the problematic discourse object became unsustainable and led to a rupture that enabled a new discursive formation, which I call scholastic, to become dominant (discussed in Chapter 6). In tracing these historical emergences and transformations in the legal regulation of obscenity, this chapter concludes by considering the effects of these legal knowledges and regulatory techniques on the constitution of moral subjects and social orders, focusing in particular on how the legal regulation of the obscene was directed unequally at the population, singling out women, youth and the working class as particularly vulnerable to the harms of the obscene.

Getting Organized Against Vice: Vice Societies and Common Law

At the end of the last chapter, the *Royal Proclamation* (1787) was discussed; it was concerned with mobilizing legal agents, the clergy, and upstanding citizens to encourage piety and discourage vice, including obscene literature. This document led to the formation of the Proclamation Society in 1789, which in 1802 became the Society for the Suppression of Vice (SSV).[732] Around the turn of the century, therefore, there was an increasingly organized public response to vice, and in particular to obscenity; concomitantly, there was also an increasing

[732] Historically, vice societies were not unheard of in Britain; for example, the Society for the Reformation of Manners was established in 1691. However, the organization and public and political influence of the SSV was unprecedented. In the United States, comparable vice societies were formed much later; for example, the New York Society for the Suppression of Vice (New York SSV) was founded by Anthony Comstock in 1873. Although the names are similar, it should not be inferred that there was a link between these organizations. In 1885, the British SSV was replaced by the National Vigilance Association, whose goal was similar in that it tried to create and enforce criminal laws to suppress public immorality.

reliance on the use of criminal common law to, literally, *suppress vice in society*. This section traces the emergence of vice societies, as well as their objectives and methods pertaining to the problematic regulatory object of obscene literature.

In the late eighteenth century, *The Pursuits of Literature* (1798) likened an author to Cleland and criticized state authorities for failing to act – or, more specifically, to use criminal law – against the seemingly uncontrolled (but not uncontrollable) problem of vice.

> Another Cleland see in LEWIS rise.
> Why sleep the ministers of truth and law?
> Has the state no controul, no decent awe,
> While each with each in madd'ning orgies vie,
> Pandars to lust, and licens'd blasphemy?
> Can senates hear without a *kindred* rage?
> Oh may a poet's light'ning blast the page,
> Nor with the bolt of Nemesis in vain
> Supply the laws, that wake not to restrain.[733]

The author identified vice, and in particular sexual license and blasphemy, as a problem that the state *should* be responsible for restraining. As established in the previous chapter, while the king had asserted jurisdiction over unruly print matter, for example, it was by no means an obvious development. Similarly, when the courts, for example in *Sedley* (1663), made tentative steps to assert jurisdiction over public morality (i.e. as guardians of public morals), there were not yet clearly defined institutional mechanisms or practices to either identify or deal with such infractions. The governance or regulation of public morality was not certain, but contingent; however, the effects of decisions such as *Curl* (1727), which established obscenity as a common law offence, perhaps contributed to an expectation that the state through the courts *should* be dealing with public immorality, or vice. Organized groups such as the SSV emerged in order to assist the state in carrying out its newly imagined and still ill-defined duties in this area.

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[733] [Thomas James Mathias], *The Pursuits of Literature* [. . .], 6th ed. (London: T. Becket, 1798), 293-295, Gale Eighteenth Century Collections Online.

In early nineteenth century Britain, prosecutions for obscenity were not initiated or investigated by agents of the state; private complaints led to prosecutions and the complainant bore the costs of prosecution. This perhaps explains, at least in part, why so few prosecutions for obscenity occurred until well-financed and organized groups like the SSV coalesced and identified obscenity as particularly problematic and therefore worth pursuing through criminal prosecutions. The success or inevitability of such organizations as the SSV, let alone their recourse to and reliance on criminal law, was never assured, however. Consideration of a pamphlet addressed to the public indicates that, from the very beginning, the SSV mediated its public image in order to positively influence public acceptance of its goals (i.e. the suppression of vice) and methods (e.g. through law enforcement).

In this pamphlet,[734] the SSV explained its purpose as well as the necessity of such an organization dedicated to fighting various public evils. The pamphlet listed, over eighteen pages, its members, which included men and women, nobles and esquires, and members of the military, clergy, and Parliament;[735] this points to a confluence of religious and state regulatory agents, constituted here as moral leaders, carrying over from the last chapter. The pamphlet then included the text of the *Royal Proclamation* (1787) as the justification for its existence; in other words, the SSV constituted itself as fulfilling the aims of the *Royal Proclamation* by encouraging piety and discouraging vice.[736] Only after having asserted its social pedigree and having justified the organization's existence did the SSV directly address the public. This suggests that the

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[734] Society for the Suppression of Vice, *Part the First, of an Address to the Public, from the Society for the Suppression of Vice* [. . .] (London: The Society, 1803), Gale Making of the Modern World.

[735] Society for the Suppression of Vice, *Address to the Public*, 3-20.

[736] Society for the Suppression of Vice, 21-26.

organization and its interventions were not inevitably welcomed or accepted by the public, and that steps were required to minimize resistance and improve public relations.

The pamphlet explained that "[i]t is a truth too evident to be denied, not only that vice has of late advanced upon us with almost unexampled rapidity; but that it has assumed a more bold and daring appearance, stalking abroad in open day, both in defiance of shame, and of the correction of laws".[737] This reiterates the concern mentioned in *The Pursuits of Literature*, which was that vice was (perceived to be) increasingly public and that common law was ineffectual in suppressing it. To put it differently, the SSV was concerned with the public evidence of vice as well as with the effects of vice on the public.

The goal of the SSV was to oppose vice and to re-establish religious principle by encouraging magistrates to enforce criminal common laws with the aid of the developing police system.[738] Recognizing that state officials failed to detect offences, and also that some offences against morality and decency were not illegal, the SSV strove to suppress public manifestations of vice through positive influence and organized legal action.[739] The SSV intended to reverse the public descent into vice by employing religion (rather than reason as in the vice in literature discourse) and virtue contra vice.[740] More specifically, the SSV intended to aid magistrates in the enforcement and detection of immorality and illegality;[741] the SSV stressed that the

[737] Society for the Suppression of Vice, 27.

[738] Society for the Suppression of Vice, 31.

[739] Society for the Suppression of Vice, 31-36.

[740] Society for the Suppression of Vice, 38-39.

[741] Society for the Suppression of Vice, 48-50.

organization, in every instance possible, would try to prevent vice rather than punish it.[742] This indicates that, at least initially, the goal of the SSV was to encourage moral reform rather than enforce it. It also indicates that criminal common law was seen as a punitive final resort. Instead of being a punitive organization, the SSV was formed to wield its collective religious-political influence in order to encourage the public to virtue and to encourage the state to act against vice (e.g. in the manner proposed by the Bishop of London half a century earlier).

While the SSV was generally concerned with the promotion of practices exemplifying public virtue and the prohibition of those exemplifying public vice, more specifically, the SSV sought to encourage (or enforce) regular observation of the Sabbath, and the prevention and/or punishment of obscenity, fraud, procurement, lotteries, disorderly houses, brothels, gambling houses, breaches of the peace, profane swearing, libelling and cruelty to animals.[743] It is worth noting that in this list of offences against morality and/or common law, obscene literature received significant attention; it was listed second among those vices that were of concern to the SSV. According to the pamphlet,

> Infidelity and Insubordination, fostered by the licentiousness of the press, have raised into existence a pestilent swarm of BLASPHEMOUS, LICENTIOUS AND OBSCENE BOOKS AND PRINTS, which are insinuating their way into the recesses of private life, to the destruction of all purity of sentiment, and all correctness of principle. The suppression of this growing evil, has been one of the primary objects of the Society's attention; in effecting which, it has appeared, and does still appear to them, that they cannot give too vigorous an energy to the execution of the laws. Like contempt of the Sabbath, this also aims to vitiate or annihilate the influence of principle; it tends most wickedly to pollute and inflame the minds of the young and innocent, and to quicken the poisonous seeds of innate corruption, into immorality and vice. So alarming, indeed, is the progress of this malignant evil, that it appears to claim a very decided attention in the future deliberations of this Society.[744]

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[742] Society for the Suppression of Vice, 53-54.

[743] Society for the Suppression of Vice, 42-44.

[744] Society for the Suppression of Vice, 43-44.

The SSV drew on religious grids of specification to constitute obscenity as a problematic discourse object, referring to it as a "growing evil", as wicked, immoral, and so on. Religious standards were mobilized by prominent social authorities in order to (re)constitute the obscene not only as illegal or as being contrary to common law, but also and perhaps more significantly as a threat to public morality; as in the last chapter, obscenity was conceptualized as both sinful and illegal. In this instance, it was also conceptualized as morally contagious, poisoning vulnerable populations identified as the young and innocent. This medical-moral imagery, alluded to earlier in Cleland's obituary, is reproduced throughout this century and is discussed later in this chapter.

This somewhat defensive pamphlet perhaps presaged some of the opposition the SSV faced in subsequent decades. For example, in 1811, a letter to the editor commented on the increase, or increasing visibility of poverty;[745] the letter-writer was critical of SSV actions against those who worked on Sundays out of necessity or poverty.[746] Instead of targeting the poor, the letter-writer suggested that the SSV should focus its attentions on the immoral, naming several brothels and problematizing the prostitution of girls under the age of thirteen.[747] Further, instead of trying to stop the circulation of obscene prints in ladies' boarding schools, the letter-writer suggested that the SSV should instead work to ban obscene public displays (e.g. in bookstalls), including advertisements for trial reports and penny prints.[748] Interestingly, the letter-writer referred specifically to *Fanny Hill* as evidence of the public display of immorality,

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[745] B. L. L., "Society for the Suppression of Vice," *Scourge, or, Monthly Expositor of Imposture and Folly* (London), April 1811, 312-313, ProQuest British Periodicals.

[746] B. L. L., "Society for the Suppression of Vice," 313-314.

[747] B. L. L., 314-315.

[748] B. L. L., 315.

commenting that it was "compressed into a sixpenny book, and therefore more easily accessible".[749] It is important to note that the letter-writer was critical of the SSV *not* because it tried to suppress vice, but because it seemingly oppressed and harassed the poor rather than the (in the letter-writer's opinion) immoral. Further, and despite the assurances of the SSV's pamphlet of ten years earlier, the letter-writer was critical of the organization's tendency to court publicity through criminal prosecution rather than through quieter and possibly more effective regulatory processes.[750]

Three important issues were raised in this letter to the editor which continued to be of concern throughout this period. First, there was a class dimension to obscenity proceedings, which was more obvious in Britain although not absent in the United States. Not only were the poor particularly targeted for prosecution, but obscenity was considered to be more threatening when it circulated in penny prints or sixpenny books as opposed to deluxe editions. Second, more than sixty years after publication, *Fanny Hill* continued to be publicly accessible both as a commercial object and as a symbol of obscenity (or vice). While it would be premature to say that it was prominent, *Fanny Hill* was at least publically recognizable enough to serve as a rhetorical device in this letter. Finally, there were concerns about the adverse effects of criminal prosecutions, in that such prosecution potentially advertised rather than effectively suppressed obscene literature. The threat of commercially viable and available obscenity on particularly vulnerable groups, the prominent role of *Fanny Hill* in the public imagination, and the dangers of public prosecutions were reproduced throughout this period.

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[749] B. L. L., 315.

[750] B. L. L., 316.

Despite the criticisms of the letter-writer, an oblique reference to the apparent success of the SSV is contained in an 1819 House of Lords debate pertaining to the *Blasphemous Libel Bill*; Lord Erskine objected to the bill, arguing that extant common law was adequate not only for blasphemy, but also for seditious and obscene libels.[751] He commented that when he came to the bar, obscene publications "were as openly exposed to sale in London as at the Palais Royal in Paris; but a private society [i.e. the SSV], without even the aid of the great resources of the Crown, or of any new law like the present, completely succeeded in putting down this odious nuisance".[752] The bill ultimately passed, albeit with considerable debate and division, suggesting that parliamentarians were not entirely comfortable with the extant means of regulation, whereby common law could be mobilized by vice societies. It should be noted, however, that the bill pertained only to blasphemous and seditious, rather than obscene, libels.

Discontent with the methods and necessity of the SSV became more evident in subsequent years. In 1821, Dr. Stephen Lushington criticized the SSV in the House of Commons, describing them as "that society whose business it was to dive into obscene pamphlets and prints", and as "a set of cowardly pusillanimous hypocrites, who prosecuted the poor and helpless, but left the great and noble unmolested".[753] Notably, William Wilberforce, the philanthropist best known for his opposition to slavery, responded to Lushington's comments

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[751] Hansard, *Blasphemous Libel Bill*, HL Deb 06 December 1819 vol 41 cc706-710, https://api.parliament.uk/historic-hansard/lords/1819/dec/06/blasphemous-libel-bill#column_706. All references to British parliamentary proceedings are taken from digitised editions of the Commons and Lords *Hansard*, and are searchable in the format presented here or in the bibliography.

[752] Hansard, *Blasphemous Libel Bill*, cc707-708.

[753] Hansard, *Constitutional Association*, HC Deb 03 July 1821 vol 5 cc1491, https://api.parliament.uk/historic-hansard/commons/1821/jul/03/constitutional-association#column_1486.

with support for the goals and methods of the SSV.[754] The Attorney General noted that no attempt had ever been made to question the legality of the SSV, and also suggested that members of the SSV were actively pursuing the English common law tradition in which there were no public prosecutors, but rather prosecution was brought forth by citizens.[755] This discussion about the propriety of vice societies and the potential abuses that attended them (including the use of informants, extra-legal pressures exerted on booksellers, and discretionary prosecutions) continued for years.[756]

As late as 1918, American H. L. Mencken was able to comment on vice prosecutions and preoccupations, suggesting that the reality of sex was far less interesting or dangerous than the fantasies that vice societies portrayed. Mencken criticized the "pornographic Methodist, [who] in the discharge of his duties as director of an anti-vice society, puts in an evening ploughing through such books as. . ."[757] What is significant is the persistence of the doubts and criticisms that followed vice societies in two different countries. Vice societies were unable to consolidate or at least to maintain (e.g. through public or political support) the relations necessary to participate in the regulation of obscene literature.

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[754] Hansard, *Constitutional Association*, cc1492-1493.

[755] Hansard, cc1494-1496.

[756] E.g. Hansard, *Petition from Mary Ann Carlile for Release from Imprisonment*, HC Deb 26 March 1823 vol 8 cc709-735, https://api.parliament.uk/historic-hansard/commons/1823/mar/26/petition-from-mary-ann-carlile-for#column_709; see also Thomas, *A Long Time Burning*, 422-430.

[757] H. L. Mencken, *In Defense of Women* (New York: Philip Goodman, 1918), 154, Everyday Life and Women in America. Note that this edition does not list *Fanny Hill* as one of those books that are read, while later editions do. E.g. H. L. Mencken, *In Defense of Women* (Garden City, NY: Garden City, 1922), 149, https://babel.hathitrust.org/cgi/pt?id=mdp.39015008862529;view=1up;seq=1.

I described increasing tensions as a result of both support for and opposition to organized vice societies, and in particular to the common law methods used to suppress vice. I suggest that the formation of vice societies was made possible by the dominance of the conceptualization of the population as moral; from the time of *Curl* (1727), the social order was constituted as essentially moral, threatened by obscenity, and requiring regulation including through law. The grids of specification by which the obscene could be conceptualized as problematic drew from religion and morality; the obscene was illegal because it was immoral. The authorities of delimitation were those political-moral leaders, including the SSV, who were so authorized because of the *Royal Proclamation* (1787), common law tradition, as well as their social status; this authority likewise enabled the SSV (in terms of the formation of enunciative modalities), to address statements both to the public, for example via the pamphlet, and within Parliament. While I have shown that there was a general consensus that the obscene was problematic, harmful and/or dangerous to the moral public, what exactly should be done about obscenity and who should do it was contested. The regulatory efforts of vice societies were increasingly criticized, especially by parliamentarians. The concern was that if an organization such as the SSV was in fact required, then the extant common law, which parliamentarians could alter through statute, was inadequate to regulate offences like obscenity.

This section traced the emergence of the SSV as an organized means to suppress vice by facilitating the enforcement of laws pertaining to obscenity. The tensions surrounding this organization and its methods, however, contributed to conditions in which an increasingly state-led response to obscene publications became possible. Before discussing the constitution of criminal statutes pertaining to the obscene, I first consider the regulation of the obscene by common law procedure in order to demonstrate that while the regulatory efforts of the SSV were

contested, common law was the dominant – albeit contested – means of regulating the obscene for over a century.

Obscenity at Common Law

In the previous section, common law pertaining to obscenity was problematized because it required prosecutions to be brought by vice societies. This section considers in more detail common law procedures and the regulation of obscene literature; this discussion frequently describes the common law regulation of *Fanny Hill* specifically. I argue that *Fanny Hill* was integral to the constitution of common law practices pertaining to the obscene, given its frequent and prominent recurrence in proceedings.

In 1816, Joseph Chitty recorded the indictment, on charges of obscenity, against the bookseller Edward Rich; for some time Chitty's text was used as a template in obscenity proceedings in Britain as well as the United States. Rich was indicted for, among other publications, *Fanny Hill*. The indictment read as follows:[758]

> That Edward Rich, late of, &c. bookseller, being a person of a wicked and depraved mind and disposition, and most unlawfully, wickedly, and deviously devising, contriving, and intending to vitiate and corrupt the morals of all the subjects of our said present sovereign lord the king, and to debauch, poison, and infect the minds of all the youth of this kingdom, and to bring them into a state of wickedness, lewdness, debauchery, and brutality, on, &c. with force and arms, at, &c. did unlawfully, wickedly, and impiously publish, and cause and procure to be published, a certain wicked, nasty, filthy, bawdy, and obscene libel, entitled. . .
>
> "Memoirs of a Woman of Pleasure," in which said last-mentioned libel are contained amongst other things, divers wicked, false, feigned, lewd, impious, impure, bawdy, and obscene prints, representing and exhibiting men and women, with their private parts in most indecent postures and attitudes, and representing and exhibiting men and women in the act of carnal copulation in various attitudes and postures. And in which said lastmentioned libel are contained amongst other things, divers wicked, false, feigned,

[758] Please note that I excerpted (1) the introduction of the indictment, (2) the portion pertaining to *Fanny Hill*, which was the sixth count of the indictment, and (3) returned to the conclusion of the second count, as directed.

> lewd, impious, impure, gross, bawdy and obscene matters, that is to say in one part thereof, according to the tenor following, viz. [*here state libellous matter*. . .]. . .
>
> to the high displeasure of Almighty God, to the scandal and reproach of the Christian religion; in contempt of our said present sovereign lord the king, and his laws, to the great offence of all civil governments, to the evil and pernicious example of all others, in the like case offending, and against the peace of our said lord the king, his crown and dignity.[759]

The indictment expressed concerns about the effective rule and authority of the Crown and Church consistent with the veridical discursive formation, characterized by the *Royal Proclamation* (1538); it also expressed concerns about the moral corruption of vulnerable populations, consistent with the vice in literature discourse of the commercial discursive formation, as well as the discursive formation of religion; finally, it focused in particular on the harms of sexual representation most clearly expressed in the religious and commercial discursive formations. Thus, common law drew from several discursive formations in order to constitute, problematize and regulate the obscene. I later suggest that the development of statutory laws was not only to "improve" regulatory practice (i.e. over common law procedures), but also to more effectively unify discursive practice within a single dominant discursive formation (i.e. law) and to produce the truth of the obscene. For now, I suggest that common law was not effectively unified, or was particularly susceptible to contestation and struggle, as evidenced in the following instances.

In the United States, the first prosecution for obscene literature occurred in the state of Massachusetts; in 1821, the conviction of Peter Holmes, who had published an edition of *Fanny Hill* which also included prints, was upheld.[760] Holmes argued that the court in which he was tried had no jurisdiction, there being no extant common law against obscene libel in

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[759] Joseph Chitty, *A Practical Treatise on the Criminal Law* [. . .], vol. 2. (London: A. J. Valpy, 1816), 42-44, Gale The Making of Modern Law.

[760] *Commonwealth v. Holmes*, 17 Mass. 336 (1821)

Massachusetts (recall similar arguments in *Curl* (1727)). He further argued that the indictment was so vague, not containing any written portion of the book and only the briefest description of the print, that it was impossible for the jury to correctly judge the matter. The Supreme Judicial Court of Massachusetts denied Holmes's appeal, deciding that "it can never be required that an obscene book and picture should be displayed upon the records of the Court" because "[t]his would be to require that the public itself should give permanency and notoriety to indecency, in order to punish it".[761] The court gave its opinion that indictments need only give a general description of the obscene book or print, and affirmed that the Court of Common Pleas had criminal jurisdiction in all but the most serious matters, except where statute indicated otherwise. This decision avoided the question of what exactly constituted the legally obscene, but at the same time affirmed the existence of a crime called obscenity that was subject to common law in Massachusetts.

Thereafter in the United States, common law obscenity prosecutions occurred mainly in New York State; this is due to the fact that, from the 1820s, state legislatures began to codify obscenity prohibitions. New York, however, did not enact an obscenity statute until 1868. Donna Dennis provides an extremely detailed discussion of obscure obscenity prosecutions in nineteenth century New York.[762] I briefly refer to her work in order to show that common law prosecutions of obscenity were rare and uncertain in the United States, just as they were in Britain.

The first obscenity cases in New York both occurred in 1824, and involved James Bonfanti, a store proprietor, Joseph McLelland, a printer, and *Fanny Hill*. Dennis writes that,

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[761] *Commonwealth v. Holmes*, 17 Mass. 336 (1821)

[762] Donna Dennis, *Licentious Gotham: Erotic Publishing and Its Prosecution in Nineteenth-Century New York* (Cambridge, MA: Harvard University Press, 2009).

> it is unclear exactly what inspired the district attorney at the time, Hugh Maxwell, to pursue these unusual prosecutions. The files in the Bonfanti case include an oath by one Thomas T. Ryder stating that he had gone to Bonfanti's fancy goods store to ask about buying *Memoirs of a Woman of Pleasure* and that Bonfanti had readily replied that he had multiple copies in stock. Although we do not know how openly Bonfanti displayed the book or whether he offered other kinds of erotica for sale, his lack of hesitation suggests he was not concerned about the possibility of arrest.[763]

This passage demonstrates that in the early 1800s, *Fanny Hill* was readily available for sale in New York.[764] In fact, Bonfanti sold an illustrated edition as a luxury item for $3.50.[765] Although Bonfanti originally pleaded not guilty, he changed his plea and both he and McLelland received suspended sentences.[766]

In 1842, there was a flurry of obscenity prosecutions with varied outcomes. In *People v. Richard Hobbes* (1842), nine books, including *Fanny Hill*, were listed in the indictment; the indictment began with three passages from the novel.[767] The other cases initiated in 1842 included: *People v. Henry R. Robinson*, *People v. Francis Kerrigan*, *People v. Cornelius Ryan*, *People v. Hiram Cure*, *People v. James Jones*, *People v. Charles Huestis*, and *People v. William Bradley*.[768] Of these cases, Dennis indicates that Robinson's went to trial in January of 1843,

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[763] Dennis, *Licentious Gotham*, 35.

[764] There is evidence that editions of *Fanny Hill* circulated throughout the New England states in the early nineteenth century. For example, in 1818, Daniel Coolidge, a Quaker bookbinder and seller from Concord, New Hampshire, complained to the state governor that two editions of *Fanny Hill* were circulating in the area. McCorison, "Fanny Hill in New England," 30.

[765] *People v. Joseph Bonfanti*, June 9, 1824 (Indictment Papers, CGS), in Dennis, *Licentious Gotham*, 19, 312n13.

[766] CGS Minutes, Dec. 15, 1824, 154, and Dec. 18., 1824, 180, in Dennis, 37, 315n47.

[767] *People v. Richard Hobbes*, Sept. 28, 1842 (Indictment Papers, CGS), in Dennis, 96-98, 326n8.

[768] All cases were Sept. 28, 1842 (Indictment Papers, CGS), in Dennis, 334n10.

and when he did not appear, he was surrendered by his bond; however, there were no further proceedings in the case according to the minutes of the Court of General Sessions.[769] Hobbes likewise initially failed to appear and was eventually sentenced to sixty days after pleading guilty, although the sentence was later changed to a fifty dollar fine.[770] The only other case from this period whose result is recorded was that of Ryan; he was acquitted of the charges involving obscene books in exchange for pleading guilty to offenses pertaining to the obscene prints and received a thirty day sentence.[771]

Then in 1847, Edward Scofield received the harshest penalty for obscenity in antebellum New York after selling *Fanny Hill* for two dollars in the Astor House, a fashionable hotel and meeting place; *Fanny Hill* was the only book named in indictment and Scofield received six months imprisonment.[772] In 1855, in *People v. Thomas Ormsby and John Atcherson*, materials including *Fanny Hill* were confiscated, but charges against Atcherson (variously called Atchison) were dismissed when the mayor of New York City wrote to the district attorney vouching for Atcherson's character and promising that he would refrain from selling such works in the future.[773] In *Edward Rice v. Thomas Gillen, a.k.a. Ormsby* (1856), a grand jury failed to

[769] CGS Minutes, Jan. 9, 1843, 360, and CGS Minutes, Mar. 10, 1843, 524, in Dennis, 134-135, 334n14.

[770] CGS Minutes, Jan. 9, 1843, 360, and CGS Minutes, Jan. 11, 1843, 370, 374, in Dennis, 139-140, 335n25-26.

[771] CGS Minutes, Jan. 16, 1843, 389, in Dennis, 140, 335n27.

[772] *People v. Edward Thomas*, May 17, 1847 (Indictment Papers, CGS), in Dennis, 145-146, 337n42, 45.

[773] Feb. 23, 1855 (Indictment Papers, CGS), in Dennis, 3-4, 309n1, 3.

indict Ormsby even though the court officer testified that he bought a copy of *Fanny Hill* and made a deal to buy two dozen more obscene works for a dollar each.[774]

Then in 1857, George Akarman's (variously known as Ackerman) shop was searched and literature was seized; a grand jury indicted him for obscene libel, specifically for publishing four books categorized as being of European origin, including *Fanny Hill*.[775] There is no further record of proceedings after the indictment.[776] Thus, Dennis's detailed work shows that there were few obscenity proceedings prior to the Civil War, and even fewer that resulted in conviction and punishment; further, almost all of these proceedings included *Fanny Hill* in some respect.

It should be noted that during this time, common law prosecutions likewise occurred in Britain. Notably, in 1856, a high profile incident involving William Dugdale was reported as an "extraordinary" case in *Reynolds's Newspaper*.[777] Dugdale sued an agent of the SSV for unlawfully entering his dwelling, accompanied by police, and without a warrant seizing books, plates, prints and engravings. An arbitrator examined the works seized and determined that the only obscene works were *Fanny Hill* and three other books.[778]

Aside from the reappearance of *Fanny Hill* in these cases as a symbol or standard of obscenity, these cases pointed to the problem of jurisdiction. Common law did not specify

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[774] Mar. 22, 1856 (Police Court Papers, box 7955), in Dennis, 161, 339n81.

[775] *People v. Ackerman*, Sept. 25, 1857 (Indictment Papers, CGS), in Dennis, 191-193, 345n66.

[776] Dennis, 197.

[777] "Yesterd y's [sic] Law, Police, Etc.," *Reynolds's Newspaper* (London), July 13, 1856, 16, http://tinyurl.galegroup.com/tinyurl/8LW5w9.

[778] "Yesterd y's [sic] Law, Police, Etc.," 16.

procedures pertaining to *who* could legitimately investigate and enforce obscenity or *how* such enforcement could proceed. Further, given the small number of cases and even smaller number of convictions resulting in a sentence, the efficacy of common law regulation was in doubt.

In summary, pursuing obscenity as a common law offence was an uncertain process that produced unpredictable results. There were long periods without legal proceedings occasionally followed by very public proceedings. Many cases were dropped before there was a resolution, or resulted in minimal punishment. Others demonstrated that the common law did not adequately allow for certain procedures, including search and seizure. To put it genealogically, during the early part of the nineteenth century, there was struggle not over the obscene (after all, it was generally agreed that *Fanny Hill* was obscene), but over the mode of domination and regulation. Perhaps as a result of the questionable efficacy and enforcement of common law, the United States and Britain began to enact statutes that dealt with the problem of obscenity.

The Obscene and Its Statutes

Having discussed the uneven application of common law proceedings pertaining to obscenity, which I suggested was evidence of struggle *not* over a problematic discourse object (i.e. obscene literature) but over its modes of regulation, this section describes the numerous criminal and regulatory statutes that proliferated in the early to mid- nineteenth century as obscenity was increasingly conceptualized as a criminal-regulatory problem that the state (rather than vice societies) should manage through statute. Throughout this period, changes in regulatory and criminal statutes were frequently mirrored in Britain and the United States, suggesting that concerns and responses emerged from similar conditions. This section traces the

emergence of regulatory and criminal statutes as the dominant mode of obscenity regulation in both Britain and the United States.

In 1824 in Britain, Section 4 of the *Vagrancy Act* forbade the public exposure of obscene materials; the offence was punishable by up to three months hard labour.[779] It is worth reflecting on the fact that this statute's long title was *An Act for the Punishment of Idle and Disorderly Persons, and Rogues and Vagabonds*. From its earliest statutory manifestation, the obscene was associated with social disorder and unruliness and also with the category of persons most associated with idleness and disorder (i.e. the poor). While the upper classes could pursue their interest in "curious" books, or could purchase luxury editions of obscene literature, the pleasures of the poor were much more stringently regulated.

In 1839, Section 54 of the *Metropolitan Police Act* allowed the constables of London's Metropolitan Police Force to take into custody without a warrant anyone who sold, distributed, or offered for sale or distribution, or exhibited obscene material, language or behaviour if the offence was committed in public view of the constable; this was punishable by a fine of not more than forty shillings.[780] Obscenity was categorized as a public nuisance offence, or as an action that offended public standards of civility.[781]

Section 28 of the *Tariff Act* (1842) in the United States prohibited the importation of obscene materials into the country; the penalty for discovered materials was seizure and

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[779] *Vagrancy Act*, 1824, 5 Geo. IV c. 83

[780] *Metropolitan Police Act*, 1839, 2 & 3 Vict. c. 47

[781] As an aside, the establishment of a police force significantly altered the state's ability to investigate obscenity (i.e. without the assistance of vice societies).

forfeiture.[782] Similarly, the importation of obscene materials was forbidden in Britain in 1876 under Section 42 of the *Customs Consolidation Act*.[783] Section 16 of the American *Postal Act* (1865) forbade obscene materials from being deposited within the mail; the offence was a misdemeanor punishable by up to five hundred dollars and/or one year imprisonment.[784] As late as 1908, legislation was still being enacted in Britain to stop the circulation of obscene materials in the mail; under Section 63, the penalty on summary conviction of a fine of up to ten pounds, while on conviction on indictment the penalty was imprisonment with or without hard labour for up to one year.[785]

Taken together, these statutory regulations were intended to significantly minimize, through pecuniary and criminal punishment, the public display, circulation and sale of obscene materials. These mechanisms represent a continuity from the early licensing regulations in Britain; these statutes were designed to suppress the obscene before it could be read or viewed, and thereby preserve public morality and order (and ensure the constitution of governable moral citizen subjects). Increasingly, however, there was a push toward the creation of statutes specifically designed to deal with the problem of obscenity (i.e. rather than to incorporate chapters or sections within larger legislative efforts). For example, in 1873, *An Act for the Suppression of Trade in, and Circulation or, Obscene Literature and Articles of Immoral Use*

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[782] *Tariff Act*, 1842, ch. 270

[783] *Customs Consolidation Act*, 1876, 39 & 40 Vict. c. 36

[784] *Postal Act*, 1865, ch. 89

[785] *Post Office Act*, 1908, 8 Edw. VII c. 48

was passed in the United States.[786] Under Section 1, it was illegal to sell, lend, give away, exhibit, publish or offer to do any of these, or to possess for the purposes of accomplishing any of these, any obscene material, or to advertise such; this was a misdemeanor punishable by hard labour for six months to five years or a fine of one hundred to two thousand dollars, plus legal costs. I argue that through legislation like this, lawmakers (rather than common law judges) became responsible for the production and maintenance of this judicial discursive formation and the social order it was constituted as protecting in both Britain and the United States. To consider this transformation further, I turn to events in Britain.

In 1857, Lord Chief Justice John Campbell asked whether the Government intended to introduce legislation to prevent the sale of poisons;[787] this question was both literal and metaphorical. At the time, the House of Lords was discussing a bill that pertained to the sale of poisons; Campbell took the opportunity to expand the scope of the discussion to include "poisonous" publications. After presiding over a trial earlier that week, Campbell,

> 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. 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. This was a matter which required, in his opinion, the immediate consideration of the Government.[788]

Note that the surface of emergence from which Campbell drew was medicine, while criminalization was conceived as the "antidote" required to preserve or protect public moral

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[786] *An Act for the Suppression of Trade in, and Circulation of, Obscene Literature and Articles of Immoral Use*, 1873, ch. 258

[787] Hansard, *Sale of Poisons and Poisonous Publications – Question*, HL Deb 11 May 1857 vol 145 cc102-103, https://api.parliament.uk/historic-hansard/lords/1857/may/11/sale-of-poisons-and-poisonous#column_102.

[788] Hansard, *Sale of Poisons*, cc103.

health. Given Campbell's statements, I briefly want to comment on the hygiene or social purity movement.

Although this project focuses on the obscene, the regulation of the obscene did not occur in isolation, but was one of many projects taken up by the social purity movement around this time. The social purity movement was a coalition that included agents from religious, medical, educational and social institutions who worked to "improve" working class life, focusing on issues like prostitution, divorce, illegitimacy, public education, and obscene literature.[789] The social purity movement, conceived as projects of moral regulation and as both a continuation and transformation of vice society efforts, was such that agents and institutions of morality, medicine and social reform worked to suppress vice, produce good subjects, and constitute a moral nation or a social order that was healthy, good and productive. As a form of moral and potentially physical contagion, the obscene was constituted as threatening the health of the nation and requiring regulation through law. Thus, Campbell's medical-moral conceptualization of the obscene as poisonous and as threatening the health and purity of the nation and requiring legal regulation was consistent with the discursive practices of the social purity movement.

Campbell introduced an anti-obscenity bill to counteract the moral poison of obscene literature. During the second reading in the House of Lords, he explained that the purpose of such legislation was to prevent the spread (again, drawing from medicine and the concept of moral contagion) of obscene prints and publications.[790] According to Campbell, "[t]heir Lordships could scarcely conceive the extent to which the trade in those infamous works was

[789] See for example Valverde, *Light, Soap, and Water*.

[790] Hansard, *Second Reading*, HL Deb 25 June 1857 vol 146 cc327-328, https://api.parliament.uk/historic-hansard/lords/1857/jun/25/second-reading#column_327.

carried".[791] As a result of his institutional position as Lord Chief Justice and having dealt with obscene literature in the course of his judicial duties, Campbell argued that extant common law procedures were insufficient to deal with the moral harm of obscenity. As part of this process of exclusion, Campbell argued for the introduction of a criminal statute, including in particular the power to search and seize.[792]

Campbell did not receive the unanimous support of the House of Lords. Lord Brougham pointed to a deficiency of the bill; namely, that there was no definition of what exactly constituted an obscene publication.[793] Brougham questioned whether "some objectionable passages" in the works of "eminent poets" might be considered obscene.[794] In other words, "classic" works like those by Geoffrey Chaucer or William Shakespeare, for example, could conceivably be considered obscene. Former Lord Chief Justice Lyndhurst likewise expressed unease with the proposed legislation, commenting, "I can easily conceive that two men will come to entirely different conclusions as to its [i.e. obscenity's] meaning".[795] This points to a struggle about the conceptualization of obscene material that was influenced by the art for art's sake movement; like beauty and art, the obscene was conceptualized by some agents of Parliament as being in the eye of the beholder. Thus, there was a struggle over the obscene as competing surfaces of emergence enabled it to be conceptualized in medico-legal and aesthetic terms. While Campbell conceptualized the obscene as being morally contagious and harmful to

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[791] Hansard, *Second Reading*, cc327.

[792] Hansard, cc327-329. Recall that this tactic had already been used to some extent in Britain, for example in the incident involving Dugdale; however, it had no statutory basis.

[793] Hansard, cc329.

[794] Hansard, cc329.

[795] Hansard, cc330.

the public "body" and requiring criminal regulation, Brougham and Lyndhurst tempered the conceptualization of the obscene as being implicated in and mitigated by the tradition of classic art and individual taste. Obscenity was recognized by some parliamentarians as a problematic object requiring criminal regulation, which was consistent with historical concerns, while others problematized the regulation of that problematic object.

While the bill was passed in the House of Lords, it continued to reveal divisions and point to struggle when it was sent to the House of Commons.[796] John Roebuck commented that "a more preposterous Bill had never been sent down from the House of Lords – and that was saying a great deal. It was *an attempt to make people virtuous* by Act of Parliament; but it could never succeed. A man who had a taste for the class of prints and publications referred to in the Bill would get them in spite of all the laws they could pass".[797] Roebuck suggested that individuals should regulate themselves, rather than be regulated by laws or governments, pointing to a continuation of the vice in literature discourse. It is significant that, amidst this attempt at intensification, a member of Parliament rejected the moralizing function of state agents and institutions in producing virtuous subjects, or in making people good. In contrast, Napier thought that instead of giving obscene publications publicity through ineffectual public prosecution, the "moral poison" of obscene matter should be destroyed summarily.[798] Again, this points to a struggle regarding the appropriate role and response of the state (and statutes) to the problem of obscenity. At stake was the successful conceptualization of the obscene as a

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[796] Hansard, *Sale of Obscene Books, &c., Prevention Bill. – Committee*, HC Deb 12 August 1857 vol 147 cc1475-1484, https://api.parliament.uk/historic-hansard/commons/1857/aug/12/sale-of-obscene-books-c-prevention-bill#column_1475.

[797] Hansard, *Sale of Obscene Books*, cc1475 (italics added).

[798] Hansard, cc1478.

problematic discourse object, the effects of which would have consequences for the regulation of subjects.

Royal assent for the *Obscene Publications Act* was finally granted in August of 1857.[799] Criminal statutory law emerged as the dominant mode of governance pertaining to obscenity in Britain and later in the United States (in 1873, as previously mentioned), and legislators became dominant authorities of delimitation who enacted within statutes legal grids of specification pertaining to obscenity and its regulation.

In Britain, while Parliament became the dominant authority in the regulation of the obscene by producing a statute that superseded but did not, it should be noted, eliminate common law, the courts redefined the problematic discourse object. In what is known as the Hicklin test, the courts interpreted statutory law (i.e. the *Obscene Publications Act* (1857)). The statutory definition of obscenity was clarified when a judge decided the following: "I think the test of obscenity is this, whether the tendency of the matter charged as obscenity is to deprave and corrupt those whose minds are open to such immoral influences, and into whose hands a publication of this sort may fall".[800] Obscene literature was constituted as that which had an effect; it depraved and corrupted certain populations who read or saw it. This suggests that the obscene was problematic or harmful not to the general public, which was constituted as moral, but to vulnerable populations, including women, youth and the working class (discussed in more detail later in this chapter).

This multiplication and transformation of practices involving the legal regulation of obscenity (i.e. through common law and through regulatory and criminal statutes) enabled the

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[799] *Obscene Publications Act*, 1857, 20 & 21 Vict. c. 83

[800] *R. v. Hicklin*, (1868) L.R. 3 Q.B. 360

conditions in which statements *about* obscenity could circulate. I argue that even as the obscene was ostensibly suppressed or repressed through law, there was an incitement to discourse. For example, in 1870, *Reynolds's Newspaper* commented on the practice of publishing accounts of obscenity proceedings and thereby publicizing obscene literature; its decision to report on a particular trial had been criticized by a rival newspaper.[801] *Reynolds's* defended its right to report on public trials, which had the effect of subverting the goal of suppressing obscenity.

Newspapers were not the only space in which the publicity and potentially adverse effects of increasingly public obscenity prosecutions were problematized. In 1888,[802] Samuel Smith sought to introduce a clause that made it unnecessary to include obscene or blasphemous passages in an indictment.[803] According to Smith, there was a risk that law clerks, juries and the newspaper-reading public could be corrupted; including evidence of obscenity in indictments was problematized as contravening the purpose of such laws.[804] This motion to suppress even the mention of obscene passages in public proceedings (by depositing the material with the indictment with the exact place of the obscene libel clearly indicated) in order to prevent the corruption of the public divided the House of Commons. This points to institutionalized attempts to utterly suppress public circulation of the obscene, even within courtroom procedure.

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[801] "Publicity Preferable to Secrecy – An Impudent Pharisee," *Reynolds's Newspaper* (London), June 5, 1870, 4, http://tinyurl.galegroup.com/tinyurl/4GhhQ3.

[802] Hansard, *[Bill 294.] Consideration*, HC Deb 20 June 1888 vol 327 cc732-734, https://api.parliament.uk/historic-hansard/commons/1888/jun/20/bill-294-consideration#column_713.

[803] Recall that different jurisdictions approached this issue differently; Massachusetts affirmed in *Holmes* (1821) that including allegedly obscene passages was not necessary, while such passages were included in New York. In Britain, the Chitty indictment included room within its template for obscene passages to be inserted.

[804] Hansard, *[Bill 294.] Consideration*, cc733.

A related concern was raised the following decade by the Lord Chancellor in the House of Lords.[805] Lord Halsbury wanted the option to impose a publication ban on any evidence given at trial which might be indecent and "likely to be prejudicial to public morality"; the contravention of the ban would constitute contempt of court.[806] This measure was opposed by the Lord Chief Justice;[807] the prominence of these two institutional positions indicates the extent of the struggle pertaining to the public circulation of obscenity and immorality, and the way to regulate and suppress it as well as public statements about it.

An interesting comment was made by the Earl of Roseberry during the course of this debate. He said, "[a]s a layman, it is a little difficult to intervene in a discussion of this kind; but there are matters connected with this Bill which seem to me to appeal to every civilian of common sense".[808] As the legal regulation of obscenity became increasingly entrenched by statutes, determining what was and was not obscene and how it could or could not be dealt with, these processes of legal regulation limited what the "layman" or "civilian" could say, not only about the legal regulatory processes, but also about the obscene. In other words, the legal institution was dominant in exercising discursive practice pertaining to the regulation of the obscene, even to the extent of limiting or excluding what could or could not be read or said within legal processes and parliamentary debates.

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[805] Hansard, *Publication of Indecent Evidence Bill [H.L]*, HL Deb 20 March 1896 vol 38 cc1434-1436, https://api.parliament.uk/historic-hansard/lords/1896/mar/20/publication-of-indecent-evidence-bill-hl#column_1434.

[806] Hansard, *Publication of Indecent Evidence*, cc1436.

[807] Hansard, cc1436-1439.

[808] Hansard, cc1446.

This section described the activities of state agents and institutions that sought to suppress, through legal regulation, the display, trade and public circulation of the obscene, and even to suppress any discourse attendant with these practices as statutory criminal law became the dominant mode of regulation. During this time, there was a transformation in the formation of themes, as the regulation of obscenity was specifically and exclusively tied to the morality of the public body, or the moral social order; while the governability of populations remained an ongoing concern, the governance of moral rather than obedient citizen subjects was at issue. The most remarkable transformation, however, was the exclusion of religion from this concern with morality; an entirely secular standard of morality – and in particular a standard of sexual morality – was produced by parliamentarians, who both produced and enforced standards of public morals through criminal statute. The following section considers in more detail the subjugated knowledges that emerged simultaneously with these practices of law.

The Legal Regulation of Obscenity and *Fanny Hill* and the Resistance to Same

While obscenity was increasingly regulated by statutes and legal processes, *Fanny Hill* continued to circulate as a material object and a symbol in a variety of circumstances, including but not limited to legal cases. This section describes how, despite attempts at suppression, numerous *Fanny Hill*s were constituted and circulated in the public imagination, eventually prompting new attempts at regulation.

In the mid- to late nineteenth century, “Fanny Hill” became a name that prostitutes appropriated for themselves. In at least two instances, involving respectively a case of purse-snatching and a domestic dispute that arose when a woman surprised her husband with a companion, a young woman was reported in a newspaper to have given her name as Fanny

Hill;[809] the phrasing of the news reports, however, implied that the name was false. Instead, the name served a function, identifying the woman as a prostitute. Thus, "Fanny Hill" became associated with more than a material book.[810]

The book *Fanny Hill* also appeared in court cases involving seduction,[811] an offence that occurred when young women or women of previously chaste character were "seduced" by men who were either in a position of authority or who had promised marriage. Seduction cases hinged on the ability of the women to demonstrate that they were chaste; rather than considering the sexual behaviour of the men accused, it was women who were "guilty" if they could not demonstrate their sexual "innocence" or purity.[812] In one case, Hannah Percival, the alleged victim of a rape by a factory supervisor, was accused of being seen with *Fanny Hill*, which she had lent to a co-worker.[813] The man accused of raping her also saw her with the book, commented on it and glanced through it, suggesting that his edition was better; this confirms that male chastity was irrelevant for such proceedings, given that his identical actions were not constituted as morally blameworthy. A significant portion of the trial account reported in the newspaper was dedicated to *Fanny Hill*, including who knew the alleged victim had the book and

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[809] "Law and Police," *John Bull* (London), March 20, 1858, 190, http://tinyurl.galegroup.com/tinyurl/4GzRMX; "A Husband Entrapped By His Wife," *Edinburgh Evening News*, February 16, 1880, [2], http://tinyurl.galegroup.com/tinyurl/4G4RA8.

[810] As an aside, *Fanny Hill* was also a frequently recurring name for sporting animals. E.g. "This Day's Coursing," *Nottingham Evening Post* (UK), December 6, 1887, 3, http://tinyurl.galegroup.com/tinyurl/4FkEAX.

[811] E.g. "Extraordinary Trial for Alleged Seduction," *Reynolds's Newspaper* (London), February 19, 1854, 6, http://tinyurl.galegroup.com/tinyurl/4GzRq0.

[812] See Strange and Loo, *Making Good*, 53.

[813] "The Police Courts," *Daily News* (London), December 8, 1859, 7, http://tinyurl.galegroup.com/tinyurl/4Gvas8.

how she got it. The inference was that good women and chaste victims would not have been exposed to *Fanny Hill*; the act of reading *Fanny Hill* transformed Percival into a fallen woman. Percival – as a woman – was constituted as weak and willing through her immoral choice of literature. Thus, in these types of cases, the sexuality of women, rather than men, was constituted as being out of control or beyond the bounds of morality; they were accomplices in their own fate.

In a different case, a will was disputed between siblings.[814] Again, *Fanny Hill* was used to discredit the (virtue of the) woman, as her elder brother argued that she was an immoral and dishonest woman who had used undue influence (presumably sexual influence) to change their father's will. She had been introduced to *Fanny Hill* by the attorney who drafted the disputed will, and subsequently purchased her own version; it was reported that she was dissatisfied because it did not have prints. A later article added that a breach occurred between the woman and her brother when she lent *Fanny Hill* to his daughter.[815] These articles explicitly detailed the scandalous relationships of the woman, including her relationship with the newly appointed executor of the will.

This tactic of using *Fanny Hill* to discredit a woman as immoral – or as sexual – was used as late as 1932. In a high profile tabloid divorce between actor and director Lowell Sherman and actress Helene Costello, her library of "spicy" books became an issue in the divorce proceedings

[814] "Northern Circuit," *Times* (London), August 6, 1862, 10, http://tinyurl.galegroup.com/tinyurl/4Gnbr2.

[815] "Romantic Will Case," *John O'Groat Journal* (Wick, UK), August 21, 1862, [4], http://tinyurl.galegroup.com/tinyurl/4GkoN7.

in order to discredit her character and gain her husband a favourable divorce settlement.[816] During the divorce, two volumes from the library, one of which was *Fanny Hill*, were reported to have disappeared.

These newspaper reports point to the ongoing circulation of *Fanny Hill* and its presumed corruptive effects on women; they also suggest that the import or significance of *Fanny Hill* inordinately affected legal outcomes, as women associated with the book were assumed to be complicit in sometimes violent or degrading sexual acts, and/or were constituted as sexually manipulative and/or disreputable. *Fanny Hill* was used as a means of discrediting women's testimonies and reputations; proximity to or knowledge of the book was enough to constitute them as immoral and promiscuous rather than as a victim. Thus, the legal regulation of the obscene did more than simply prohibit what could or could not be read; it also constituted standards of purity in such a way that women could become complicit in their own victimization.

While women associated with *Fanny Hill* were increasingly constituted as morally blameworthy, the book continued to circulate in public and in the public imagination. For example, in 1834, a satirical article reported that the House of Lords had re-written the Thirty Nine Articles, or doctrinal statements, of the Church of England; in Article VI, which referred to "the sufficiency of the College Libraries for a Degree" (a reference to the sufficiency of the canonical Bible for salvation), the names and numbers of the "amusing" books necessary for getting a degree included *Fanny Hill*.[817] In 1863, the book was mentioned in relation to the Russian Imperial Library, which was disparaged for the quality of its collection as well as its

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[816] United Press, "Spice Vanishes at Spicy Trial," *Long Island City Daily Star* (NY), May 10, 1932, 1, http://fultonhistory.com/Fulton.html.

[817] "The Thirty-Nine Articles," *Satirist; or Censor of the Times* (London), June 29, 1834, 202, http://tinyurl.galegroup.com/tinyurl/4GmRH0.

arrangement, which was by size of the book rather than by subject; the writer commented that "[y]ou will find Mrs. Glass on the Art of making Syllabubs placed next to Beattie on the Immutability of Truth; and you will find Fanny Hill supported on one side by Hudibras, and on the other by St. Augustine".[818] These are just a few examples of casual references to *Fanny Hill* that indicated not only its poor reputation, but also how well known it was.

I argue that despite regulatory and criminal curbs on the trade in obscenity, trade in obscene materials – including *Fanny Hill* – continued more or less openly.[819] For example, the *National Police Gazette* creatively circumvented the legal prohibition on advertising obscene matter in general, and *Fanny Hill* in particular. In the section "To Correspondents", the New York newspaper consistently inserted notices advising that *Fanny Hill* could not be purchased in the city and that the newspaper would not advertise it if it was offered. For example:

> W. T. B. - - - We do not think "Fanny Hill" can be purchased in this city. We would not advertise it if offered.[820]
>
> ***
>
> W. B. Lyons N. Y. – "Fanny Hill" comes under obscene literature, and cannot be bought or sold, and certainly no reputable dealer will handle it. Such goods are never admitted to the advertising columns of the GAZETTE at any price.[821]
>
> ***
>
> J. F. King, Abrada, M. T. – "Fanny Hill" cannot be bought or sold, and is never advertised in these columns. No reputable dealer would handle it.[822]

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[818] "Notes and Queries," *American Literary Gazette and Publishers' Circular* (Philadelphia), August 1, 1863, 271, ProQuest American Periodicals.

[819] See Dennis, *Licentious Gotham*, 212, 260 for two circa 1870 reproductions of "gentlemen's" circulars that advertised expensive five dollar editions of *Fanny Hill*.

[820] "To Correspondents," *National Police Gazette* (NY), August 9, 1884, 11, http://fultonhistory.com/Fulton.html.

[821] "To Correspondents," *National Police Gazette* (NY), July 18, 1885, 11, http://fultonhistory.com/Fulton.html.

[822] "To Correspondents," *National Police Gazette* (NY), September 26, 1885, 11, http://fultonhistory.com/Fulton.html.

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> J. E. T., Waco, Texas. – We have repeatedly stated that Fanny Hill cannot be bought or sold, and is never advertised in these columns.[823]
>
> ***
>
> L. B. Potter, Angels Camp, Cal. – "The Life of Fanny Hill" is not and cannot be bought or sold in this State and is never advertised in these columns.[824]
>
> ***
>
> M. H. B., Hutchinson, Kansas. – "Fanny Hill" is of illegal sale, cannot be bought or sold, and would not be advertised in these columns at any price.[825]

The persistence of such notices suggests that the *National Police Gazette*, while following the letter of the law, was in fact flouting it and likely surreptitiously advertising *Fanny Hill*; enough information was supplied that *Fanny Hill* was made available to those who were interested. The law against advertising obscene material was contested while the law was seemingly observed and upheld. In other words, the statutory laws pertaining to the obscene were not only subverted, they were used as a sales technique.

In Britain, a similar publication openly advertised *Fanny Hill* despite extant legal regulation. For example, in an advertisement for "RICH and RARE BOOKS", *Fanny Hill* was the first book listed and was described as a cloth edition with eight coloured plates in two volumes for five shillings; the advertisement listed P. N. Reid, Publisher, West Green Road, London N.[826] Similar advertisements continued to appear in the *Illustrated Police News* under

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[823] "To Correspondents," *National Police Gazette* (NY), October 10, 1885, 11, http://fultonhistory.com/Fulton.html.

[824] "To Correspondents," *National Police Gazette* (NY), December 19, 1885, 11, http://fultonhistory.com/Fulton.html.

[825] "To Correspondents," *National Police Gazette* (NY), March 5, 1887, 11, http://fultonhistory.com/Fulton.html.

[826] "Rich and Rare Books, &c.," *Illustrated Police News* (London), December 12, 1896, 7, http://tinyurl.galegroup.com/tinyurl/4GhgW3.

headings like “CHIC BOOKS”,[827] “REAL GEMS”,[828] “SPICY BOOKS”,[829] and “RARE BOOKS”.[830] Readers were encouraged to buy *Fanny Hill* direct and save.[831] *Fanny Hill* was even advertised as being on sale, “GIVEN AWAY TO EVERY READER, 1s. BOOKS FOR 6d.”; this was advertised as “[o]ur own original and copyright editions, which can be obtained only from us, so beware of spurious imitations”.[832] *Fanny Hill* was also part of a going out of business sale, where packages of books, photographs and transparencies were bundled together at low prices by P. N. George.[833] The *Illustrated Police News* was not the only newspaper to

[827] E.g. “Chic Books, &c.,” *Illustrated Police News* (London), April 3, 1897, 7, http://tinyurl.galegroup.com/tinyurl/4Gobr3; “Chic Books, &c.,” *Illustrated Police News* (London), May 1, 1897, 7, http://tinyurl.galegroup.com/tinyurl/4GwqZ6.

[828] E.g. “Real Gems,” *Illustrated Police News* (London), May 29, 1897, 8, http://tinyurl.galegroup.com/tinyurl/4Gwqh1; “Real Gems,” *Illustrated Police News* (London), September 11, 1897, 11, http://tinyurl.galegroup.com/tinyurl/4FnW80.

[829] E.g. “Spicy Books,” *Illustrated Police News* (London), September 11, 1897, 11, http://tinyurl.galegroup.com/tinyurl/4FnW80; “Spicy Books,” *Illustrated Police News* (London), November 20, 1897, 11, http://tinyurl.galegroup.com/tinyurl/4G7Wf4.

[830] E.g. “Rare Books,” *Illustrated Police News* (London), September 23, 1899, 8, http://tinyurl.galegroup.com/tinyurl/4Go4F0; “Rare Books, &c.,” *Illustrated Police News* (London), January 6, 1900, 10, http://tinyurl.galegroup.com/tinyurl/4FnVp6.

[831] E.g. “Books and Photos,” *Illustrated Police News* (London), April 2, 1898, 9, http://tinyurl.galegroup.com/tinyurl/4FnU82; “Books and Photos,” *Illustrated Police News* (London), December 3, 1898, 11, http://tinyurl.galegroup.com/tinyurl/4G3yb7.

[832] “Given Away to Every Reader,” *Illustrated Police News* (London), December 24, 1898, 11, http://tinyurl.galegroup.com/tinyurl/4FnVX6.

[833] “Given Away,” *Illustrated Police News* (London), January 21, 1899, 11, http://tinyurl.galegroup.com/tinyurl/4FnTq0.

carry such advertisements; the *Licensed Victuallers' Mirror* also included advertisements for an illustrated *Fanny Hill* at ten pence and or a cloth-bound edition with coloured plates at 3s. 6d.[834]

That business thrived is demonstrated by the case of Henry Warren, who was reported to have been charged with selling indecent materials in 1870.[835] A police superintendent saw questionable advertisements in *Reynolds's Newspaper* and began a correspondence, making two orders to purchase obscene books. The defendant was reported to have "forwarded some catalogues containing lists of books, amongst them 'Fanny Hill: A Memoir of a Woman of Pleasure,' and others containing indecent matter and coloured plates".[836] Early reports described the sting operation, while a later news report commented that Warren was "a shabby-genteel-looking man, aged 36, [who] was indicted for maliciously and scandalously selling and uttering 14 obscene prints, called photographic cards. The case excited considerable interest".[837] In this later article, the following information was added: "At the time the prisoner was arrested, when waiting for his wife outside the Post-office, he had a black bag, and in this were a number of obscene prints and copies of 'Fanny Hill,' a most disgusting work".[838] *Fanny Hill* was made to appear surreptitiously or ashamedly in catalogues and black bags; however, it was available for purchase through the mail.

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[834] E.g. "Scarce Books, Rare Photos," *Licensed Victuallers' Mirror* (London), September 18, 1899, 8, http://tinyurl.galegroup.com/tinyurl/4Fkmv3; "Scarce Books, Rare Photos," *Licensed Victuallers' Mirror* (London), September 25, 1899, 8, http://tinyurl.galegroup.com/tinyurl/4FkmU4.

[835] "Police Intelligence," *Morning Post* (London), August 11, 1870, 7, http://tinyurl.galegroup.com/tinyurl/4GmTJ0.

[836] "Police Intelligence," 7.

[837] "Middlesex Sessions," *Morning Post* (London), August 19, 1870, 7, http://tinyurl.galegroup.com/tinyurl/4Gh5J5.

[838] "Middlesex Sessions," 7.

Similarly, in August of 1872, Herbert Judge was reported to have been charged with publishing an obscene libel and being in possession of indecent prints and books; a landlord for Oxford University students had come across a catalogue and discussed it with police.[839] As an informant, the landlord replied to the catalogue and received *Fanny Hill*, four transparent cards, and another catalogue. In October of the same year, bookseller John Bennison was reported to have been charged with possessing with intent to circulate and with circulating indecent books, slides, prints, etc.[840] A police officer bought a couple of items, including Ovid's *Art of Love* (c. 2), but later returned for more; Bennison produced several photographic slides, priced at five shillings, and some books, including *Fanny Hill*, which was priced at thirty shillings. When the police officer commented on the high price, Bennison, whose partner was imprisoned at the time for obscenity-related offenses, replied that such materials were "hard to get now".[841] Once again, this demonstrates that *Fanny Hill* was available and that its sale was profitable enough for booksellers to risk imprisonment.

There are several points to draw from this. First, despite regulatory and criminal statutory efforts to suppress the circulation and trade of obscene literature, there continued to be relatively overt advertisements, which included enough information (e.g. names, pseudonymous and/or vague addresses) for buyers to contact sellers. Second, *Fanny Hill* was featured in these advertisements; although it was by no means the only book mentioned, it was consistently identified and often prominently so (e.g. in larger type or near the top of a list of titles) in order

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[839] "The Police Courts," *Daily News* (London), August 31, 1872, 6, http://tinyurl.galegroup.com/tinyurl/4Go3g2.

[840] "Police Intelligence of Saturday," *Standard* (London), October 14, 1872, 7, http://tinyurl.galegroup.com/tinyurl/4Gvan7.

[841] "Police Intelligence of Saturday," 7.

to garner attention and solicit sales. *Fanny Hill* served a symbolic function, signalling the type of books offered for sale. Third, the prices for obscene literature varied from quite low to more expensive prices; this suggests that there was an extensive market with diverse consumers. Fourth, later advertisements included the guarantee that goods would be sent free by post "securely packed"[842] or "Under Cover",[843] which might have been an attempt to preserve the modesty of the buyer, or to ensure that the goods would arrive without state interference (i.e. seizure). Finally, not only did legal regulation fail to make *Fanny Hill* and similar materials unavailable or even impermissible, it was used to make forbidden objects more desirable so that obscene literature continued to be advertised, sold, and sent through the mail despite extant statutes.

That is not to suggest that such advertisements and activities went unnoticed. The British Parliament remained concerned with the circulation of obscene publications, pictures and prints. In 1888, Samuel Smith called for a resolution in the House of Commons to ensure that laws pertaining to obscenity (specifically the *Obscene Publications Act* (1857)) would be enforced and possibly strengthened.[844] This discussion captured the key concerns pertaining to the obscene that were expressed at that time. First, there was concern that youth in particular were vulnerable to the moral corruption of obscene materials.[845] Second, there was a concern pertaining to the increasing amounts of obscene materials; Smith called it a "gigantic national

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[842] "Rare Books and Photos," *Illustrated Police News* (London), December 30, 1899, 11, http://tinyurl.galegroup.com/tinyurl/4G6Zv4.

[843] "Chic Books, &c.," *Illustrated Police News* (London), October 20, 1900, 10, http://tinyurl.galegroup.com/tinyurl/4FnUu3.

[844] Hansard, *Resolution*, HC Deb 08 May 1888 vol 325 cc1707-1717, https://api.parliament.uk/historic-hansard/commons/1888/may/08/resolution#column_1707.

[845] Hansard, *Resolution*, cc1708.

danger" and a "subtle poison".[846] Edwin De Lisle's comment that "the evil affected the class of persons who were least able to resist it" indicates that concerns about the obscene were also classed.[847] His reasoning was that the rich could insulate themselves from the harms of the obscene, while "the poor, who had little scope for the higher enjoyments of life, naturally picked up the literature which was nearest at hand".[848] In summary, there were concerns about who was reading obscene material and also about the amount of obscene literature in circulation, prompting attempts at intensification.

To conclude this section and to introduce the next, I suggest that while the legal regulation of obscenity was established as the dominant discursive practice, the ongoing production of *Fanny Hill* in the public imagination and in conjunction with a variety of legal cases, as well as the ongoing advertisement, sale and circulation of obscene literature including *Fanny Hill*, enabled new attempts at regulation.

Obscenity – A Matter of Pure Law?

In 1885, the Home Secretary was questioned about the possibility of criminal proceedings in relation to an objectionable edition of the *Pall Mall Gazette*.[849] Sir Richard Assheton Cross responded that he had consulted with the Attorney General and said,

> [t]reating the question as one of *pure law*, I am advised that the publication of any obscene writing is a misdemeanour, that the publishers can be prosecuted by indictment

[846] Hansard, cc1708.

[847] Hansard, cc1717-1718.

[848] Hansard, cc1718.

[849] Hansard, *The 'Pall Mall Gazette' – Objectionable Articles – Revelations of Gross Immoralities*, HC Deb 07 July 1885 vol 298 cc1827-1828, https://api.parliament.uk/historic-hansard/commons/1885/jul/07/the-pall-mall-gazette-objectionable#column_1827.

> in the usual way, and that the offence is punishable by fine and imprisonment, according to the discretion of the Court. The question whether any particular writing is obscene is one for a jury to determine. *It is a question of pure law*. . .[850]

Despite these assertions, obscenity could not be characterized as a matter of pure law. While I have suggested that in this judicial discursive formation legal regulation was dominant, its unity was also contested. This section demonstrates that subjugated knowledges pertaining to the obscene emerged in literature, Parliament, public addresses by writers and in newspapers, and even in the courts. This section demonstrates that the dominance of legal regulation pertaining to the obscene was never complete or undisputed, but rather was implicated in struggle.

The Obscene in Literature

As in the previous chapter, *Fanny Hill* continued to emerge in fiction. For example, an edition of the *Pearl* ("A Journal of Facetiae and Voluptuous Reading") contained allusions to *Fanny Hill*; two boys were erotically stimulated by their interactions with the book, its prints, and their conversation about the book.[851] This suggests that *Fanny Hill* continued to figure within fiction as a trope of and for sexual activity.

This trend was also evident in the anonymous *My Secret Life*, published in 1888.[852] It is worth considering *My Secret Life*, the sexual diary of a Victorian man, not because it happens to be representative or even because it is still well-known today, but because it contains so many references to *Fanny Hill*. As well, given that *My Secret Life* was ostensibly autobiographical, it

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[850] Hansard, *The 'Pall Mall Gazette'*, cc1827 (italics added).

[851] "Sub-Umbra, or Sport Among the She-Noodles," *Pearl* (London), August 1879, http://www.horntip.com/html/books_&_MSS/1870s/1879-1880_the_pear_journal/issue_02_-_aug_1879/index.htm.

[852] Anonymous, *My Secret Life*, 3 vols. (1888; Project Gutenberg, 2009), http://www.gutenberg.org/files/30360/30360-h/30360-h.htm.

is possible to trace the link between immoral reading and immoral action, which as we have seen was constituted as so problematic that the obscene needed to be legally suppressed.

Fanny Hill operated as a sexual framing device from the beginning of *My Secret Life*. The author claimed that he had rarely read "baudy" books in his youth; *Fanny Hill* was an exception and to him it was also exceptional because among the "baudy imaginings or lying inventions" depicted in other works, *Fanny Hill* seemed truthful.[853] He wrote that,

> Fanny Hill was a woman's experience. Written perhaps by a woman, where was a man's, written with equal truth? That book has no baudy word in it; but baudy acts need the baudy ejaculations; the erotic, full flavored expressions, which even the chastest indulge in, when lust, or love, is in its full tide of performance. So I determined to write my private life freely as to fact, and in the spirit of the lustful acts done by me, or witnessed; it is written therefore with absolute truth and without any regard whatever for what the world calls decency.[854]

That *Fanny Hill* was considered a truthful book – in that it was faithful to reality – represents a continuation from the vice in literature discourse. In a transformation, however, the author did not incite readers to virtue. Instead, the book made space for private vice; it was, after all, a secret life that was described.

The author went on to describe his first exposure to *Fanny Hill*. In Volume 1, Chapter VIII, he wrote about how *Fanny Hill*, lent to him by a friend, propelled his sexual awakening; he describes masturbating over the book and its pictures. *Fanny Hill* was not only an erotic stimulant for the author; the book continued to feature in his sexual development, or progressive seduction. In a continuation of the progress stories discussed in the previous chapter, the author then purchased (apparently with no difficulty) his own copy of *Fanny Hill*, which was

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[853] Anonymous, *My Secret Life*, preface.

[854] Anonymous, preface.

subsequently an aid to seduction in several chapters, including Volume 1, Chapter XII, Volume 2, Chapter I, and Volume 3, Chapters XVII and XVIII.

My Secret Life could be read as confirming the fears that invited suppressive legislation; it was a dangerous, sexually corrupting book. A closer look, however, suggests that *My Secret Life* does more than associate *Fanny Hill* with sexual seduction. It also suggests that such sexuality was *secret*. Notwithstanding its eventual publication, *My Secret Life* was an anonymous publication of a secret sexual diary; such secrecy suggests that these sexual activities were, to an extent, suppressed. Or, at the least, *Fanny Hill* was not read overtly and without shame or consequence, and sexual encounters were private and secret. The example of *My Secret Life*, therefore, points to that tension in which sex and sexuality and sexual works were supposed to be secret and suppressed but also circulated seductively in literature and in sexual practice. Such circulation was discussed in public forums, including newspapers, periodicals and pamphlets.

The Obscene in Newspapers, Periodicals and Pamphlets

Subjugated knowledges pertaining to sexual representation in literature were excluded by the judicial discursive formation through practices of law which reproduced law's knowledge of the immoral and therefore illegal as truth. By (re)considering subjugated knowledges contained within newspapers, magazines and pamphlets, the struggle between law (as guardian of public morals) and rights (as claimed and exercised by the individual) is recovered. These subjugated knowledges eventually contributed to a transformation in the judicial discursive formation.

I begin this work of recovery by considering discussions pertaining to what was appropriate in literature, or what was constituted as appropriate literature. For example, the

arrest of Moses Harman, editor of *Lucifer*, for printing an obscene letter in Kansas was discussed in another magazine.[855] The writer of *Liberty* wrote that,

> Obscene or not, *it was Mr. Harman's right to print it*. . . But it seems to me, nevertheless, a proper time to say that . . . Mr. Harman's act was a rash one, and that he has no business to be disappointed if Liberals do not rally to his defence. It is questionable whether determined and cool-headed men who are pushing a plan of campaign which they think the only one likely to succeed are called upon to endanger that plan of campaign and therefore *their cause* by sallying forth to the aid of every rash comrade who precipitates an ill-timed and misplaced conflict. Up to a certain point *there is a chance to win the liberty of printing* directly and on its merits; but the liberty to print the "Memoirs of Fanny Hill" (and I compare the letter published by Mr. Harman to this book only in the sense that it is so extreme that a jury would be almost certain to class it as obscene) will not be achieved until the sexual superstition has been pretty thoroughly uprooted, – a result that can follow only from the achievement of economic liberty. *To precipitate a struggle on the issue of liberty to print the most extreme "obscenity," and suffer defeat on it, would be to lay a foundation for more serious invasions of the liberty of printing*. . .[856]

This points to the production of a subjugated knowledge that gained strength throughout this period and led to a rupture; the writer discussed individual speech rights and freedoms as mitigating or justifying the obscene. The writer was aware that this was a subjugated knowledge, and framed the situation as one of struggle or conflict. Being aware of extant restrictions within the judicial discursive formation, the writer distinguished between what could be said and what should be said in public and about obscenity. He advocated a moderate course toward the eventual "emancipation" of all forms of speech and writing through gradual subversion and strategic political engagement. Of course, it is of some interest that he considered *Fanny Hill* to be the ultimate example of obscene literature (and, by implication, the last fight for so-called freedom of expression); by the end of this chapter, this might seem to be

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[855] "On Picket Duty," *Liberty* (Boston), April 19, 1890, 1, ProQuest American Periodicals.

[856] "On Picket Duty," 1 (italics added).

an instance of foreshadowing. This writer was not alone in publicly criticizing extant regulatory mechanisms pertaining to literature that was deemed obscene.

In 1884, author George Moore also spoke to these emerging concerns, and in particular about the limitations on the concept of personal freedom imposed by disciplinary techniques of surveillance and the (legal or otherwise) enforcement of morals. Moore alluded to numerous articles about "the very vexed question of what is right and what is wrong in literature".[857] As Alexander Pope did more than a century earlier, Moore criticized the quality of English literature,[858] and, like Samuel Johnson, Moore was concerned that the lack of religion and morals in literature could adversely affect young women and widows.[859] Thus far, his concerns aligned with or pointed to a continuity between discursive formations, and in particular with the vice in literature discourse. What was new, or a transformation, however, was the attention that Moore paid to the role of moralized subjects – including publishers, proprietors and readers – in perpetuating a suppressive or exclusive system of regulation.

Moore was an author who experienced an unusual and informal means of regulation. He wrote a book that was favourably reviewed; however, the owner of the major circulating library in London (Mudie's) refused to allow circulation of the novel, deeming it immoral.[860] Proprietor Charles Mudie based his decision on complaints from two women from the country, presumably

[857] George Moore, "A New Censorship of Literature," in *Literature at Nurse, or Circulating Morals: A Polemic on Victorian Censorship*, ed. Pierre Coustillas (Atlantic Highlands, NJ: Humanities Press, 1976), 27. This was a reprint of a letter originally published on December 10, 1884 in the *Pall Mall Gazette*.

[858] Moore, "A New Censorship," 27.

[859] Moore, 28.

[860] Moore, 30.

patrons of the lending library.[861] Moore objected to this practice of being held to an unknown standard by anonymous (and moralized) critics. He also revealed problems inherent in a commercial system that allowed such repressive and arbitrary measures to take place. Moore described a system in which profit (or, more specifically, tradesmen such as Mudie) controlled the circulation of English literature. He described a monopoly in which the proprietors of circulating libraries required that books should first be issued in expensive three volume editions, making it difficult for the average person to purchase books for private consumption.[862] Such a system also made it difficult or impossible for authors and publishers to profit from selling books in cheap editions because they would not be carried by lending libraries.[863] Moore concluded that "[a]t the head, therefore, of English literature, sits a tradesman, who considers himself qualified to decide the most delicate artistic question that may be raised".[864]

As a result of his experiences, Moore undertook at his own risk to cheaply publish his next novel and commented that,

> I shall now, therefore, for the future enjoy *the liberty of speech* granted to the journalist, the historian, and the biographer, *rights unfortunately . . . denied to the novelist*. Whether others will follow my example, whether others will see as I see that *the literary battle of our time* lies not between the romantic and realistic schools of fiction, but *for freedom from the illiterate censorship of a librarian*, the next few years will most assuredly decide. I do not fear for the result.[865]

Unlike agents in the commercial discursive formation, Moore did not ascribe to the idea that virtue should triumph, either in literature or in the regulation of literature. Instead, the "real"

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[861] Moore, 30.

[862] Moore, 28.

[863] Moore, 28, 31.

[864] Moore, 28.

[865] Moore, 32 (italics added).

fight was for the "freedom" to write and to read what one chose. Moore, like the writer of *Liberty,* believed that there was a struggle over what could be written, read and purchased, and he believed that "victory" – and specifically the victory of rights and freedoms – was inevitable. This points to the circulation of subjugated knowledges that contested the power-knowledge of the judicial discursive formation.

What I wish to draw particular attention to is the way in which material circumstances – outside of the legal regulation that has been discussed – contributed to the suppression or exclusion of certain works as obscene. There is evidence that the dominance of legal regulation was such that it influenced standards of taste and encouraged extra-legal regulation that included some books in the commercial market and excluded others. The quiet influence of the morally outraged customer – or the moralized consumer subject – worked to suppress certain obscene or disapproved of works. Thus, the regulation of obscene literature was not limited to the court or to acts of Parliament; the truth of the judicial discursive formation extended to the commercial market, mobilizing extra-legal regulatory procedures that were contested in public address pamphlets.

In 1923, Clive Bell wrote the pamphlet *On British Freedom*, continuing the historical trend in which those involved in the production of literature also contributed to subjugated knowledges (e.g. recall Edmund Curll).[866] Bell was an English literary critic and member of the Bloomsbury Group who was critical of the tendency to legislate what he called "Puritan prejudice" into restrictive statutes.[867] It is possible, therefore, to see the continuation of a particular subjugated knowledge pertaining to individual rights and freedoms over the decades.

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[866] Clive Bell, *On British Freedom* (London: Chatto and Windus, 1923).

[867] Bell, *On British Freedom*, 1.

Bell argued that adult men *and women* should be able to choose the books they read, rather than "allowing a handful of stupid and ignorant boobies to choose for us".[868] He rejected the legal institution and its parliamentary and judicial agents as guardian of public morals in favour of the responsibilized subject.

Bell was not only concerned with legal regulation as an infringement of personal freedom, however. He was also concerned about the effects of regulation on the quality of literature. Interestingly, he suggested that extant restrictions led to "unreal" and "conventional" works and a general "inhibition" since writers were not able to tell the "truth as they see and feel it".[869] Again, this idea that real and truthful works necessarily included vice indicates continuity from the vice in literature discourse of the commercial discursive formation, except without the accompanying incitement to virtue (e.g. through prefaces or postscripts). Instead, a developing artistic standard, or standard of taste, constituted vice as its own meritorious reality or truth.

Bell also went further than those from the previous period when he argued that writers and philosophers are authorities on matters of taste and truth, as biologists are experts on biology and mathematicians on math.[870] D. H. Lawrence made a similar argument in his essay, *Why the Novel Matters*, originally published in 1925.[871] He suggested that novelists understood and conveyed the truth of life better than religious ministers or philosophers or scientists.[872] I argue

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[868] Bell, 10-11.

[869] Bell, 12-13.

[870] Bell, 17-18.

[871] D. H. Lawrence, "D. H. Lawrence (1885-1930): 'Why the Novel Matters' (1925)," in *Modernism and Literature: An Introduction and Reader*, ed. Mia Carter and Alan Warren Friedman (New York: Routledge, 2013), 485-489.

[872] Lawrence, "'Why the Novel Matters'," 486-487.

that a subjugated knowledge emerged that aestheticized truth, separating fiction from reality into a "harmless" concept called art. This knowledge became increasingly developed. For now, it is enough to note its emergence and that it contested legal regulatory modes of domination by contesting the harm of sexual representation in literature to public moral virtue, substituting aesthetic grids of specification for legal-moral ones.

Similar concerns and publications pertaining to the individual's freedom to read what she chose emerged in the United States around the same time; for example, in 1927, Upton Sinclair wrote an article about censorship, suggesting that "[t]he habit of censorship is spreading, and people are being accustomed to the idea that the State may regulate what they read and think".[873] Historically, the state, at least from the time of the *Royal Proclamation* (1538) through the development of common law and the proliferation of legal and regulatory statutes, *had* regulated (obscene) literature. In other words, it made sense that people would be accustomed to this regulation. Sinclair, however, was concerned that such regulation was becoming habitual and thus unremarkable or common sense, perhaps as a result of the intensification of regulation through criminal statutory procedures. His article remarked on the phenomenon in order to problematize the process of regulation. Sinclair as well as the writers discussed above problematized the regulation of the obscene while others problematized the regulatory object.

In 1928, Morris Ernst and William Seagle published *To the Pure*, in which they questioned the concept of obscenity.[874] They called it an "empty" word that was constituted by

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[873] Upton Sinclair, "Censor: Fool or Knave," *New Masses* (NY), August 1927, 16, https://www.marxists.org/history/usa/pubs/new-masses/1927/v03n04-aug-1927-New-Masses.pdf.

[874] Morris L. Ernst and William Seagle, *To the Pure... A Study of Obscenity and the Censor* (1928; New York: Kraus Reprint, 1969).

vice societies or moralizing groups and public prosecutions.[875] They claimed that obscenity existed only insofar as it was legally and morally regulated and suppressed. In reference to the typical wording of obscenity indictments (e.g. recall Chitty), they suggested that "few words are as fluid and vague in content as the six deadly adjectives – *obscene, lewd, lascivious, filthy, indecent* and *disgusting* – which are the basis of the censorship. No two persons agree on these definitions".[876] The significance of this statement cannot be underestimated; two educated and legally trained men questioned not only the authority of those involved in the legal regulation of obscenity, but the concept of obscenity itself. Similarly, in 1929, D. H. Lawrence discussed the concepts of pornography and obscenity, and suggested that the legal standard was problematic; he wrote that "[t]he law is a dreary thing, and its judgments have nothing to do with life".[877] The truth of legal obscenity was challenged.

It was not only lawyers and authors who criticized the restriction of publications designated as obscene; subjugated knowledges that potentially disrupted the unity of the judicial discursive formation pertaining to the obscene (and to *Fanny Hill*) and its legal regulation also emerged in newspapers, particularly in the United States. For example, in 1920, a New York newspaper satirically suggested that the "national thought-rationer" would permit Americans to have one new idea each per year; in order to ensure that this quota was not exceeded, "[t]he constitution and the bill of rights will be ordered under lock and key in the public libraries with

[875] Ernst and Seagle, *To the Pure*, vii.

[876] Ernst and Seagle, vii.

[877] D. H. Lawrence, *Pornography and Obscenity* (London: Faber and Faber, 1929), 5.

Rabelais, the Magna Charta [sic] and 'The Adventure of Fanny Hill.'"[878] In 1932, a *New York Evening Post* journalist published a "Books That Would Be Best Sellers If I Had My Way" list; the list included *Fanny Hill*, along with Karl Marx's *Das Kapital* (1867) and Henry Flower's *Modern English Usage* (1926), among others.[879] When in 1934 a legal edition of *Ulysses* (1922) by James Joyce was finally published, a New York newspaper commented that up to that point the novel, "thanks to Mr. Sumner [head of the New York SSV], had to consort with 'Fanny Hill,' etc., to the public's confusion, until a wise judge decided Americans had at last become grown-ups".[880]

This brief selection of sometimes caustic journalistic discussion suggests that *Fanny Hill* was, during the early twentieth century, still well-known and also that it contributed to the emerging and increasingly prominent subjugated knowledges that linked the concept of obscene literature to art and free speech, as well as free enterprise. It also suggests, however, that while *Fanny Hill* might still be beyond the boundaries of acceptable literature – and that was not at all certain – there was growing opposition to the paternalistic work of groups like the New York SSV and the state. Increasingly, subjugated knowledges were produced that urged adults to decide for themselves what they would read; this threatened the unity of the judicial discursive formation from which obscenity emerged, which continued to constitute obscenity as a problematic discourse object subject to legal regulatory mechanisms.

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[878] Cartoons Magazine, "Brain Rations 1921," *Buffalo Evening News* (NY), June 11, 1920, 17, http://fultonhistory.com/Fulton.html.

[879] William Soskin, "Reading and Writing," *New York Evening Post*, January 23, 1932, 7, http://fultonhistory.com/Fulton.html.

[880] "Past Week's Books," *Brooklyn Daily Eagle* (NY), January 31, 1934, 23, http://fultonhistory.com/Fulton.html.

This subsection discussed the attempts of writers to express emerging but subjugated knowledges pertaining to rights and freedoms and artistic taste that contested the legal suppression or regulation of the obscene. These competing knowledges, while publicly prominent, were not able at this time to successfully contest the dominant legal regulatory discourse. While it became possible to talk of "art" and "freedom", and the discursive practices regulating the obscene were increasingly questioned and morality was increasingly conceptualized as a private rather than public matter, *Fanny Hill* was still forbidden by practices instituted by the state.

The Obscene and the State

The previous subsection described subjugated knowledges, constituted primarily by authors and journalists, that contested the legal conceptualization and regulation of the obscene. This subsection considers a similar fragmentation among state agents, including members of Parliament. While state institutions, including the Post Office, Customs, police and prosecutors continued to enforce statutory legislation pertaining to the obscene, members of Parliament – who had enacted these regulatory measures – were increasingly sceptical of their efficacy. For example, in 1919, Major Evan Hayward asked the Postmaster-General whether he was aware of the destruction of a packet of etchings by the well-known and respected artist Felicien Rops, which had been sent to a firm of picture dealers in London.[881] Postmaster-General Albert Illingworth indicated that,

[881] Hansard, *Destroyed Etchings*, HC Deb 17 February 1919 vol 112 cc607-608W, https://api.parliament.uk/historic-hansard/written-answers/1919/feb/17/destroyed-etchings#column_607w; Hansard, *Etchings Destroyed*, HC Deb 24 February 1919 vol 112 cc1436-1437W, https://api.parliament.uk/historic-hansard/written-answers/1919/feb/24/etchings-destroyed#column_1436w.

> [t]he destruction of the whole packet was in accordance with the general practice adopted by my Department with a view to the suppression of the traffic by post in indecent and obscene wares. I am aware that the etchings of Rops possess considerable technical merit and command high prices, but *the fact that an obscene picture may be the work of an artist of repute does not render it less objectionable from the point of view of public morals*.[882]

Hayward followed up his question by asking what qualifications or art training the officials had to make such decisions, or to designate items as obscene rather than as art.[883] Illingworth responded that no special art training was required.[884] The Postmaster-General, therefore, flatly rejected the idea that artistic experts should or could determine the obscene; instead, extant legal regulations enabled such determinations to fall within the jurisdiction of postal officials. In other words, Illingworth asserted that authorized state agents, such as postal officials, were dominant producers of knowledge pertaining to the obscene, and expert or alternative knowledges and standards were excluded. Artistic training, for example, was not necessary because art did not mitigate or obviate the obscene according to law.

The issue of artistic censorship, rather than the suppression of the obscene, was raised again in 1929, when the Home Secretary was questioned about the seizure of *The Sleeveless Errand* (1929) and a manuscript of poems by D. H. Lawrence.[885] Sir Frank Meyer questioned "whether the present position of the law in this matter is the best way of dealing with clearly obscene publications, without imposing upon the police and magistrates a duty which they

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[882] Hansard, *Etchings Destroyed*, cc1436W (italics added).

[883] Hansard, cc1437W.

[884] Hansard, cc1437W.

[885] Hansard, *Books and Manuscript (Seizure)*, HC Deb 28 February 1929 vol 225 cc2157-2163, https://api.parliament.uk/historic-hansard/commons/1929/feb/28/books-and-manuscript-seizure#column_2157.

should not have – a literary censorship or a moral censorship".[886] This is an example of the struggle pertaining to the regulation of obscenity; concerns about "literary censorship" were increasingly being expressed by members of Parliament who were ostensibly responsible for that regulation. This struggle signaled a potential for transformation in the discursive formation, as the exclusion of artistic concepts and knowledges was less and less successful and as themes of individual rights and freedoms and standards of art increasingly challenged the constitution of obscenity as a problematic object that threatened public morals. The increasing authority of artists as experts of aesthetic taste was evident, and was reproduced by some members of Parliament who repeated and reproduced subjugated knowledges in their discussions.

While in 1930 the Government declined to form a committee to investigate whether the legal regulation of obscenity could or should be altered,[887] there was a growing reluctance on the part of parliamentarians to be actively involved in what was increasingly seen as the persecution rather than prosecution of obscenity. For example, in 1947, William Gallacher asked the Home Secretary about the serial publication of *Forever Amber* (1944) and whether he would prosecute the publishers.[888] James Ede responded with a deflection; he indicated that the responsibility for initiating a prosecution rested with the Director of Public Prosecutions.[889] When Gallacher requested a more vigorous law to prosecute "filthy" publications, Ede said that he was "reluctant

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[886] Hansard, *Books and Manuscript*, cc2160.

[887] Hansard, *Literary Publications (Censorship)*, HC Deb 10 April 1930 vol 237 cc2341, https://api.parliament.uk/historic-hansard/commons/1930/apr/10/literary-publications-censorship#column_2341.

[888] Hansard, *Newspaper (Serial Story)*, HC Deb 31 July 1947 vol 441 cc613-614, https://api.parliament.uk/historic-hansard/commons/1947/jul/31/newspaper-serial-story#column_613.

[889] Hansard, *Newspaper (Serial Story)*, cc613.

to do anything that restricts the right of publication".[890] Based on what was discussed in the previous chapter, there was no historical "right" to publication; instead, subjugated knowledges pertaining to individual rights and freedoms, specifically as they applied to literature and to art, were growing in prominence to the extent that they influenced the willingness of state agents to initiate legal regulation.

In summary, parliamentarians were increasingly questioning the regulatory (i.e. statutory) processes pertaining to obscenity, but took minimal action either to suppress or to address the problem of the obscene or its regulation. The courts, however, were not so conflicted.

The Obscene and the Courts

While "art" that contained sexual representation was beginning to be associated with "freedom" by authors, journalists and parliamentarians, the legal courts excluded such knowledge. In 1923, Maurice Inman and Max Gottschalk were reported to have been accused of selling obscene literature; they were arraigned after a complaint by the New York SSV.[891] The books named included *Fanny Hill* and two other titles, which were sold to a member of the New York SSV. The magistrate was not swayed by arguments asserting the artistic or historical value of the book. According to the newspaper report,

> 'Whether a book is obscene or not falls within the range of ordinary intelligence,' Magistrate Simpson wrote. 'No expert testimony is required. The question is how will the book affect the ordinary person in whose possession a copy is likely to fall?

[890] Hansard, cc613-614.

[891] "2 Book Dealers Held for Trial," *New York Evening Telegram*, December 13, 1923, 4, http://fultonhistory.com/Fulton.html.

> 'When distinction is drawn between that which is merely obscene, as are these books, and that which the higher courts' tests allow and sanction, pornographic tides should be stemmed and the statutes should be enforced.'[892]

The same magistrate had dismissed a complaint by the New York SSV the previous year that involved three books, including *Women in Love* (1920) by D. H. Lawrence. At that time, he ruled that, contrary to being obscene, each of the books was "'a distinct contribution to the literature of the day'".[893] Thus, despite his decision in the *Fanny Hill* case, it is possible to see that literature was slowly, almost insidiously being recognized as protected in and by law as "art" while the "obscene" remained outside or was excluded by these boundaries, although legal rather than literary experts determined the boundaries of what was obscene and what was art.

Summary of Subjugated Knowledges Produced

This section considered the struggle of subjugated knowledges emerging from various agents and institutions, including authors associated with the commercial market, journalists and critics within news media, parliamentarians of the state, and judges in the courts. While the legal regulation of the obscene continued to reproduce the dominance of the judicial discursive formation, subjugated knowledges advocating for the recognition of "art" and personal "freedom" and/or "rights" contested this regulation. *Fanny Hill* continually emerged within these subjugated knowledges, constituted as a sort of boundary marker between art and the obscene, or between repressive regulation and freedom. While these knowledges were subjugated by institutional authorities and excluded from procedures of legal regulation, this emergent struggle over the conceptualization and regulation of obscene literature continued into

[892] "2 Book Dealers Held," 4.

[893] "2 Book Dealers Held," 4.

the next discursive formation. A significant factor contributing to the ultimate rupture and transformation of this discursive formation was the economics of prohibition, discussed in the next section.

The Economics of Prohibition

In this section, I suggest that a changing commercial market significantly altered the conditions pertaining to the legal regulation of obscenity. Specifically, the growing profits associated with "booklegged" works, coupled with the subsequent change in mass market publishing, complicated efforts to legally regulate obscenity.

In 1929, D. H. Lawrence wrote *A Propos of 'Lady Chatterley's Lover'*.[894] The essay was intended to justify that novel; however, the essay also discussed the practice of piracy.[895] Obscene works were particularly susceptible to piracy because they typically lacked copyright protection; this deprived Lawrence and other authors of the opportunity to profit. Lawrence experienced a situation in which it was difficult for authors to find legal redress because of the marginal reputation of certain works, which simultaneously made those works more desirable to pirates. In other words, those works condemned as obscene sold briskly, but those responsible for creating them saw little profit and in addition were sometimes prosecuted and/or publicly condemned.

There was certainly a thriving and not-so-hidden black market in obscene or questionable publications. For example, an 1888 edition of *Fanny Hill* included an introduction that refuted

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[894] D. H. Lawrence, "A Propos of 'Lady Chatterley's Lover'," in *Lady Chatterley's Lover; A Propos of 'Lady Chatterley's Lover'*, ed. Michael Squires (1929; New York: Cambridge University Press, 1993), 303-335.

[895] Lawrence, "A Propos of 'Lady Chatterley's Lover'," 305-307.

Cleland's stigmatization on the basis of his novel.[896] The introduction asserted that, "*Fanny Hill* is not a slip-shod job, done to order in a hurry, but, on the contrary, the production of a true literary artist, a work conceived and executed *con amore* and finished with all the care and talent of which the author was capable".[897] In addition to constituting *Fanny Hill* as desirable rather than disreputable, this work commented on the general shoddiness (e.g. poor quality paper, tiny print, and/or incomplete texts) and expense of the available English versions.[898] Thus, in the context of trade, these entrepreneurs denigrated the competition, claiming to be of good quality and also claiming to provide an object of good quality. This suggests that there was competition among black market publishers to provide items that appealed to certain markets on the basis of cost and/or quality.

A 1927 news article commented on booklegging in Chicago, suggesting that "dealers, university students and some amateur collectors are known to do a thriving business in buying and selling volumes that have been suppressed, frowned upon by the pure-minded or written expressly for the 'bad book' trade".[899] The article specifically mentioned *Fanny Hill*, which sold for between forty and one hundred dollars; prices varied according to demand, as with alcohol prohibition, and also according to clientele. A few years later, another article reported that a deluxe edition of *Fanny Hill*, "one of the oldest of the suppressed tomes, will be distributed by

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[896] "Notice of Cleland," in *Memoirs of Fanny Hill*, by John Cleland (Paris: Isidore Lisieux, 1888), v-xi, Defining Gender.

[897] "Notice of Cleland," vi.

[898] "Notice of Cleland," x.

[899] "Chicago Bookleggers Get High Prices for Volumes Under Ban," *Niagra Falls Gazette* (NY), November 11, 1927, 19, http://fultonhistory.com/Fulton.html.

local book-leggers soon, with the original pictures wrapped in a separate package".[900] Of course, these could not be original pictures, since the original editions by Cleland were published without prints. Taken together, these articles, printed in local and mainstream newspapers, suggest that *Fanny Hill* was desirable, marketable, and profitable well into the twentieth century.[901]

Within a few years of the publication of these articles, however, there was a major shift in the commercial publishing industry. Dime novels began to proliferate and dominate the market; booklegging became passé because for the first time there was a consumer market for books. A critic commented that "the market for bootlegged books is declining because of the competition from novels emblazoned in their titles with the word 'virgin,' signifying a promise of legally printed lubricities far more beguiling than the frank pornography of 'Fanny Hill,' 'Flossie, the Venus of Fifteen,' etc., etc.".[902] This is not to say that pirated or booklegged editions of *Fanny Hill* or other works disappeared. A review article mentioned that *Revolt on the Campus* (1935) would be "the most bootlegged book since 'Fanny Hill' on the campuses of the country".[903] However, the changing market led to a change in the perceived urgency of the problem of

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[900] Walter Winchell, "On Broadway," *Glens Falls Post Star* (NY), July 30, 1929, 4, http://fultonhistory.com/Fulton.html.

[901] This marketability translated not only into pirated or booklegged editions, but also into the establishment of publishing houses devoted to the publication of such works, including Maurice Girodias's Olympia Press and Jack Kahane's Obelisk Press. For an interesting account of Kahane's experiences, see Jack Kahane, *Memoirs of a Booklegger* (London: Michael Joseph, 1939).

[902] George Currie, "Passed in Review," *Brooklyn Daily Eagle* (NY), July 1, 1931, 13, http://fultonhistory.com/Fulton.html.

[903] Gould Cassal, "Behind the Rah-Rahs," *Brooklyn Daily Eagle* (NY), November 10, 1935, 16C, http://fultonhistory.com/Fulton.html.

obscenity. Regulatory and law enforcement officials were faced with an exponentially growing problem: the uncontrollability of mass market goods.

The trend toward a consumer market and cheaper publications was particularly unwelcome in Britain. From the 1930s onward, questions about measures to stop the importation of American publications entering the British market were raised in Parliament.[904] This situation came to a head in the early 1950s, when conditions seemingly permitted only two responses: an intensification or transformation of the legal regulatory practices pertaining to the obscene. The following section describes the short-lived efforts to intensify the legal regulation of obscenity.

Rewriting Obscenity Law

Out of the concerns about the effectiveness of extant law voiced from the beginning of this period, the increasingly prominent subjugated knowledges pertaining to art and freedom, and as a result of the changing commercial market, new laws or legal tests pertaining to the obscene emerged in Britain and the United States. The intensification of legal regulation was an attempt to preserve and reproduce the judicial discursive formation's conception and regulation of obscenity; obscenity law was rewritten to reproduce authority and truth pertaining to the obscene. In Britain, the *Obscene Publications Act* of 1857 was replaced with the *Obscene Publications Act* of 1959. In the United States, the *Roth* (1957) case resulted in a new test for obscenity set out by the Supreme Court. This section describes the rewriting of obscenity law as an attempt to exclude the subjugated knowledges – and in particular the concern about art – discussed above and to resolve the struggle pertaining to the legal regulation of the obscene.

[904] E.g. Hansard, *Imported Obscene Publications*, HC Deb 14 June 1938 vol 337 cc36-37, https://api.parliament.uk/historic-hansard/commons/1938/jun/14/imported-obscene-publications#column_36.

The Obscene Publications Act *of 1959*

In the early 1950s in Britain, Parliament led a push for obscenity prosecutions that was fuelled by concern over American imports and more specifically horror comics as a result of the increased production of mass market printing.[905] Questions about the number of obscenity prosecutions, as well as the steps taken to suppress obscenity and/or to address the (in)adequacy of extant criminal law and its penalties were frequently raised.[906] This increased parliamentary scrutiny seems to have had an effect; in 1951, nineteen obscenity proceedings occurred,[907] while there were 197 proceedings in 1953.[908]

Obscenity and its regulation became a highly public and divisive issue; the struggle led to a mutation that allowed for a legal distinction (which emerged from the art for art's sake sentiment) between art and the obscene to be recognized in statutory law. In 1954, there were several high profile obscenity prosecutions in Britain; notably, a destruction order was issued for

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[905] E.g. Hansard, *Comic Strips (Import)*, HC Deb 31 January 1952 vol 495 c339, https://api.parliament.uk/historic-hansard/commons/1952/jan/31/comic-strips-import; Hansard, *Children and Young Persons (Harmful Publications) Bill*, HL Deb 21 April 1955 vol 192 cc516-542, https://api.parliament.uk/historic-hansard/lords/1955/apr/21/children-and-young-persons-harmful.

[906] E.g. Hansard, *Obscene Publications (Prosecutions)*, HC Deb 06 December 1951 vol 494 cc2546-2547, https://api.parliament.uk/historic-hansard/commons/1951/dec/06/obscene-publications-prosecutions#column_2546; Hansard, *Books (Censorship)*, HC Deb 27 March 1952 vol 498 cc809-810, https://api.parliament.uk/historic-hansard/commons/1952/mar/27/books-censorship#column_809; Hansard, *Obscene Books and Postcards*, HC Deb 17 December 1953 vol 522 cc100-101W, https://api.parliament.uk/historic-hansard/written-answers/1953/dec/17/obscene-books-and-postcards#column_100w; Hansard, *Obscene Literature*, HC Deb 20 May 1954 vol 527 c140W, https://api.parliament.uk/historic-hansard/written-answers/1954/may/20/obscene-literature; Hansard, *Obscene Publications (Law)*, HC Deb 18 November 1954 vol 533 cc555-556, https://api.parliament.uk/historic-hansard/commons/1954/nov/18/obscene-publications-law#column_555.

[907] Hansard, *Obscene Publications (Prosecutions)* [6 December 1951], cc2546.

[908] Hansard, *Obscene Literature*, c140W.

Giovanni Boccaccio's *Decameron* (1353), which served as a model or inspiration for Geoffrey Chaucer's *Canterbury Tales* (1387). In the wake of this incident, Home Secretary Major Lloyd George was asked if the law concerning obscene literature would be amended.[909] Kenneth Robinson wondered whether the Home Secretary was aware of "widespread concern among the public about a law which permits magistrates to order the destruction of Boccaccio's 'Decameron,' which has circulated freely for 600 years, which brings reputable publishers into disrepute, and allows profiteers in pornography to escape scot free?".[910] Robinson's question articulated the coalescing of fears concerning the seemingly arbitrary (although they were derived from the rules of the discursive formation) actions of individual judges to determine what was obscene, the artistic and economic concerns of people involved in the art or publishing industry, and the concern about the ineffectiveness of extant obscenity laws to adequately deal with "pornographers".

In a pertinent aside, it was not an accident that the pornographer as a particular subject was constituted at that time. The pornographer was conceptualized as being involved in selling "dirt for dirt's sake", or trading in perversion for profit. The pornographer was distinct from the "serious artist" who might include sex or sexuality in a legitimate artistic, rather than purely economic, work. Here we see that the language, concepts and themes of subjugated knowledges were taken up in ways that produced a distinction between "art" and "pornography", as the former was conceptualized as virtuous for its aesthetic and truthful qualities, while the latter was condemned for its "base" economic value.

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[909] Hansard, *Obscene Literature (Legislation)*, HC Deb 21 October 1954 vol 531 cc1379-1380, https://api.parliament.uk/historic-hansard/commons/1954/oct/21/obscene-literature-legislation#column_1379.

[910] Hansard, *Obscene Literature (Legislation)*, cc1379.

Early in 1955, Roy Jenkins introduced a motion to bring forward a private member's bill that sought to amend and consolidate laws pertaining to obscene publications, including in particular the *Obscene Publications Act* (1857).[911] The bill he presented had been drafted by a committee set up under the Society of Authors, composed primarily of publishers, authors, and critics, or those who had historically produced subjugated knowledges pertaining to the obscene. The bill sought to address the main concerns about existing laws including concerns about censorship and the variability in obscenity prosecution outcomes as well as the inability of the author to explain his intention; the lack of an admissible defence, such as artistic or scientific merit; the inability to call expert witnesses; the uncertainty as to whether books should be judged as a whole or by isolated passages; and finally, the lack of a maximum penalty defined by law.[912]

Somewhat to his surprise, Jenkins's motion to introduce the private member's bill was passed and toward the end of 1955 he moved for a second reading.[913] At this time, Jenkins noted that the committee which had drawn up the bill had presented it not only to Parliament, but to the public and to the news media. He suggested that the news media – which had participated in the production and circulation of subjugated knowledges – received the bill favourably; the *Times*, the *Sunday Times*, the *Manchester Guardian* and the *Times Literary Supplement* were mentioned as having published articles favourable to the proposed legislative changes.[914] In seconding the motion, Jocelyn Simon alluded to rights and freedoms, suggesting that the issue of obscenity was

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[911] Hansard, *Obscene Publications*, HC Deb 15 March 1955 vol 538 cc1127-1130, https://api.parliament.uk/historic-hansard/commons/1955/mar/15/obscene-publications#column_1127.

[912] Hansard, *Obscene Publications* [15 March 1955], cc1127-1128.

[913] Hansard, *Obscene Publications Bill*, HC Deb 25 November 1955 vol 546 cc1883, https://api.parliament.uk/historic-hansard/commons/1955/nov/25/obscene-publications-bill.

[914] Hansard, *Obscene Publications Bill* [25 November 1955], cc1884.

one of importance because it dealt with "one of the fundamental principles of our Constitution, namely, the right to freedom of expression".[915] Simon framed the issue of obscene literature as one of liberty rather than libertinism,[916] contesting dominant discourse with subjugated knowledge.

After a series of delays, including time before the Select Committee, the bill was reintroduced in December of 1958 just before the end of session.[917] Mark Bonham Carter, a publisher as well as a member of Parliament, made an interesting comment during the House of Commons discussion. He said, "I cannot help thinking that works of art are not created by average men, that some of them are not intended for average men, and, lastly, in a liberal society, one of the things which is to be assumed is that average men should be responsible for themselves. No one is forced to buy or forced to read a book which shocks him".[918] He suggested that individuals should be responsible for themselves, or that subjects should self-govern. Historically, the king was responsible for the preservation of public morals. Subsequently, vice societies in tandem with the development of common law emerged to fulfill the same function; they were active guardians of the morals of the public. These historical relations were enshrined in criminal and regulatory laws, as state agencies and especially legal institutions took over the regulation of obscenity and public morality. To suggest that the individual should be responsible (or the subject responsibilized) for her own moral choices

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[915] Hansard, cc1887.

[916] Hansard, cc1889.

[917] Hansard, *Obscene Publications*, HC Deb 16 December 1958 vol 597 cc992-1051, https://api.parliament.uk/historic-hansard/commons/1958/dec/16/obscene-publications#column_992.

[918] Hansard, *Obscene Publications* [16 December 1958], cc1020.

represents a significant transformation, which I have shown was prompted by persistent and increasingly prevalent subjugated knowledges circulating throughout this period. Yet I should also point out that this was not necessarily a new subjugated knowledge, but a continuation or re-emergence of those knowledges produced by Henry Fielding and Cleland, for example. These subjugated knowledges could and did lead to transformation pertaining to the problematic discourse object of obscenity, the authority of speakers (e.g. writers versus judges), concepts (e.g. art versus pornography), and themes (e.g. personal freedom versus public morality).

The saga of the bill continued with amendments and discussions until royal assent was finally granted on July 29, 1959.[919] The *Obscene Publications Act* (1959) was, according to the long title, intended to protect "literature" and strengthen prohibitions on "pornography".[920] This statute recognized a distinction between art and obscenity; Section 4 allowed for a specific defence against the charge of obscenity, which reads:

> (1) A person shall not be convicted of an offence against section two of this Act, and an order for forfeiture shall not be made under the forgoing section, if it is proved that publication of the article in question is *justified as being for the public good on the ground that it is in the interests of science, literature, art or learning*, or of other objects of general concern.
> (2) It is hereby declared that the opinion of experts as to the literary, artistic, scientific or other merits of an article may be admitted in any proceedings under this Act either to establish or to negative the said ground.[921]

The significance of Section 4 cannot be understated as a major event in the judicial discursive formation. Britain modified extant legislation pertaining to the obscene in order to manage, through incorporation, the subjugated knowledges that were becoming increasingly

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[919] Hansard, *Royal Commission*, HL Deb 29 July 1959 vol 218 cc802, https://api.parliament.uk/historic-hansard/lords/1959/jul/29/royal-commission#column_802.

[920] *Obscene Publications Act*, 1959, 7 & 8 Eliz. II c. 66

[921] *Obscene Publications Act*, 1959, 7 & 8 Eliz. II c. 66 (italics added)

unruly. Cultural conceptions of art, enunciated by writers and others, allowed for a grid of specification that distinguished between the morally corrupting and the aesthetically meritorious. Authorities of delimitation, while still predominantly judges, were less authoritative, given that Section 4 gave authority to "expert" literary witnesses to determine what might be considered "for the public good". Similarly, the formation of concepts included a broader range of statements that enabled a distinction between art and the obscene, where previously there had been no such distinction. In terms of the formation of themes, the "right" to a defence and the "right" to read artistic works were also incorporated, when previously maintaining a standard of public morality (including the morality of vulnerable populations) was the dominant concern. Again, this transformation occurred as a result of the inability to exclude subjugated knowledges pertaining to art and personal rights and freedoms elaborated by extra-legal agents including writers.

The inclusion of these subjugated knowledges within the *Obscene Publications Act* (1959) led to a transformation of dominant discursive practice; however, the judicial discursive formation remained at this time dominant vis-à-vis the obscene. The procedures of legal regulation continued to constitute and regulate the obscene, even if Section 4 allowed for a defence of obscenity as art. I argue that while the dominance of legal regulation of obscenity was (at least ostensibly) re-established by the new statute, the concessions made toward the defensibility of some obscene "art" were incompatible with the judicial discursive formation and eventually led to a rupture. Before discussing this rupture, I turn attention to the United States and the transformation of its legal regulation of obscenity, which took a much different course than did Britain.

The Roth *(1957) Case*

In the United States, the Supreme Court rather than legislators reconceptualized the obscene. Specifically, *Roth* (1957) challenged the constitutionality of declaring material obscene on free speech grounds.[922] The legal test enunciated by the United States Supreme Court required that material be considered as a whole, in terms of whether or not the dominant theme appealed to prurient interest, as determined by the average person applying contemporary community standards.[923]

In this case, *amici curiae* urging reversal (i.e. the acquittal of Samuel Roth) were filed by Ernst (previously mentioned as co-author of *To the Pure*), the Authors League of America, Inc., Greenleaf Publishing Co. et al., the American Book Publishers Council, Inc., and the American Civil Liberties Union; this represents a significant consolidation of interests, particularly those in the business of publishing. The commercial discursive formation effectively contested dominant legal definitions and procedures of regulation. While Roth was not acquitted, the ruling began a process of clarifying obscenity law in the United States that continued with *Memoirs* (1966)[924] and *Miller* (1973).[925]

Justice William Brennan gave the opinion of the United States Supreme Court in *Roth* (1957), which featured prominently in the *Memoirs* (1966) case the following decade. He wrote:

> All ideas having *even the slightest redeeming social importance* – unorthodox ideas, controversial ideas, even ideas hateful to the prevailing climate of opinion – have the full protection of the guaranties, unless excludable because they encroach upon the limited

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[922] *Roth v. United States*, 354 U.S. 476 (1957)

[923] *Roth v. United States*, 354 U.S. 476 (1957)

[924] *A Book Named "John Cleland's Memoirs of a Woman of Pleasure" v. Attorney General of Massachusetts*, 383 U.S. 413 (1966)

[925] *Miller v. State of California*, 413 U.S. 15 (1973)

> area of more important interests. *But implicit in the history of the First Amendment is the rejection of obscenity as utterly without redeeming social importance*. This rejection for that reason is mirrored in the universal judgment that obscenity should be restrained, reflected in the international agreement of over 50 nations, in the obscenity laws of all of the 48 States, and in the 20 obscenity laws enacted by the Congress from 1842 to 1956.[926]

This idea of redeeming social importance was crucially important in the *Memoirs* (1966) case, discussed below. At this point, I wish to note that, as in Britain, there were knowledges emerging primarily from the commercial market and pertaining to the mitigating or redeeming themes of art and freedom that prompted the transformation of obscenity law in order to subsume these subjugated knowledges within the judicial discursive formation.

A few years later, following the publication of a book by the controversial Henry Miller – and before *Fanny Hill* was tried – commentator William Buckley, Jr. suggested that, "[i]t is even doubtful that there any longer exists any piece of obscenity which can be banned from the mails, or from the bookstores; some professor, or critic, or even bishop, will almost certainly show up to testify before a judge that 'The Adventures of Fanny Hill,' or whatever, is an honest creative effort, and should be allowed to circulate freely".[927] What follows demonstrates that Buckley was prescient about obscenity and inadvertently about *Fanny Hill*, too. The introduction of redeeming social importance or value, tied into conceptions of art, fractured the unity of the judicial discursive formation; I demonstrate that the subjugated knowledges incorporated into Section 4 and the *Roth* (1957) decision continued to be implicated in struggle in such a way that the dominance of the judicial discursive formation could not be effectively reproduced.

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[926] *Roth v. United States*, 354 U.S. 476 (1957) (italics added)

[927] William F. Buckley, Jr. "Hypocrisy on Pornography," *Buffalo Courier Express* (NY), September 9, 1962, 14A, http://fultonhistory.com/Fulton.html.

Fanny Hill's Legal Troubles

This section traces how *Fanny Hill* was implicated in prominent trials in the United States (in New York and Massachusetts) and Britain (in London). This section is quite detailed because there was an extraordinary incitement to discourse pertaining to sex and sexuality around these trials, with significant implications for the legal conceptualization of obscenity and its regulation.

New York

In June of 1963, G. P. Putnam's Sons (Putnam's) was asked by a journalist if there had been any (presumably legal) trouble over the company's decision to publish *Fanny Hill* in the United States later that month; a spokesperson indicated that there had been no trouble and that none was expected.[928] Later that month and just prior to publication, a lengthy review of Putnam's *Fanny Hill* appeared in the *New York Post*.[929] The review included a summary of the novel's plot, for example describing the second part of the book as a "pirouette through a Hogarthian milieu of lechery, cuckoldry, harlotry and lesbianism. They whirl in and out of bed with amiable sports, jaded roues, a masochistic young whipper-snapper and an oversexed imbecile. But Fanny's final turn is with her 'dearest' Charles".[930] In this review article in a mainstream newspaper, a journalist assumed the privilege or ability to speak authoritatively as a critic about *Fanny Hill* as a piece of literature rather than as a problematic obscene object. While

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[928] Martha MacGregor, "The Week in Books," *New York Post*, June 9, 1963, Magazine 13, http://fultonhistory.com/Fulton.html.

[929] Alan Levy, "'Fanny Hill' Enters Polite Society," *New York Post*, June 23, 1963, Magazine 13, http://fultonhistory.com/Fulton.html.

[930] Levy, "Polite Society," Magazine 13.

the relative position of the journalist as a speaking subject was not as authoritative as a judge, for example, the critic did not hesitate to make authoritative statements about the worth or value of the book. This suggests that an increasing range of statements pertaining to the obscene was possible.

This review, and the fact that it was not excluded by the judicial discursive formation, points to the possibility of transformation in the formation of concepts and themes, especially as *Fanny Hill* was described as an "under-the-counter-classic" and "perhaps the best-selling banned book of all time".[931] The following excerpt gives insight into how it came to be possible to speak of *Fanny Hill* with a language, concept and themes that did not emerge from and were not successfully excluded by the judicial discursive formation.

> 'Fanny Hill' is presented to today's society under respectable, though clearly blushing, auspices as 'An Outstanding Literary Curiosity.' One may scarcely recognize good old 'Fanny Hill' as she promenades down Publisher's Row. She is dressed in a discreet jacket, a 13-page 'Introduction to Modern Readers' by an eminent critic (Peter Quennell), a nine-page 'Note on [Her] American History,' and a 21-page appendix.[932]

Both the novel's introduction and this article constituted *Fanny Hill* as respectable because it was of scholarly interest, and had social, historical and artistic merit; it did not *only* contain sexual representation, which would more easily enable the judicial discursive formation to effectively problematize it.

Not only were critics producing knowledges that contested judicial discursive practice by making space for, rather than prohibiting, sexual literature and knowledge, but events also made the circulation of such knowledges seem more reasonable. Around this time, the Profumo Affair was ongoing in Britain and had received international attention; the sexploits of Stephen Ward,

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[931] Levy, Magazine 13.

[932] Levy, Magazine 13.

Christine Keeler, and John Profumo, Secretary of State for War, were seen as comparable in explicitness to the contents of *Fanny Hill*.[933] In fact, the Profumo Affair was linked with *Fanny Hill* in news coverage, especially when Marilyn Rice-Davies, a colleague of Keeler and part of the scandal, signed a contract to play the role of Fanny in a film version of the novel.[934]

Despite the fairly positive review and increasing sexual "permissiveness" (or cynicism), however, *Fanny Hill* became embroiled in legal procedures. In a widely reported action, the five district attorneys and the corporation counsel of New York City together sought to have a temporary injunction on the grounds of obscenity issued against the sale of *Fanny Hill* in July of 1963; it was reported that the novel should not be sold because it contained "'lurid sex acts, teaches no lesson and points no moral'".[935] While the injunction was sought to legally prohibit the sale of the novel in New York, sales of the novel were brisk. The *New York Post* indicated that *Fanny Hill* was listed for sale as "The Book" to avoid legal troubles pending the decision.[936] One week later, it was reported that it was still selling well, according to several booksellers.[937] *Fanny Hill* was even listed as number ten on a best seller list, as determined by a survey of

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[933] Profumo, British Secretary of State for War, initially denied having a sexual encounter with model and topless dancer Keeler. The sex scandal was magnified by the possibility that Keeler might also have been involved with Yevgeny Ivanov, a Soviet naval attaché, thus implying a possible security breach.

[934] Associated Press, "Mandy Signs to Play Role of Fanny Hill," *Yonkers Herald Statesman* (NY), December 31, 1963, 21, http://fultonhistory.com/Fulton.html.

[935] James A. Wechsler, "Fanny Hill," *New York Post*, July 18, 1963, 24, http://fultonhistory.com/Fulton.html.

[936] Martha MacGregor, "The Week in Books," *New York Post*, July 14, 1963, Magazine 13, http://fultonhistory.com/Fulton.html.

[937] Martha MacGregor, "The Week in Books," *New York Post*, July 21, 1963, Magazine 13, http://fultonhistory.com/Fulton.html.

leading booksellers.[938] The pending legal action, therefore, did not achieve its aim to prohibit sale and was in fact publicly flouted as newspapers reported these circumventions of a possible legal order; once again, commercial practices contested the dominance of the judicial discursive formation.

The circumvention of the principle of legal regulation (i.e. prohibition or suppression) is found in a *New York Post* article; the journalist indicated that he had followed the example of New York Supreme Court Justice Charles Marks, who was considering the request for an injunction, in obtaining *Fanny Hill* in order to read it before passing judgment.[939] The journalist reported that, "I have, in a matter of hours, completed reading it, and I do not detect that it has caused any fatal excitation, or spiritual damage".[940] He found it "charming" although repetitive.[941] Referring to the accusations contained in the request for an injunction, the journalist suggested that far from being lurid, the sex acts contained within the novel were conventional and not significantly different from those contained in other volumes; further, he contested the idea that novels should teach lessons or morals. He wrote that "it had not occurred to me that moral-pointing was a requirement for publication of a book in our enlightened city. In fact, from a literary viewpoint, one might contend that the most serious flaw is the stained note of uplift on which the book ends" (a reference to Fanny's redemptive marriage to her first love,

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[938] "Best Sellers," *Rochester Democrat and Chronicle* (NY), July 21, 1963, 13W, http://fultonhistory.com/Fulton.html.

[939] Wechsler, "Fanny Hill," 24.

[940] Wechsler, 24.

[941] Wechsler, 24.

Charles, and her reclamation of a virtuous life).[942] He also dismissed as valid the assertion that there was no plot and that the novel was essentially a series of poorly linked sexual episodes, and instead referred to insights about social conditions that could be learned from the novel. This article is of considerable interest because it contested not only the legal regulatory knowledges and practices of the judicial discursive formation, but it also contested the vice in literature discourse of the commercial discursive formation, since the journalist rejected the need for literature to impel toward virtue. Instead, he drew from alternative knowledges, which I categorize as aesthetic, to constitute *Fanny Hill* as having artistic merit as well as socio-historical value.

Marks came to a different conclusion, however; he acted within and reproduced the judicial discursive formation when he granted the injunction against the publication, sale, or distribution of the novel on the grounds that *Fanny Hill* was obscene.[943] This decision received considerable attention in New York's newspapers, which are of interest for their fragmented reporting of the decision. For example, one article said that the judge ruled against the book because it "'[d]epicts in glowing terms a series of acts dealing with sex in a manner designed to appeal to the prurient interest'".[944] Another article indicated that the book was "'patently offensive and utterly without any social value'".[945] Elements of the *Roth* (1957) decision, therefore, were evident in news articles, but not in their totality. In other words, the newspaper

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[942] Wechsler, 24.

[943] *Larkin v. Putnam's Sons*, 40 Misc. 2d 25 (1963)

[944] Associated Press, "'Fanny Hill' Banned as Obscene," *Rochester Democrat and Chronicle* (NY), July 25, 1963, 12A, http://fultonhistory.com/Fulton.html.

[945] Associated Press, "Court Bars 1749 Book as Obscene," *Tarrytown Daily News* (NY), July 25, 1963, 3, http://fultonhistory.com/Fulton.html.

coverage seemed unable to fully link the decision pertaining to *Fanny Hill* to the precedent of *Roth* (1957) and the United States Supreme Court's test of obscenity. This suggests that the *Roth* (1957) decision – and the concept of obscenity that it sought to define – was not entirely clear or dominant; the formation of obscenity as a discourse object, and in particular its legal grids of specification, was not coherent or unified.

The injunction was apparently enough to halt sales of the book – or then again, perhaps it was not. A journalist wrote that *Fanny Hill* was not available at any of the Lexington Avenue shops she canvassed; she qualified this discovery, however, by commenting that "[a]t least they say they aren't selling it".[946] In other words, it was really the *status quo* for *Fanny Hill* – still legally prohibited but also still available to those who knew where to look or how to ask.

In August of 1963, *Fanny Hill* came before New York Supreme Court Justice Arthur Klein when Putnam's contested the injunction against the sale and distribution of the novel.[947] I briefly describe the trial proceedings, largely as recounted by Charles Rembar, who included extensive and unedited (except for punctuation) portions of the trial transcript in his book, *The End of Obscenity* (1968),[948] and subsequently consider the newspaper coverage of the trial in

[946] Martha MacGregor, "The Week in Books," *New York Post,* August 4, 1963, Magazine 13, http://fultonhistory.com/Fulton.html.

[947] *Larkin v. Putnam's Sons*, 40 Misc. 2d 28 (1963)

[948] I made this choice because Rembar presented particularly authoritative knowledges as both a legal agent and as an author. I am aware that Rembar does not present an "unbiased" account of the trial; however, any account of the trial could be similarly problematized. I do not read Rembar as being more (or less) truthful, but recognize him as more authoritative than most, and read him with a reflexive awareness that takes into account the fact that Rembar recounted and emphasized *certain* aspects and portions of the trial. Most importantly, Rembar's trial transcripts in this and later cases involving *Fanny Hill* are invaluable to this project because they are not all publicly available (to my knowledge).

order to consider the transformation of *Fanny Hill* as an obscene object and the struggle over the conceptualization and regulation of the obscene.

Rembar, who represented Putnam's, tried – in both New York and later in Massachusetts – to constitute specific portions of Brennan's decision from *Roth* (1957) (quoted earlier) as the prevailing but legally unrecognized test for obscenity. To be clear, *Roth* (1957) was recognized as the standard for legal determinations of obscenity; recall that the test was whether the average person, applying contemporary community standards, would find that the dominant theme of the material as a whole appealed to prurient interest.[949] However, Rembar argued that Brennan's decision constituted an additional test: the social value test, based on the idea of redeeming social importance. For Rembar, this comprised a test under which, if *Fanny Hill* had some redeeming social value (e.g. literary, historical or social value), then it could not be outside the First Amendment (i.e. it could not be obscene and must be a matter of free speech). To establish this test, he enlisted the aid of expert literary witnesses, the authority of whom was not recognized at that time by the judiciary in the United States. In an unprecedented decision, Klein allowed the testimony of expert literary witnesses; however, because there was no precedent, it was unclear to what extent this expert testimony would affect the outcome of the case.[950]

The witnesses – including the editor of the *Sunday Times Book Review*, a poet and assistant professor of English at Yale University, an assistant professor of English at Hunter College, the president of Putnam's, and other literary critics and editors – compared *Fanny Hill* to classic or artistic erotica that did not significantly diverge from contemporary community

[949] *Roth v. United States*, 354 U.S. 476 (1957)

[950] Rembar, *The End of Obscenity*, 246-248.

standards.[951] These experts, given their professions, were constituted as being exposed to and familiar with contemporary community and artistic standards. Rembar, as a legal agent working on behalf of a commercial institution (i.e. Putnam's), worked to establish this expert knowledge in order to constitute *Fanny Hill* in a way that would not be in violation of the first part of the *Roth* (1957) standard. In other words, *Fanny Hill* was constituted by expert literary knowledge as being comparable to extant literature in line with community standards rather than outside the bounds of acceptable sexual representation.

Regarding the appeal to prurient interests, or the second part of the *Roth* (1957) test, the literary experts consistently declined to speculate on why someone might want to read *Fanny Hill*. For example, prosecutor Seymour Quel asked Eric Bentley if he would "'agree that the vast majority of people who would read this book would read it because of its eroticism?'".[952] Bentley declined to give an opinion about the motivations of others, or he declined to speak in terms of, or on behalf of, a moral public. Rather than speaking as a guardian of public morals, Bentley spoke only for himself as an expert rather than moral subject. Like other witnesses, he indicated that he read the book for its artistic and intellectual qualities rather than its potentially sensual or physiological effects.

In conjunction with establishing that the book could be read for intellectual rather than prurient reasons, Rembar worked to affirm the reputation of the publishers; in previous legal decisions, the character of the publisher went toward establishing the character of the book.[953] This suggests some continuity from the earliest formulations of the obscene, whereby the

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[951] See Rembar, 248-281.

[952] Quoted in Rembar, 281.

[953] Rembar, 272-274.

infamous Curll was found guilty of obscenity while Cleland as a gentleman of quality was not. Quel conceded the reputation of the publisher and Walter Minton, president of Putnam's, stated that *Fanny Hill* was published during the normal course of business.[954] In other words, a reputable publisher – unlike the disreputable Curll – produced *Fanny Hill* for sale as a matter of course rather than in an attempt to profit from salacious materials that would appeal to prurient interests.

Finally, these witnesses gave their expert opinion as to the redeeming social value of *Fanny Hill*. They described the book as a meritorious example of the eighteenth century English novel, well-written literature, and an interesting historical document providing insight into psychological and socio-economic conditions, as well as human sexuality and philosophy.[955] Establishing *Fanny Hill* as art or literature of value contested legal grids of specification and legal procedures pertaining to the regulation of the obscene. Rather than an illegal object causing harm, these literary experts produced knowledge that constituted *Fanny Hill* as being valuable not only in commercial terms, but according to aesthetic grids of specification. At this time, it was uncertain whether such a conceptualization could successfully compete with the legal constitution of the obscene, exempting aesthetic or meritorious literature from legal regulation.

Quel introduced witnesses on behalf of the prosecution, including Dr. William Rosenblum, rabbi of Temple Israel, Father Edward Soares, Roman Catholic priest and Director of the Archdiocesan Committee for Decency in Literature, Julius Nerow, a social worker and Deputy Executive Director of the New York City Youth Board (whose testimony was largely

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[954] In Rembar, 274.

[955] See Rembar, 248-281.

excluded on the basis that the statute in question did not apply to youth specifically), and Reverend Canon William Van Meter, Director of Christian Social Relations of the Protestant Council of the City of New York. These religious agents were historically presumed to have some authority, given the close association of religion and law in the regulation of the obscene. Rembar objected to these witnesses on the grounds that they were not "literary" experts, a distinction with which Klein agreed. For example, Klein ruled that Soares was not "'qualified as an expert in the field of literature. He is no more, in my opinion, than the average reader'".[956] By implication, Rembar's witnesses were above average and therefore had expert or more authoritative opinions.

This was a significant point; the judge allowed or gave more authority to the knowledges or testimony of Rembar's literary experts than he did to religious experts. This was a critical moment in which those who were allowed to speak authoritatively, as determined by a legal authority (i.e. a judge), about the issue of obscenity transformed; no longer was the Church or a moral representative such as an SSV agent considered within the legal institution of the court to be an authority on obscenity. Instead, Klein authorized the knowledges of literary experts, potentially transforming the obscene from a moral-legal concept to an aesthetic-legal concept. Klein, in allowing the prosecution's witnesses to speak with less authority, or in mitigating or excluding their testimony, signaled that while the court would be the final arbiter of the undisputed parts of the *Roth* (1957) test, literary experts could speak to the concept of redeeming social value.

While Rembar worked hard to exclude or at least to minimize the testimony and authoritative knowledge of the prosecution witnesses, Rosenblum ended up saying that *Fanny*

[956] Quoted in Rembar, 289.

Hill had "'some literary merit'".[957] Van Meter went further, admitting that on reading the book he had changed his mind about it; he "'came out with a view that this was a serious book, that there was some serious consideration of plot and character development, that it had some sociological importance, if a person were concerned with that period'".[958] For Rembar, this was the turning point in the trial, in which the "redeeming" literary value of *Fanny Hill* was established or confirmed by prosecution witnesses. Klein reacted to this testimony with humour; he was actually seen to turn away from the court in order to hide a smile.[959] Of course, more significant was that the prosecution witnesses used the (subjugated) vocabulary or knowledges of the defence in relation to *Fanny Hill*. Rather than relying on moral-legal grids of specification to determine the object's obscenity, the prosecution witnesses attributed literary qualities – derived from subjugated knowledges – that ultimately mitigated or made difficult a legal determination of obscenity.

On August 23, 1963, Klein dismissed the temporary injunction against the sale and distribution of *Fanny Hill*.[960] He decided that,

> [t]he book, though undeniably containing numerous descriptions of the sex act and certain aberrations thereof as its central theme, contains not one single obscene word. While it is undoubtedly true that obscenity is not rendered less obscene by virtue of the fact that it has been well written – nor for that matter must a writing necessarily appear exclusively on the walls of men's public lavatories to be considered pornographic – there is present herein an additional factor, not normally encountered in cases where books are sought to be suppressed, and that is the high literary quality of the book. With respect to

[957] Quoted in Rembar, 285.

[958] Quoted in Rembar, 291.

[959] Rembar, 292-293.

[960] *Larkin v. Putnam's Sons*, 40 Misc. 2d 28 (1963)

> the literary quality of the book, defendant produced several expert literary figures as witnesses who testified at some length.[961]

Based on expert testimony that reproduced subjugated knowledges, Klein ruled that *Fanny Hill* had literary value which "redeemed" it from legal sanction; Klein accepted the previously excluded knowledges of expert literary witnesses as authoritative in his legal determination.

Following Klein's decision, the *Olean Times Herald* published a review of Putnam's six dollar edition of *Fanny Hill*. This suggests that, having been "redeemed" by the legal court, *Fanny Hill* was not only fit to be sold, but also to be reviewed by expert literary critics who had in fact contributed to that legal determination of *Fanny Hill*. According to this review,

> [i]t took Fanny Hill a couple of hundred years to get here, but the famous, or infamous, lady of easy virtue finally has arrived in what might be called polite literary society.
>
> That is, the memoirs of this fictional London miss of the 1700s may be purchased openly at your neighbourhood bookstore, in an edition with the name of the book printed in large letters on the jacket – in contrast to the decades of bootleg sales at up to $50 a copy. . . .
>
> The sameness, and the mincing 18th Century style of the writing, are weaknesses of what is described appropriately as an outstanding literary curiosity.[962]

This review is of interest because it points to the transformation that I have been suggesting; specifically, that non-legal grids of specification – or literary or aesthetic standards – were successfully applied to *Fanny Hill*, mitigating its (moral) harm and therefore ensuring its legality. *Fanny Hill*, which had been conceptualized as *the* symbol of legally obscene literature and sexual representation, was seemingly no longer morally or legally problematic; instead, literary experts, including critics, writers and academics, produced knowledge that constituted *Fanny Hill* as an aesthetic rather than obscene object.

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[961] *Larkin v. Putnam's Sons*, 40 Misc. 2d 28 (1963)

[962] J. L. B., "Letters from a Shady Lady," *Olean Times Herald* (NY), August 30, 1963, 11, http://fultonhistory.com/Fulton.html.

In addition to circulating literary reviews of the novel, newspapers also advertised the sale of *Fanny Hill*. For example, in an advertisement that accepted mail orders, the Clinton Book Shop inserted the following advertisement:

> THE CLASSIC NOVEL ABOUT FANNY HILL
> IS NOW AVAILABLE
> *John Cleland's*
> MEMOIRS OF A WOMAN OF PLEASURE
> First Published in the Middle of The 18th Century.[963]

In addition to enjoying a new circulation as a result of the knowledge constituted by expert literary opinions and carried in literary reviews, *Fanny Hill* was profitable as a commodity at least in part because it had been forbidden for so long. It was transformed from obscene into a valuable "classic" by judicial decision and expert opinion.

As newspapers circulated information about the literary value and commercial availability of *Fanny Hill*, I suggest that they contributed to the mutating conceptualization of obscenity. For example, one critic had decided not to review *Fanny Hill* when Putnam's first released it, suggesting that the book was not "serious".[964] However, when the temporary injunction was put in place, he changed his mind because he supported Putnam's "right" to publish the book.[965] His subsequent review focused less on the novel than on subjugated knowledges pertaining to obscenity; specifically, he downplayed the imagined harmful consequences of obscenity (suggesting that obscenity was not harmful at all or that harm was unlikely to occur as a result of reading a book), and argued that literary rather than legal experts

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[963] "The Clinton Book Shop," *Rochester Democrat and Chronicle* (NY), August 30, 1963, 4A, http://fultonhistory.com/Fulton.html.

[964] Stanley Edgar Hyman, "In Defense of Pornography," *New Leader* (NY), September 2, 1963, 13, ProQuest Periodicals Archive Online.

[965] Hyman, "In Defense of Pornography," 13.

should decide what people should read (presumably based on literary qualities).[966] This opinion was affirmed by Klein's decision; in other words, previously subjugated knowledge had the authority of a legal decision behind it and circulated in popular mediums.

Shortly after these events occurred in New York, action was taken against *Fanny Hill* in London.

London

On November 7, 1963, the day before it was scheduled to become available for sale, action was taken against the Mayflower Books (Mayflower) edition of *Fanny Hill*. This action, from start to finish, received attention from the newspapers, including in the United States.[967] In Manchester, several thousand copies of the paperback book (those few that were not yet distributed) were seized from the printers, and 171 copies were seized from bookseller Ralph Gold's Magic Shop in London.[968] The *Times* reported that the Director of Public Prosecutions instructed police to make an application for process under the *Obscene Publications Act* (1959), which was similar to an injunction to stop sales prior to a determination of obscenity.[969] The *Sunday Times* later reported that *Fanny Hill* was selling well in Soho; the journalist visited twelve bookstores and found that five, all of them small and independent, were selling the

[966] Hyman, 14-15.

[967] E.g. Associated Press, "Britain Stops Sale of Novel," *Amsterdam Evening Recorder and Daily Democrat* (NY), November 8, 1963, 1, http://fultonhistory.com/Fulton.html; Associated Press, "World News Briefs," *Olean Times Herald* (NY), November 8, 1963, 1, http://fultonhistory.com/Fulton.html.

[968] Grant, "'Exciting, Bawdy, Extrovert'," 156; "Bow-St. Process Over a Paper-Back," *Times* (London), November 8, 1963, 12, http://tinyurl.galegroup.com/tinyurl/4Fk9u6.

[969] "Bow-St. Process," 12.

Mayflower edition for between three to ten pounds rather than the original selling price of 3s. 6d., while a different, illustrated edition was selling for between fifteen to twenty pounds.[970] This situation was similar to the period between the request for an injunction in New York and when the injunction was granted, when sales of the book were reported to be brisk.

Another article in the *Sunday Times* favourably reviewed the novel, emphasizing its psychological insights pertaining to "sexual satisfaction", the vivid descriptions of sexual pleasure, the lack of obscene or coarse words, and the quality of the style of writing.[971] While the article was entitled "Controversial Classic", J. W. Lambert constituted *Fanny Hill* as respectable according to extra-legal grids of specification; doing so in a review in a major newspaper potentially served to normalize such expert literary knowledge, or at least it contested legal discourse pertaining to the obscene. Again, this critical review process bore some similarity to the positive literary reviews published in American newspapers that emphasized many of the same points of literary, social and/or historical interest or value.

In terms of reviews, Brigid Brophy's in the *New Statesman* was particularly prominent; her introduction begins:

> To my mind, the two most fascinating subjects in the universe are sex and the 18th century. Anyone who so much as partly shares that persuasion would expect *Fanny Hill*, as a cardinal source-book for both subjects, to be an interesting document. An interesting novel, however, you would not expect, if you judged by the run of minor 18th-century fictions or, still less, by the run of famous naughty books. As a rule, if there's anything drearier than smut, it's old smut. When *Fanny Hill* turns out to possess, over and above

[970] David Leitch, "Rush for 'Fanny Hill' Sends Price Sky-High in Soho," *Sunday Times* (London), November 10, 1963, 3, http://tinyurl.galegroup.com/tinyurl/4FjaJ4.

[971] J. W. Lambert, "Controversial Classic," *Sunday Times* (London), November 10, 1963, 38, http://tinyurl.galegroup.com/tinyurl/4FmQ67.

> the interest of its material, literary charm, that seems almost too bonus to be true. It is in fact a highly engaging little erotic tale. . .[972]

Brophy acknowledged a personal interest in both sex and the eighteenth century that predisposed her to find that *Fanny Hill* was an "interesting" novel; however, she also argued that the book was in itself both interesting and of interest. In other words, it was not only a book about sex or containing sexual representation, but it was a book about sex that also had "literary charm". To support her argument, or her subjugated but expert knowledge, she referred to the influences of the period from which *Fanny Hill* emerged and also reflected on the tone and concerns of the book. She compared it favourably to other eighteenth century as well as contemporary works in terms of plot and form; she affirmed that *Fanny Hill* was valuable because the woman's pleasure, rather than her virtue, was central to the plot. What is important to draw from this, more than any particular argument of Brophy's, was the fact that a serious newspaper included a serious article that constituted *Fanny Hill* as a serious *and* a sexual book, rather than, for example, a seduction to immorality. There was neither an apology for, nor anticipated harm from, the sexual episodes and Brophy did not shy away from those topics in the review; instead, the article made space for a serious consideration of sexual representation as literature rather than as obscene.

Ten days after the seizure of copies of *Fanny Hill*, it was reported that Sir Theobald Mathew, Director of Public Prosecutions, had not yet decided whether to take legal action.[973] This meant that the police continued to hold the copies rather than bring them before a magistrate as required under the *Obscene Publications Act* (1959). During this holding period, which itself

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[972] Brigid Brophy, "Mersey Sound, 1750," *New Statesman* (London), November 15, 1963, 710, ProQuest Periodicals Archive Online.

[973] "Decision Awaited over Future of 'Fanny Hill'," *Sunday Times* (London), November 17, 1963, 3, http://tinyurl.galegroup.com/tinyurl/4FiKL4.

was eventually problematized in newspapers, there was time for new storylines (or knowledges) to appear.

For example, on November 23, 1963, it was reported that Luxor Press (Luxor) would publish ten thousand copies of *Fanny Hill* in a luxury edition costing £2 5s.[974] According to the article, the preparations for publishing had been ongoing for months; Charles Skilton, proprietor of Luxor, said he did not know about the Mayflower paperback edition but did feel "that police action was less likely over a book costing 45s., since such a price would limit its appearance on bookstalls".[975] A follow-up article the following week reported that the Luxor edition had been published without incident.[976] According to this article, the Luxor version was expurgated, which potentially factored into the decision not to initiate legal proceedings. Luxor's 10 000 copies were printed and distributed and strong sales led some booksellers to order further copies. Skilton characterized his edition as "'a deluxe edition intended for people who like good books'".[977] This Mayflower-Luxor storyline received considerable attention, including in the United States,[978] and is worth noting for a few reasons.

First, the overt discrepancy in treatment between editions of the same novel distinguished by price rather than content suggests that there was still a concern about the population among which such a publication might circulate. In other words, the wealthy who collected deluxe

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[974] "Firm to Publish 'Fanny Hill'," *Times* (London), November 23, 1963, 6, http://tinyurl.galegroup.com/tinyurl/4FiG9X.

[975] "Firm to Publish," 6.

[976] "Dearer Edition of 'Fanny Hill'," *Times* (London), November 30, 1963, 6, http://tinyurl.galegroup.com/tinyurl/4FiGiX.

[977] "Dearer Edition," 6.

[978] E.g. Associated Press, "'Memoirs' on Sale in Deluxe Edition," *Rochester Democrat and Chronicle* (NY), December 1, 1963, 13B, http://fultonhistory.com/Fulton.html.

books were less subject to legal or moral censure than vulnerable or poor subjects. A similar conclusion can be drawn from the fact that it was reported that Christie's auctioned an unexpurgated 1893 edition of *Fanny Hill* toward the end of that year.[979] Second, there was at no point that I have discovered ever a public explanation given for the discrepancy in treatment; agents of state institutions, including the police and prosecutors, were entirely silent on the matter, leaving space for often critical speculation in public newspapers. Finally, the demand for *Fanny Hill* was strong enough that reputable publishers risked presenting it to the public.

On December 8, 1963, one month after police seized copies of *Fanny Hill*, critical coverage in the newspapers appreciably increased. The *Sunday Times* decried the "kidnapping" of the book in an article that wondered what the Director of Public Prosecutions had been doing for the last month; although copies had been seized and publication and distribution halted, legal proceedings still had not been instituted.[980] Since that initial search and seizure, the article commented that there had been "silence" (i.e. from Director of Public Prosecutions Mathew).[981] The article was incredulous in tone, suggesting that Mathew "must surely know what 'Fanny Hill' is all about";[982] while this could be read as implying that there had been enough time to read *Fanny Hill*, it could also be read as suggesting that the novel was very well-known. The article then criticized the *Obscene Publications Act* (1959) for failing to include a time limit for the process of deliberation; specifically, the article pointed to the economic hardship experienced

[979] Edwin Mullins, "End of Year Surprises," *Financial Times* (London), January 1, 1964, 18, http://tinyurl.galegroup.com/tinyurl/4G7YW1.

[980] "The Kidnapping of Fanny Hill," *Sunday Times* (London), December 8, 1963, 36, http://tinyurl.galegroup.com/tinyurl/4FiGZ6.

[981] "Kidnapping of Fanny Hill," 36.

[982] "Kidnapping of Fanny Hill," 36.

by publishers and booksellers when stock was seized and held indefinitely. In the absence of a such a time limit, the result was "a bureaucratic censorship (reinforced by immense commercial penalties): and this, irrespective of the particular case of 'Fanny Hill,' cannot be tolerated".[983] Here it is possible to see that once again, commercial considerations were formulated and mobilized to contest processes of legal regulation. These commercial knowledges urged legal efficiency in order to avoid undue commercial penalty.

One week later, it was reported that the Metropolitan Police had made a successful application at the Bow Street Magistrates' Court on behalf of the Director of Public Prosecutions under Section 3 of the *Obscene Publications Act* (1959).[984] This meant that there would not be a jury trial; further, instead of potentially subjecting the publishers to criminal penalties, the distributors would be summoned to show cause why *Fanny Hill* should not be forfeited and destroyed. Thus, Ralph Gold of G. Gold and Sons Ltd., a bookseller who operated out of the Magic Shop in London, was served with a summons to appear and show cause why 171 copies of the Mayflower edition of *Fanny Hill* should not be forfeited.[985]

Mayflower chose to intervene in the *Gold* (1964) case;[986] they were represented by Jeremy Hutchinson, an English barrister involved in some of the most significant and/or

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[983] "Kidnapping of Fanny Hill," 36.

[984] "'Fanny Hill': Court Hearing in January," *Times* (London), December 14, 1963, 8, http://tinyurl.galegroup.com/tinyurl/4FiJe3.

[985] "'Fanny Hill' Summons," *Times* (London), December 19, 1963, 6, http://tinyurl.galegroup.com/tinyurl/4FiDh2.

[986] *R. v. Gold (Mayflower Books intervening)*, (1964). Please note that this case was not published in a law report series, and thus does not have a reported case title or citation. In discussions with a very helpful law librarian at Oxford University, it was suggested that such decisions are made based on legal significance; the implied designation of this case as "insignificant" points to the ways in which the archive contains, excludes and orders

notorious legal cases of his time, including the 1960 defence of *Lady Chatterley's Lover* (the British edition being published in 1960) for obscenity, the 1961 defence of George Blake, a British double agent who worked for the Soviet Union, the 1963 defence of Keeler for perjury pertaining to the Profumo Affair, as well as cases involving Charlie Wilson the Great Train Robber, the theft of the Duke of Wellington's portrait (painted by Francisco Goya) from the National Gallery, and the theft of the World Cup, among others. His defence of *Fanny Hill*, on behalf of Mayflower, points to the perceived significance of the matter.

In a lengthy *Times* article,[987] it was reported that evidence presented by prosecutor Mervyn Griffith-Jones focused on the character or quality of the Magic Shop and the circumstances of sale in order to negate the statutory defence by which publications were justified as being for the public good on various grounds (e.g. in the interests of art, science, history, etc.). Griffith-Jones provided the magistrate with photographs of the Magic Shop, half of which was used to sell books and half of which was used to sell jokes and tricks. Further, it was reported that Inspector Webb had entered the shop on November 5 and discovered a display of *Fanny Hill* books with the sign "Just out *Fanny Hill*, banned in America, 3s. 6d.".[988] Griffith-Jones suggested throughout the trial that readers would not buy *Fanny Hill* based on its literary or historical merits in an establishment like the Magic Shop.

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knowledges. I have adopted the citation used by Grant in *Jeremy Hutchinson's Case Histories* (2015), and refer to this book and to newspapers for information pertaining to the case. As an aside, the volume of newspaper articles pertaining to this case shows a discrepancy between information considered to be legally significant and information that is considered to be "newsworthy".

[987] "Author Says Novel 'Fanny Hill' Not Pornography," *Times* (London), January 21, 1964, 7, http://tinyurl.galegroup.com/tinyurl/4FiLK9.

[988] "Author Says Novel," 7.

The same article described Hutchinson as taking a rather similar approach to the matter; in an attempt to establish that *Fanny Hill* was not obscene, he began by describing the circumstances of publication rather than the contents of the book itself. Like Rembar in New York, Hutchinson worked to establish the reputation of Mayflower, that the book was supplied to the Magic Shop as a normal business transaction and that anyone could access the book.[989] Hutchinson also pointed out that whatever the sign in the shop said, the book had not in fact been banned in the United States (i.e. given the Klein decision). In summary, Hutchinson tried to establish the normalcy of *Fanny Hill* and its circumstances of sale.

Hutchinson then called witnesses, who were authorized by Section 4 to speak as "experts" in the court, in order to establish the novel's literary and historical merit and thereby justify its publication as being for the public good. The first witness was Peter Quennell, who had written the introduction and notes to Putnam's American edition. On the basis of his literary and historical expertise, Quennell opined that *Fanny Hill* had literary and historical merit, and was (therefore) distinct from pornography.[990] Quennell also mentioned that the book was favourably reviewed by respected critics (some of whom were discussed earlier), including V. S. Pritchett, H. D. Ziman, Marghanita Laski, J. W. Lambert, and Brigid Brophy; they treated it as a work of literature and of historical importance.

What is particularly significant about this testimony, in addition to Quennell's expert knowledge of *Fanny Hill* as literature of merit and as a useful object of academic study, was the length of space dedicated to the reproduction of his claims in the *Times*. Large portions of Quennell's testimony were included verbatim in the article, with headings that directed the

[989] "Author Says Novel," 7.

[990] "Author Says Novel," 7.

reader's conclusions, such as "Favourably Reviewed" and "Not Morbid, Sick, or Degrading".[991] The *Times* gave space and significance to Quennell's knowledge, both acknowledging and reproducing his "expert" status.

Unlike the rather speedy resolution of the New York trial, the *Gold* (1964) case in London took place over several weeks. On the second day of the trial, Quennell finished giving his testimony; subsequently, H. Montgomery Hyde,[992] a Doctor of Literature and former Ulster Unionist Member of Parliament, and literary critic Karl Miller testified.[993] These expert witnesses produced authoritative knowledge about the historical interest and literary merit of the book, and rejected the prosecutor's argument that the average reader would be more interested in the book for its sexual rather than historical content. This is similar to Rembar's experts in the New York trial who declined to speak authoritatively about anything other than their own expert opinions; it also represents a significant rupture, since the "expert" declined to decide what subjects – constituted as individuals and not as a general moral public or a particular vulnerable population – might or should read.

After another break in the trial, the newspaper coverage picked up where the trial left off, focusing on the testimony of Marghanita Laski.[994] Laski was one of those who had favourably

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[991] "Author Says Novel," 7.

[992] See H. Montgomery Hyde, "The *Fanny Hill* Case," in *A History of Pornography* (New York: Farrar, Straus and Giroux, 1965), 208-233.

[993] "'Fanny Hill' Is Defended by Former M.P. and Critic," *Times* (London), January 28, 1964, 7, http://tinyurl.galegroup.com/tinyurl/4FiLR3.

[994] J. W. Lambert, "The Dumb Waiter Stands Witness for 'Fanny Hill'," *Sunday Times* (London), February 2, 1964, 8, http://tinyurl.galegroup.com/tinyurl/4FiLP1.

reviewed the novel; at trial, she memorably called it "'a gay little book'".[995] She testified that she had been surprised that she was able to recommend the book, and affirmed that it had literary, social and historical merit. Laski explained, for example, that Cleland had used numerous English words and phrases for the first time in print. Laski also discussed, in more detail than the three previous male witnesses, the sexual episodes of the novel. This led to an interesting cross-examination by Griffith-Jones.

> When he rose to cross-examine, Mr Griffith-Jones made play with the 'unpleasant' episodes.
>
> There were, for instance, two episodes about Lesbianism. Surely they were distasteful? – Not profoundly distasteful.
>
> There are four episodes about masturbation. Surely they were unpleasant? – No, not unpleasant.
>
> The 'peeping Tom' episode? – A similar scene had not been objected to in Richardson's 'Pamela.' . . .
>
> Well, the seduction of the footman – not unpleasant?
>
> . . .
>
> 'Is it, sir?' said Miss Laski with an appealing upward inflection.
>
> The picking up of the sailor, and going off straightaway to have sexual intercourse. Not unpleasant? – A bit of really realistic, really good writing.
>
> Virtually the whole book was concerned with sex? As for historical interest, was human nature so very different 200 years ago?
>
> 'I've learnt,' said Miss Laski calmly, 'that human nature varies immensely. That what they did then *is* so similar is the interesting thing – not at all the impression you would get from, say, the "Kama Sutra."'
>
> 'Very well,' said Mr Griffith-Jones in a resigned voice, 'that's your view.'[996]

This exchange emphasizes the sympathetic portrayal by newspapers of the experts, who were portrayed as suave, articulate and sophisticated defenders of artistic and/or (particularly in this case) sexual expression. It also points to an interesting trend in Britain, in which the expert opinions of women (recall Brophy's article) pertaining to sex and sexuality were constituted as

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[995] Lambert, "The Dumb Waiter," 8.

[996] Lambert, 8.

particularly important – or at least were prominently reproduced in newspapers.[997] I suggest that the expert opinions of women pertaining to sexual literature were constituted both as more newsworthy than the opinions of most of the men testifying (with the exception of Quennell), and also that these opinions worked to contest or undermine the dominance of a judicial discursive formation that constituted women as requiring moral guardianship and as being sexually vulnerable or corruptible.

The impetus to crack down on obscene literature as part of the reproduction of the dominance of the judicial discursive formation and in opposition to such expert testimony resurfaced in the House of Commons. George Brown spoke at length, decrying the apparently blurred line separating what could and could not be circulated in the mails.[998] He suggested that if *Fanny Hill* was "held not to be obscene, leaflets can be handed out by uniformed postmen advocating that we buy the book, with some nice little passages from it telling us that it would be good for us to have it".[999] Postmaster-General Reginald Bevins replied that "there were considerable extracts from this piece of alleged literature in almost every Sunday newspaper in our homes last Sunday".[1000] This brief interlude in a larger debate was significant for two reasons. First, *Fanny Hill* attracted attention such that the outcome of the case was presumed to have much farther ranging effects than the forfeiture of 171 copies of the book from the Magic

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[997] A similar review of the trial and witnesses was included the following day in the *Times*. Once again, particular attention was given to Laski's positive response to the sexual scenes of the novel. "'Fanny Hill' as a Cheerful Corrective," *Times* (London), February 3, 1964, 7, http://tinyurl.galegroup.com/tinyurl/4FiKY3.

[998] Hansard, *Post Office (Household Delivery Service)*, HC Deb 04 February 1964 vol 688 cc989-1059, https://api.parliament.uk/historic-hansard/commons/1964/feb/04/post-office-household-delivery-service#column_989.

[999] Hansard, *Post Office*, cc1001.

[1000] Hansard, cc1006.

Shop. Second, and perhaps more importantly, Bevins pointed to the fact that newspapers were authorized to report on the trial and were thereby authorized to include excerpts of problematic or potentially obscene literature. To put it differently, newspapers operated outside of the prohibition on the obscene and were not in (much) danger of prosecution because they ostensibly provided information rather than titillation. As Griffith-Jones had argued that patrons of the Magic Shop were of a particular sort and easily corrupted, newspapers were implicitly constituted as impartially conveying information to incorruptible readers. These sorts of distinctions, including between Mayflower and Luxor editions, made it increasingly difficult to determine what publications were obscene within this judicial discursive formation.

On the last day of trial, Hutchinson addressed the issue of whether sexual representation was automatically obscene because it was morally objectionable. He said,

> If you start from the premise that sex is dirty and in itself depraved, then of course you speak, as Mr Griffith-Jones has done, of the 'kicks' in the book and 'hot passages' and so on. This book is about sex, which is a most absorbing subject – always has been and always will be – and it has never been part of the defence that people should read it in a high-minded way, bearing in mind its place in literature, as a social or moral tract. All the witnesses have said that it is exciting, bawdy, extrovert, gay; sometimes sombre and sometimes hilariously funny. But if in fact the book is written in a very excellent way and has historical interest and is a child of its age, then all those matters indicate that the book finds its place in the history of literature and not in the history of smut. It matters not at all from the point of view of this court what is the motive of anyone who buys it. That is entirely irrelevant. The only evidence called by the prosecution has been directed to the shop. Not one witness has been called by them with evidence directed to the book. One might think that they were discussing here whether the Magic Shop is on trial rather than the novel by John Cleland. Just because the novel was being sold with the notice 'Banned in America', just because a bookseller thought he could puff a book by affixing to it an entirely misleading notice, does not make that book obscene.[1001]

This closing argument was constructed for one purpose: to ensure the return to the commercial market of the book *Fanny Hill* on behalf of Mayflower. Hutchinson's arguments can be seen as justifications of why the book should be available for sale, and as a critique of the

[1001] Quoted in Grant, "'Exciting, Bawdy, Extrovert'," 164-165.

legal standards by which the sale could properly be legally forbidden. It is remarkable how little the idea of public morality emerged during this trial. Even when Griffith-Jones focussed on the unsavoury characters who were imagined to frequent the Magic Shop, or when he pressed Laski about her (expert) opinion about the depictions of sex in the novel, the focus remained on the corruption of the "average" subject, rather than the moral public. Thus, regardless of the outcome of the trial, significant ruptures were evident in the legal conceptualization of obscenity. No longer was law successfully reproducing itself as the guardian of the public morals; instead, there was space made within this judicial discursive formation – as a result of the *Obscene Publications Act* (1959) – in which experts could testify that a book was literature, regardless of the sexual content, or even because of it.

Despite this transformation, Justice Sir Robert Blundell took only a few minutes to declare, on February 10, 1964, that Mayflower's edition of *Fanny Hill* was obscene and Gold's copies were forfeit.[1002] While during the trial the newspapers emphasized or gave space to the opinions of expert witnesses, with the verdict the news media focused largely on the magistrate's decision, discussed in the following subsection.

After the Trial in Britain

Because of the time difference, people in the United States actually learned of the verdict (through newspapers anyway) before those in Britain did. Most of these articles noted that Mayflower's fifty cent version had been forfeited while Luxor's six dollar version circulated, and/or that despite the numerous expert defence witnesses testifying to its merits, it was found to

[1002] Grant, 165.

be legally obscene.[1003] This suggests a few things. First, *Fanny Hill* was newsworthy, regardless of whether it was determined to be obscene or not; it was an object around which considerable discourse or knowledge was mobilized or incited. Additionally, there was a generally expressed concern that expert witnesses were not being heard in – or were being excluded by – the courts. These "expert" knowledges, however, circulated in and were reproduced by newspaper reports during and after the trial, producing alternative and contesting existing knowledges and truths about the obscene.

For example, Blundell was reported in the *Times* as saying that "'I have come to my decision on what I have heard in the witness-box and such exhibits as I have seen . . . doing the best I can in the circumstances I have no hesitation in saying that the order should be made'".[1004] This article, having announced the verdict and summarized the case, then provided a detailed verbatim account of the final witness who had appeared before Blundell's judgment. Robert Pitman was a literary critic for the *Sunday Express*, and was formerly an English grammar school teacher. Hutchinson had established that Pitman had strong views about pornographic books, and yet Pitman still considered *Fanny Hill* to have literary and historical merit, and further suggested that it was "wholesome".[1005] The article then concluded with Hutchinson's defence arguments. That the majority of this article was devoted to the defence of *Fanny Hill*, or to its constitution as having merit rather than being obscene suggests that the legal verdict was not

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[1003] E.g. Associated Press, "London Bans 'Fanny Hill' Paperback," *Binghamton Press* (NY), February 10, 1964, 23, http://fultonhistory.com/Fulton.html; Associated Press, "'Fanny Hill' Ruled Obscene," *Niagra Falls Gazette* (NY), February 10, 1964, 1, http://fultonhistory.com/Fulton.html.

[1004] "Magistrate Rules that 'Fanny Hill' Is Obscene," *Times* (London), February 11, 1964, 6, http://tinyurl.galegroup.com/tinyurl/4FiLJ0.

[1005] "Magistrate Rules," 6.

sufficient to exclude or silence the arguments or subjugated knowledges of the defence (i.e. that literary, social and/or historical merit negated the legal determination of obscenity).

This is borne out by the fact that neither in Britain nor in the United States was the verdict reported as definitive. For example, the *Times* reported that Mayflower was considering an appeal.[1006] Part of the problem was that Blundell's verdict (or the legal process) applied only to the 171 copies seized from Gold's Magic Shop; of the 99 000 copies printed before legal action was taken, 82 000 had already been distributed to bookshops all over Britain.[1007] As the co-managing director of Mayflower said, "'[s]o far as I know, there is nothing to stop a bookshop in Scunthorpe or Glasgow or even Chelsea from selling the book. There might be another court action, but another magistrate might take a different view'".[1008] The verdict, therefore, was not seen as the final word; procedures of law were seemingly insufficient to effectively or totally suppress the circulation of *Fanny Hill*, as well as alternative knowledges of the obscene. This perception of variability, in which different editions might be treated differently or authorities in different geographical locations might arrive at different legal determinations, significantly contested the authority and truth of law pertaining to the obscene.

There is further evidence that Mayflower, at least, did not consider the legal decision indisputable or authoritative. In 1964, the same year as the trial, Mayflower brought out an expurgated edition of *Fanny Hill* that included a third letter.[1009] The letter was a critical

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[1006] "'Fanny Hill' Held Obscene," *Times* (London), February 11, 1964, 10, http://tinyurl.galegroup.com/tinyurl/4FiJB8.

[1007] "'Fanny Hill' Held Obscene," 10.

[1008] "'Fanny Hill' Held Obscene," 10.

[1009] Grant, "'Exciting, Bawdy, Extrovert'," 168. As an aside, an unexpurgated version of *Fanny Hill* was published in Britain in 1970 with no consequences. Grant, 168.

summary of the events of the trial, told as if experienced by Fanny herself. Commenting on Blundell, the letter read: "'I was foolishly filled with the expectation that so rational a pleasurist, a kindly bachelor of some sixty years, would view with indulgence the story of the scandalous stages of my life after my safe coming home to port and the paths of Virtue'".[1010] Consistent with the vice in literature discourse produced by Cleland and others, Fanny (or commercial agents associated with Mayflower) assumed that a reasonable or "rational" person would be able to read *Fanny Hill* "properly". The letter commented on the flattering "'approbation of my little work, of its historical interest and its literary merit by witnesses of the highest learning and distinction'".[1011] The letter builds on this theme, in which the properly educated or instructed person would understand the "'moral of my little tale: that it is Love and Marriage alone which sanctify pleasure'".[1012] Again, this reproduced the vice in literature discourse which was in contrast to the knowledges or truths of the dominant judicial discursive formation, given that according to the former, the responsibilized consumer subject would, could and should be responsible for her own reading matter.

Newspapers, through their reporting practices, were also involved in this struggle, or the contestation of the dominance of the legal regulation of the obscene. An article in the *New Statesman* was particularly critical of the verdict, at least in part because Blundell failed to give any reasons for his decision (i.e. to counter those testimonies/knowledges/truths produced by the

[1010] Quoted in Grant, 169.

[1011] Quoted in Grant, 169.

[1012] Quoted in Grant, 169.

experts).[1013] The result of this decision, the article pointed out, was that the expensive Luxor edition could be read while the Mayflower edition could not be. The writer noted that "[d]istinguished critical evidence was called to establish the fact that Cleland's book is a work of serious literary merit. No evidence was called on the other side. Therefore the bench must have accepted the point – and disregarded it. Why?"[1014] The writer concluded that *Fanny Hill* was banned because it contained sex, and sexual representation was in and of itself obscene. It was an indication of the ongoing struggle that these sorts of questions were asked in public mediums. The authority of experts regarding obscene literature eroded the authority of the legal institution, particularly pertaining to the concept of obscenity.

Publishers and journalists were not the only ones to contest Blundell's decision, and by extension the authority of the judiciary. An all-party (i.e. non-partisan) motion was tabled in the House of Commons by Tom Driberg, and was signed by approximately twenty members of Parliament.[1015] In a letter to the editor, Driberg clarified that the motion "'*calls on* the Secretary of State for the Home Department, the Director of Public Prosecutions, and chief constables not to waste the time of the police and the courts in further imbecilities of this kind'".[1016] The motion also drew attention to the differential treatment of the Mayflower and Luxor editions.[1017]

[1013] Flavus, "London Diary," *New Statesman* (London), February 14, 1964, 244, ProQuest Periodicals Archive Online.

[1014] Flavus, "London Diary," 244.

[1015] "M.P.s Criticize 'Fanny Hill' Decision," *Times* (London), February 13, 1964, 5, http://tinyurl.galegroup.com/tinyurl/4FiJN7.

[1016] "All-Party Motion on 'Fanny Hill' Case," *Times* (London), February 22, 1964, 9, http://tinyurl.galegroup.com/tinyurl/4FmgH5.

[1017] "M.P.s Criticize 'Fanny Hill' Decision," 5. This motion was widely reported in New York newspapers. E.g. Associated Press, "'Hands Off Fanny'," *Kingston Daily Freeman* (NY),

In this instance, representatives of a legislative institution – which was involved in the statutory regulation of obscenity – contested the decision reached by the legal court, as well as the authority of that institution to regulate the obscene.

However, this criticism was countered, pointing to the ongoing struggle over *Fanny Hill* and the obscene, including the appropriate definition (or constitution of the problematic discourse object), jurisdiction (or institutional authority) and response (or dominant practices) to *Fanny Hill* and the obscene. The *Times* reported that a Conservative motion was tabled and signed by seven members of Parliament in support of Blundell's verdict.[1018] However, the article then referred back to the original all-party motion and included the text of the latter. This issue did not go away, as support for the critical motion gained twenty seven signatures by February 17, 1964, compared to eight for the Conservative motion.[1019]

In the midst of the ongoing debate about the legal regulation process, obscenity generally and *Fanny Hill* specifically, Mayflower declined to appeal the verdict. Luxor, meanwhile, announced that they had printed 60 000 paperback copies of *Fanny Hill* to be issued at 9s. 6d. and sealed in transparent wrapping.[1020] Apparently correctly, given that no legal trouble was

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February 13, 1964, 18, http://fultonhistory.com/Fulton.html; Associated Press, "'Hands Off Fanny Hill'," *Geneva Times* (NY), February 13, 1964, 5, http://fultonhistory.com/Fulton.html.

[1018] "'Fanny Hill' Decision," *Times* (London), February 14, 1964, 13, http://tinyurl.galegroup.com/tinyurl/4FiE85.

[1019] "'Salacious Books' Trend Attacked," *Times* (London), February 17, 1964, 7, http://tinyurl.galegroup.com/tinyurl/4Fkoy4.

[1020] "'Fanny Hill' in a Sealed Edition," *Sunday Times* (London), February 16, 1964, 3, http://tinyurl.galegroup.com/tinyurl/4FiJf7.

encountered, Skilton explained that "'[t]his should prevent any difficulty with the authorities because people cannot browse through the book without buying it'".[1021]

In Manchester, however, there was an intensification of regulation. On February 25, 1964, it was reported that four books, including abridged and unexpurgated versions of *Fanny Hill*, were seized by police from the Portland Bookshop.[1022] On March 12, it was reported that proprietor Alex Mizrahi received a summons for what was likely the unexpurgated Mayflower version of *Fanny Hill*.[1023] Also in March, the Manchester printers of the Mayflower edition (C. Nicholls) received a summons to show cause why the more than four thousands of copies seized from their premises should not be forfeited.[1024] In April, it was reported that both cases ended in forfeiture orders.[1025] More than the decisions themselves, what is of interest is the inclusion in the *Financial Times* of the information that the "woman" chairman had indicated that the committee would read the book through again before rendering judgment.[1026] This obliquely highlighted one of the key issues or points of contention in this struggle: who could legitimately

[1021] "Sealed Edition," 3.

[1022] "Manchester Police Seize 'Fanny Hill'," *Times* (London), February 25, 1964, 5, http://tinyurl.galegroup.com/tinyurl/4FiHM6.

[1023] "Manchester Case over 'Fanny Hill'," *Times* (London), March 12, 1964, 5, http://tinyurl.galegroup.com/tinyurl/4FiFC0.

[1024] "Fanny Hill' Printers Summoned," *Times* (London), March 4, 1964, 5, http://tinyurl.galegroup.com/tinyurl/4G4P71.

[1025] "'Fanny Hill' Obscene, Manchester Finds," *Times* (London), April 21, 1964, 6, http://tinyurl.galegroup.com/tinyurl/4FiFs1; "Forfeiture of 'Fanny Hill' Accepted," *Times* (London), April 22, 1964, 12, http://tinyurl.galegroup.com/tinyurl/4FkAz1.

[1026] "Re-Reading Fanny Hill," *Financial Times* (London), April 15, 1964, 1, http://tinyurl.galegroup.com/tinyurl/4GkoW8.

read the book without harm, and who could authoritatively determine whether or not an obscene book caused harm.[1027]

Less than a month after Blundell's verdict, Mathew, the Director of Public Prosecution, died. His obituary, following so closely after the *Gold* (1964) case, focused on that event. The *Sunday Times* suggested that it was "an ironic, even tragic, chance that he should die just at a moment when there is controversy over the most impossible of all his duties – the control of obscene literature".[1028] In a rather macabre way, this obituary emphasized that the *Fanny Hill* issue wasn't dead.

All this publicity, or this incitement to discourse, was itself identified as problematic by Simon Wingfield Digby in the House of Commons; he wondered about the wisdom of granting so much attention to an old book of questionable historical and literary merit while the vast majority of meritless pornography was ignored (i.e. by legal agents and institutional processes).[1029] Attorney General Sir John Hobson admitted that "[o]ne of the difficulties of all prosecutions is that they sometimes attract a great deal of attention to a work which is better left

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[1027] I also want to mention that shortly after the trial in London, it was reported that *Fanny Hill* was prosecuted in Copenhagen, Denmark. E.g. "'Fanny Hill' Charge in Copenhagen," *Times* (London), February 20, 1964, 10, http://tinyurl.galegroup.com/tinyurl/4FiHE3. This suggests that the *Fanny Hill* phenomenon was not limited to geographic conditions. However, the outcomes of the trials in the United States, Britain and Denmark varied widely. In the United States, the legal concept of obscenity was upheld while *Fanny Hill* was determined to be not obscene; in Britain, *Fanny Hill* was legally designated as obscene; in Denmark, the *Fanny Hill* case eventually led to the abolishment of the legal category of obscenity.

[1028] "Sir Theobald Mathew Dies at 65," *Sunday Times* (London), March 1, 1964, 3, 16, http://tinyurl.galegroup.com/tinyurl/4G5to8.

[1029] Hansard, *Obscene Publications (Prosecutions)*, HC Deb 09 March 1964 vol 691 cc32-33, https://api.parliament.uk/historic-hansard/commons/1964/mar/09/obscene-publications-prosecutions#column_32.

to look after itself".[1030] Parliamentary critics continued to give attention to *Fanny Hill*, however. On learning that the cost of the prosecution of *Fanny Hill* was £296 3s., Leo Abse asked,

> Does the Attorney-General believe that it is in the interests of the taxpayer that money should be wasted in this way with no final determination being made upon the case? . . . If the Director of Public Prosecutions is to behave as a nanny to the nation and take proceedings against this elegant eighteenth century book, will the Attorney-General tell us whether these proceedings will involve the five copies of the book which are in the Library of the House of Commons, which scores of Members are waiting to see?[1031]

It would seem from these exchanges that there were those who wanted to move on and silence public debate, regardless of how many people – members of Parliament included – were reading *Fanny Hill*. Others, however, continued to incite discourse in both Britain and the United States, and contest the dominant judicial discursive formation.

Meanwhile in New York...

As dissatisfaction (as well as support) was expressed with the outcome of *Gold* (1964), so too there was dissatisfaction with the New York verdict by Klein. It is important to highlight that the events in New York and in London were not entirely separate processes, but were intertwined; newspaper reports on both cases led to a high degree of public knowledge. I separate the processes for organizational reasons, but highlight that events overlapped.

In New York, Klein's decision was appealed to the Supreme Court Appellate Division of New York, indicating disagreement and struggle within the judicial discursive formation.[1032] In

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[1030] Hansard, *Obscene Publications (Prosecutions)* [9 March 1964], cc33.

[1031] Hansard, *'Fanny Hill' (Prosecution Costs)*, HC Deb 16 March 1964 vol 691 cc983, https://api.parliament.uk/historic-hansard/commons/1964/mar/16/fanny-hill-prosecution-costs#column_982. See also "'Fanny Hill' Action: £296 3s," *Times* (London), March 17, 1964, 14, http://tinyurl.galegroup.com/tinyurl/4FiKi0.

[1032] *Larkin v. Putnam's Sons*, 20 A.D. 2d 702 (1964)

a 3-2 split, it was ruled that an injunction restraining distribution and sale of *Fanny Hill* under extant state and federal laws was permissible and that *Fanny Hill* was legally obscene.

The majority decision read in part:

> This book is essentially an uninterrupted series of minutely detailed descriptions of sexual adventures – many of them abnormal and involving acts of perversion – with nothing more. The passages of the book that are not directly concerned with such matter are merely brief introductions necessary to set the stage for each succeeding adventure. . . . Nor is this book less obscene by reason of its having been well written or the absence of patently offensive words. *Despite these 'redeeming' features* – and this book needs more for its ultimate redemption – we conclude that it is 'obscene'. If the laws governing such material are to have any meaning at all, this book must fall within their proscriptions.[1033]

The dissenting opinion read in part:

> A reading of the book in suit establishes that reasonable men could disagree as to whether it has redeeming social value rendering unconstitutional its suppression. *A reading of the record establishes that reasonable men of distinction in the field of literature and scholarship find redeeming social value in the book.* Particular emphasis is placed upon the historical and sociological-historical interest of the book with only passing comment that it happens to be well written. The book, or rather, the potential readership of the book, is entitled to the benefit of the doubt in the application of a censorship statute under constitutional standards. Thus, it is inconsequential whether an individual or an official finds only obscenity in the book or that even a primary motivation two centuries ago was a purveying of obscenity.[1034]

These opinions, with their references to "redeeming" features or value were crucial to the subsequent United States Supreme Court case involving *Fanny Hill,* and to the ultimate rupture that I argue takes place when the judicial discursive formation was superseded by the scholastic discursive formation. For the moment, I simply summarize these opposing statements. The majority decision condemned *Fanny Hill* as obscene because of its "abnormal" sexual content, despite the fact that it was well-written. What is interesting to consider here is that there was no discussion of moral harm or corruption. According to this decision, obscenity was based on

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[1033] *Larkin v. Putnam's Sons*, 20 A.D. 2d 702 (1964) (italics added)

[1034] *Larkin v. Putnam's Sons*, 20 A.D. 2d 702 (1964) (italics added)

sexual content itself, rather than on the effects of such content on the public whom the legal courts were authorized to protect (e.g. as vulnerable to moral corruption). The minority opinion, with reference to expert witnesses, concluded that not only was the book well-written, it also had historical and sociological interest. Once again, just as in the commercial discursive formation, the expert opinions of "reasonable men" were considered authoritative in determining the obscene; disagreement about the obscenity of the book (i.e. between judicial authorities and literary experts) was constituted as permissible. This minority opinion rejected an absolute legal standard of obscenity as sexual representation and permitted experts to share a jurisdiction over the determination or constitution of the obscene in a way that allowed for a greater range of conceptual development.

Thus, the judicial discursive formation experienced struggle in terms of its formation of objects, enunciative modalities, concepts and themes. Authorities of delimitation (i.e. the appeal judges) were divided as to the grids of specification by which they could establish *Fanny Hill* as obscene. Some judges gave more authority than others to expert statements. The split decision signaled a significant difference in the range of consensus pertaining to the problematic discourse object as conceptualized by law or by reasonable persons. Finally – and this was a crucial development in terms of the eventual emergence of a scholastic discursive formation – these opinions point to the increasingly limited themes that the judicial discursive formation drew on and reproduced. Rather than acting as guardians of public morals, for example, judges acted to exclude sexual representation. This was ultimately an unsustainable practice; the sexual eventually would and could not be excluded within literature or by law.

The decision of the New York Supreme Court Appellate Division, including excerpts from both the majority decision and more rarely the minority opinion, were covered by

newspapers. Some simply reported the verdict.[1035] Some reported excerpts of the majority decision.[1036] Some reported excerpts from both the majority decision and the minority opinion.[1037] For the first time in American news coverage, there was significant discrepancy in how the case was reported. Newspapers, given the back and forth decisions pertaining to *Fanny Hill*, were unsure exactly what "facts" or truths to report; knowledges pertaining to *Fanny Hill* and the obscene were contested to the extent that newspapers could not identify or reproduce a dominant truth.

Immediately following these news reports came editorials that emphasized the vicissitudes or changeability of the legal decisions pertaining to *Fanny Hill*. The *Oswego Palladium* commented that regardless of the legal verdicts, "[t]he debate over the book will continue, and so will its reading, secretively or otherwise".[1038] The editorial framed the issue as a debate between those who thought that *Fanny Hill* was smut and those who considered it to be literature; the debate or struggle was made possible, according to this editorial, because there was no clear legal definition of obscenity. The *Utica Daily Press* likewise framed the issue as one of disagreement or struggle, but suggested that the legal courts, "rather than pressure groups and

[1035] E.g. Associated Press, "Book 'Fanny Hill' Declared Obscene," *Kingston Daily Freeman* (NY), February 28, 1964, 9, http://fultonhistory.com/Fulton.html; "Court Slaps Novel," *Long Island Star-Journal* (NY), February 28, 1964, 1, http://fultonhistory.com/Fulton.html.

[1036] E.g. Associated Press, "Sale of 'Fanny Hill' Banned in New York State," *Rochester Democrat and Chronicle* (NY), February 28, 1964, 2A, http://fultonhistory.com/Fulton.html; Associated Press, "'Fanny Hill' Obscene, State Court Rules," *Utica Daily Press* (NY), February 28, 1964, 2, http://fultonhistory.com/Fulton.html.

[1037] E.g. Associated Press, "State Court Bans Book, 'Fanny Hill,' As Obscene," *Buffalo Courier-Express* (NY), February 28, 1964, 2, http://fultonhistory.com/Fulton.html.

[1038] "An Enduring Tale," *Oswego Palladium* (NY), February 29, 1964, 6, http://fultonhistory.com/Fulton.html.

private individuals" would have to decide the issue.[1039] The concern of the latter editorial was to keep obscenity from youth, in particular; the implication was that adults could decide for themselves what to read, which was a significant historical departure from times when various guardians of public morals, from the king to the common law courts to the SSV and eventually to state legislators, decided what could and should be read according to primarily moral standards.

Despite the legal decision, sales of *Fanny Hill* were strong, and were even stimulated following the ruling; it was reported that booksellers experienced an increase in sales of fifty to eighty percent.[1040] It is possible that Putnam's edition was still being sold, although it was reported that as a result of the Klein ruling three other American editions of *Fanny Hill* were rushed into print in October.[1041] The same article estimated that *Fanny Hill* had grossed over $1 500 000 in the United States. Once again, the influence of commercial practices were implicated in the struggle over the obscene; it is impossible to say whether the literary or sexual determinations of the book prompted these purchases, but it is possible to say that the judicial injunction was ineffective in regulating (i.e. through legal suppression or prohibition) the circulation and sale of *Fanny Hill*.

Given the uncertainty in the legal verdicts and in newspaper coverage, an event occurred in New York that newspapers could – and did – cover in a way that (apparently) unified civic sentiment, even if it did not indicate unity within the judicial discursive formation. Reverend William Glenesk of Spencer Memorial Presbyterian Church in Brooklyn announced that he

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[1039] "Courts Find Obscenity Difficult to Define and Keep from Youth," *Utica Daily Press* (NY), February 29, 1964, 4, http://fultonhistory.com/Fulton.html.

[1040] United Press International, "'Fanny Hill' Sales Soar," *Rochester Democrat and Chronicle* (NY), March 1, 1964, 10A, http://fultonhistory.com/Fulton.html.

[1041] Tom A. Cullen, "Britons: U.S. Source of Most Smut Reading," *Utica Observer-Dispatch* (NY), April 19, 1964, 10C, http://fultonhistory.com/Fulton.html.

would give out free copies of *Fanny Hill*, apparently donated by Putnam's just before the injunction was announced, during a Sunday service in order to protest against censorship; his sermon would compare episodes in the novel and the *Bible*.[1042]

Glenesk, however, changed his mind as he would be in violation of New York law if he distributed copies of Putnam's *Fanny Hill*. Instead, he organized a panel to discuss censorship after the service and set up a display of books banned throughout history, including the *Bible*, James Joyce's *Ulysses* (1922), Ernest Hemingway's *A Farewell to Arms* (1929), Giovanni Boccaccio's *Decameron* (1353), Charles Darwin's *On the Origin of Species* (1859), Thomas Paine's *The Age of Reason* (1794, 1795, and 1807), and Niccolò Machiavelli's *The Prince* (1532).[1043] The sermon was attended by an overflow crowd of six hundred people and was widely reported in the newspapers.[1044] The sermon, as reported in these articles, reproduced the knowledge of Fielding, Cleland and others, or of the commercial discursive formation, suggesting that people required a knowledge of right and wrong (or virtue and vice) in order to choose to do right. Glenesk rejected that sex was in itself wrong (contrary to the reasoning of the

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[1042] E.g. Associated Press, "Pastor Offers Copies of Banned Book," *Albany Knickerbocker News* (NY), March 2, 1964, 12A, http://fultonhistory.com/Fulton.html; Associated Press, "Pastor Plans to Defy Ban on 'Fanny Hill'," *Oswego Palladium-Times* (NY), March 2, 1964, 12, http://fultonhistory.com/Fulton.html; New York Times News Service, "Cleric to Distribute 'Fanny Hill' in Church," *Buffalo Courier-Express* (NY), March 2, 1964, 4, http://fultonhistory.com/Fulton.html; "Book Censorship," *Schenectady Gazette* (NY), March 4, 1964, 18, http://fultonhistory.com/Fulton.html; "Pastor Will Distribute Copies of 'Fanny Hill'," *New York Post*, March 2, 1964, 3, http://fultonhistory.com/Fulton.html.

[1043] "Glenesk Will Not Defy Ban on Reading 'Fanny Hill'," *Brooklyn Heights Press* (NY), March 5, 1964, 7, http://fultonhistory.com/Fulton.html.

[1044] E.g. Associated Press, "'Fanny Hill' Defended as Moral by Cleric," *Rochester Democrat and Chronicle* (NY), March 9, 1964, 5A, http://fultonhistory.com/Fulton.html; Associated Press, "Minister Gives View Reading of Novels," *Kingston Daily Freeman* (NY), March 9, 1964, 15, http://fultonhistory.com/Fulton.html; Associated Press, "People in the News," *Cortland Standard* (NY), March 9, 1964, 9, http://fultonhistory.com/Fulton.html.

appellate court decision), and argued that Fanny was a woman in search of love. Again, what is particularly significant was the extensive coverage or newsworthiness of a religious agent speaking (or preaching) about *Fanny Hill*. This event enabled newspaper coverage to coalesce around the issue of individual freedom, as authorized by a religious agent.

In the midst of the public controversy, a New York Appellate Division judge delayed the injunction on *Fanny Hill* ten days so that the publishers could appeal the ruling.[1045] The case was argued in the New York Court of Appeals on April 1, 1964, but was not decided until July 10, 1964.[1046] Because there was such a significant delay, statements and knowledges circulated and fragmented in a variety of institutions.

It is worth pointing out that these statements and knowledges – even legal statements – circulated primarily in newspapers. One editorial commented that *Fanny Hill* was "the subject of a thousand leering news stories and the object of a hundred indignant editorials in the newspapers of Britain, the United States and Canada".[1047] There was an incitement to discourse mobilized around the problematic *Fanny Hill* and contained within newspapers. While discourse pertaining to the obscene was at least ostensibly produced by judicial authorities within the judicial discursive formation, increasingly less authorized speakers such as journalists participated in the production of knowledges. The news media did so in such a way that tended to favour subjugated knowledges, or literary rather than legal-moral experts and grids of specification.

[1045] *Larkin v. Putnam's Sons*, 14 N.Y. 2d 645 (1964)

[1046] *Larkin v. Putnam's Sons*, 14 N.Y. 2d 399 (1964)

[1047] Robert Fulford, "The Sudden Death of the Taste Taboos," *Maclean's* (Toronto), April 18, 1964, 18, ProQuest Periodicals Archive Online.

For example, the *New York Post* published excerpts of an NBC debate segment called "Literature or License?".[1048] Princeton history professor Eric Goldman was the moderator, and the guests were Arnold Gingrich, publisher of *Esquire*, John Lawler, counsel to Operation Yorkville (a vice society concerned with obscene literature in particular), Barney Rosset, head of Grove Press, Ephraim London, attorney and New York Civil Liberties Union director, and Ernest van den Haag, psychoanalyst and New York University professor. The debate primarily centred on the idea of censorship (a theme that contested state governance of public morality), with Lawler defending his anti-pornography organization's aims by insisting that laws should be enforced and community standards respected. Lawler faced a panel of opponents and lost considerable ground when he suggested that *Fanny Hill* and Henry Miller's *Tropic of Cancer* (1934) were examples of literature that should not be read even by adults; he also said that reading those books had not harmed him, implying that some people had to be protected while others were incorruptible. Apparently stung by the response of the panel, which doubted the efficacy of certain people of moral fibre protecting those more susceptible to corruption, Lawler returned to the issue, saying,

> Now you asked me before if I had been affected when I read 'Fanny Hill' for the prosecution I was involved in and I said no. The reason that I wasn't affected was that I read it as hurriedly as I could because it was provocative, very provocative. And I just was trying to get a general idea so that I would know what I was talking about when I went into court. But if I sat there and stewed over it, it would have created all sorts of lustful thoughts. It would have debased my concept of women and –[1049]

[1048] "Censorship and the Open Society," *New York Post*, July 5, 1964, 26, http://fultonhistory.com/Fulton.html.

[1049] "Open Society," 26.

He was interrupted by London, who suggested that Lawler was "disqualified" from judging *Fanny Hill* as he admitted he had not "really" read it.[1050]

This exchange gives some insight into the emergence of the newly authoritative experts on obscenity; rather than representatives from citizens' groups who had been involved in the regulation of obscenity since at least the SSV, publishers, professors, and civil rights advocates were able to speak more forcefully or authoritatively to the "problem" of obscenity. Further, only those people who had "truly" read *Fanny Hill* were "qualified" to judge it (i.e. as obscene or not). In other words, this moderated debate points to the transformation regarding the conceptualization of obscenity and its regulation that I suggest was taking place; the struggle pertained to whether a book could be obscene based on its (sexual) content, or whether expert opinion with either legal or aesthetic grids of specification or standards of reference was required to make a determination.

There are a few points to draw out in summary. First, *Fanny Hill* was prominent in the public imagination as part of an incitement to discourse; it provoked strong feelings of disgust and attributions of moral harm that must necessarily be dealt with through law and also stirred up increasingly rights-based defences by which individuals were constituted as being responsible for their own choices. In both cases (e.g. for Lawler and for Glenesk, respectively), *Fanny Hill* was *the* symbol of a book beyond the pale or a book that must be defended at all costs. Second, the incitement to discourse included statements and knowledges from experts from the publishing industry, the legal profession, and the university that contested the unity of the judicial discursive formation. These three institutions, producing knowledges from the commercial market, the legal courts (newly balancing new concerns about literary expression

[1050] "Open Society," 26.

against harms of obscenity), and academia competed to produce authoritative knowledges and practices pertaining to the obscene. Of these institutions, I demonstrate that eventually the university emerged as dominant within the subsequent discursive formation. For now, however, I simply point to these knowledges, agents and institutions that were increasingly engaged in the struggle over (the regulation of) *Fanny Hill* and the obscene.

Meanwhile, Back in Britain...

Again, I want to emphasize that events in New York and London were occurring nearly simultaneously. While it might be easier for the reader to make sense of events if they were organized differently, for example if the events in New York and then the events in London were discussed from start to finish, this is not how events played out. Further, the role of a genealogy is not to make things simple, straightforward, linear, or neat; instead, this back and forth emphasizes the messiness, the contingency, and the mutual influence (to the extent that there was influence) of these events occurring in two locations, in slightly different ways, and with slightly different results.

The last time we checked on the state of things in Britain, there was considerable controversy over the legal procedures involved in the case against *Fanny Hill*; specifically, the delay in getting the matter to trial and the decision to prosecute under Section 3 were criticized by an all-party motion. Months after the verdict, the discussion or incitement to discourse had not abated and the fragmented judicial discursive formation had not been unified; there was an impetus to revise the *Obscene Publications Act* (1959), which indicates an attempt at intensification or transformation pertaining to the legal conceptualization and regulation of the obscene.

As the *Economist* suggested, this push to revise the statute was not unidirectional.[1051] The Government was "rumoured" to be seeking to increase the penalties on conviction, and to increase police powers of seizure.[1052] The article opined, however, that the *Obscene Publications Act* (1959) should be loosened and that, specifically in light of the *Gold* (1964) case, the statute "should be amended to provide that jury trial should be made available wherever this defence [i.e. for the public good] is raised".[1053]

In June of 1964, the Government proposed harsher penalties to address the problem of obscene literature.[1054] Reflecting on the historical regulation of obscenity using legal means, during which time editions of *Fanny Hill* proliferated, Abse wondered why "in the face of the history of pornography and the futility of attempting to suppress it by legislation, do we, at this curious moment, seek yet tighter control?".[1055] That a parliamentarian was able to ask that question is indicative of the state of rupture, in which the conception and regulation of obscenity were being re-thought and re-articulated. It is also of some significance to note that, once again, *Fanny Hill* featured prominently during this debate as part of an historical recital of obscenity.

[1051] "Tighter, or Looser?" *Economist* (London), May 2, 1964, 471, http://tinyurl.galegroup.com/tinyurl/4G5tP0.

[1052] "Tighter, or Looser?" 471.

[1053] "Tighter, or Looser?" 471.

[1054] Hansard, *Obscene Publications Bill*, HC Deb 03 June 1964 vol 695 cc1143-1217, https://api.parliament.uk/historic-hansard/commons/1964/jun/03/obscene-publications-bill#column_1143.

[1055] Hansard, *Obscene Publications Bill* [3 June 1964], cc1189.

Like Abse, Ian Gilmour wondered why the bill was being introduced and why it was a Government priority.[1056] In a speech that delighted the heart of this student who loves irony and is interested in moral panic scholarship, he said,

> Anybody would gather from the introduction of the Bill that pornography was really a vastly important subject and that it was a major social evil. We have only to look around us for a moment to see that it is not. There are a great many other things which are far more important. One obvious thing is the gang warfare between Mods and Rockers at seaside resorts. It would surely be far better for the Mods and Rockers and for the community at large if instead of breaking up Clacton and places like that they all stayed at home and read a little light pornography.[1057]

He considered the legislative concern about obscenity to be of no consequence, while the subject of the classic text on moral panic was of greater concern (i.e. Stanley Cohen's *Folk Devils and Moral Panics: The Creation of the Mods and Rockers* (1972)). Gilmour specifically criticized the "crusaders" who insisted that obscenity caused harm, and suggested that "the people who try to stamp it out seem to be the people who pay much the most attention to it".[1058] This speech suggests that the legislative reaction to the problem of obscenity was considered to be disproportionate to the harms it caused, or that the problem of obscenity was overstated. I argue that the corruption of public morals was no longer constituted as a harm that required legislative suppression and that new harms or surfaces of emergence needed to be identified in order to sustain judicial discursive practice pertaining to obscenity.

When the *Obscene Publications Bill* went to the House of Lords, Lord Shackleton commented that he could not get a copy of *Fanny Hill* from the House of Commons Library; the

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[1056] Hansard, cc1192.

[1057] Hansard, cc1192.

[1058] Hansard, cc1192-1193.

book had a seven month reservation waitlist.[1059] Even as parliamentarians were reading the book that had seemingly precipitated the bill, royal assent was granted on July 31, 1964.[1060] The *Obscene Publications Act* (1964), which revised but did not replace the *Obscene Publications Act* of 1959, did not settle the problem of obscenity or of *Fanny Hill*, however. Questions about legislative amendments continued to be raised in Parliament for years thereafter.[1061]

The final point I wish to make in regards to this parliamentary discussion is the fact that it was happening at all. Britain and the United States, despite common conditions stemming from their shared common law and the relatively synchronized development of statutory obscenity law in the mid-nineteenth century, pursued different ways of dealing with the problem and regulation of obscenity. In Britain, state legislators clarified the distinction between literature and obscenity, increasing penalties for the latter in statutory law, while in the United States,

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[1059] Hansard, *Obscene Publications Bill*, HL Deb 23 July 1964 vol 260 cc830, https://api.parliament.uk/historic-hansard/lords/1964/jul/23/obscene-publications-bill#column_827.

[1060] *Obscene Publications Act*, 1964, c. 74

[1061] E.g. Hansard, *Obscene Publications Act*, HC Deb 15 March 1967 vol 743 c121W, https://api.parliament.uk/historic-hansard/written-answers/1967/mar/15/obscene-publications-act; Hansard, *Obscene Publications Acts, 1959 and 1965*, HC Deb 15 February 1968 vol 758 c397W, https://api.parliament.uk/historic-hansard/written-answers/1968/feb/15/obscene-publications-acts-1959-and-1965; Hansard, *Obscene Publications (Amendment)*, HC Deb 25 March 1969 vol 780 cc1291-1293, https://api.parliament.uk/historic-hansard/commons/1969/mar/25/obscene-publications-amendment#column_1291; Hansard, *Obscenity*, HC Deb 09 November 1972 vol 845 cc1180-1183, https://api.parliament.uk/historic-hansard/commons/1972/nov/09/obscenity#column_1180; Hansard, *Obscenity Law*, HC Deb 19 June 1975 vol 893 c477W, https://api.parliament.uk/historic-hansard/written-answers/1975/jun/19/obscenity-law; Hansard, *Obscene Publications (Amendment)*, HC Deb 23 March 1976 vol 908 cc208-211, https://api.parliament.uk/historic-hansard/commons/1976/mar/23/obscene-publications-amendment#column_208; Hansard, *Obscene Publications Acts*, HC Deb 05 May 1977 vol 931 cc629-630, https://api.parliament.uk/historic-hansard/commons/1977/may/05/obscene-publications-acts#column_629; Hansard, *Obscenity*, HC Deb 30 June 1992 vol 210 c522W, https://api.parliament.uk/historic-hansard/written-answers/1992/jun/30/obscenity.

increasingly higher levels of courts sought to clarify the distinction between obscenity and constitutionally protected speech. Thus, while Britain legislated the problem of obscenity, the United States judiciary managed the problem of obscenity.

New York Court of Appeals

As mentioned earlier, the decision on *Fanny Hill* was eventually announced on July 10, 1964.[1062] New York's highest court decided not to uphold the reinstated injunction against *Fanny Hill*; it was determined that "[t]he book falls within the area of permissible publications".[1063] Justice Francis Bergan gave the majority decision of the split (4-3) court.

Bergan wrote that "[t]he history and tradition of our institutions stand against the suppression of books".[1064] Having already traced the history of the legal regulation of the obscene in the United States, which was a history of institutions working to suppress or regulate literature using common and statutory laws, I suggest that the emergence of this nouveau-historical discourse deserves further consideration, rather than dismissal as idealist or revisionist. Far from categorizing these statements as wrong or factually incorrect, I suggest that they point to the emergence and production of new truths or knowledges that supported literary freedom and were tied to the rights of the individual (i.e. to read what one chose). This understanding of history allowed for new themes pertaining to the obscene to emerge, which in turn contributed to a reconceptualization of the obscene.

[1062] *Larkin v. Putnam's Sons*, 14 N.Y. 2d 399 (1964)

[1063] *Larkin v. Putnam's Sons*, 14 N.Y. 2d 399 (1964)

[1064] *Larkin v. Putnam's Sons*, 14 N.Y. 2d 399 (1964)

Having reviewed recent obscenity cases, Bergan wrote of "the inherent difficulty in reaching consistency" in obscenity judgments.[1065] In the absence of predictable or reliable legal outcomes, which were necessary to ensure the unity of the judicial discursive formation, and also given the emerging and competing knowledges pertaining to (historical) literary freedom, *Fanny Hill* was ruled to have a "slight literary value" that also provided socio-historical insight.[1066] In order to justify such a decision, the problem of harm that had accompanied all previous iterations of the legal concept of the obscene needed to be resolved. Bergan wrote that "[i]t is unlikely 'Fanny Hill' can have any adverse effect on the sophisticated values of our century. Some critics, writers, and teachers of stature testified at the trial that the book has merit, and the testimony as a whole showed reasonable differences of opinion as to its value".[1067] *Fanny Hill* and its sexual content were deemed harmless based on expert non-judicial testimony or knowledge.

As in previous instances, this verdict was reported widely in the newspapers. An article appeared with slight variations in numerous newspapers, reporting that while "some of the judges still insisted" that *Fanny Hill* was obscene, the issue was settled.[1068] This did not end the incitement to discourse, or the interest in *Fanny Hill*, however. Throughout August, the book

[1065] *Larkin v. Putnam's Sons*, 14 N.Y. 2d 399 (1964)

[1066] *Larkin v. Putnam's Sons*, 14 N.Y. 2d 399 (1964)

[1067] *Larkin v. Putnam's Sons*, 14 N.Y. 2d 399 (1964)

[1068] E.g. Associated Press, "Bookstores Win Right to Sell 'Fanny Hill'," *Yonkers Herald Statesman* (NY), July 11, 1964, 2, http://fultonhistory.com/Fulton.html; Associated Press, "Sharply Split Appeals Court OK's 'Fanny Hill' in NYS," *Cortland Standard* (NY), July 11, 1964, 1, http://fultonhistory.com/Fulton.html.

remained on the best sellers list.[1069] Further, in September of 1964, it was reported that *Fanny Hill* was translated into an eight and a half minute short film (*A Comedy Tale of Fanny Hill*) by Robert Levy.[1070] By May of 1965, a full-length version of the book was in theatres;[1071] it was reported that the film was a financial success, ranking eleventh in the country behind *My Fair Lady* (1964), *The Sound of Music* (1965), *Goldfinger* (1964), and *Mary Poppins* (1964).[1072] Thus, the legal verdicts made space for multiple versions of *Fanny Hill*, or for the translation of *Fanny Hill* into different (and profitable) mediums.[1073]

[1069] "Paperback Best Sellers," *New York Post*, August 2, 1964, 43, http://fultonhistory.com/Fulton.html; "Best Sellers," *New York Post*, August 30, 1964, 49, http://fultonhistory.com/Fulton.html.

[1070] William Pepper, "'Fanny' Gets Short Shrift," *New York World-Telegram and Sun*, September 2, 1964, 36, http://fultonhistory.com/Fulton.html.

[1071] Newspapers throughout New York regularly carried advertisements and notices for show times and locations of the film. One advertisement read in part "They Said It Could Not Be Filmed!" and "Banned for 200 years... now a feature film by Albert Zugsmith!", and included an endorsement from *Playboy* magazine. E.g. "Fanny Hill," *Twin Falls Times-News* (NY), May 21, 1965, 6, http://fultonhistory.com/Fulton.html.

[1072] "Top Twelve," *Time* (NY), April 9, 1965, 73, EBSCOhost Academic Search Complete.

[1073] *The Memoirs of Fanny Hill* was also staged at the Lyric Theatre, Hammersmith, in London in 1965. "Fanny Hill Dramatized," *Times* (London), November 24, 1965, 5, http://tinyurl.galegroup.com/tinyurl/4FjY69.

In 1966, *The Notorious Daughter of Fanny Hill* was released and was followed by such offerings as the films *Fanny Hill Meets Lady Chatterley* (1967), *Fanny Hill Meets Dr. Erotico* (1967), and *Around the World with Fanny Hill* (1974).

Fanny Hill was also released in a Swedish film adaptation by Mac Ahlberg in 1968.

In 1972, the all female American rock band Fanny released an album entitled *Fanny Hill*.

In 1980, likely the most famous re-writing of *Fanny Hill* was published; written by Erica Jong, *Fanny: Being the True History of the Adventures of Fanny Hackabout-Jones* was ostensibly the "true" story of Fanny's life.

But Then Comes Massachusetts...

Not accepting the New York decision as the last word or as an authoritative verdict, the state of Massachusetts took *Fanny Hill* to court. As should be established by now, it was not surprising to see nearly simultaneous and yet utterly conflicting legal decisions and processes pertaining to *Fanny Hill*. For example, it was reported that the Ontario Court of Appeal ruled that *Fanny Hill* was not obscene around the same time that New Jersey banned the book.[1074] I spend comparatively less space discussing the Massachusetts cases simply because the same agents (i.e. Rembar on behalf of Putnam's) advanced the same legal arguments as described in the New York cases. However, because the Massachusetts cases are the ones that eventually made their way to the United States Supreme Court, there are a few points to draw out.

I suggested throughout this chapter that initially the obscene was constituted as harming vulnerable subjects who could be seduced into vice; subsequently, the obscene was associated with "abnormal" sexual representations. This transformation of the problematic discourse object, coupled with discourses deriving from the commercial market and the art for art's sake movement, made it difficult to reproduce knowledge of the obscene as harmful. While

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As late as 1983, *Fanny Hill* was still being translated into film (by Gerry O'Hara).

In 1991, April de Angelis translated *Fanny Hill* into a feminist play (*The Life and Times of Fanny Hill*).

Fanny Hill also became an off-Broadway musical by Ed Dixon in 2006.

The following year, Andrew Davies produced *Fanny Hill* for television; the show was the biggest success to date on BBC4, with over one million viewers. Mike Mulvihill, "Fanny Hill," *Times* (London), December 14, 2007, 23, http://tinyurl.galegroup.com/tinyurl/67Hvh0.

[1074] Associated Press, "Ontario Court Rules 'Fanny' as Fit for Public Reading," *New York Post*, December 4, 1964, 34, http://fultonhistory.com/Fulton.html; (Dec. 8, 1964). Associated Press, "Jersey Bars Book as of No Value," *Yonkers Herald Statesman* (NY), December 8, 1964, 10, http://fultonhistory.com/Fulton.html.

previously legal agents acted as guardians of public morality, literary experts constituted sexual representation as aesthetic, harmless, and in the eye of the beholder. The problematic object, conceived as sexual representation, was no longer constituted as necessarily causing harm or leading to sexual immorality. This transformation of the problematic object (and its regulation) is most clearly evident in the shift from criminalizing publishers and booksellers to criminalizing the book itself.

The legal proceedings against *Fanny Hill* in Massachusetts were *in rem*, or were directed against the book itself rather than against a corporation or individual (e.g. against Putnam's or a bookseller like Gold); it was literally the *Attorney General v. A Book Named "John Cleland's Memoirs of a Woman of Pleasure"*.[1075] This points to a struggle over the intersubjective meanings of obscene literature as a thought object; the obscene mutated from being corrupting, morally poisonous literature that caused harm to vulnerable populations to a sexual object that was in itself problematic, wrong, immoral and/or illegal.

The Massachusetts Supreme Judicial Court upheld the lower court's ruling that found *Fanny Hill* to be obscene. The majority decision (4-3) was written by Justice John Spalding and commented on the "strained" testimony of experts, but concluded that "*the fact that the testimony may indicate this book has some minimal literary value does not mean it is of any social importance*".[1076] Unlike Klein, therefore, the Massachusetts judges did not consider the expertise of witnesses to be as credible or as truthful as judicial tests and standards, and therefore

[1075] *Attorney General v. A Book Named "John Cleland's Memoirs of a Woman of Pleasure"*, 349 Mass. 69 (1965)

[1076] *Attorney General v. A Book Named "John Cleland's Memoirs of a Woman of Pleasure"*, 349 Mass. 69 (1965) (italics added)

excluded their testimony. However, the phrase quoted above became crucially important when this case went to the United States Supreme Court.

Fanny Hill *and the United States Supreme Court*

On December 7 and 9, 1965, arguments pertaining to *Fanny Hill* specifically and obscenity generally were made in the United States Supreme Court, and the case, known as *Memoirs* (1966), was decided on March 21, 1966.[1077] The decision began: "The Supreme Court, Mr. Justice Brennan, held that court's declaration as obscene, indecent and impure a book recounting the life of a prostitute was erroneous. Reversed".[1078] While this seems like a straightforward and definitive declaration, on closer examination it was much less so, and not only because Justices Tom Clark, John Harlan and Byron White dissented in a 6-3 decision.

The United States Supreme Court found that "reversal is required because the court misinterpreted the social value criterion".[1079] With reference to the decision of the Massachusetts Supreme Judicial Court, the United States Supreme Court ruled that,

> a book need not be 'unqualifiedly worthless before it can be deemed obscene.' A book cannot be proscribed unless it is found to be utterly without redeeming social value. This is so even though the book is found to possess the requisite prurient appeal and to be patently offensive. Each of the three federal constitutional criteria is to be applied independently; the social value of the book can neither be weighed against nor canceled by its prurient appeal or patent offensiveness. Hence, even on the view of the court below that Memoirs possessed only a modicum of social value, its judgment must be

[1077] *A Book Named "John Cleland's Memoirs of a Woman of Pleasure" v. Attorney General of Massachusetts*, 383 U.S. 413 (1966)

[1078] *A Book Named "John Cleland's Memoirs of a Woman of Pleasure" v. Attorney General of Massachusetts*, 383 U.S. 413 (1966)

[1079] *A Book Named "John Cleland's Memoirs of a Woman of Pleasure" v. Attorney General of Massachusetts*, 383 U.S. 413 (1966)

> reversed as being founded on an erroneous interpretation of a federal constitutional standard.[1080]

In other words, the admission by the Massachusetts court that *Fanny Hill* had minimal literary and historical value meant that it passed the social value test and could not be legally constituted as obscene.

I now backtrack slightly in order to show how the United States Supreme Court came to this decision, and to highlight the contingency of the decision and in particular the acceptance and the adoption of the redeeming social value test. In his opening argument, Rembar suggested that the judges did not even need to read *Fanny Hill* to determine whether or not it was obscene; instead, he urged the court to rely on the testimony of expert witnesses in determining the social value of the book.[1081] The court, he suggested, need only decide whether the experts, presumably called by the prosecution and defence, had made their case. Rembar best expressed himself when he compared establishing the literary value of a book by literary experts to establishing a scientific principle by scientific experts.[1082] The judges did not necessarily need to accept this argument, however; the test obliquely referenced in *Roth* (1957) referred to *social* value. In other words, literary experts could testify to the literary value of a book, but social value was not necessarily the same thing. However, the United States Supreme Court ultimately accepted Rembar's argument, radically transforming grids of specification and authorities of delimitation in the constitution of obscenity as a problematic discourse object and object of legal regulation.

[1080] *A Book Named "John Cleland's Memoirs of a Woman of Pleasure" v. Attorney General of Massachusetts*, 383 U.S. 413 (1966)

[1081] In Rembar, *The End of Obscenity*, 453-458.

[1082] In Rembar, 458.

Rembar reflected on the success of his arguments; he wrote that any author writing with some talent would never be bothered by the law again.[1083] For Rembar, "[t]hat is the meaning of the *Fanny Hill* case. So far as writers are concerned, there is no longer a law of obscenity".[1084] This was not, strictly speaking, correct; obscenity laws continue to exist, after all. But Rembar argued that with the United States Supreme Court decision in *Memoirs* (1966), anything that could be qualified as literature would never again be suppressed.

Rembar's book, which I referred to throughout this chapter, did more than provide information on the legal processes that involved *Fanny Hill*. Clearly, the law did not stand on its own; he had something to add, interpret or clarify. Rembar decided to speak to or produce knowledge about the concept of legal obscenity not only in the courtroom, but through a book. Rembar explained that he wrote his book in order to offer insight into how the legal system works, and also to prove that "no matter what the courts and the legislatures had traditionally deemed 'obscene' – no matter what the term meant to laymen or to lawyers – the government could not suppress a book if it had merit as literature".[1085] What seems strange is his need to state this so emphatically, particularly because he insisted on couching obscenity in legal terms; that is, he understood obscenity to be a legal concept. If that was so, then how could his words add anything to the legal discourse or decision on obscenity? Or to put it differently, what could Rembar's statements or knowledge possibly add to legal discourse? I suggest that Rembar contributed to the ongoing struggles, prompted by high-profile cases like those involving *Fanny Hill*, "that continue to be argued, publicly and privately, long after the courts have decided

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[1083] Rembar, 490.

[1084] Rembar, 490.

[1085] Rembar, 4.

them".[1086] In other words, Rembar contributed to an incitement to discourse that did not abate with the *Memoirs* (1966) verdict.

While Brennan's decision (quoted earlier), with Justices Abe Fortas and Earl Warren concurring, accepted the social value test and reversed the obscenity decision pertaining to *Fanny Hill*, this was the only plural opinion; seven different opinions were written in *Memoirs* (1966), which is further confirmation of the fragmentation that I have discussed. I briefly refer to some of the other United States Supreme Court opinions pertaining to *Fanny Hill*.

Justice William Douglas concurred with the decision in what is generally referred to as absolutist terms; he rejected the idea that any speech was outside the First Amendment.[1087] He also commented on the "unusually large number of orders" that were placed by universities and libraries, and specifically mentioned that the Library of Congress had requested the right to translate the book into Braille.[1088] This is interesting, given his absolutist stance; he argued that all speech was protected, but also pointed to the literary value of *Fanny Hill* as evidenced by academic institutions as further justification for its non-obscene legal designation.

Douglas suggested that "[w]e are judges, not literary experts or historians or philosophers. We are not competent to render an independent judgment as to the worth of this or any other book, except in our capacity as private citizens".[1089] Again, this points to a transformation; a member of the highest court in the country recommended a complete

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[1086] Rembar, 4.

[1087] *A Book Named "John Cleland's Memoirs of a Woman of Pleasure" v. Attorney General of Massachusetts*, 383 U.S. 413 (1966)

[1088] *A Book Named "John Cleland's Memoirs of a Woman of Pleasure" v. Attorney General of Massachusetts*, 383 U.S. 413 (1966)

[1089] *A Book Named "John Cleland's Memoirs of a Woman of Pleasure" v. Attorney General of Massachusetts*, 383 U.S. 413 (1966)

abdication of legal authority pertaining to the regulation of the obscene – a jurisdiction that had been established over a century earlier. Instead of moral authority pertaining to sexual literature deriving from the Church, the Crown, or the courts, Douglas asserted that the only authority that could determine the "worth" of a book was the expert; further, "private citizens" should be responsibilized to decide for themselves what to read. Again, this was a significant transformation; Douglas referred to the inherent worth of the book rather than its potentially harmful effects. This idea that a book could be valued in terms other than financial was – I cannot stress enough – a radical departure from previous conceptions and made arguments about obscenity unsustainable in their current, legally dominated discursive practice. Relatedly, Douglas commented on the uncertainty that stemmed from the history of obscenity in common law from *Sedley* (1663) onward; this uncertainty made, in his opinion, the legal restraint of literature via obscenity untenable.

Justice Tom Clark was one of three dissenters in *Memoirs* (1966). In his opinion, he admitted "embarrassment" in needing to describe the book in order to demonstrate its obscenity; however, he refused to quote from the book directly because to do so would "debase" the court's records, which reproduced concerns from the mid-nineteenth century.[1090] This necessity to read and describe the book was prompted by his rejection of the social value test and his concern about the usurpation of the traditional role of the courts by expert opinions. Given that he did not agree that the social value was a separate constitutional test, he turned to the book to see if it met the established legal tests of appealing to prurient interest and being patently offensive according to contemporary community standards. Clark wrote that,

[1090] *A Book Named "John Cleland's Memoirs of a Woman of Pleasure" v. Attorney General of Massachusetts*, 383 U.S. 413 (1966)

> Memoirs is nothing more than a series of minutely and vividly described sexual episodes. The book starts with Fanny Hill, a young 15-year-old girl, arriving in London to seek household work. She goes to an employment office where through happenstance she meets the mistress of a bawdy house. This takes 10 pages. The remaining 200 pages of the book detail her initiation into various sexual experiences, from a lesbian encounter with a sister prostitute to all sorts and types of sexual debauchery. . . This is presented to the reader through an uninterrupted succession of descriptions by Fanny, either as an observer or participant, of sexual adventures so vile that one of the male expert witnesses in the case was hesitant to repeat any one of them in the courtroom. These scenes run the gamut of possible sexual experience such as lesbianism, female masturbation, homosexuality between young boys, the destruction of a maidenhead with consequent gory descriptions, the seduction of a young virgin boy, the flagellation of male by female, and vice versa, followed by fervid sexual engagement, and other abhorrent acts, including over two dozen separate bizarre descriptions of different sexual intercourses between male and female characters. In one sequence four girls in a bawdy house are required in the presence of one another to relate the lurid details of their loss of virginity and their glorification of it. This is followed the same evening by 'publick trials' in which each of the four girls engages in sexual intercourse with a different man while the others witness, with Fanny giving a detailed description of the movement and reaction of each couple.
>
> In each of the sexual scenes the exposed bodies of the participants are described in minute and individual detail. The pubic hair is often used for a background to the most vivid and precise descriptions of the response, condition, size, shape, and color of the sexual organs before, during and after orgasms. There are some short transitory passages between the various sexual episodes, but for the most part they only set the scene and identify the participants for the next orgy, or make smutty reference and comparison to past episodes.
>
> There can be no doubt that the whole purpose of the book is to arouse the prurient interest. Likewise the repetition of sexual episode after episode and the candor with which they are described renders the book 'patently offensive.' These facts weigh heavily in any appraisal of the book's claims to 'redeeming social importance.'[1091]

This opinion reproduced the harms associated with the obscene and especially with sexual representation. For example, Clark suggested that Putnam's published the book to prey "upon prurient and carnal proclivities for its own pecuniary advantage".[1092] Similar accusations were leveled at Curll, Akarman and others. Clark also focused on certain "legal facts" accepted by the courts, which constituted the obscene as sexual representation, and excluded other facts

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[1091] *A Book Named "John Cleland's Memoirs of a Woman of Pleasure" v. Attorney General of Massachusetts*, 383 U.S. 413 (1966)

[1092] *A Book Named "John Cleland's Memoirs of a Woman of Pleasure" v. Attorney General of Massachusetts*, 383 U.S. 413 (1966)

(such as those provided by experts). Thus, although apparently defeated in this decision, the legal tradition and reasoning pertaining to obscenity were not obliterated or excluded.[1093]

New York – London – Massachusetts

This section (i.e. including all the subsections above) described the legal cases pertaining to *Fanny Hill* and obscenity in New York, London and Massachusetts, and the fragmentation of the judicial discursive formation. Particularly in the United States, legal verdicts were divided rather than decisive; seven opinions were produced by the nine judges of the United States Supreme Court alone, a remarkable indication of judicial division and fragmentation. This fragmentation occurred when the judicial discursive formation could no longer successfully exclude expert literary knowledges from reconceptualizing the obscene. Increasingly authoritative subjugated knowledges were produced by lawyers, judges, publishers, parliamentarians, and experts; these knowledges pertaining to art, free speech, and individual rights circulated in particular in newspapers, and posited that experts (rather than law or legal agents) could determine what was literature and that individuals could choose for themselves what to read. This constitution of *Fanny Hill* as literature that had social value regardless of its

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[1093] In an interesting example of subversion, Clark's opinion was reformulated by the *Columbia Journalism Review* as an advertisement for obscenity. Based on Clark's opinion, the editors composed an advertisement for *Fanny Hill*:

> TOM *CLARK* on FANNY HILL
> Why read all of the *Memoirs of a Woman of Pleasure (Fanny Hill)?* Read instead the most lurid passages as selected and graphically summarized by a leading authority, Associate Justice Tom Clark. Read Justice Clark on:
> 'sexual debauchery'
> 'lurid details of the loss of virginity'
> 'precise descriptions of the response, condition, size, shape and color of the sexual organs'
> UNEXPURGATED – IN PLAIN WRAPPER.

"Passing Comment," *Columbia Journalism Review* 5, no. 1 (1966): 3, ProQuest Periodicals Archive Online.

sexual representation was contingent and tied to the emergence of the literary expert who, as is demonstrated in the next chapter, was increasingly authorized by the university institution.

Analysis of Moral Regulation Projects

In this chapter I described how processes of law emerged to become dominant, exercising power in conjunction with systems of knowledge in order to constitute, problematize and regulate the obscene. Practices of law were described as being transformed and intensified during events and struggles, such as during trials or with the creation of statutes, as attempts to unify the judicial discursive formation and exclude or subsume subjugated (and especially expert) knowledges. I argue that standards of vice and virtue were constituted through law rather than reason, in contrast to the commercial discursive formation; standards of moral and immoral behaviour and especially sexual behaviour were constituted through law rather than religion; and the regulation of vice and virtue, moral and immoral behaviour occurred primarily through prohibition and punishment rather than persuasion, as state agents and institutions governed others. This process of legalization, or the criminalization of the obscene, was part of the normalized and routinized processes of state activities that encouraged certain moral ways of being and suppressed others beyond the immediate trial or the institution of a new statute. This section considers the discursive practices of law that were described throughout this chapter – conceived as projects of moral regulation – as making people as well as the nation "good", or as having effects on the formation of subjectivities and dominant social orders.

Objects of Regulation

Under common law regulation, the obscene was conceptualized as a distinct type of libel, distinguished from blasphemous and seditious libel. Thus, the obscene was conceptualized as non-religious and non-political in its content and effects, which was a significant transformation from the veridical and religious discursive formations; the obscene was constituted as offending against moral standards or standards of public civility enshrined in and protected by law. The obscene was constituted as a harm to public morals; this discovery of a civil social harm emerged from conditions, including in particular changing economic conditions, that made increasing varieties of literatures available to increasing populations of people who were not constituted as being able to reasonably govern themselves in accordance with normative moral standards. Obscene literature was problematized by social, moral and religious agents, including judges and vice society members, as being contrary to public decency, and therefore law. These authorities, who at least initially did not derive their authority only from institutions of law or state, but also from their hierarchical social positions, were able to successfully classify the obscene as being contrary to good morals, and thus under the jurisdiction of law. Law both produced and affirmed normative moral standards of behaviour; the obscene was "obviously" illegal because of the problematic properties successfully ascribed to it that were prohibited by law.

The obscene was conceptualized as illegal or as a crime initially because it was constituted as harming vulnerable subjects who could be seduced into vice, and as leading to moral or social degeneration (e.g. of a moral Christian nation); subsequently, the obscene was associated with "abnormal" or "depraved" sexual representations. This chapter described the transformation of the problematic discourse object, whereby it was eventually categorized and problematized primarily for its sexual content rather than (necessarily) its effects (e.g. on the

sexual morality or behaviour of women). This points to a struggle over the intersubjective meanings of obscene literature as a thought object; the obscene mutated from being corrupting, morally poisonous literature that caused harm to vulnerable populations to a sexual object that was in itself problematic, wrong, immoral and/or illegal. While law continued to constitute the obscene as a crime within its jurisdiction, points of diffraction emerged within the judicial discursive formation. In particular, it became possible to speak of the obscene in legal terms, such as rights and freedoms, which provided alternative legal standards against which to conceptualize objects such as *Fanny Hill*; this significantly contested law's ability to regulate the obscene as immoral and therefore illegal. I argue that this transformation in the problematic discourse object ultimately left law unable to successfully reproduce its dominance over the regulation of the obscene. I also suggest that this struggle over the obscene discourse object points to its constitution as the result of political rather than value-neutral or inevitable processes.

Agents of Regulation

Agents of regulation ensured the ongoing regulation of the obscene (i.e. as a problematic object) in conjunction with institutional mechanisms, and their authority derived from their institutional association. As with the object of regulation, there was some transformation in the agents of regulation as part of the reproduction of the dominance of the judicial discursive formation. For example, initially the legal regulation of the obscene depended on the combined efforts of organized vice societies and common law enforcement agents (i.e. judges) and institutions (i.e. common law courts). As the state developed increasingly specialized institutions, such as police and public prosecutors, these legal agents continued to "suppress vice in society" through increasingly formalized law enforcement practices, including investigation,

trial, and sentencing, thereby excluding or minimizing the participation of "civilians" to the role of informants.

As state-initiated legal practices became dominant, they contributed to the intensification of the regulation of the obscene; the obscene could be sought, found, and dealt with by the aforementioned legal authorities working within the legal institution. This ensured the continued regulation of the problematic object for more than a century, as agents both reproduced and derived authority from the institution of law. In particular, judges drew from legal precedent set by case law or statutes in order to formulate the obscene as a legal problem, and to derive appropriate sanctions or punishments. Judges were authoritative agents who had the right, privilege and ability to make legal rulings or verdicts; their legal knowledges and the techniques of the trial and verdict were essential in constituting and guarding judicial dominance over the obscene. Thus, judges were a particularly important social subject engaged in practices of truth production and the reproduction of the discourse object of obscenity, as well as the judicial discursive formation. Even when parliamentarians became involved in the regulation of the obscene, for example through the creation of statutes, judges continued to define and refine these statutes through their rulings, bringing them in line with extant legal precedent, doctrine, or knowledge, and ensuring the dominance of the judicial discursive formation and especially the institution of the judiciary.

Knowledges and Techniques of Regulation

The knowledges or truths that mobilized agents and institutions to problematize the obscene and respond to it with projects that excluded sexual representation in literature (and also encouraged normative standards of literature) derived from law, which was associated with

moral-legal standards. Law functioned to authoritatively produce, circulate, and maintain dominant discursive practices that established the truth of the obscene, beginning with the technique of common law precedent that established judges as guardians of public morals. Subsequently, regulatory statutes were created to significantly minimize, through pecuniary and criminal punishment, the public display, circulation and sale of obscene materials; this suggests both continuity and transformation from the early licensing regulations described in the veridical discursive formation, which were designed to suppress the obscene before it could be read or viewed and thereby preserve public morality and order (and ensure the constitution of governable moral citizen subjects). Eventually, however, criminal statutory law – which was reactive rather than preventative – became the dominant mode of governance pertaining to obscenity. These techniques of regulation – from depositions to adversarial trials to verdicts – focused on the adjudication of evidence and guilt, and authoritatively reproduced knowledge and truth of the obscene as a crime.

While law's authority was most evident in its punishments, it is important to reiterate that legal knowledges and techniques or practices did not simply respond to the problem of the obscene (e.g. with sanctions); instead, law constituted the obscene. Knowledge of the obscene as bad or harmful, or as immoral and therefore illegal, was produced by agents such as judges in order to necessitate its regulation through law; conversely, the regulation of obscenity through techniques of law reinforced the truth of obscenity as bad or harmful, or as immoral and illegal. The technique of the legal trial and the ritualistic determination of guilt were significant methodological steps in determining a particular conception of obscenity and its effects, and also in (re)asserting the dominance of the judicial discursive formation not only over the obscene, but over moral objects, subjects and social orders. While law could be conceptualized as a

regulatory technique that made people good by forbidding what was bad, it could also be conceptualized as a technique of normalization that forbid deviations from a certain acceptable sexual norm; in other words, law did not function only to prohibit and punish the "bad", it also produced standards of "good".

These knowledges of the obscene as immoral, illegal, and harmful were contested by the knowledges of the commercial discursive formation, particularly as the regulation of the obscene became enshrined in criminal statutes. Thus, like the transformation in objects and agents discussed above, there was evidence of struggle and transformation in the knowledges and techniques of regulation within the judicial discursive formation. Parliamentarians, experts, journalists and writers produced knowledge in line with the art for art's sake movement and argued for the responsibilization of the individual who should be "free" or have the "right" to make her own (reading) choices; thus, there was continuity from the commercial discursive formation pertaining to the governance of the self, but there was also a translation in discourse that derived its vocabulary from law. During moments of intensification, these subjugated knowledges were subsumed within the judicial discursive formation, as in the case of the *Roth* (1957) decision and the creation of Section 4. However, the incorporation of these knowledges invited new agents; the formation of "literary experts" as having authoritative knowledge pertaining to the obscene indicated a degree of fragmentation among state agents regarding the boundaries of law and art, as well as what behaviours could and should be regulated by state. This significantly challenged the ability of the judicial discursive formation to reproduce unchallenged the dominant knowledges and techniques of regulation that were most evident in the *Fanny Hill* trials.

Targets of Regulation

I argue that the legal regulation of the obscene was directed unequally at the population, constituting women and the working class as particularly vulnerable to the harms of the obscene. This did not necessarily reflect the intentions of agents of regulation; nevertheless, hierarchical ordering within the extant social order was reproduced and reinforced. Agents of regulation – who were primarily men of the upper classes – followed institutional procedures that guided and constrained women and the working class to choose from a range of possible, acceptable or authorized behaviours, particularly pertaining to the sexual.

To be clear, I am not suggesting that there was a patriarchal conspiracy to oppress women through the suppression of the obscene; as I have shown throughout this chapter, the judicial discursive formation contained clear evidence of tension in the knowledges and techniques of regulation pertaining to the obscene. A House of Lords debate in 1960 most clearly illustrates this tension,[1094] as well as the transformation in the regulatory objects, techniques and knowledges discussed above. As an agent of the state, Lord Teviot argued that it was the task of the state to influence and at times enforce standards of morality through law. He claimed that the circulation and acceptance of obscene literature was "an affront to the public mind, an insult to our social and moral standards, on which we, my Lords, used to be the leaders".[1095] This statement was consistent with the veridical and religious discursive formations, as state agents positioned themselves – thanks to their institutional positions – as moral leaders and authorities governing simple or vulnerable moral populations. In contrast, Lord Boothby insisted that the

[1094] Hansard, *The 'Lady Chatterley's Lover' Case*, HL Deb 14 December 1960 vol 227 cc528-574, https://api.parliament.uk/historic-hansard/lords/1960/dec/14/the-lady-chatterleys-lover-case#column_528.

[1095] Hansard, *'Lady Chatterley's Lover' Case*, cc529.

individual should govern herself; he suggested "that we might have a good try at doing a little self-disciplining",[1096] which was consistent with the commercial discursive formation. Given this tension, it is difficult to suggest that law functioned only to oppressively produce moralized subjects; law also provided standards by which subjects were encouraged to practice self-governance or ethical self-formation within the judicial discursive formation, according to the normative standards produced by law.

Having rejected an understanding of law as (only) an instrument of oppression, I do however argue that law, via the regulation of the obscene, was a means of reproducing gender, or what was permissible and desirable for men versus women. Beyond simply determining the obscene (i.e. as illegal), law made claims about other areas of social life; this chapter described a trend whereby the regulation of moral behaviour or misbehaviour, and especially sexual behaviour, was gendered. The sexual imagination and behaviour of women, including those associated with *Fanny Hill* for example, was increasingly problematized as requiring legal governance and especially censure and/or punishment. Thus, law transmitted gendered attitudes, values and theories of society; law's normative standards normalized the sexual behaviours of men while problematizing the sexual behaviours of women. Women were constituted by law as virtuous and also as susceptible or vulnerable to vice. In producing such knowledge, or in producing the truth of obscenity as well as gendered conceptualizations of sexual morality, law constituted women as requiring more (legal) governance than men. The virtuous woman was protected by law, while the fallen woman – or the woman whose behaviour deviated from normative standards, for example by reading *Fanny Hill* – was punished by it. Thus, while obscenity law ostensibly regulated obscene materials, such as *Fanny Hill*, it also extended its

[1096] Hansard, cc562.

influence or its effects to women's imaginations as well as bodies. The regulation of the obscene was not simply about problematic texts, but about the constitution of acceptable forms of sexual desire, its representation, and even ideal masculinity and femininity.[1097]

In addition to constituting and regulating concepts of gender, the regulation of obscenity through law disciplined the pleasures of the poor and the unruly. Rojek discussed the regulation of leisure from the 1830s to the 1950s, the period covered by this chapter; he argued that the regulation of leisure, or of proper pleasures, was a means of distinction between the bourgeois and the working or idle poor.[1098] In other words, a particular culture was cultivated that normalized certain distinctive ways of being and behaving that was reproduced in proper (i.e. class-appropriate) leisure activities. From its earliest statutory manifestation in the nineteenth century, the obscene was associated with social disorder and unruliness and also with the category of persons most associated with idleness and disorder – the poor. While those in the upper classes could pursue their interest in "curious" books, or could purchase luxury (or Luxor) editions of obscene literature, the penny prints and pleasures of the poor were much more stringently regulated. This points to a continuity from the commercial discursive formation, whereby the consuming subject was considered more or less responsible, or in this instance legally culpable, based on the ability to purchase pleasure virtuously. Law, including obscenity laws, associated virtuous purchases with the wealthy, while at the same time policing the pleasures of the poor; in this way, the morality or moral superiority of the upper classes was reproduced while the moral degeneracy of the working class was likewise established.

[1097] Hunt, "Making-Up the New Person," 283.

[1098] Rojek, "'The Eye of Power'," 366, 369-370.

Having discussed the effects of these legal projects of moral regulation on the constitution of good and bad subjects (both constituted and distinguished by categories of gender and class), I briefly consider the effects of such projects on the constitution of a moral social order. The moral regulation of the obscene during the nineteenth and early twentieth centuries was not aimed *necessarily* at repressing sex, or the sexuality of women and the poor, but also functioned to produce certain kinds of citizens within a moral social order or nation.[1099] I argue that the obscene, much like unruly print matter from the veridical discursive formation, was constituted as a danger to a hierarchical and classed social order. Rather than threatening the authority of the Crown or Church, however, the consumption of obscene literature by the poor was constituted as threatening the moral distinction of Britain (i.e. in the context of empire) and the United States (i.e. as a city upon a hill). The problematization and regulation of the obscene by institutionally authorized agents such as parliamentarians and judges both constituted and reproduced a hierarchical social order distinguished by moral governors and docile moral citizen subjects, or alternatively ungovernable and (sexually) irrepressible and irresponsible citizen subjects. Thus, the legal regulation of the obscene effectively constituted a distinction between the moral governors and the governed, whereby law was constituted as integral to the production of docile and moral citizen subjects and to the reproduction of the moral authority of social and political leaders, as well as the reproduction of a moral nation or social order.

The Continuation of the Judicial Discursive Formation in the Present

There are certainly lines of continuity to be traced from this judicial discursive formation to the present. There continues to be a legal as well as popular recognition and problematization

[1099] See Heath, *Purifying Empire*, 1, 48, 53.

of sexual representation, or a frame of meaning which constitutes the obscene as a particular class or type of sexual object. Although the obscene was not always or only constituted as "abnormal" sexual representation, the constitution of the obscene as a sexual thought object continues, even outside of legal discursive practices. For example, the *Fifty Shades of Grey* (2011) Wikipedia entry does not mention obscenity, nor were the author or publisher criminally prosecuted on the grounds of obscenity; however, "Obscenity controversies in literature" is one of the listed search categories.[1100] This suggests that the obscene continues to exist as a thought object connoting socially or morally disapproved of sexual representation, and results in the classification (as a result of frames of meaning) of such materials as essentially different from other types of materials or literatures. Thus, the legal conceptualization of the obscene as problematic or controversial sexual representation continues to circulate and constitute extra-legal frames of meaning; the obscene exists today not only as a legal category, but as a popular concept understood to refer to the sexual.

Conclusion

This chapter traced the emergence and dominance of the legal regulation of obscenity, as well as resistance to the same. Obscenity was constituted as a problematic, morally harmful object by legal knowledges, beginning with *Curl* (1727). I suggested that it was not until the late eighteenth and early nineteenth centuries, however, that legal regulation became the dominant mode of the regulation of obscenity. In large part this was due to the institutionalization of regulatory techniques by vice society agents; as moralizing groups, vice societies brought prosecutions against those who sold obscene literature. These vice societies and their moral

[1100] "Fifty Shades of Grey," Wikipedia, Wikimedia Foundation, last modified November 1, 2018, https://en.wikipedia.org/wiki/Fifty_Shades_of_Grey.

regulatory agents worked to suppress the public circulation of vice, constituting it as morally harmful and subject to common law. Their techniques of regulation were not only intended to suppress vice through legal means, or through the enforcement of common law, but also to encourage virtue. In other words, the subjects at whom the regulatory knowledges and techniques of vice societies were directed were not booksellers specifically, but the moral(ized) public generally. Vice societies, through disciplinary practices of common law, sought to govern – or influence to virtue – the greater population.

These agents of moral regulation, however, were problematized nearly from the beginning of their existence. Common law practices were constituted as insufficient to effectively regulate obscenity, given the need for vice societies to initiate and finance prosecutions. Through the proliferation of regulatory and criminal statues, law was reproduced – without the assistance of vice societies – as the dominant mode of the regulation of obscenity. Through this production of legislation, the prohibition and regulation of the obscene was effectively constituted as the prerogative of the state. Regulatory agents became police officers who identified and investigated obscenity, prosecutors who produced evidence that spoke to the truth of obscenity, and judges who administered punishments associated with obscenity. This intensification of legal regulatory practices effectively marginalized vice societies as well as their knowledges; while obscenity continued to be associated with religious or moral terms such as "wicked", increasingly the obscene was constituted as an issue of sexual morality that was (therefore) illegal.

It was within this period of time, from the early nineteenth to early twentieth centuries, that the targets of regulation – and in particular women and youth – were constituted as vulnerable to moral corruption and sexual seduction (e.g. as per the Hicklin test). I argued that

the regulation of obscenity was not only about problematic literature. Instead, the regulation of the obscene was integral in constituting virtuous as well as fallen women, and also contributed to the formation of both Britain and the United States as moral nation-states. Law prohibited the circulation of sexually obscene materials in an attempt to normalize and ensure the reproduction of acceptable sexual imaginations and behaviours, especially among women, and to constitute morally exemplary, healthy and productive nation-states.

Throughout this period, and especially culminating around events such as precedent-setting trials or the creation or modification of legislation, I demonstrated that – despite attempts at suppression or repression – there was an incitement to discourse. This was particularly evident in newspaper content, which circulated dominant and subjugated knowledges about obscenity; the obscene was not confined to specialized spaces such as the courtroom, and increasingly knowledge of the obscene that was produced through trials circulated in and was contested by newspapers. Newspapers circulated advertisements and provided information pertaining to trials, and also published the views of critics. With their penchant for (re)producing controversy, newspapers also publicized events such as those pertaining to Glenesk, who wanted to distribute copies of *Fanny Hill* to his congregation. While newspapers produced doubt about the obscene and its regulation, experts worked to "redeem" *Fanny Hill* and to produce new truths about obscenity.

By the mid-twentieth century, the expert opinions of academics and critics were increasingly sought and legal knowledges were no longer considered to be the sole or authoritative determinant of obscenity. In addition to and outside the authority of judges, literary experts were constituted as having truthful knowledges of the obscene. In a process of intensification, these expert knowledges were incorporated into constitutional tests in the United

States (i.e. *Roth* (1957)) and into legislation in Britain (i.e. Section 4 of the *Obscene Publications Act* (1959)). These measures recognized, within the legal regulatory process, that literary, artistic, scientific, historic and/or other merits, or those objects with redeeming social value, as identified by experts, could mitigate obscenity. This constitution of print matter containing sexual representation as literature that had social value was contingent; it was tied to the emergence of the literary expert who, as is demonstrated in the next chapter, was increasingly authorized by the university institution.

In the *Fanny Hill* trials, I demonstrated that extant legal regulation of obscenity, notwithstanding the incorporation of these subjugated knowledges, was contested by the ongoing commercial circulation of the novel, the publicity of newspaper reports, and the legal acceptance or authorization of expert knowledges. These knowledges problematized the truth of the regulatory object as morally harmful and the "right" of legal agents and institutions to use techniques of law to regulate it. In particular, the reconceptualization of obscene literature by female literary experts like Brophy and Laski, who could speak to the intellectual charms of sexual representation in a process that constituted women as sexual agents rather than vulnerable subjects, contested the obscene and its regulation. No longer could the judicial discursive formation successfully constitute the regulation of the obscene as either making people (or women) "good" or as producing a morally exceptional nation; instead, the responsibilized individual was responsible for her own aesthetic, moral and commercial choices.

Thus, I have argued that a significant transformation occurred when binary practices of law, which categorized the obscene as illegal and literature as legal, were unable to successfully reproduce dominant conceptualizations of obscenity. This transformation occurred as a result of the success of competing knowledges, or the production of alternative conceptions of the

obscene as aesthetic, harmless and subject to expert non-legal determinations. Although originally excluded, expert literary witnesses were eventually authorized by the judicial discursive formation; these expert literary witnesses contested dominant knowledge and successfully produced counter-knowledges that promoted non-legal conceptualizations of the obscene. While I do not suggest that the expert testimony of a few dozen witnesses effected this transformation, these subjugated knowledges were, around the time of *Memoirs* (1966), able to supersede judicial discursive practice, undermining the definitive and determinative properties of obscenity laws that constituted objects as immoral or moral, illegal or legal. When expert witnesses were accepted within the judicial process, legal discourse and procedure were unable to successfully limit and proscribe the possibilities of obscenity in such binary ways; the inability of the legal institution to maintain discursive dominance through exclusion made it possible for a new agent and institution to emerge: the expert and the university. Having established the conditions that enabled – or that failed to exclude – this emergence, in the next chapter I examine the incitement to discourse that transformed obscene literature into obscene (or sexual) "art" that could be regulated not by criminal or regulatory law, but by academics as experts.

In the United States, Rembar and others suggested that obscenity was ended. In a review of Rembar's book, C. H. Rolph suggested that,

> [n]o one is likely to give the subject an epitaph that is better informed or as readable. . . . It is difficult to believe it will be the last. Come to think of it, I know it won't. But Mr Rembar sees the end not merely of the law about obscenity but of obscenity itself; for obscenity has to be 'corrupting' and there will soon be nothing and no one left to corrupt unless obscenity can be given some fresh meaning.[1101]

While the legal decision of the United States Supreme Court seemed to indicate that literature with any kind of redeeming value could no longer be considered obscene, Rolph's words were

[1101] C. H. Rolph, "The Tree of Knowledge," *New Statesman* (London), April 11, 1969, 519, ProQuest Periodicals Archive Online.

prescient. Obscenity would be "ended" *unless* a new meaning or conceptualization emerged. In the following chapter, I argue that that is exactly what happened. The concept of obscenity transformed, although this time discursive practice was dominated by literary critics and academics.[1102]

[1102] In an interesting aside, and as a reminder that events were ongoing in Britain, around this time the *Financial Times* reported that the paperback industry was growing, albeit slowly (given that the average British person bought less than two books per year). The article announced that Mayflower's abridged version of *Fanny Hill* had sold 1.2 million copies. "Hard Heads Behind the Soft Covers," *Financial Times* (London), March 22, 1966, 13, http://tinyurl.galegroup.com/tinyurl/4Gv592.

CHAPTER VI

The Scholastic Discursive Formation:

The Intellectualization of *Fanny Hill* and the Obscene

Introduction

> Be this as it may, the *Memoirs of a Woman of Pleasure*, simple as is its construction, presents a characteristic picture of the manners of a certain class at the time, and is a pleasant and readable book. It undoubtedly is, and will probably long remain, the best erotic novel in the English language.[1103]

The previous chapter described the emergence, existence, and effects of the judicial discursive formation; throughout much of that period, dominant legal practices were contested by subjugated knowledges pertaining to the aesthetic, or knowledges deriving from the art for art's sake movement. These knowledges – extant from the late nineteenth century, as evidenced for example in the epigram by the bibliophile Henry Spencer Ashbee – reconceptualized legally obscene objects as having redeeming value or merit that negated the potential for (moral) harm. This chapter begins by considering the "redemption" of *Fanny Hill* through the production of knowledge by literary experts and academics who referred to aesthetic grids of specification in order to produce knowledge of the literary and socio-historical value or merit of the book. This scholarly knowledge constituted *Fanny Hill* as aesthetic and as a valuable or valid object of study. Subsequently, this chapter considers what I call the academicization of *Fanny Hill*, whereby the book was reconceptualized by feminist and queer scholars in particular as a problematic rather than aesthetic object that caused harm due to its gendered and heteronormative representations and implications. Thus, somewhat like Peter Sabor, I suggest

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[1103] Pisanus Fraxi [Henry Spencer Ashbee], *Catena Librorum Tacendorum*, vol. 3 of *Bibliography of Prohibited Books* (1885; New York: Jack Brussel, 1962), 91.

that scholarly criticism or knowledge production "moved from the ethos of sexual liberation to that of gender trouble".[1104] However, I do not conceptualize this as a transformation of the scholastic discursive formation; instead, I demonstrate that a diversity of scholarly knowledges were produced and permitted according to the rules of formation and exclusion. These scholarly knowledges produced *Fanny Hill* and the obscene as objects of study, or as an "intellectual" problem rather than a moral or legal one. Thus, while I describe a diversity of knowledges within this scholastic discursive formation, which allowed *Fanny Hill* to be conceptualized as aesthetic (e.g. literary and/or historic) or as containing normative representations of gender and sexuality, all of these knowledges are considered to be "intellectual" or scholastic.

Before I begin, the question to be addressed is whether, following the legal trials and especially the *Memoirs* (1966) verdict, *Fanny Hill* was constituted as an "obscene" thought object within this discursive formation, which I call scholastic because of the predominance of scholarly knowledges and practices. Certainly, *Fanny Hill* was the same material object throughout each of the discursive formations discussed; as I have shown, however, there were distinct iterations of the obscene as a thought object. I suggest that *Fanny Hill* is studied today for those historical relations that constituted and problematized it as immoral, illegal and obscene. Scholarly research continues to be guided by historic conceptualizations of the obscene and of *Fanny Hill*; to put it differently, continuities from previous discursive formations can be found within the scholastic discursive formation. Further justification of this understanding of *Fanny Hill* as an obscene thought object is required, given that this chapter even more than the preceding ones focuses on *Fanny Hill* specifically rather than "the obscene" more generally; my reasoning is explained below.

[1104] Sabor, "Sexual Liberation to Gender Trouble," 569.

Fanny Hill *and/or the Obscene*

As I investigated the scholarship on obscenity in the early stages of this project, and before I settled on *Fanny Hill* as the object of study, I noticed a trend whereby *Fanny Hill* appeared as a symbol, an archetype, or a monument of "the obscene". For example, in his history of "pornography", Walter Kendrick suggested that *Fanny Hill* was "virtually synonymous" with pornography.[1105] In Peter Wagner's history of "erotica", he traced the development of the literary genre in "an almost uninterrupted line" from *Ragionamenti* (1534) to *Fanny Hill*.[1106] These and others conceptualized *Fanny Hill* as a significant historical event as well as a significant piece of sexual literature; this significance was attributed to or resulted from *Fanny Hill*'s relation to the obscene (or the pornographic or erotic).[1107] In text after text pertaining to the scholarly study of the obscene, I came across seemingly obligatory mentions of *Fanny Hill*, as well as the curious and frequently repeated phrase "like *Fanny Hill*", whereby obscene literature would be compared to the apparently "original" obscene text.[1108] The often oblique and yet persistent references to *Fanny Hill* in the scholarly literature on obscenity piqued my interest and in large measure inspired this project. What was it about *Fanny Hill* that prompted these seemingly obligatory references? What was it that made *Fanny Hill* so intimately associated with the concept of the obscene? While I do not conflate *Fanny Hill* with the concept of obscenity or vice versa, I do suggest that neither – within the conditions of the

[1105] Kendrick, *The Secret Museum*, 99.

[1106] Wagner, *Eros Revived*, 6.

[1107] As an aside, I suggest that the terms pornography and erotica were mobilized during this time at least in part to displace or contest the legal conceptualization of obscenity.

[1108] E.g. Wagner, *Eros Revived*, 212; Bill Thompson, *Soft Core: Moral Crusades Against Pornography in Britain and America* (New York: Cassell, 1994), 12.

scholastic discursive formation – can be conceptualized without the other. In other words, *Fanny Hill* and obscenity are integrally related in our current as well as historical conceptualization of both and/or either.[1109]

Consider George Ryley Scott, who in 1945 discussed the legal, sociological and literary aspects of obscenity; referring to *Fanny Hill*, he suggested that "[n]o survey of 'suppressed' erotic literature can be in any way complete which ignores this novel, perhaps the most notorious contribution to English erotic literature".[1110] It is of interest to note that Scott was not convinced of *Fanny Hill*'s place in the scholarly canon, calling it "perhaps the rankest pornography ever perpetuated by an English author having any claims to literary craftsmanship".[1111] This suggests a certain tension pertaining to the scholarly study of *Fanny Hill*, as its significance was matched by its notoriety. This also indicates that such scholarly study was at least initially reluctant and was certainly contingent, particularly since the book was at that time illegal.

Following the somewhat anomalous Scott (i.e. because his text was almost unique in its topic and tone at that time),[1112] in the early 1960s several books that likewise highlighted – and produced – the significance of *Fanny Hill* in relation to the obscene were published. David Loth, a journalist who wrote *The Erotic in Literature: A Historical Survey of Pornography as Delightful as It Is Indiscreet*, made a significant contribution to the study of sexual literature,

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[1109] Please note that this chapter should *not* be read as a review of the literature. Scholarly texts are read for their historical value, in much the same way as documents in Chapters 4 and 5.

[1110] Scott, *"Into Whose Hands"*, 143.

[1111] Scott, 145.

[1112] See also Ralph Thompson, "Deathless Lady," *Colophon* 1, no. 2 (1935): 207-220.

framing such study as "delightful".[1113] Loth described *Fanny Hill* as "[p]erhaps the pornographic best seller of all time" that "enjoyed a perennial favor which is shared by remarkably few books in English – the Bible, *Pilgrim's Progress*, Shakespeare, but no other work of specialized erotica".[1114] Alec Craig, a British author and poet, wrote *The Banned Books of England and Other Countries: A Study of the Conception of Literary Obscenity*, which was a history of the progressive development of legal obscenity in conjunction with the increasingly significant concepts of intellectual freedom and artistic expression; he referred to *Fanny Hill* as the "classic" example of pornographic writing.[1115] In the same year, John Chandos edited *To Deprave and Corrupt: Original Studies in the Nature and Definition of Obscenity* in order to draw attention to "the divergence of standards and inconsistency of judgments displayed whenever, in the course of judicial trial or other public process, the concepts of obscenity and censorship have arisen".[1116] This edited collection included a "who's who" of those involved in the intellectual and commercial fight to "free" obscenity from legal "repression". Chandos himself commented on *Fanny Hill*, calling it the "epitome of erotic books".[1117]

These and other books point to the beginning of a general trend that did not necessarily originate from or was not confined to the university. Instead, prominent – but not necessarily

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[1113] David Loth, *The Erotic in Literature: A Historical Survey of Pornography as Delightful as It Is Indiscreet* (New York: Julian Messner, 1961), title.

[1114] Loth, *The Erotic in Literature*, 32-33.

[1115] Craig, *Banned Books of England*, 33. See also Kendrick, *The Secret Museum*, 188.

[1116] John Chandos, editor's note to *'To Deprave and Corrupt...': Original studies in the Nature and Definition of 'Obscenity'* (New York: Association Press, 1962), vii.

[1117] John Chandos, "Unicorns at Play," in *'To Deprave and Corrupt...': Original studies in the Nature and Definition of 'Obscenity'*, ed. John Chandos (New York: Association Press, 1962), 184.

authoritative – public figures expressed interest in and concern about social and legal standards pertaining to the obscene, or to sexual representation in literature, and produced knowledges through accepted techniques (such as the publication of scholarly works that mobilized immanent critique) that contested the harm of such sexual representation and that often constituted the harms that attended legal suppression or repression. These books referred to *Fanny Hill*, often giving a brief overview of the plot and commenting on the style of writing, establishing the prominent place of *Fanny Hill* in histories of obscenity *before* the trials in London or New York. This points to the significance of *Fanny Hill* as a symbol of the obscene.

Following the trials of the 1960s, similar books that focused on the history of legal literary obscenity continued to be written; however, there was a shift toward academics writing "academic texts". For example, Donald Thomas, whose last post was as Professor Emeritus of English Literature at Cardiff University, wrote *A Long Time Burning: The History of Literary Censorship in England*.[1118] His book does not differ significantly from those mentioned above, except perhaps in the style in which it was written; the extensive use of references and the language framed the work as "more factual", rather than a "more impassioned" plea for (sexual) change. He commented frequently on the "irrepressible" *Fanny Hill*.[1119] Likewise, Steven Marcus, an American academic and literary critic who held an emeritus position at Columbia University, wrote *The Other Victorians: A Study of Sexuality and Pornography in Mid-Nineteenth-Century England*.[1120] This book considered and compared icons of the Victorian era, including William Acton, Henry Spencer Ashbee, and *My Secret Life* (1888), but still managed

[1118] Thomas, *A Long Time Burning*.

[1119] Thomas, 279.

[1120] Steven Marcus, *The Other Victorians: A Study of Sexuality and Pornography in Mid-Nineteenth-Century England* (New York: Basic Books, 1966).

to mention *Fanny Hill*. In developing his concept of "pornotopia", or the utopian fantasy in which desirable men and women are always ready and willing to copulate, Marcus referred to *Fanny Hill*.[1121] Because *Fanny Hill* was (apparently) so well-known, it could serve as *the* example of an analytical concept that Marcus developed.

By the 1990s, however, there was an increasingly critical scholarly stance, largely fuelled by feminist and queer studies, that rewrote the (progressive) histories and aesthetic panegyrics of obscene literature from the 1960s. While *Fanny Hill* was still frequently mentioned, it was no longer constituted as a monument of literary or sexual freedom or a significant historic event; instead, *Fanny Hill* was increasingly framed as problematic for its sexual (mis)representation. For example, Patricia Meyer Spacks wrote the well-known and often cited *Desire and Truth: Functions of Plot in Eighteenth-Century English Novels*, incorporating *Fanny Hill* as a sort of touchstone throughout her book.[1122] She suggested that its plot "expresses and confirms its sexual ideology: sexual relations are power relations in which men, with the advantage of social and physical force, oppose women, whose resources depend mainly on indirection and on socially confirmed male fantasies about the female nature".[1123] Another example comes from Madeleine Kahn's *Narrative Transvestism: Rhetoric and Gender in the Eighteenth-Century English Novel*, in which *Fanny Hill* is problematized for being "deeply conservative".[1124] Where

[1121] Marcus, *The Other Victorians*, 281-282n1.

[1122] Patricia Meyer Spacks, *Desire and Truth: Functions of Plot in Eighteenth-Century English Novels* (Chicago: University of Chicago Press, 1990).

[1123] Spacks, *Desire and Truth*, 56.

[1124] Madeleine Kahn, *Narrative Transvestism: Rhetoric and Gender in the Eighteenth-Century English Novel* (Ithaca, NY: Cornell University Press, 1991), 154-159.

once criminal law conceptualized *Fanny Hill* as harmful because it was immoral, academics reconceptualized it as harmful because it was gendered or heteronormative.

While I have given a general outline of the emergence and transformation of the academic scholarship pertaining to *Fanny Hill* and the obscene (discussed in greater detail below), the overall effect of such studies was the ongoing production of scholarly dominance over the obscene and over *Fanny Hill*, as knowledges or truths of the meaning of *Fanny Hill* and its aesthetic qualities or harmful effects were continually reproduced by scholarly practices, including publication. I argue that regardless of whether *Fanny Hill* was constituted as having literary or socio-historical merit or value, or whether it was problematized for its gendered or heteronormative representations, these disparate analyses did not *necessarily* point to struggle, but rather to the ongoing reproduction of scholarly dominance, and the intellectualization of the obscene. The reproduction of scholarly knowledges within academia requires, to an extent, conflict; knowledges are continually reproduced in relation to previous knowledges as part of the process of (re)establishing dominance. For example, Janet Todd read *Fanny Hill* as confirming social and sexual conventions,[1125] while Julia Epstein read *Fanny Hill* as "a critique of the cultural constructions of sexuality in the mid-eighteenth century".[1126] While this polarity might be understood as a struggle for dominance, I suggest that these arguments are complicit in the same project, which is to truthfully interpret or produce knowledge of *Fanny Hill* as an intellectual object, using the conventions and methodologies of particular disciplines and theoretical orientations – including for example the techniques of literary and feminist criticism – within the scholastic discursive formation. These scholarly disagreements stimulate and

[1125] Janet Todd, "Erotic Friendship: John Cleland's *Fanny Hill* (1748-1749)," in *Women's Friendship in Literature* (New York: Columbia University Press, 1980), 95.

[1126] Epstein, "Fanny's Fanny," 136.

strengthen scholastic discursive practice as problems are (re)articulated in order to (re)establish the university institution and its agents as dominant. Thus, I argue that the ability to continually reread *Fanny Hill* and reproduce these readings in scholarly works functions to maintain and reproduce scholarly dominance pertaining to the obscene. The aestheticization and academicization of *Fanny Hill* does not point to a rupture of the discursive formation, but rather to the ongoing intellectualization of the obscene that served to reproduce the scholastic discursive formation.

To be clear, and being mindful of my place within academia, this chapter is limited in scope, refusing generalizing claims about all of academia or all of sexual literature; I consider the university as one institution involved in the moral regulation of *Fanny Hill* and the obscene. At times this chapter is or may seem pointed; this is prompted by fact that *Fanny Hill* continues to be significant in academic scholarship in a way that needs to be problematized in order to provide insights into the scholarly participation in relations of power-knowledge pertaining to the obscene and its regulation. I emphasize the importance of recognizing that academics did not "simply" analyse or critique *Fanny Hill* as a material object, but were implicated in the constitution and regulation of the obscene, and thus in relations of power-knowledge. This chapter considers how the university emerged as a site that "radiated discourses aimed at sex, intensifying people's awareness of it as a constant danger, and this in turn created a further incentive to talk about it".[1127] This chapter traces the institutional incitement within academia to speak about sex.[1128] This incitement to discourse – in which this project is enmeshed – prompted me to critically reconsider what Foucault refers to as the speaker's benefit, whereby deliberate

[1127] Foucault, *The History of Sexuality*, 31.

[1128] Foucault, 18.

transgression of sexual prohibition, repression, or taboo and the belief in or constitution of a better, freer, or more egalitarian tomorrow implicates academics within the politics of truth regimes.[1129] Considering my own relations within the university institution as well as the production of knowledge by academics pertaining to *Fanny Hill* and the obscene is an essential part of conducting a history of the present, and in particular of making visible relations of power-knowledge.

This chapter is my attempt to produce an ongoing historical awareness, or an awareness of the past in the present. Roy Porter's *Flesh in the Age of Reason* is an example of a work that pays close attention to the social, intellectual and cultural tenets of an age (i.e. the Enlightenment) in which obscene literature emerged;[1130] I suggest that this attention to historical specificity is not as prevalent as it could be in current scholarship. For example, while Porter suggested that *Fanny Hill* was a means of "rethinking the self" during the Enlightenment,[1131] there is less attention paid to how academic texts produce or achieve "something" – such as the formation of subjects and social orders – in our current time. The study of obscenity and *Fanny Hill* is not only historical or literary, but must be considered for its implications on and in the present; as part of a history of the present, this chapter considers the scholarly discursive practices that reproduce the significance of *Fanny Hill*(s), such that in 2003 – more than two hundred and fifty years after the novel's publication – Patsy Fowler and Alan Jackson could

[1129] Foucault, 6-7.

[1130] Porter, *Flesh in the Age of Reason*.

[1131] Porter, 281.

comment that *Fanny Hill* "deserves a scholarly collection of its own".[1132] Statements and texts like this are not considered or critiqued for their truth or falsity, but instead are considered as part of an incitement to discourse and as a part of a production of knowledges pertaining to *Fanny Hill* and the obscene occurring within the scholastic discursive formation; subsequently, these discursive practices are considered for their effects.

Again, in this chapter I do not seek to arrive at a definitive or truthful interpretation of *Fanny Hill*, or to point to a better or worse strand of scholarly thought. Further, this chapter should not be read as a review of the literature; scholarly texts are read as historical documents in much the same way as in Chapters 4 and 5. I consider how scholarly articles, chapters and books produced *Fanny Hill* as a significant object or symbol of obscenity, and as an intellectual (rather than moral or legal) concern. I argue that in the absence of clear – or dominant – legal standards, norms or truths, scholarly knowledges pertaining to *Fanny Hill* became a significant means of conceptualizing or making sense of the obscene.

The Obscene and the State

Before discussing the aestheticization of *Fanny Hill*, for clarity I briefly comment on the continuation of the legal concept of obscenity. Following the case of *Memoirs* (1966) in the United States and the controversy pertaining to obscenity cases in Britain, including *Gold* (1964), the state did not surrender the problem of the obscene; there are still laws against the obscene. From the 1960s, however, state involvement in the problem or regulation of the obscene in the United States and Britain was seemingly limited or subjugated to periodic commissions and occasional legislative propositions. For example, in 1970 the *Report of the*

[1132] Patsy S. Fowler and Alan Jackson, editors' preface to *Launching* Fanny Hill*: Essays on the Novel and Its Influences* (New York: AMS Press, 2003), xiv.

Commission on Obscenity and Pornography was published;[1133] initiated by President Lyndon Johnson and received (and rejected) by President Richard Nixon, this report affirmed that the state had a role in investigating harmful materials and establishing methods to control such materials. However, rather than tightening state control over sexual materials, the Commission recommended open and fact- or research- based discussion pertaining to sex and affirmed that the individual should chose for herself what to read or view. Similar findings were made in the *Williams Report*, published in 1979 in Britain.[1134] Of course, in 1986 nearly opposite findings were presented in the *Meese Report*,[1135] and in 1999 the British House of Lords discussed another bill on obscenity.[1136] While this seemingly points to the persistence of the state's attempts to govern the problem of obscenity, the criticism facing the *Meese Report* and the apathy facing the obscenity bill (see Viscount Janric Craigavon's comments)[1137] suggests that these commissions and legislative revisions were of some public interest, but minimal regulatory effectiveness.

Further evidence of the subjugation of the discursive practices of the judicial discursive formation is the fact that since the 1960s there have been few criminal prosecutions on grounds

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[1133] United States, *The Report of the Commission on Obscenity and Pornography* (Washington, 1970), https://babel.hathitrust.org/cgi/pt?id=umn.31951p00073248m;view=1up;seq=9.

[1134] Great Britain, *Report of the Committee on Obscenity and Film Censorship*, 1979, Cmnd. 7772, ProQuest U.K. Parliamentary Papers.

[1135] United States, *Attorney General's Commission on Pornography* (Washington: U.S. Department of Justice, 1986), https://babel.hathitrust.org/cgi/pt?id=mdp.39015058809065;view=1up;seq=1.

[1136] Hansard, *Obscenity Bill [H.L.]*, HL Deb 27 May 1999 vol 601 cc1132-1134, https://api.parliament.uk/historic-hansard/lords/1999/may/27/obscenity-bill-hl#column_1132.

[1137] Hansard, *Obscenity Bill [H.L.]*, cc1133.

of obscenity for literature or other "artistic" or "aesthetic" forms. Of course, the exceptions to this trend stand out; for example, Robert Mapplethorpe's *The Perfect Moment* photography exhibit, which opened in 1988 and included homoerotic and sadomasochistic themes, was embroiled in significant public controversy in the United States but resulted in a jury decision of not guilty.[1138] Similarly, the *Little Sisters* (2000) case, involving the importation of gay and lesbian literature into Canada, is relatively recent in memory.[1139] Notwithstanding (and not to minimize) this or like incidents, criminal proceedings pertaining to obscenity generally reflect the division formulated by the art for art's sake movement established in *Memoirs* (1966); the aesthetic is generally considered not to be subject to legal regulation, while "real" sexual acts continue to fall under the jurisdiction or regulation of criminal law.

Having argued that the state is no longer dominant in the regulation of the obscene and that criminal law is rarely employed against objects designated as artistic sexual expression, I do not suggest that the legal regulation of the obscene has ceased. Richard Jochelson and Kirsten Kramar, as well as Mariana Valverde, have produced scholarly works pertaining to the ongoing legal and moral regulation of the obscene in a Canadian context.[1140] They consider, for example, cases involving female toplessness and consensual group sex or swinging and the constitution of

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[1138] *City of Cincinnati v. Contemporary Arts Center*, 57 Ohio Misc. 2d 15 (1990)

[1139] *Little Sisters Book and Art Emporium v. Canada (Minister of Justice)*, [2000] 2 S.C.R. 1120

[1140] E.g. Valverde, "The Harms of Sex," 181-197; Richard Jochelson, "After *Labaye*: The Harm Test of Obscenity, the New Judicial Vacuum, and the Relevance of Familiar Voices," *Alberta Law Review* 46, no. 3 (2009): 741-767, HeinOnline Law Journal Library; Richard Jochelson and Kirsten Kramar, "Governing through Precaution to Protect Equality and Freedom: Obscenity and Indecency Law in Canada after R. v. Labaye [2005]," *Canadian Journal of Sociology* 36, no. 4 (2011): 283-312, https://www.jstor.org/stable/canajsocicahican.36.4.283; Richard Jochelson and Kirsten Kramar, *Sex and the Supreme Court: Obscenity and Indecency Law in Canada* (Halifax: Fernwood, 2011).

the obscene (as well as other issues)[1141] in relation to the concept of risk of harm. Risk of harm is argued to be a "post-moral" technique of moral regulation,[1142] according to which harm is a means of conceptualizing the dangerous, bad, or immoral and justifying intervention that criminalizes sexual behaviour or expression.[1143] Thus, the legal regulation of obscenity continues to problematize and normalize sexual conduct in ways that produce moral or good subjects and social orders.[1144] In summary, it is not my contention that the legal regulation of the obscene has ceased; rather, it has transformed. The following section considers the conditions that made such a transformation possible.

The Incitement to Discourse and the Emergence of Expert Authority

As discussed in the preceding chapter, the "literary expert" became increasingly authoritative in the constitution of the obscene. The emergence of this authority of delimitation was contingent and initially relied on the authorization of the judicial institution (i.e. by Arthur Klein's precedent in the United States and Section 4 in Britain). Perhaps the most significant condition of possibility that enabled the expert and later the academic to become authorities pertaining to sexual representation was the Sexual Revolution and the explosion of sexual research. For example, one of the expert witnesses in *Gold* (1964) was H. Montgomery Hyde, a British parliamentarian and academic. A few months after the trial, his book, *A History of*

[1141] E.g. Dawn Moore and Mariana Valverde, "Maidens at Risk: 'Date Rape Drugs' and the Formation of Hybrid Risk Knowledges," *Economy and Society* 29, no. 4 (2000): 514-531, https://doi.org/10.1080/03085140050174769.

[1142] Moore and Valverde, "Maidens at Risk," 514.

[1143] Valverde, "The Harms of Sex," 187; Jochelson and Kramar, "Governing through Precaution," 285.

[1144] E.g. Jochelson and Kramar, *Sex and the Supreme Court*, 6, 11-13, 80-81.

Pornography (1964), was published and reviewed in the *Sunday Times*.[1145] According to the review, pornography was a matter of "scientific" interest; however, "it is only within the last few years that the objective study of this kind of writing has become possible".[1146] While the reviewer seemed to be much keener on the work of the Institute for Sex Research of Indiana University and the work of Dr. Alfred Kinsey than the book by Hyde, I suggest that this review article pointed to the emerging scientization of sexuality; science (broadly speaking) – rather than morality or law – became the surface of emergence in which the obscene could be sought and found. The courts had engaged in a struggle to maintain jurisdiction over public morals, but the emergent authority of the literary expert successfully contested the knowledge systems and practices of the judiciary.

The scientization of sexuality was not the only reason that experts were increasingly able to constitute the obscene. The influence of the commercial market was also a significant condition of possibility that allowed literary critics, for example, to emerge with authority. During the 1960s, paperback books were increasingly available, affordable, and mass produced.[1147] At this time, individuals or consumers (rather than lending libraries, for example) drove the commercial book market. Previously, publishers might have printed a few thousand copies of a book and hoped to break even, but in the 1960s, one hundred thousand or more books could be printed cheaply and for profit. The result was that literary critics, who featured prominently in the trials of *Fanny Hill*, were increasingly authoritative as they guided the tastes

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[1145] Philip Day, "By Men for Men," *Sunday Times* (London), July 26, 1964, 34, http://tinyurl.galegroup.com/tinyurl/4FnGU4.

[1146] Day, "By Men for Men," 34.

[1147] See Charles Hamblett, "Paul Hamlyn: The Publisher Who Proved that Books Can Be Sold Like Soap," *London Life*, June 4, 1966, 14-15, ProQuest British Periodicals.

and purchases of potential readers with their reviews. Based on their literary authority and credentials, reviewers selected, from among the increasing number of books available for purchase, *certain* books to recommend or reject. While there were critical reviews prior to mass publication, the reviews of experts appeared regularly in daily or weekly newspapers to an audience that could afford to act on those reviews. These expert critics did not simply guide the literary tastes of readers, however.

Brigid Brophy, a literary critic discussed in the previous chapter, continued to write articles supporting the intellectualization or scientization of sex and sexuality, including their representation in literature. In the *New Statesman*, she responded to a critical article that called for British intellectuals including herself to stop the "flood" of surveys, analyses, essays and interviews pertaining to sex that were "drowning" people.[1148] She argued that talk about sex had not been exhausted; talk was necessary, in her opinion, to establish sexual toleration (e.g. pertaining to obscene literature, homosexuality, abortion, and divorce by consent). She wrote,

> [w]hat Miss Scott-James calls 'revelations about sex' are so far from seeming 'banal' to our magistracy and the Lord Chamberlain that we cannot buy the full text of *Fanny Hill* and can witness *A Patriot for Me* only through a legal loophole.
>
> If you believe that cruelties, injustices or (like censorship) sheer idiocies are going on, it's hard to know what, in a democracy, you ought to do except talk about them.[1149]

This passage confirms that there was an incitement to discourse; experts and intellectuals were actively involved in producing knowledge of sex and sexuality. This passage also incidentally confirms that *Fanny Hill* was central to emerging conceptualizations of sexual freedom.

[1148] Brigid Brophy, "The Unmentionable Subject," *New Statesman* (London), July 16, 1965, 79, ProQuest Periodicals Archive Online.

[1149] Brophy, "The Unmentionable Subject," 79.

London Magazine characterized the *Fanny Hill* trials as the last in "the great battle for sexual freedom in literature".[1150] The journalist was unsure, however, whether literature had been improved by the fight. The same doubt was expressed in the *Antioch Review* in a review of six controversial books (including Putnam's edition of *Fanny Hill*); the critic commented that "although the publishers affirm that 'free' novels expand our understanding of human nature, they are deceiving themselves and us".[1151] Into this uncertainty about the value or quality of "obscene literature", which was conceptualized as sexual rather than illegal or immoral literature, academics stepped in to reorient values and to provide new standards of appreciation and ways of making sense of the obscene (or the pornographic or erotic). Academics, as authorities of delimitation whose authority derived from the university institution, successfully excluded literary experts and critics who were outside the university institution; during the late 1960s and early 1970s, university academics became dominant agents of regulation within this scholastic discursive formation.

I do not suggest that this trend was absolute; obscenity and *Fanny Hill* were popular as well as academic objects of discourse and study throughout the period covered in this chapter. However, even popular discussions of obscenity tended to associate it with the university. For example, there was a short story about a middle class man named Tom who went to university and met a rebel intellectual named Mystic and other bohemian artists who did various shady

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[1150] Jocelyn Brooke, "A Pyrrhic Victory?" *London Magazine*, October, 1, 1964, 54, ProQuest Periodicals Archive Online.

[1151] Irving Malin, "Sex in Print," *Antioch Review* 24, no. 3 (1964): 408, https://www.jstor.org/stable/4610622.

things for money, including attempting to publish a mimeographed edition of *Fanny Hill*.[1152] One of the characters explained, "'It's pretty hot stuff, but literary. That Cleland could write; it's good eighteenth-century bawdy. I think I'll write a critical preface'".[1153] Tom, who had never heard of *Fanny Hill*, was enticed by the novelty of the group and their activities. It is worth noting that instead of *Fanny Hill* leading to sexual seduction and potentially a woman's moral downfall, in this story a man was intellectually seduced by the rebel-chic activities of the university group. Increasingly, however, I argue that the study of *Fanny Hill* became insular as knowledges circulated in scholarly rather than popular mediums.

Even when *Fanny Hill* itself was republished, the book was marketed to the university demographic. In 1985, it was announced in the *Sunday Times* that Oxford University Press and Penguin Books were both issuing editions of *Fanny Hill*; the article suggested that "Oxford and Penguin have now restored Fanny to her virgin literary form and are seeking to push her, unprotesting, into the university English literature syllabus".[1154] These books, with scholarly introductions and notes, were aimed at student subjects.

Fanny Hill – as *the* symbol of English language obscene literature – underwent a significant reconceptualization during in the 1960s both within the university institution and in the public imagination in such a way that it became established as a significant object of study. *Fanny Hill* was constituted as *the* historical and aesthetic exemplar of obscene literature and thus

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[1152] Robert A. Wiggins, "The Suitcase and the Mystic," *Carolina Quarterly* 11, no. 2 (1959): 5-12, ProQuest Periodicals Archive Online.

[1153] Wiggins, "Suitcase and the Mystic," 9.

[1154] Norman Lebrecht, "Publishing Giants Doing Battle for Fanny's Favours," *Sunday Times* (London), August 11, 1985, 3, http://tinyurl.galegroup.com/tinyurl/4Fm8d4.

worthy of study. To support this claim, I consider extant scholarly texts on *Fanny Hill*.[1155] As discussed, I begin by describing the initial aestheticization of *Fanny Hill* as literature of merit or value, followed by the reconceptualization of *Fanny Hill* as harmful and risky due to its gendered and heteronormative representations of sex and sexuality, both of which occurred within and helped to reproduce the scholastic discursive formation.

The Aestheticization of *Fanny Hill*

In perhaps one of the most interesting or ironic articles that I read, nearly a decade before *Gold* (1964) it was reported that the British Museum had acquired three rare editions of *Fanny Hill*.[1156] In a letter to the editor announcing this news, E. J. Dingwall commented that "[u]p till now the Museum had no early edition of the work in English and thus it was not possible to do any detailed work on the mystery of these early editions".[1157] *Fanny Hill* was likewise a source of interest to the American Antiquarian Society, which made inquiries into *Fanny Hill*'s early American history.[1158] Following the trials in the 1960s, there was an explosion of research or scholarly discursive practice within universities that produced knowledge of obscenity and *Fanny Hill*. Rather than being an item of obscure historical or bibliographic interest, *Fanny Hill*

[1155] See Appendix B for a chronological list of scholarly books, chapters and articles on *Fanny Hill*.

[1156] "Acquisitions," *Times Literary Supplement* (London), October 12, 1956, 608, http://tinyurl.galegroup.com/tinyurl/4FmzT0.

[1157] E. J. Dingwall, "Fanny Hill," *Times Literary Supplement* (London), September 16, 1955, 541, http://tinyurl.galegroup.com/tinyurl/4FjY77.

[1158] Marcus A. McCorison, "American Bibliographical Notes: Fanny Hill," *Proceedings of the American Antiquarian Society* 82, no. 1 (1972): 65-66, ProQuest Periodicals Archive Online.

became part of an incitement to discourse characterized by what I call the aestheticization of obscene literature.

While historically literature was constituted as influencing moral behaviour (recall for example the vice in literature discourse as well as justifications for making sexual representation in literature illegal), as a result of the legal trials of the 1960s, literary art was constituted as having no effect on behaviour, moral or otherwise; instead, it was conceptualized with reference to aesthetic grids of specification as having better or worse merits or qualities, or as being artistic and amoral. These aesthetic merits were increasingly constituted by academics who, as authorities of delimitation, produced knowledge of *Fanny Hill* as literary and aesthetic rather than having moral or legal consequences.

It makes sense to begin any consideration of the aestheticization of *Fanny Hill* with Peter Quennell's introduction to Putnam's edition of *Fanny Hill*.[1159] Not only was this the edition that sparked the American legal controversy, it also established or at least pointed to three of the four subsequent areas of scholarly interest. Quennell rejected the possibility that *Fanny Hill* was a morally or sexually "vulgar" book and instead constituted it as a work of artistic and historical interest and merit.[1160] For example, he commented on the "literary qualities" and "elegance and energy" of the book that conveyed an artful story that also gave "a graphic picture of its social age".[1161] Quennell produced knowledge of *Fanny Hill* as a significant piece of eighteenth

[1159] Peter Quennell, introduction to *Memoirs of a Woman of Pleasure*, by John Cleland (New York: G. P. Putnam's Sons, 1963), 5-17.

[1160] Quennell, introduction to *Memoirs*, 17.

[1161] Quennell, 12.

century literature, alongside the works of Samuel Richardson and Henry Fielding,[1162] and referred to John Cleland as "the gifted amatory storyteller".[1163] Thus, the aestheticization of *Fanny Hill* involved the production of knowledge that excluded discussions of (sexual) morality and that imbued the novel with value as a result of its literary and socio-historical qualities. The following subsections consider the work of academics who likewise reconceptualized *Fanny Hill*(s), producing knowledge about its amoral/aesthetic, literary, and/or socio-historical qualities. The last subsection considers the fourth area of inquiry, in which obscenity law was critiqued following the trials in the United States.

Reconceptualizing Sexual Representation as Amoral and Aesthetic

Among the earliest scholarly articles pertaining to *Fanny Hill* are several that distinguish between sexual literature as art or pornography. This was a significant part of establishing *Fanny Hill* as a legitimate object of study, or of establishing amoral and aesthetic grids of specification by which *Fanny Hill* could be interpreted or understood. For example, John Hollander discussed the increasing prevalence or normalization of sex in literature and considered whether *Fanny Hill* was pornographic.[1164] Because *Fanny Hill* could be studied for its euphemism and stylistic language, for example, he argued that it could be distinguished (to an extent) from pornographic works that were less legitimate because they ostensibly produced only physiological rather than intellectual responses.[1165] In the face of increasing sexual content in

[1162] Quennell, 12-13.

[1163] Quennell, 10.

[1164] Hollander, "The Old Last Act," 69-70.

[1165] Hollander, 70.

books, Hollander pointed to *Fanny Hill* as literature that blurred or threatened traditional boundaries, given that it could stimulate intellectual and/or physiological responses. These boundaries between art, which could be studied for its merits, and pornography, which could not, became increasingly distinct; academics increasingly constituted *Fanny Hill* as an object worthy of intellectual consideration, at the same time establishing relations whereby the pornographic was excluded as "meritless".

For example, B. Slepian and L. Morrissey reviewed Putnam's edition of *Fanny Hill* in a British journal of literary criticism.[1166] They proposed that a study of the novel's structure, themes and rhetoric demonstrated that the book was "not just pornography, but that it has real literary worth".[1167] Again, this points to a concern by academics to separate or distinguish, according to aesthetic grids of specification, between pornography and literature. The former was thought to be proved by its physiological reactions, and the latter by established disciplinary standards, traditions, and/or techniques (which were intellectual). In order to "prove" this distinction, academics from the university institution produced knowledge of *Fanny Hill* as literary art and excluded other sources of knowledge. For example, Slepian and Morrissey noted that "[j]udges and reviewers can be wrong",[1168] while academics could produce correct or truthful knowledges. In this struggle for dominance, academics employed scholarly techniques, including the research and publication of literary criticism, in order to produce scholarly

[1166] B. Slepian and L. J. Morrissey, "What is *Fanny Hill*?" *Essays in Criticism* 14, no. 1 (1964): 65-75, https://doi.org/10.1093/eic/XIV.1.65.

[1167] Slepian and Morrissey, "What is *Fanny Hill*?" 65.

[1168] Slepian and Morrissey, 75.

knowledge of *Fanny Hill* as an object of study, which had "never been subjected to serious critical scrutiny".[1169]

A significant part of this knowledge production involved the association of *Fanny Hill* with philosophical texts and ideas in order to link the book with aesthetic ideals and the intellect. For example, Stephen Sossaman performed a literary analysis of *Fanny Hill* and Cleland's *Memoirs of a Coxcomb* (1751) as part of a work of recovery that ostensibly moved past the reputation of these works to consider their thematic concerns with sex, love and reason.[1170] Sossaman argued that Cleland advocated for "balancing appetite and restraint";[1171] the books were interpreted not as licentious, but as a call for sexual restraint governed by reason and ending in love.[1172] Similarly, Ruth Bernard Yeazell argued that despite its explicit depictions of desire and sex, *Fanny Hill* was "essentially a modest fiction"; she argued that while Fanny engaged (generally) enthusiastically in sexual relations with many men, she modestly gave her heart only to Charles, whom she eventually married.[1173] This is consistent with, or indicates the continuity of, the long-standing vice in literature discourse as a means of justifying or making sense of sexual representation.

A different example of the association of philosophic ideas with *Fanny Hill* is provided by Leo Braudy, who considered the prevalence of eighteenth century materialist philosophy in

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[1169] Slepian and Morrissey, 65.

[1170] Stephen Sossaman, "Sex, Love and Reason in the Novels of John Cleland," *Massachusetts Studies in English* 6, no. 3/4 (1978): 93-106.

[1171] Sossaman, "Sex, Love and Reason," 93.

[1172] Sossaman, "Sex, Love and Reason," 105.

[1173] Ruth Bernard Yeazell, "Fanny Hill's Virgin Heart," in *Fictions of Modesty: Women and Courtship in the English Novel* (Chicago: University of Chicago Press, 1991), 104.

Fanny Hill, or the philosophic idea that man [sic] is a machine.[1174] Braudy related a particular philosophy about the nature of the soul to the exemplary text of *Fanny Hill*, arguing that *L'Homme machine* (1747) was a philosophical influence on Cleland and thus *Fanny Hill* was itself a philosophic text. This article is of interest for its insight into the techniques of establishing academic dominance pertaining to the obscene and its study; Braudy acknowledged (or reproduced) the distinction between pornography and literature and suggested ignoring the "furor", or the intense publicity pertaining to legal events, of *Fanny Hill*'s republication in order to make space for the contemplative (e.g. rather than emotional) scholarly study of the text.[1175] In intellectualizing sexual representation, or in constituting truthful or good knowledges as reasoned rather than emotional or physiological responses, Braudy produced the redeeming social value of *Fanny Hill* as something more or other than "just" pornography or a popular event; it was a sexual *and* philosophical novel. This discovery or production of the book and its value was accomplished by expert academic reading in conjunction with approved disciplinary techniques, including comparative textual analysis.

These examples point to a bifurcation in which the aestheticization of *Fanny Hill* – or the production of knowledges by academic experts pertaining to the book's qualities and effects – seemingly required an intellectual rather than physiological response to the book. This trend was not universal, however, as some academics produced knowledge pertaining to sexual representation as natural and normal. For example, John Illo described *Fanny Hill* as a "sweet

[1174] Braudy, "*Fanny Hill* and Materialism," 21-40.

[1175] Braudy, 21.

idyll of the orgasm";[1176] the book was conceived to be a perfect sexual fantasy and its sexual representations were naturalized. Using the techniques of literary criticism, including a comparison to other authors and styles, Illo concluded that the book was an expression of natural, healthy and ideal sexuality. The article also contained a sexually explicit passage that described Fanny's initial experience of sexual intercourse,[1177] which was consistent with the attempt to constitute *Fanny Hill* as an example of "sensuously attractive sexuality, and, especially, wholesome heterosexuality".[1178] Thus, while the article employed techniques common to literary studies, it introduced sex rather than just text as a matter of literary interest and study, and it did so in a way that was consistent with the early Sexual Revolution. Sexual representation itself was increasingly legitimized as an (amoral or natural) object of study.

In summary, from the time of the trials, the problem of sexual representation was taken up and reformulated by academics. The dominant approach was to reconceptualize sexual literature as aesthetic, divorced both from moral harm as well as physiological response,[1179]

[1176] John Illo, "The Idyll of Unreproved Pleasures Free," *Carolina Quarterly* 17, no. 2 (1965): 21.

[1177] Illo, "Unreproved Pleasures," 18-19.

[1178] Illo, 20.

[1179] See also Ivker, "Eroticism and Natural Morality," 141-148; Douglas Brooks-Davies, "The Mythology of Love: Venerean (and Related) Iconography in Pope, Fielding, Cleland and Sterne," in *Sexuality in Eighteenth-Century Britain,* ed. Paul-Gabriel Boucé (Manchester, UK: Manchester University Press, 1982), 176-197; Marvin D. L. Lansverk, "'Delightful Vistas': Genital Landscapes and Addisonian Aesthetics in Cleland's *Memoirs of a Woman of Pleasure*," in *Launching* Fanny Hill*: Essays on the Novel and Its Influences*, ed. Patsy S. Fowler and Alan Jackson (New York: AMS Press, 2003), 103-123; Rance D. Denton, "Secrets of Sex and Innocence in Memoirs of a Woman of Pleasure: A Profile of Purity Using Three Common Philosophies," *Colonial Academic Alliance Undergraduate Research Journal* 2, no. 1 (2011): 1-14, http://scholarworks.gsu.edu/caaurj/vol2/iss1/7; Kathleen Lubey, "Sex as Form: The Aesthetic Pedagogies of John Cleland and William Hogarth," in *Excitable Imaginations: Eroticism and Reading in Britain, 1660-1760* (Lewisburg, PA: Bucknell University Press, 2012), 161-203.

while other approaches naturalized sexuality both in the novel and as an object of study.[1180] This reconceptualization of sexual representation – and sexual representation was seemingly epitomized by *Fanny Hill* – through the production of scholarly knowledge put the sexual within the jurisdiction not of law or morality, but of the academic. Academics continued to produce knowledge within the university, establishing their scholarly dominance and the obscene as an aesthetic object of study rather than a problem.

Establishing Fanny Hill *in Relation to the Literary Canon*

In conjunction with this reconceptualization of sexual representation, which produced knowledge of the obscene as aesthetic and excluded the possibility of moral harm, academics also worked to establish *Fanny Hill* in relation to the literary canon. This further legitimized the obscene as an object of academic study rather than a moral or legal object or problem.

For example, Morrissey and Slepian suggested, contra Quennell, that Daniel Defoe's *Moll Flanders* (1722) was a more "obvious" influence on Cleland than Samuel Richardson's *Clarissa* (1748).[1181] This brief article, published as *Fanny Hill* was discussed in newspapers and the courts, pointed to similarities in plot and character between the two novels. Morrissey and Slepian defined or categorized *Fanny Hill* not as immoral or illegal, but in relation to canonical books of eighteenth century literature. *Fanny Hill* was conceptualized as being *like* certain literature and also as *being* literature.

[1180] E.g. Raymond K. Whitley, "The Libertine Hero and Heroine in the Novels of John Cleland," *Studies in Eighteenth-Century Culture* 9 (1979): 387-404.

[1181] L. J. Morrissey and B. Slepian, "Fanny and Moll," *Notes and Queries* 11, no. 2 (1964): 61, https://doi.org/10.1093/nq/11-2-61a.

Similarly, Myron Taube argued that *Fanny Hill* bore a closer resemblance to Defoe's *Moll Flanders* than to Samuel Richardson's *Pamela* (1740).[1182] The article compared and contrasted the characters Moll and Fanny, referring to their respective texts. *Fanny Hill* was studied as literature; the text was viewed in isolation as an object of literary study rather than as a text implicated in concepts of obscenity. Taube produced knowledge with reference to the isolated text and in accordance with the disciplinary procedures of literary studies rather than referring to moral grids of specification.

Meanwhile, Edward Copeland revisited the idea that *Fanny Hill* could be compared to Richardson's *Clarissa* in order to demonstrate that there are shared conventions between the works of sentimental fiction.[1183] This article, like others that preceded it (and which followed it),[1184] points to the formation of concepts as academics established, through reference to the book and to other literary texts, what *Fanny Hill* is and what it does, or what forms, conventions or styles of literature it exemplifies and how these are or should be interpreted by the reader. It also points to a trend whereby the production of academic knowledge requires a certain amount of contestation, as academics competed to produce truthful knowledges of *Fanny Hill*. I suggest that regardless of their views on whether *Fanny Hill* was like the work of Richardson, Defoe, or

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[1182] Myron Taube, "Moll Flanders and Fanny Hill: A Comparison," *Ball State University Forum* 9, no. 2 (1968): 76-80.

[1183] Copeland, "Sisters in Distress," 343-352.

[1184] See Bradbury, "Comic Novel," 263-275; Kibbie, "Sentimental Properties," 561-577; Antje Schaum Anderson, "Gendered Pleasure, Gendered Plot: Defloration as Climax in *Clarissa* and *Memoirs of a Woman of Pleasure*," *Journal of Narrative Technique* 25, no. 2 (1995): 108-138, https://www.jstor.org/stable/30225963; Franz Meier, "Gender Identity in Sentimental and Pornographic Fiction: *Pamela* and *Fanny Hill*," in *Mediating Identities in Eighteenth-Century England: Public Negotiations, Literary Discourses, Topography*, ed. Isabel Karremann and Anja Müller (Burlington, VT: Ashgate, 2011), 45-55.

any other author,[1185] these articles – as scholarly knowledge – effectively produced *Fanny Hill* as literature of merit and a desirable object of study.

Historicizing Fanny Hill

In addition to legitimating the aesthetic study of sexual representation and/or establishing *Fanny Hill* within a literary canon, academics produced knowledge of the history or "facts" of the novel from the time of its publication. The trial produced considerable knowledge of the book, and academics did likewise, publishing and reprinting historical information and documents in order to establish the facts (or truths) of *Fanny Hill*. For example, in an earlier chapter, I mentioned the work of David Foxon, the British Museum employee who studied libertine literature. His inclusion of an appendix pertaining to *Fanny Hill*,[1186] not originally part of the plan, was the result of the discovery of several documents that provided facts pertaining to the circumstances of the book's publication and reception.[1187] The appendix functioned to provide previously unknown or unpublished historical documents to researchers, but also served to establish a type of historical truth. Those claims not supported by historical documents or primary sources were considered to be less truthful. This evidentiary approach, which was consistent with the disciplinary procedures of history, initiated the process of establishing an

[1185] See Stanley J. Solomon, "Subverting Propriety as a Pattern of Irony in Three Eighteenth-Century Novels: *The Castle of Otranto, Vathek,* and *Fanny Hill*," *Erasmus Review* 1, no. 2 (1971): 107-116; Wilding, "Paradise Lost and Fanny Hill," 14-15; Rosemary Graham, "The Prostitute in the Garden: Walt Whitman, *Fanny Hill*, and the Fantasy of Female Pleasure," *English Literary History* 64, no. 2 (1997): 569-597, https://www.jstor.org/stable/30030148.

[1186] David Foxon, "John Cleland and the Publication of the *Memoirs of a Woman of Pleasure*," in *Libertine Literature in England 1660-1745* (New York: University Books, 1965), 52-63.

[1187] Foxon, *Libertine Literature*, 52.

historical canon of "true facts" pertaining to the book and its publication which subsequent academics consulted and repeated or reproduced.

Academics published articles announcing the discovery of new documentary information, for example pertaining to early editions of *Fanny Hill*,[1188] biographical information pertaining to Cleland (the impetus for which can be assumed to be tied to the ongoing interest in *Fanny Hill*) and/or documents associated with Cleland (canonizing his works or establishing his oeuvre based on the interest stemming from *Fanny Hill*),[1189] and lesser known episodes in the legal regulation of the book.[1190] Many of these early histories ostensibly eschewed interpretive frameworks in favour of reporting "the facts". This contributed to a knowledge or understanding of *Fanny Hill* not only as a text, but as a significant historical and legal event which could be made knowable through historical techniques.

[1188] E.g. McCorison, "Two Unrecorded American Printings," 64-66; McCorison, "Fanny Hill in New England," 29-30.

[1189] E.g. Epstein, *John Cleland*; Roger Lonsdale, "New Attributions to John Cleland," *Review of English Studies* 30, no. 119 (1979): 268-290, https://www.jstor.org/stable/514321; Henry Merritt, "A Biographical Note on John Cleland," *Notes and Queries* 28, no. 4 (1981): 305-306, https://doi.org/10.1093/nq/28-4-305b; James Basker, "'The Wages of Sin': The Later Career of John Cleland," *Études Anglaises* 40, no. 2 (1987): 178-194, ProQuest Periodicals Archive Online; Kate Levin, "'The Meanness of Writing for a Bookseller': John Cleland's *Fanny* on the Market," *Journal of Narrative Technique* 28, no. 3 (1998): 329-349, https://www.jstor.org/stable/30225501; Gladfelder, *Fanny Hill in Bombay*; Hal Gladfelder, "Obscenity, Censorship, and the Eighteenth-Century Novel: The Case of John Cleland," *Wordsworth Circle* 35, no. 3 (2004): 134-141, https://www.jstor.org/stable/24044983.

[1190] E.g. Stephen Bates, "Father Hill and *Fanny Hill*: An Activist Group's Crusade to Remake Obscenity Law," *First Amendment Law Review* 8 (2010): 217-282, HeinOnline Law Journal Library.

Reproducing the Redeeming Value of Fanny Hill *through Law*

The final branch of scholarship or knowledge production under the umbrella of aestheticization pertains to the redemption of *Fanny Hill* by legal scholars. Even after the trials, law continued to be part of the reconceptualization of *Fanny Hill*; in the United States, *Memoirs* (1966) was constituted as a significant case and landmark for freedom of expression. Scholarly work reproduced this significance in large part through legal histories of obscene literature and *Fanny Hill*.

For example, in 1966, the year of the United States Supreme Court decision, Paul Hennessey traced the legal history of obscenity from the *Holmes* (1821) decision to *Memoirs* (1966).[1191] He described the legal concept of obscenity and the transformation, via precedent, of legal standards pertaining to the concept, and derided the use of law to suppress that which might "offend" groups or individuals.[1192] Hennessey contributed to a discourse of legal liberalization and "progress".[1193] He also argued for an objective legal test that distinguished between objects of social importance and those that were sexually "aberrated" and intended only for economic gain;[1194] this suggests that within law, the social value test was accepted, but the legal test of obscenity was still understood, in this article at least, to exclude certain undesirable (perhaps "pornographic") books. Twenty five years later, Gayle Wintjen reconsidered the "evolution" of state and federal standards of obscenity dating from 1966;[1195] this points to the ongoing

[1191] Hennessey, "Constitutional Law," 887-893.

[1192] Hennessey, 889.

[1193] Hennessey, 887.

[1194] Hennessey, 891, 893.

[1195] Wintjen, "Twenty-five Years Later," 875.

significance of *Fanny Hill* as a significant legal event, and also suggests that the history of legal obscenity did not end with *Memoirs* (1966).

It is also worth mentioning that both lawyers involved in the *Fanny Hill* trials, Charles Rembar and Jeremy Hutchinson, were involved in the production of books and thereby knowledge about the cases.[1196] Rembar described his legal arguments and preparations in order to suggest that obscenity had "ended". Likewise, Thomas Grant referred to Hutchinson's personal files about the *Gold* (1964) case in a way that is comparable to, although much shorter than, Rembar's book. Both books described the legal processes and arguments of their respective cases and reflected on the political, moral and cultural significance of the respective verdicts. These books did more than provide information on the legal processes that involved *Fanny Hill*. The legal processes and decisions were not allowed to stand on their own; instead, the authors interpreted and clarified, speaking to the concept of legal obscenity not only in the courtroom, but also outside it in ways that both contested legal knowledge and reproduced the significance of *Fanny Hill* (e.g. in "ending" obscenity or achieving "freedom").

While the above could be described as legal progress narratives, there were also critiques of law or the legally obscene. For example, L. A. Powe, Jr. referred to communications between United States Supreme Court judges and argued that bargaining occurred in order to obtain the conviction of Ralph Ginzburg at the expense of "freeing" *Fanny Hill*.[1197] He demonstrated that the production of judicial verdicts could be based on factors other than standards of "justice", or could be influenced by political pressures. Marc Stein likewise shifted legal analyses away from

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[1196] Rembar, *The End of Obscenity*; Grant, "'Exciting, Bawdy, Extrovert'," 154-170.

[1197] Powe, Jr., L. A. "The Obscenity Bargain: Ralph Ginzburg for *Fanny Hill*." *Journal of Supreme Court History* 35, no. 2 (2010): 166-176, https://doi.org/10.1111/j.1540-5818.2010.01239.x.

progress narratives (i.e. the increasing freedom of free speech and acceptance of sexual representation) to complicating ideas of justice through the inclusion of queer analysis and theory.[1198] He considered United States Supreme Court decisions impacting sex, sexuality and gender, including the *Memoirs* (1966) case, arguing that decisions from 1965 to 1973 enshrined heteronormativity in laws.

Thus, while ostensibly "freed" from law, *Fanny Hill* continued to be associated with law in ways that reproduced the significance of the book as an object of study, and which linked the book to the (legally) obscene.

Reflection on Aestheticization

In this section I described what I called the aestheticization of *Fanny Hill* as academics, who were authorities of delimitation affiliated with the university institution and in particular with the disciplines of literature, history, and legal studies, successfully excluded other forms of expert knowledge (including the knowledges of literary critics); academics reproduced the book as having intellectual or philosophical, literary, socio-historical and/or legal merit or value. Thus, academics produced a wide range of concepts pertaining to the obscene corresponding to the rules, logics or methods of the disciplines identified. Literary studies produced knowledge pertaining to the aesthetic and literary merits or qualities of literature containing sexual representation, while history and legal studies respectively produced socio-historical and legal knowledges or truths. Thus, a range of statements pertaining to *Fanny Hill,* or to the acceptable, correct, or true reading of *Fanny Hill* and its significance were authorized within the scholastic discursive formation; these statements contributed to the reproduction of the discursive

[1198] Marc Stein, *Sexual Injustice: Supreme Court Decisions from* Griswold *to* Roe (Chapel Hill: University of North Carolina Press, 2010).

formation, and reproduced the significance of the obscene and the novel as legitimate objects of study. Despite the range of concepts, these knowledges produced a consistent theme: that the obscene (or *Fanny Hill*) was "truly" aesthetic and intellectual, rather than morally or legally problematic.

The majority of this knowledge pertaining to the aesthetic was produced in the 1960s and 1970s and this knowledge formed the basis of Peter Sabor's introduction to the Oxford University Press edition of *Fanny Hill*, published in 1985.[1199] In order to frame the book for the reader, Sabor provided biographical details of Cleland and a description of the book's historical reception (including the positive critical reception of Putnam's edition, from which time bibliographical, biographical, doctoral, comparative, philosophic, and literary analyses, as well as feminist criticism – distinct from the feminist enthusiasm of Brigid Brophy and Marghanita Laski – constituted the book as a controversial and significant work of literature), and commented on the literary qualities of the book. Thus, Sabor's introduction revisited most of the points described above; his introduction to *Fanny Hill* could be considered a summation of the scholarly literature about *Fanny Hill*. This is significant; *Fanny Hill* did not exist – at least in Oxford's edition – as a singular text, but as a text that academics had described, interpreted, rewritten and reconceptualized. In other words, an accurate and scholarly understanding and appreciation of the text(s), consistent with scholarly knowledges, enabled readers to properly appreciate the aesthetic merits or values of *Fanny Hill*.[1200]

[1199] Peter Sabor, introduction to *Memoirs of a Woman of Pleasure*, by John Cleland (New York: Oxford University Press, 1985), vii-xxvi.

[1200] See also Peter Wagner, introduction to *Fanny Hill, or, Memoirs of a Woman of Pleasure*, by John Cleland (New York: Penguin Books, 1985), 7-30.

It is perhaps worth noting that scholarship focused almost exclusively on *Fanny Hill* as a textual document; few academics have considered the illustrations that frequently accompanied publications of *Fanny Hill*. William Ober, a pathologist, is an exception; he considered the illustrations of various editions of *Fanny Hill*.[1201] The lack of interest in plates, prints or engravings is perhaps attributable to the predominance of literary scholars' interest in "text" (and the exclusion of visual text) or the historian's interest in "original" documents, which criteria excluded illustrations since none accompanied the original publication. Thus, visual representations of *Fanny Hill* were generally excluded from study for being inauthentic.

This section affirmed that *Fanny Hill* was constituted by academics as agents of the university institution as a meritorious or valuable object of study and further posited that the knowledge contained within or in relation to the text was constituted as being of intellectual benefit rather than moral harm to the reader. I suggest that during this period, academics navigated what Kirsten Saxton calls the "delights and difficulties" of teaching others – conceived as a new or transformed incarnation of the simple subject – about how to properly understand *Fanny Hill* in particular and sexual literature (or "explicitly erotic fiction") generally.[1202] These understandings, however, were contested by the emergence of feminist and queer scholarship from the 1980s.

[1201] William B. Ober, "The Iconography of *Fanny Hill*: How to Illustrate a Dirty Book," in *Bottoms Up! A Pathologist's Essays on Medicine and the Humanities* (Carbondale: Southern Illinois University Press, 1987), 153-175.

[1202] Kirsten T. Saxton, "Risking Fanny: Teaching *Memoirs of a Woman of Pleasure*," in *Launching* Fanny Hill*: Essays on the Novel and Its Influences*, ed. Patsy S. Fowler and Alan Jackson (New York: AMS Press, 2003), 331.

The Academicization of *Fanny Hill*

Following the aestheticization of *Fanny Hill* and the obscene more generally, sexual representation in literature was problematized as a result of the "discovery",[1203] by feminist and queer scholars in particular, of the gendered and heteronormative representations in the book. *Fanny Hill* was problematized for constituting masculinity and femininity and sex and sexuality in ways that affirmed and/or reproduced extant (i.e. dominant) structures or relations and that excluded that which was constituted as "deviant". The discovery of this problem of gendered and sexual (mis)representation led to the re-inscription of *Fanny Hill* as an object of regulation by agents (still academics) who were qualified to articulate the problem as a result of their institutional affiliation with the university and who could thus mobilize regulatory knowledges (e.g. feminist and queer theories and methodologies) to respond to the problem. This section traces the re-problematization of *Fanny Hill* within the scholastic discursive formation.

The transformation described in this section invoked processes of exclusion, as emergent authorities of delimitation (e.g. feminist and queer scholars) produced knowledges that prohibited an aesthetic rather than political reading of *Fanny Hill*. These academics produced the truth of *Fanny Hill* and the obscene as well as their harmful effects, excluding those knowledges that were seen as less authoritative or even false if they did not similarly problematize the obscene; the opposition between true and false, or between aesthetic and what I call "academic" knowledges, was mobilized as a technique of exclusion.[1204] Feminist and queer

[1203] See Hunt, *Explorations*, 316.

[1204] While many times I was tempted to call these knowledges "political", this would not be consistent with a Foucaultian genealogy, which posits that all knowledge is implicated in relations of power. I settled on "academic" knowledge because in contrast to most of the knowledges discussed in this project, including aesthetic knowledges, this knowledge emerged almost exclusively from the university institution.

academics within the university looked to hierarchicalized organizations or relations of domination pertaining to gender and sexuality as grids of specification whereby the obscene could be classified and problematized (i.e. as being implicated in such hierarchy or domination). Thus, the most significant theme produced pertained to (relations of) domination. In terms of the formation of enunciative modalities, it is important to recognize that even as academics produced scholarly works that reconceptualized the obscene as harmful due to its normative representations, these academics were not necessarily more authoritative than those previously discussed; they occupied the same institutional position and they likewise produced statements in scholarly journals and articles that were formulated as expert and scholarly (or truthful) knowledges produced in accordance with feminist and queer techniques or methodologies. Thus, this section focuses on the contingent and complex production and exclusion of knowledges as academics (as authorities of delimitation) competed within a single discursive formation to produce knowledges and truths of *Fanny Hill* and the obscene.

Problematizing Gendered Representations

Nancy Miller remains among the most well-known academics to introduce feminist perspectives to literary studies; she used a feminist methodology to examine descriptions of female experience, identity and place in eighteenth century books, including *Fanny Hill*.[1205] What is particularly interesting is Miller's adoption of a "two-handed" reading in order to reveal

[1205] Nancy K. Miller, "A Harlot's Progress: II *Fanny Hill*," in *The Heroine's Text: Readings in the French and English Novel, 1722-1782* (New York: Columbia University Press, 1980), 51-66.

or constitute *Fanny Hill* as a female *Bildung*.[1206] This is a reference to Jean-Jacques Rousseau's comment about erotic books that are read with one hand (i.e. in order to facilitate simultaneous masturbation with the other hand). Miller promoted an intellectual versus a sensual reading of the book, which points to a continuation of the trend described above. Feminist scholarship typically considered obscene literature or sexual representation for its implications in gendered power relations rather than for its potential physiological effects.

For example, in a book about women's friendship in literature, Todd devoted one half of a chapter to the erotic friendships depicted in *Fanny Hill*.[1207] She considered how different female characters prepared or influenced Fanny to be a (hetero)sexual woman in a male-dominant world, as well as the gendered nature of vice, virtue and success, or how women could or could not obtain riches, power and position.[1208] Todd focused on the gendered conventions that govern sexual relationships, and concluded that instead of being subversive, Fanny ultimately confirms (or conforms to) male dominant conventions (e.g. with her virtuous marriage). While this chapter is seemingly a significant transformation from what preceded it, given its emphasis of the gendered norms and experiences in the book, Todd, like agents from the commercial discursive formation, taught readers how to read and respond to the book. Todd's efforts to produce knowledge about or interpret the truth of *Fanny Hill* and its effects guide the reader's experience and understanding of the novel much like the prefaces and postscripts provided by authors of the eighteenth century, or even the sermons of bishops and verdicts of judges in the nineteenth century. Todd and other academics produced knowledge

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[1206] Miller, "A Harlot's Progress," 65. A *Bildungsroman* is a term in literary criticism that refers to a coming of age story.

[1207] Todd, "Erotic Friendship," 69-100.

[1208] Todd, 72.

pertaining to *Fanny Hill* and its effects in order to guide subjects in the reading of such books and to contest gendered social orders (rather than to prevent behaviour leading to vice, for example).

I argue that in the absence of criminal or regulatory laws that definitively declared what *Fanny Hill* was (i.e. illegal or a crime), academics as authorities of delimitation produced knowledge pertaining to *Fanny Hill*'s meaning and harmful effects, much like bishops and judges did previously. The process of authoritatively conceptualizing *Fanny Hill* and the obscene, taken up by feminists beginning in the 1980s, while critical of gendered structures or social orders, nevertheless represents a continuity from previous discursive formations as the book was condemned for those effects constituted as harmful. What is different, or what signals a transformation, is that harm to the dominant or extant social order and its virtuous or moral subjects was not at issue; instead, the dominations of the extant social order were problematized, and subjects were moralized to reject such arrangements.

For example, Patricia Meyer Spacks, who conducted a comparative text analysis of *Fanny Hill* and Henry Fielding's *Amelia* (1751), argued that Fanny is the archetypal fallen woman while Amelia is the archetypal saintly woman – as imagined by men.[1209] Despite their apparent character differences, Spacks argued that both women are unchanging myth-like figures who are subordinate to men and social convention (i.e. to virtuous marriage), and female characters who do not perform their subordination are presented as monstrous.[1210] Thus, female submission was argued to reflect the desire and imagination of men, which Spacks problematized through the production of knowledge.

[1209] Spacks, "Female Changelessness," 273-274.

[1210] Spacks, 281.

Similarly, Robert Markley argued that *Fanny Hill* "sustains a masculine mythology of power from within the guise of a feminine confession".[1211] Markley's concern with the use of language to regulate sexuality points to the relationship between language and power, or the language of the novel and its relation to gendered structures of power. While Markley suggested that the text of *Fanny Hill* (de)limits what sexual behaviours are acceptable, his text likewise frames an acceptable or correct reading of *Fanny Hill* (i.e. as a phallocentric text). On another level, however, the academic's "language" or statements – produced within the scholastic discursive formation – make visible and thus susceptible to change the structures identified as gendered and therefore problematic.

Patsy Fowler discussed sex acts within *Fanny Hill* in order to point to the reinforcement of extant patriarchal norms and structures.[1212] Her consideration of these sex acts led her to conclude that women are objectified for male pleasure, which also reinforces male power.[1213] Fowler linked fiction with its presumed negative or harmful effects in much the same way as the early *Royal Proclamations* (1538 & 1787); she problematized *Fanny Hill* for its content and/or meaning and the presumed effects on readers (e.g. simple subjects) as well as on collective or cultural norms and behaviours (e.g. gendered rather than moral social orders). Also like the kings and bishops who were implicated in the creation and enforcement of the *Royal Proclamations* (1538 & 1787), Fowler – within the scholastic discursive formation and in accordance with accepted feminist techniques – claimed to have conducted a truthful reading of

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[1211] Markley, "Language, Power, and Sexuality," 345.

[1212] Patsy S. Fowler, "'This Tail-Piece of Morality': Phallocentric Reinforcements of Patriarchy in *Memoirs of a Woman of Pleasure*," in *Launching* Fanny Hill*: Essays on the Novel and Its Influences*, ed. Patsy Fowler and Alan Jackson (New York: AMS Press, 2003), 49-80.

[1213] Fowler, "Phallocentric Reinforcements," 72-77. See also Holmes, "Sexual Positions," 124-139.

the text, in contrast to those readings that came to different conclusions, which she specifically mentioned and rejected or excluded.[1214]

There are other examples of such feminist scholarship;[1215] one that I found particularly interesting considered whether the plot of *Fanny Hill* models male pleasure (arousal, climax, relaxation) or female pleasure (cyclical and ongoing orgasm).[1216] The examples provided above demonstrate that feminist academics produced knowledge of *Fanny Hill* that constituted it as harmful due to its effects on the reproduction of gendered social relations and orders; subjects were constituted as requiring this knowledge in order to resist or contest such gendered domination.

Such feminist interpretations or knowledges, or the production of feminist concepts pertaining to the obscene, were not uncontested, however. Roy Roussel, for example, argued for a non-gendered or "androgynous" reading of *Fanny Hill* that would permit the possibility of identities and experiences that are both masculine and feminine.[1217] Similarly, Epstein considered the sexual ambiguities rather than dominations contained in the language and narrative strategies of *Fanny Hill*.[1218] Carol Houlihan Flynn argued that Cleland brought together opposing literary traditions (i.e. the libertine and the sentimental) and feminine

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[1214] Fowler, "Phallocentric Reinforcements," 59-60, 65, 76n34.

[1215] E.g. Philip E. Simmons, "John Cleland's *Memoirs of a Woman of Pleasure*: Literary Voyeurism and the Techniques of Novelistic Transgression," *Eighteenth-Century Fiction* 31, no. 1 (1990): 43-64, https://doi.org/10.1353/ecf.1990.0047; Weed, "Fitting Fanny," 7-20.

[1216] Anderson, "Gendered Pleasure, Gendered Plot," 108-138.

[1217] Roy Roussel, "*Fanny Hill* and the Androgynous Reader," in *The Conversation of the Sexes: Seduction and Equality in Selected Seventeenth- and Eighteenth- Century Texts* (New York: Oxford University Press, 1986), 37-66.

[1218] Epstein, "Fanny's Fanny," 136.

characterizations (i.e. Fanny as whore and wife) in order to consider both compliance and its subversion.[1219] In order to demonstrate how Cleland subverted rather than reinforced literary and social or gender norms, Flynn compared the book to other eighteenth century works and concluded that Fanny Hill, both the character and the book, combined pain and pleasure in order to confound normative expectations. These examples suggest that feminist scholarship was both responsive to and occasionally contradicted earlier research. As Flynn noted, *Fanny Hill* has been read by academics "as an idyllic pornotopic celebration of sexuality, as a healthy celebration of feminine desire, as a serious defense of philosophical materialism, and as a phallocentric glorification of patriarchal authority".[1220] These examples point to the ongoing reproduction of *Fanny Hill*(s) within the scholastic discursive formation as academics produced knowledge that, even when seemingly contradictory, nevertheless reproduced the dominance of academic knowledges pertaining to the obscene.

Gary Gautier considered whether Cleland constructed "a female subjectivity which suits a male agenda", or whether Fanny as an unreliable narrator destabilized bourgeois ideology and female subjectivity.[1221] In contrast to Ann Louise Kibbie,[1222] Gautier argued that Cleland utilized both the sentimental narrative and the narrative of the commercial market satirically and

[1219] Carol Houlihan Flynn, "What Fanny Felt: The Pains of Compliance in *Memoirs of a Woman of Pleasure*," *Studies in the Novel* 19, no. 3 (1987): 284-295, https://www.jstor.org/stable/29532508.

[1220] Flynn, "What Fanny Felt," 284.

[1221] Gary Gautier, "Fanny's Fantasies: Class, Gender and the Unreliable Narrator in Cleland's *Memoirs of a Woman of Pleasure*," *Style* 28, no. 2 (1994): 133, https://www.jstor.org/stable/42946239.

[1222] Kibbie, "Sentimental Properties," 561-577.

subversively.[1223] What is of particular interest is Gautier's acknowledgement that *Fanny Hill* was and can be read in multiple ways, which alternately affirm or destabilize dominant structures and/or ideologies; he also acknowledged that *Fanny Hill* can be read for pleasure.[1224] This multiplicity of readings or production of knowledges does not necessarily point to a fractured scholarship, even as increasingly academics responded to and also refuted the reading and reasoning of other academics. Instead, it points to the range of statements permitted within the scholastic discursive formation. I agree with Gautier's assessment that this multiplication of knowledges "guarantees *Memoirs*'s survival into a new age of critical as well as popular readings".[1225] The ability to continually (re)read *Fanny Hill* – and also to reproduce these readings in scholarly works – is the primary means of securing scholarly dominance over the truth(s) of *Fanny Hill* and the obscene.

Before moving on to consider emergent problematizations of *Fanny Hill* as heteronormative, I should mention that most of the scholarship discussed above coincided with what is sometimes called third wave feminism, appearing primarily between the mid-1980s to mid-1990s. Later feminist scholarship pertaining to *Fanny Hill* incorporated post-colonial scholarship and concerns. For example, Felicity Nussbaum memorably referred to *Fanny Hill* as "an apocalyptic vision of the tumescent white male member controlling the known world".[1226] While this scholarship generally pointed to the oppressive structures of economics and gender, it

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[1223] Gautier, "Fanny's Fantasies," 133.

[1224] Gautier, 143.

[1225] Gautier, 143.

[1226] Felicity A. Nussbaum, "One Part of Womankind: Prostitution and Sexual Geography in *Memoirs of a Woman of Pleasure*," *differences: A Journal of Feminist Cultural Studies* 7, no. 2 (1995): 26.

also pointed, for example, to the ambiguity of Fanny's gendered body and the sexual practices described; Nussbaum suggested that while these ambiguities were contained by heterosexual and bourgeois structures in the novel, the ambiguity of pornographic literature itself might "resist being mapped, penetrated, and colonized".[1227] Thus, feminist scholarship enabled both criticism and resistance to be discovered in or derived from the obscene or from *Fanny Hill*. To put it differently, *Fanny Hill* was increasingly implicated by feminist academics in relations of dominance as well as struggle, and constituted as containing dominant as well as subjugated knowledges.

Problematizing Heteronormative Representations

Beginning in the early 1990s, there was an increasing concern with heteronormative depictions of sexuality in *Fanny Hill*. Like the feminist scholarship described above, queer scholarship focused on the theme of harm, particularly as it related to extant norms and dominations contained within obscene literature and reflected in social orders. The canonization of *Fanny Hill* within queer studies is evident in its inclusion in *The Cambridge Companion to Gay and Lesbian Writing*;[1228] it is constituted as prefatory to, or as the original example of, subsequent works dealing with homosexual writing and their socio-legal problematizations. This subsection considers the emergence of queer knowledges pertaining to the obscene and *Fanny Hill* within the scholastic discursive formation.

Kevin Kopelson, along with Donald Mengay (discussed next), was the first to consider the sodomitical scene in *Fanny Hill*, which involved two young men, while Fanny was a secret

[1227] Nussbaum, "One Part of Womankind," 33-34.

[1228] Bristow, "Homosexual Writing on Trial," 17-33.

voyeur.[1229] For the first time, the problematized sodomitical scene was specifically considered not as an historical curiosity, a problematic piece of text, or a possible clue to Cleland's own sexuality, but for itself. Kopelson mobilized the scene to produce knowledge of dominant and subjugated sexualities. He considered whether the scene was exceptional among other sexual encounters in the book because, among other reasons, it is the only one that Fanny denounces.[1230] Given this apparent disgust, Kopelson questioned why a graphic description of male homosexuality was contained in the book at all, and suggested that there is an element of "phobic enchantment", or attraction to that which repulses.[1231] This attraction, he argued, is integral to the construction and maintenance of the dominant culture (i.e. sexual and gender differences in heterosexual relations) by way of the Other. This production of knowledges pertaining to *Fanny Hill* and normative sexualities was taken up remarkably quickly.

Mengay discussed the homoerotic possibilities of *Fanny Hill* with reference to four motifs.[1232] Rather than the affirmation of heterosexuality generally ascribed by previous academics,[1233] Mengay suggested that Cleland made space for multiple readings of sexuality and morality.[1234] To put it differently, he argued that *Fanny Hill* contained subjugated knowledges that enabled the possibility of sexualities outside of the dominant heterosexual configuration. Cameron McFarlane, as part of a larger discussion of sodomy and its depiction in the literature of

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[1229] Kopelson, "Seeing Sodomy," 173-183.

[1230] Kopelson, 175-176.

[1231] Kopelson, 178.

[1232] Mengay, "The Sodomitical Muse," 185-198.

[1233] Mengay, 186-188.

[1234] Mengay, 196.

a particular historical period, also discussed the sodomitical scene in *Fanny Hill*.[1235] Rather than accepting Fanny's rage or indignation about the incident and asserting that the book condemned male homosexuality and sodomy in particular, McFarlane, like Kopelson and Mengay, (re)produced the text's meaning. He suggested that *Fanny Hill* was a sodomitical fantasy and argued that Fanny was an "eye in drag", or a voyeur who delighted in the eroticized male body.[1236] Rather than including the sodomitical scene in order to condemn it, Fanny enabled the reader to voyeuristically participate in the sexual act; voyeurism throughout the novel was argued to lead to desire and not (truly) to disgust.

In addition to the sodomitical scene, which spans approximately two pages of the novel and has received considerable scholarly attention,[1237] lesbian encounters in the novel were eventually discussed. For example, Lisa Moore proposed to complicate extant feminist readings of *Fanny Hill* in order to reconsider its representations of female pleasure as only ever misogynist, as well as gay readings in which homosexuality was only ever male.[1238] She worked to retrieve the importance and power of female same-sex relations depicted in *Fanny Hill* as something more than preludes to (the dominance of) heterosexual relations. John Benyon similarly reconsidered the lesbian encounters between Fanny and Phoebe not as a somewhat unsatisfactory prelude to heterosexual fulfilment, but as an erotic alternative to what he

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[1235] Cameron McFarlane, "The Sodomitical Spectacle," in *The Sodomite in Fiction and Satire 1660-1750* (New York: Columbia University Press, 1997), 145-173.

[1236] McFarlane, "The Sodomitical Spectacle," 160-162.

[1237] See also Gladfelder, "Plague Spots," 56-78; Bobker, "Sodomy, Geography, and Misdirection," 1035-1045.

[1238] Lisa L. Moore, "Domesticating Homosexuality: *Memoirs of a Woman of Pleasure*," in *Dangerous Intimacies: Toward a Sapphic History of the British Novel* (Durham, NC: Duke University Press, 1997), 55-58.

suggested were the heterosexual and bourgeois ideologies of the novel.[1239] In other words, Benyon reread or reproduced the novel as containing spaces for women to find pleasure and economic opportunity outside of heterosexual middle class marriage. This reading, he suggested, was enabled by a rejection of the "too pat conclusion" in which Fanny was married and lived a virtuous life; instead, he argued that both reader and academic could resist the narrative closure of the novel (i.e. its plot and conclusion) and participate in the variety of sexual readings and experiences contained within the novel.[1240] This points to the production of knowledges and truths, as well as to their fracturing, as multiplicity – in contrast to and contestation of domination – was encouraged and produced within the university.

This fracturing encouraged or enabled academics to reconsider *Fanny Hill* as well as scholarly readings of the book, and contributed to a diversity of concepts and themes within the scholastic discursive formation. These concepts and themes are well-formulated in Jody Greene's Foucaultian analysis, which positioned *Fanny Hill* as a "pedagogical treatise" on sexual taste, and as part of an eighteenth century incitement to discourse about sex that normalized or naturalized certain sexual practices and excluded others.[1241] She suggested that *Fanny Hill* was implicated in the categorization or conceptualization of sexual practices and their acceptability

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[1239] John C. Benyon, "'Traffic in More Precious Commodities': Sapphic Erotics and Economics in *Memoirs of a Woman of Pleasure*," in *Launching* Fanny Hill*: Essays on the Novel and Its Influences*, ed. Patsy S. Fowler and Alan Jackson (New York: AMS Press, 2003), 5, 8-9, 20-23.

[1240] Benyon, "Sapphic Erotics and Economics," 6.

[1241] Jody Greene, "Arbitrary Tastes and Commonsense Pleasures: Accounting for Taste in Cleland, Hume, and Burke," in *Launching* Fanny Hill*: Essays on the Novel and Its Influences,* ed. Patsy S. Fowler and Alan Jackson (New York: AMS Press, 2003), 227.

according to normative standards, or standards of taste.[1242] For Greene, *Fanny Hill* was implicated in discursive practices pertaining to the construction and regulation of sex and sexuality in which experience and reflection encouraged conformation to particular normative standards. Greene pointed to the production of power through *Fanny Hill*, as well as to subversion, as projects of taste were never certain or uncontested. Even as *Fanny Hill* was implicated in relations of power-knowledge, particularly pertaining to normalized sexual behaviours, I argue that so too were scholarly texts. Academic works can be conceptualized as "pedagogical treatises" on sexual taste and as part of a twenty first century incitement to discourse about sex that normalizes and naturalizes – and/or problematizes – certain sexual knowledges and practices.

For example, Annamarie Jagose reconsidered studies pertaining to *Fanny Hill*'s plot, suggesting that they glossed over sex acts despite their significance as narrative events.[1243] In particular, she contested the ways in which sex acts were read "as if their meanings, values, and significances were always already transparently known".[1244] She repositioned the sex acts as significant narrative plot points, rather than pornographic events on the way to Fanny's virtuous bourgeois marriage. Further, she mobilized the "conceptual unruliness" contained within *Fanny Hill* in order to demonstrate the extent to which gender, sex and sexuality were and can be contested (specifically in relation to the hierarchical and differential gender models).[1245] Rather

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[1242] Greene, "Arbitrary Tastes," 229-231.

[1243] Annamarie Jagose, "'Critical Extasy': Orgasm and Sensibility in *Memoirs of a Woman of Pleasure*," *Signs* 32, no. 2 (2007): 459-460, https://www.jstor.org/stable/10.1086/508215.

[1244] Jagose, "'Critical Extasy'," 459.

[1245] Jagose, 460-461.

than contributing to the discursive production of patriarchy or heteronormativity, Jagose rejected such readings of the novel by looking at the variety of representations of gender, sex and sexuality within the book; she focused on the concept of orgasm, itself historically and culturally influenced, in the novel (rather than what was posited in scholarship or current cultural understandings) in order to demonstrate that *Fanny Hill* contained emergent rather than determined (or dominant or dominating) sexual ideologies. This critique of the scholarship on *Fanny Hill* and its tendency to reify the discursive production of heterosexual desire is significant; rather than considering whether or not the novel was implicated in these discourses of sex and gender and relations of domination, Jagose highlighted the implication of scholarship itself in these same discourses and relations. She was critical of the assumption of heterosexual desire in much of the scholarship on the book, as well as the naturalizing effects of this assumption.

Reflections on Aestheticization and Academicization

I pointed to a transformation within the scholastic discursive formation as authorities of delimitation, associated with different academic disciplines including history, as well as literary, legal, gender, and queer studies competed to produce and exclude knowledges and truths of *Fanny Hill* and the obscene. There was abundant evidence of the practice of commentary, or of bringing original texts (including *Fanny Hill*) up-to-date in order to reread and redefine discourse. Also evident were distinctions between disciplines, as disciplinary boundaries and techniques influenced, guided or constrained the possibilities of thinking about or critiquing discourse, as well as producing knowledge. Feminist and queer scholars "thought" obscenity differently than historians or literary or legal scholars, for example, and different disciplines

competed to produce more authoritative knowledges of the obscene. Rather than indicating a rupture in the scholastic discursive formation, a glance at Appendix B, which lists scholarly books, chapters and articles pertaining to *Fanny Hill* chronologically, shows that while I have neatly divided the two groups of scholarship, categorized as aesthetic and academic, academics continue to produce knowledge of *Fanny Hill* as aesthetic and/or as harmful. Thus, rather than arguing that what I have called academic knowledges became dominant and the aesthetic knowledges subjugated, instead I suggest that both continue to exist within (and reproduce) the scholastic discursive formation, competing and contesting and ultimately influencing the kinds of questions that can be asked and answered about *Fanny Hill* and the obscene.

Before considering the moral regulation projects described in this chapter, I want to take a moment to reflect on both the scholarship described above as well as the criticism frequently levelled at Foucault: relativism.[1246] I described numerous competing statements or knowledges pertaining to *Fanny Hill* as a discourse object whose effects were constituted as aesthetic or harmful. For Foucault, knowledge(s) and truth(s) are not natural, but contingent and complex. He rejected making definitive truth claims because truths and knowledges are produced within a discursive formation; Foucault realized that he too, and all the knowledge that he produced, existed within the limits – or the rules – of a discursive formation. In the same way that gendered and heteronormative relations evident in the social order today might seem obvious to me or you, the truth that the obscene could lead to a descent into vice or that immoral books should be banned by law was also "natural" or "obvious" in previous discursive formations. Rather than positing truth, questioning these self-evidences or common sense understandings fulfils the purpose of a genealogy.

[1246] See Veyne, "Foucault Revolutionizes History," 175-177.

In conducting this project, and especially in writing this chapter, I have discovered a tension between moral regulation and genealogy; while both are critical of discursive practices and their effects, genealogy is resistant to determinations that would allow me to conclude, for example, that the regulation of obscenity was and is gendered, or that the exercise of power has gendered effects. The reason for this is that concerns pertaining to gender are prioritized by, and my own knowledge is produced within, a discursive formation characterized by particular systems of knowledge (i.e. that are concerned with gender) and practices (i.e. that academics produce truthful knowledges through accepted techniques).

Of what use, then, is genealogy? How can regimes of truth and extant dominations ever be contested if no "definitive" subjugated knowledges or contestatory truth claims are ever made? This project pointed to the emergence and existence of different thought objects called obscenity; in conjunction with moral regulation scholarship, which intentionally considers hierarchical ordering along lines such as class, gender and sexuality, this project also considered projects of moral regulation in which particular knowledges and practices produced certain subjects and social orders in ways that advantaged some populations and disadvantaged others. Thus, when genealogy is twinned with moral regulation, it can provide great insight into projects of moral regulation, including the regulation of gender, sex and sexuality, in a way that both acknowledges and critically reflects upon the production of such knowledges within a discursive formation. In other words, based on the theoretical models built within this project, I have provided one plausible way to think, understand and explain "the obscene" and its effects. I do not have to choose among any of the knowledges or truths considered for the correct description of reality; instead, I have presented the best possible description or understanding that is consistent with the techniques of genealogy and moral regulation.

Analysis of Moral Regulation Projects

I have argued that the process of critical reflection, or of problematizing one's own relations to systems of knowledge and the exercise of power, is particularly important for this chapter. The realization that I, as researcher, am producing knowledge that excludes other knowledges according to the rules of the scholastic discursive formation (or the techniques of a genealogy within the discipline of criminology), was illuminating. It likewise made me consider whether or how I am participating in contemporary projects of moral regulation. This process of reflection was particularly helpful in highlighting and to an extent dispelling my own normative inclinations or judgments; "moral regulation" does not apply only to those discursive practices with which one disagrees.

In this section, I reconsider the normalization and routinization of scholarly knowledges and activities that encouraged certain ways of living and being and suppressed others, or that constituted and reproduced subjectivities and social orders. In particular, this section considers how scholarly discursive practices were implicated in projects of moral regulation and the ways in which students' (broadly speaking) responses to *Fanny Hill* and the obscene were governed by the scholarly knowledges produced by university academics, which guided and constrained understandings of and responses to sexual representations in literature. While recognizing that there were differences between the moral regulation projects of the religious discursive formation, for example, and the scholastic discursive formation, I nevertheless argue that systems of knowledge and the exercise of power (i.e. in projects of moral regulation) were similar or demonstrated continuities in that the obscene was constituted as harmful, having deleterious effects on subjects and social orders. I begin by considering the components of the moral regulation projects described in this chapter.

Objects of Regulation

Initially, the object of regulation was constituted as sexual and aesthetic literature; subsequently, the obscene was problematized as being gendered and heteronormative. Despite this transformation, the obscene and *Fanny Hill* consistently remained an object of scholarly study, as academics produced knowledge of the object according to disciplinary rules, procedures, or logics. Academics successfully constituted the obscene as a desirable, valuable or valid object of intellectual study, and *Fanny Hill* as *the* exemplar of obscene literature.

The conceptualization of the obscene as aesthetic (e.g. rather than immoral or illegal) points to a rupture with all previous discursive formations. No harm, whether political, moral, or legal was associated with art objects. Of course, the conceptualization of the obscene as aesthetic excluded as problematic, harmful or worthless those objects categorized as pornographic, for example, which suggests that perhaps the rupture was not so definite or revolutionary as it seemed, despite assertions that obscenity had ended. The later problematization of the obscene by feminist and queer scholars also points to a significant transformation in the conceptualization of the object. Although constituted as being or reflecting gendered or heteronormative relations, there was no attempt to mobilize processes to suppress or repress the obscene object; instead, the obscene was constituted as an object of study, and knowledge of the object and its harmful effects was constituted as potentially leading to change in the gendered and/or heteronormative social order. Thus, the object was problematized for its content in order to effect change rather than to preserve a dominant social order. This is a significant transformation from the veridical, judicial or religious discursive formations, which mobilized projects of moral regulation that reinforced and reproduced the extant hierarchical, legal-moral or religious social orders. Likewise, even though the commercial discursive

formation made space for the "improvement" of the consuming subject through good literature, social transformation was excluded as the social order was constituted as essentially good, despite containing vice; good literature was constituted as reflecting a good social order and good subjects acting virtuously within it.

Thus, the obscene as an object was constituted as a valuable object of study either on the basis of its aesthetic qualities or for its potential to reveal and transform extant or dominant systems of knowledge and relations of power pertaining to gender and sexuality.

Agents of Regulation

Agents of regulation, or those who ensured the continued regulation of the object in conjunction with institutional mechanisms, were academics who derived their authority or expertise from the university. The institutional position and authority of academics, or their association with the university, enabled them to exclude the knowledges of literary critics as well as judges, for example. Academics mobilized disciplinary standards, methods or procedures – such as historical research, literary criticism, or queer analysis – in order to assess the object of regulation and produce scholarly knowledges. These knowledges were circulated primarily in academic journals, chapters and books, rather than the more popular mediums of the commercial discursive formation or the verdicts of the judicial discursive formation, for example.

Academics were as engaged in producing knowledges about *Fanny Hill* (what it is) and its effects (what it does) as previous agents, including judges or bishops. Like agents from the commercial discursive formation, academics taught "students", an incarnation of the simple or vulnerable subject, how to properly read and respond to the obscene. Scholarly efforts produced knowledges about or interpreted the truths of *Fanny Hill* and its effects – whether conceptualized

as aesthetic or harmful – that guided the reader's experience and understanding of the novel and the obscene, much like the prefaces and postscripts provided by authors of the eighteenth century, or even the sermons of bishops and verdicts of judges in the nineteenth century. Thus, there was continuity as academics produced knowledges pertaining to *Fanny Hill* and its effects in order to guide subjects. There was also transformation, however, as these knowledges were not produced to prevent vice, for example; instead, academics as agents produced knowledges either to ameliorate the aesthetic appreciation of subjects or to contest gendered or heteronormative social orders and the exclusion of "non-normative" behaviours.

The knowledges produced by academics reinforced their status as experts, or as those able to "truly" understand the merits or problems of the obscene. The fact that academics produced divergent knowledges did not necessarily undermine their authority as agents of regulation. Instead, the ongoing production of knowledges enabled the reproduction of scholarly dominance over the obscene and *Fanny Hill*, as knowledges or truths were continually reproduced through accepted academic practices, including analysis, publication and teaching.

Knowledges and Techniques of Regulation

While this chapter described a diversity of knowledges pertaining to the obscene, categorized as aesthetic and academic, these knowledges and techniques consistently emerged from the academy. Particularly important in this process is what I called the intellectualization of sexuality, or the production of knowledge of the sexual as intellectual rather than moral, legal or religious. While the courts produced knowledge about the morality of sexual representation, constituted the obscene object as illegal, and invoked punitive techniques of law to regulate the object, for example, in this scholastic discursive formation the university produced knowledge or

research pertaining to the "facts" of sexual representation, constituted the obscene as an object of study, and invoked techniques of scholarly criticism to regulate the object. Academics provided ways of making sense of "obscene literature", conceptualized as sexual rather than illegal or immoral literature; they produced knowledge of art, gender, sex and sexuality in ways bounded by disciplinary practices and/or theoretical orientations (e.g. history, or literary, legal, gender or queer studies) and contained within scholarly texts. These knowledges did not simply provide knowledge of the obscene object, however. They also functioned to constitute subjects who required this scholarly knowledge in order to appreciate art, or to resist or contest gendered or heteronormative dominations.

Targets of Regulation

If power and knowledge are interrelated, then the knowledges produced by academics within the university and the scholarly discursive formation were as political as the knowledges produced by bishops and judges. These knowledges likewise had effects, including on the formation of subjects and social orders; they were as likely to guide and constrain subjects, positioning them to choose from a range of possible, acceptable or authorized behaviours, as the knowledges of the veridical, commercial, judicial or religious discursive formations. I argue that student subjects were produced; this refers not only to literal students who were enrolled in universities, but also to the reading public that was provided with scholarly notes, introductions, references and so on (e.g. in Putnam's, Oxford's and Penguin's editions of *Fanny Hill*) that enabled or encouraged subjects to better or more properly read and respond to obscene literature. As discussed, proper responses were constituted as intellectual rather than physiological; the proper response of students to the obscene was to appreciate it aesthetically or problematize it

politically (rather than morally or legally). Another way of putting it is that students were encouraged to respond to the obscene intellectually, rather than with reference to religious or legal standards or grids of specification, for example.[1247]

During and immediately following the legal trials of the 1960s, experts and academics constituted *Fanny Hill* not only as literature or art, but as literature that the individual should be able to choose to read. I traced an incitement to discourse that was indignant about the legal repression of sexual representation, and which suggested that the "freeing" of *Fanny Hill* would result in a better tomorrow. Increasingly, the reading of *Fanny Hill*, particularly in the United States, was conceptualized as a matter of individual rights or free speech. This points to a continuation from the commercial discursive formation, where the reasonable consumer subject was constituted as being able to decide for herself what to purchase and read, and to behave responsibly. In other words, subjects were constituted as being capable of self-governance. Although I suggested that academic agents were seemingly less concerned with the effects of the obscene on the (moral) behaviours of subjects, I do not suggest that students were able to "freely" read *Fanny Hill*. As the production of knowledges and standards constituted and encouraged or normalized intellectual responses to art, so too did the conceptualization of individual rights function to subjectify and regulate the student subject.

As Ben Golder writes, claiming or asserting rights is also "simultaneously a subjection" because such claims facilitate "our entry into regimes of power-knowledge which bind us to particular truths, ways of thinking and acting and being".[1248] In relation to *Fanny Hill*, while student subjects ostensibly gained the freedom or right to read the book unhindered by law,

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[1247] And of course physiological responses were excluded by all discursive formations.

[1248] Ben Golder, "Foucault, Rights and Freedom," *International Journal for the Semiotics of Law* 26, no. 1 (2013): 14, https://doi.org/10.1007/s11196-012-9259-8.

scholarly discursive practices constrained the reading of and response to *Fanny Hill*, such that students were free to choose within or between extant mentalities (e.g. those knowledges pertaining to the aesthetic qualities of the obscene and/or to the problematic literary representation of sex, sexuality and gender). Students could not simply choose what or how to read, but were encouraged to choose correctly and to read properly, according to the knowledges and techniques of the scholastic discursive formation. Thus, students were encouraged to self-govern; within the scholastic discursive formation, there was an impetus to responsibilization, as scholarly knowledge was produced in order to guide the reading choices and world views of students who might otherwise choose incorrectly or naively. However, these knowledges of the aesthetic were problematized; after all, the suggestion that there is a proper way to read implies that there is also an improper way. I suggest that this, at least in part, resulted in new iterations of the risk of harm.

The knowledges and techniques of the scholastic discursive formation not only encouraged the recognition of the aesthetic merits of obscene literature, but also encouraged students to recognize and problematize differences and distinctions, or the normalization of hierarchical gender relations and sexualities. These knowledges pointed to hierarchical distinctions, or to the differential experiences of regulation based on gender and sexuality, and also contested or subverted these distinctions, encouraging students to problematize extant social orders or dominations and work or struggle toward change. This problematization of the historically specific ways that social orders were reinforced or reproduced to the advantage of some populations (i.e. men and heteronormative persons) and the disadvantage of others (i.e. women and non-heteronormative persons) is consistent with the work of a genealogy, so how

can I say that academics and scholarly knowledges and techniques were or are involved in projects of moral regulation?

Again, I remind the reader that moral regulation projects do not imply normative judgments; instead, moral regulation projects are the discursive practices that are of substantive concern for a genealogy; they are conceptualized as the exercise of power in conjunction with systems of knowledge that are implicated in events and struggles. Academic knowledges and techniques do not exist outside of history and its processes, and thus must be considered for those normalized and routinized processes that encouraged certain ways of living and behaving and suppressed others. The moralization of students, or the inculcation of proper or scholarly reading techniques, alerted student subjects to the potential harms of a book that reflected and reproduced dominant structures and relations along particular lines. Academia, rather than religion or law, for example, provided standards by which students could orient themselves in relation to the obscene, mould their behaviours, and make sense of their relations to the social order.

The Continuation of the Scholastic Discursive Formation in the Present

Besides those continuities that I have already discussed, I conclude by pointing to the ongoing effects of the scholastic discursive formation in the present. We continue to judge literature according to aesthetic standards that exclude or at least distinguish between the good and the bad, the pornographic and the erotic, or the classic and pulp fiction. For example, when *Fifty Shades of Grey* (2011) was labelled “mommy porn” rather than “erotic literature”, decisions about whether to purchase and read it were constrained; did the reader really want to be associated with “mommy porn”, rather than “erotica”, for example? Similarly, in discussing this

project with friends and acquaintances, I was questioned about whether such reading was a "guilty pleasure" or an academic obligation. This points to a continuity whereby the "choice" or "freedom" to read continues to be constrained by the ways in which reading is made possible and permissible. My reading was seemingly justified (according to these friends and acquaintances) because of its implication in an academic process, when perhaps the same reading materials might be discrediting if I read them for "pleasure".

Similarly, the politics of the novel or reading are also evident today, as we continue to ban books in libraries, for example. The same scholarly standards or knowledges that problematize the exclusion of certain sexualities or that reflect gendered dominations are sometimes mobilized to exclude such problematic books. Although it refers to racial rather than gendered or heteronormative relations and dominations, Mark Twain's *The Adventures of Huckleberry Finn* (1884) is one of the best known examples of literature containing excluded, unacceptable, or problematized knowledges (e.g. pertaining to racial stereotypes). I suggest that this is, however, exceptional rather than typical. Of all the discursive formations discussed, the scholastic discursive formation is least likely to be involved in the governance of others (or Others). Instead, it encourages the governance of the self, and encourages student subjects to participate in processes of problematization in order to advance a different social order(ing).

Thus, while I have argued that academics continue to engage in projects of moral regulation, I hope that I have done so in such a way as to make it clear that there are both continuities and transformations between previous discursive formations, and also that the knowledges produced derive from and reproduce the scholastic discursive formation. In an attempt to avoid normative judgments, I have refrained from suggesting whether the moral regulation projects of the scholastic discursive formation are better or worse than any of the

others previously discussed; instead, I followed the procedures of the genealogy in order to make sense of the emergence and existence of the discursive practices that enabled us to stand here in the present and associate the obscene with a particular thought object. Of course, when discussing this project with friends and acquaintances, the question I most often received was, "What is obscene literature? Do you mean like [insert example of obscene literature here]?" This points to a degree of fragmentation in the obscene thought object, yet I argue that this is consistent with the scholastic discursive formation, which rejects Truth and encourages multiplicity. The obscene, as we understand it today, is both historical and in the process of being remade.

Conclusion

Margaret Mitchell commented on the continued popular and critical interest in *Fanny Hill* and also on the diversity of critical positions pertaining to its study.[1249] After two hundred and seventy years, we have not yet exhausted the phenomena of "Fanny Hill"; knowledge, and particularly the scholarly knowledge of academia, continues to be (re)produced. Academics assumed the didactic role of teaching students or readers more generally how to read and respond to *Fanny Hill* and the obscene. Academics ostensibly did not teach (sexual) morality (as in the vice in literature discourse of the eighteenth century); instead, they taught students what *Fanny Hill* "truly" was and/or meant, and how it "should" be read and/or understood (very much like the vice in literature discourse). These didactic discourses were based on those historically specific analytic perspectives that were authorized by the scholastic discursive formation, including literary, historical, legal, feminist and queer analytic frameworks. Mitchell suggested

[1249] Mitchell, "'Dreadful Necessities'," 305.

that this critical "disparity", or the profusion of knowledges, derived from "the text's provocative ambiguity, its resistance to a definitive reading".[1250] In contrast, I argued that academics produced knowledges of the obscene and *Fanny Hill* according to disciplinary techniques and within the rules of the scholastic discursive formation. These knowledges and techniques encouraged students to respond to the obscene in particular ways, and thus had effects on the formation of student subjects in post-moral or problematized social orders.

Philip Simmons wrote that "each generation of readers brings to Cleland's text its own version of the fundamental tension between what is permissible and impermissible in both sexual and narrative conduct".[1251] I have shown that different discursive formations have constituted the obscene and its effects differently, and that systems of knowledge and relations of power have effects on the formation of subjects and social orders. The concluding chapter revisits these continuities and transformations in order to reconsider how iterations of the obscene were conceptualized.

[1250] Mitchell, 305.

[1251] Simmons, "Literary Voyeurism," 45.

Chapter VII

A History of the Present:

Continuity, Change and the Obscene

Introduction

The idea that *Fanny Hill* is ageless, or will survive unchanged forever, is symbolized in Derek Ingrey's *Pig on a Lead* (1963) a post-apocalyptic novel in which three men carried three books: the *Bible*, *Pilgrim's Progress* (1678), and *Fanny Hill*.[1252] One of the men was actually a youth; he was never supposed to read *Fanny Hill*. *Fanny Hill* was imagined to not only survive the apocalypse, but regulations and restrictions pertaining to it were also imagined to have survived. This concluding chapter revisits the work of this project to remind the reader that while *Fanny Hill* might seem ageless, as a (or *the*) symbol of the obscene, *Fanny Hill* has been problematized and regulated in distinct ways for well over two hundred years.

In this chapter, I reconsider this project's contributions in three main areas. First, I describe this project's criminological contributions, or how it contributed to a reflexive criminology by way of taking obscene literature as an object of study. Second, I consider this project's methodological contributions, including the importance of reintroducing the emergence, existence and effects of obscenity within history, as well as the ability to effectively study the relations between thought objects (e.g. obscenity) and real objects (e.g. the novel *Fanny Hill*). Finally, I describe this project's empirical contributions, or how this project contributed to the literature on obscenity and the novel *Fanny Hill* through the description and analysis of historical events.

[1252] In Gillian Freeman, "Depression Session," *Spectator* (London), September 20, 1963, 358, ProQuest Periodicals Archive Online.

Criminological Contributions

Coming to the end of this project, I am very cognizant that I write within the archive and that this project is shaped by the knowledges and practices within which I exist at this time, or by the extant conditions. I have written this doctoral dissertation as a student of criminology within the institution of the university. Having conducted a genealogy, however, I recognize that even as I am produced as a student subject, the conditions within which I research are not fixed, but are complex, contingent and open to struggle; being critically aware of my position, I crafted a project that – I hope – contributes to a creative criminology.

Recognizing that criminology did not spring fully-formed from the head of Zeus, I reconsidered the discipline, at least in part because of the frequent comments my project garnered about its "fit" within the discipline. Criminology is a site of knowledge production that is located in an historical field characterized by struggle for power and resources.[1253] In order to be more authoritative, criminology often turns to "science" rather than to "art" for its objects and methods of study. This tendency toward dichotomization and division, for example of criminology and literary studies as well as of science and fiction, is indicative of Foucault's will to truth.[1254] Certain forms of "scientific" knowledge tend to be privileged while imaginative or fictional artefacts are disregarded or devalued as objects of study or forms of knowledge because of the historical and contingent distinctions *between* disciplines that provide systems of truth, propositions, rules, definitions, techniques and instruments that limit what can and cannot be studied and discussed *within* disciplines.[1255] This project challenged the distinction and division

[1253] Doyle, Chan and Haggerty, "Transcending the Boundaries," 287.

[1254] Foucault, *The Archaeology of Knowledge*, 218-219.

[1255] Foucault, *The Archaeology of Knowledge*, 222; Sheridan, *The Will to Truth*, 126.

between social science and art, criminology and literature, in order to explore the richness that a consideration of both could provide. I conceptualize criminology as being implicated in both academic and popular knowledge production; criminology can fruitfully include unusual objects, knowledges or fields of inquiry within its scope.

To be clear, I do not suggest that this project is "bigger or better" than other criminological projects; instead, I have tried to formulate the genealogical consideration of obscene literature in general and *Fanny Hill* in particular as a criminological project of relevance and worth. This project is one among a growing number that consider film, fiction, art, photography, dance, music, etc.[1256] in order to depart from criminology-as-science, deepen criminological knowledge, and examine, test and refine criminological ideas through the study of unconventional objects.[1257] This project provided a way of thinking about crime and culture, and demonstrated that criminology can engage in significant work that makes sense of concepts like obscenity – which was conceptualized as far more than a crime – and objects like *Fanny Hill*.

This project demonstrated that obscenity was conceptualized as subversive print matter, a marketable commodity, a crime, a sin, an aesthetic object, and an academic novel. I argue that thinking about crimes as thought objects, or as historical phenomena that emerge, exist and have effects, has fruitful possibilities for criminology. When criminology not only studies "crime", but also studies the genealogy of different crimes, it can contest relations of power-knowledge and participate in struggle. In moving beyond the study of the "facts" of crime, criminology can contest the truths of crime and enable other possibilities for imagining and responding to such

[1256] For a snapshot of recent work in this area, see Michael Hviid Jacobsen, ed. *The Poetics of Crime: Understanding and Researching Crime and Deviance through Creative Sources* (Burlington, VT: Ashgate, 2014).

[1257] Frauley, "On Imaginative Criminology," 618-619.

thought objects. For example, a genealogical consideration of marijuana could enable us to understand those processes that constituted marijuana as a crime or as a medical or recreational substance, or that normalized first its criminalization and then its subsequent decriminalization. Thus, the relevance or significance of this project to criminology is not only in reconsidering crimes like obscenity in and of itself, which could be dismissed as curiously passé or even fall outside of the criminological purview entirely, but in critiquing how we make sense of such thought objects. This project demonstrated a process of conceptualizing, of going back and forth between the material object and the thought object and between material conditions and frames of meaning, in order to make sense of and problematize our understandings of the obscene not only as a crime, but as a variety of thought objects.

This project did so in a way that introduced obscene literature as an object of criminological study that makes sense of the regulation – conceived more broadly than legal regulation – not only of books, but also of subjects and social orders. Thus, obscene literature was not simply a curious object of study; it provided a lens that enabled me to reflect on or theorize criminology and its conventions, as well as a variety of concepts and concerns.

Methodological Contributions

In addition to the criminological contributions described above, this project also made methodological contributions. I constructed a theoretical model, or a plausible way to think, understand and explain "the obscene". This framework first combined archaeology and genealogy in order to account for or make sense of the emergence and existence of discourse. Discourse pertaining to the obscene was considered in isolation from what preceded or succeeded it and according to the rules of formation in order to problematize received history, or

to identify the conditions that made certain statements about the obscene possible and excluded other statements. This project considered the formation of distinct thought objects referred to and problematized as obscenity, including the historical social and cultural spaces, authorities, institutional sites and classificatory schemes that constituted obscenity's existence as such. This project also considered those subjugated knowledges that problematized dominant knowledges and contributed to struggle and transformation, evident in events. Or, as I wrote in an earlier chapter, *this project considered how and why, at particular historical moments, obscenity was (re)problematized through and in particular discursive practice(s) and with what effects, and problematized the ways that these discourses, practices and effects continue into the present*.

This project offered one way of moving between and effectively studying the relations between thought objects (i.e. obscenity) and real objects (i.e. the novel *Fanny Hill*). While it is not the only way to make sense of the obscene, this genealogical project provided a conception of obscenity and its historical relations – or its emergence, existence and effects – while at the same time moving beyond an historical description in order to implicate obscenity in the present. In conducting a history of the present, I avoided normative judgments and progress narratives in favour of a consideration of normalizing judgments and complex and contingent relations subject to struggle and transformation. The purpose of such a methodology was to make sense of the ways that knowledges and practices of the obscene, or projects of moral regulation, are still with us today.

In addition to crafting an archaeological and genealogical methodology, I combined within this framework moral regulation scholarship. While genealogy requires painstaking recovery and detailed description of the production of discourse through the rules of formation, the problematization of history, or the effects of historical discursive practice, was developed in

conjunction with moral regulation. Through the careful genealogical consideration of the knowledges that mobilized agents and attendant institutionalized practices or techniques, the objects and targets of moral regulation were considered. Moral regulation projects were conceptualized as attempts to "conduct conduct", positioning subjects to choose from a range of possible, acceptable or authorized behaviours; such projects also reproduced or reinforced dominant social orders. Thus, moral regulation provided a way to critically consider relations of domination, processes of subjectification, and evidence of struggle pertaining to the regulation of objects and targets within social orders both in the past and the present.

This combination or synthesis of methodologies was effective because both genealogy and moral regulation are concerned with historical descriptions that are problematized to reveal the effects of the exercise of power and processes of regulation by which states or social orders and subjects are formed. Additionally, moral regulation complemented or benefited this genealogical study. In particular, moral regulation scholarship provided ways to consider the substantive or empirical concerns of genealogical projects by clearly delineating elements of analysis, including the objects, agents, knowledges and techniques, and targets of regulation, which correspond well to Foucault's rules of formation and exclusion. Further, moral regulation scholarship was helpful in enabling a consideration of the sometimes coercive (although still productive) processes of subjectification, or a consideration of the variety of processes implicated in the governance of others and the self. In particular, moral regulation scholarship was responsive to the concerns of feminists and others pertaining to the exercise of power in ways that advantaged some populations and disadvantaged others. Thus, by mobilizing the insights and methods of moral regulation scholarship, this project was able to critically consider the differential experience of relations of power and domination that enabled the constitution and

contestation of gender and class, for example, through or in relation to processes and projects of moral regulation. In integrating genealogy with moral regulation, I moved from recognizing the links between these two groups of scholarship,[1258] to mobilizing their combined potential.

Empirical Contributions

In addition to the criminological and methodological contributions summarized above, most obviously, this project contributed to our empirical knowledge of the obscene and of *Fanny Hill*. In this section, I provide brief snapshots of the distinct discursive formations and their respective objects and projects of regulation in order to show one last time the contrasts and continuities, or the development, partial demise and gradual elision, of discursive formations as they pertain to the obscene. I begin by considering the first analytic chapter (Chapter 4), in which I identified several discursive formations – the state, commercial market, common law judiciary, and religion – that competed to constitute obscenity as a discourse object, each with its own procedures or techniques for producing knowledge and exercising power.

From the time of the *Royal Proclamation* (1538) through to the *Licensing Act* (1662), literature was constituted by high-ranking officials of the state and Church as having the potential to adversely affect or harm the population. The effects of unregulated print matter on the governability of the public by the Crown (or state) and the Church was constituted as problematic; the circulation of ideas in print form and in a language that was widely understood and increasingly read was subject to regulation in order to mitigate the effects of alternative or unauthorized knowledges and truths. Seditious, schismatic and offensive writings were constituted as offending against public peace, religion, and public decency. I suggested that

[1258] E.g. Glasbeek, "Introduction," 2.

social life could not be freely imagined or disseminated through print matter, but was authorized only by following proper regulatory procedures, such as licensing and registration, which ensured the royal and ecclesiastical monopoly on truth, including especially those truths that reaffirmed their institutional and socio-political dominance. Unauthorized publishing was constituted as a threat to public peace; unregulated print matter adversely affected the normative standards and normalized behaviours of the population. Specifically, discourse linked unruly print matter with unruly citizen subjects, which was constituted as dangerous to the functioning of the state and of true religion. From this embryonic discursive formation, which I called veridical, truthful knowledges and their attendant practices, both coercive and disciplinary, continue to be mobilized in ways that are political rather than neutral.

When I first settled on the term "veridical" to describe this discursive formation, I admit that I was eliding the term with "vertical". However, having considered whether there was a better term for this discursive formation, I decided that veridical – meaning truthful or veracious – was appropriate. It was in this veridical discursive formation that the initial truths pertaining to the obscene first emerged and, I argue, have continued to be produced despite numerous transformations. It was in this discursive formation that the problem of obscenity or offensive writing was first made visible or problematized and subject to regulation, and it was this discursive formation that constituted state and Church officials as regulators, and simple or vulnerable populations as subjects. Aspects of these elements played out in subsequent discursive formations, as morally, legally, religiously, and intellectually authoritative institutional agents governed (or improved) themselves and others through the regulation and consumption of print matter. From this very first discursive formation, we continue to see that the state and Church, among others, are authoritative in determining and regulating our

conceptions of sexual morality, and we continue to make distinctions between what is appropriate to read (or view or do) and what is detrimental to our well-being. This linkage between what we read and our civic, moral, legal, religious, or ethical "duty" to be "good" subjects first emerged from the knowledges and practices of this veridical discursive formation.

Following and flowing from the veridical discursive formation, I described the commercial discursive formation which was concerned not with licensing, but with licentiousness. Beginning in the eighteenth century, the general concern about unregulated print matter transformed into a specific concern about "literature"; not only the public availability, but also the quality of print matter – characterized as literature – came to be of concern. This concern was produced largely by eighteenth century writers and others involved in the print trade, and was the result of the cessation of state regulation and the increase in both literacy and publications. As part of an effort to encourage the consumption of market goods (i.e. literature), the reader was responsibilized into reading and acting virtuously through particular techniques, which included prefaces and postscripts. What previously might have been constituted as harmful was transformed into a beneficial moral practice; how to navigate vice and virtue became not a problem requiring state regulation, but rather adherence to normative morals and standards of taste. Despite this transformation, in which literature was conceived to be of more benefit or value than harm, concerns about the potential harm of certain kinds of literature – including literature containing sexual representation – persisted; coincidentally, concerns about vulnerable populations of consumer subjects became more defined. Women in particular were constituted as requiring extra guidance or regulation to prevent a deterioration of sexual morality and a seduction to vice. Thus, within the commercial discursive formation, there was no simple distinction between rulers and ruled as in the veridical discursive formation; instead, gendered

hierarchies of morality were constituted and vice in literature was constituted as problematic, especially in the hands of vulnerable women.

The link between the reading material of obedient or governable subjects and peaceable rule (produced in the veridical discursive formation), and the morality of consumer subjects (produced in the commercial discursive formation), was both enshrined and transformed in the judicial discursive formation through the practices of common law. Common law courts assumed jurisdiction for public morality or civility. No longer was good behaviour constituted simply as obedience to governing authorities or institutions; instead, a moral dimension was incorporated into the knowledges and techniques of law. Using the language of proof and the standard of evidence, the court extended its jurisdiction to include obscene literature with *Curl* (1727), which was "evidently" against law – and religion and morality – as well as counter to good rule. This knowledge of the obscene as immoral therefore subject to legal regulation was based on the concept of public morality. Sexual literature – problematized as distinct from seditious or schismatic writings or the more generic vice in literature – was legally constituted as an offence against the morals of the public, which was in turn constituted as being essentially good or virtuous. Following from the commercial discursive formation, women and youth were constituted as especially susceptible to representations of sexual vice in literature, which was imagined to lead to vice in life. Unlike the commercial discursive formation, however, law rather than standards of taste constituted good or moral citizen subjects through disciplining, and bad or immoral (criminal) subjects through coercive techniques of punishment.

Finally, the religious discursive formation was briefly discussed, primarily in relation to the efforts of the Bishop of London around the time that *Fanny Hill* was published. While the judicial discursive formation derived standards of morality from religion, its regulatory

techniques were entirely secular. Likewise, while the veridical discursive formation included religious agents in its techniques of regulation, secular citizens rather than pious subjects were constituted. Within this religious discursive formation, the obscene was conceptualized as sin, rather than a crime, vice in literature, or a regulatory infraction. Perhaps as a result of the competition among discursive formations, the religious discursive formation mobilized legal as well as spiritual and familial agents to regulate the obscene. Common law was contested, or was constituted as being insufficient to deal with the sin of the obscene, and thus it fell to religious leaders and patriarchs to ensure the good behaviour of the flock generally and women and youth specifically. This religious discursive formation perhaps best highlights the competition and overlap among discursive formations in terms of regulatory knowledges and techniques that resulted in the regulation of (the sexual behaviour of) women in particular.

Subsequently, in Chapter 5 I discussed the dominance of the judicial discursive formation, which was not at all assured in Chapter 4, competing as it did with the religious and commercial discursive formations in particular. Judges and legislators increasingly strengthened their claims pertaining to the governance of morality and the ability to make people good through law; the social order was constituted as essentially moral, threatened by obscenity, and requiring regulation through law. The knowledge of the commercial discursive formation was subjugated; having admitted that vice in literature was potentially a problem, agents of the commercial market were unable to counter that all literature was good for all subjects. Regulatory and criminal statutes proliferated as the judicial discursive formation intensified its practices in order to subjugate the increasingly haphazard practices of the religious discursive formation (e.g. recall the work of vice societies). These statutory regulations were intended to significantly minimize, through pecuniary and criminal punishment, the public display,

circulation and sale of obscene materials. These techniques point to a continuity from the early licensing regulations of the veridical discursive formation; statutes were designed primarily to suppress the obscene before it could be read or viewed, and thereby preserve public morality and order (and ensure the constitution of governable moral citizen subjects). These techniques also point to a continuity with the techniques of the religious discursive formation, as statutes ensured that those who sinned or offended were encouraged to confess through the procedure of the trial and receive punishment-as-absolution. Thus, knowledges and techniques of regulation evident in the judicial discursive formation subsumed and transformed those of competing discursive formations in order to produce normative and normalized standards of behaviour pertaining to the obscene (and gender and sexuality). These legal modes of regulation continued to constitute simple or vulnerable populations – who required discipline and sometimes coercion – including the poor, women, and youth. In particular, the regulation of the obscene was integral in constituting virtuous as well as fallen women and it also contributed to the formation of both Britain and the United States as moral nation-states. Law authoritatively prohibited the circulation of sexually obscene materials in an attempt to normalize and ensure the reproduction of acceptable sexual imaginations and behaviours, especially among women, and to constitute morally exemplary, healthy and productive nation-states.

This is not to suggest that the religious or commercial discursive formations disappeared. The judicial discursive formation was contested by the practices of the commercial market, which continued to advertise and sell obscene literature, including *Fanny Hill*. Rather than trying to encourage virtue, agents of the commercial market constituted the obscene as desirable either because of its illicit connotations or because of its aesthetic properties, pointing to a transformation. I also described how writers, authors and others involved in the book trade

eventually expressed knowledges not pertaining to vice and virtue, but rather to rights and freedoms – which were legal knowledges – in order to reformulate standards of artistic taste. These subjugated knowledges ultimately led to an intensification within the judicial discursive formation as these competing knowledges were subsumed in the *Roth* (1957) decision and the *Obscene Publications Act* (1959). However, the admission of literary experts into the legal process as authoritative agents whose knowledges could determine the harm or value of literature led to the eventual rupture of the judicial discursive formation.

With the legal trials in New York, London, and Massachusetts, *Fanny Hill* – as *the* exemplar of obscene literature – was eventually redeemed based on its historical, literary, and social value rather than condemned for its "abnormal" sexual representations. Thus, new conceptions of value – distinct from religious or legal standards of morality – were produced by "experts" or agents from the publishing industry, the legal profession, and the university. These three institutions, producing knowledges from the commercial market, the legal courts (newly balancing emerging concerns about literary expression and the freedom of speech against the harms of obscenity), and academia competed to produce authoritative knowledges and practices pertaining to the obscene. While previously legal agents acted as guardians of public morality, literary experts constituted sexual representation as being aesthetic, harmless, and in the eye of the beholder. The problematic object, conceived as sexual representation, no longer necessarily caused harm or led to sexual immorality. This transformation of the problematic object and its regulation was most clearly evident in the shift from criminalizing publishers and booksellers to criminalizing the book itself. There was a struggle over the intersubjective meanings of obscene literature as a thought object; the obscene mutated from being corrupting, morally poisonous literature that caused harm to vulnerable populations to a sexual object that was in itself

problematic, wrong, immoral and/or illegal. This transformation was unsustainable; the binary practices of law, which categorized the obscene as illegal and literature as legal, were unable to successfully reproduce dominant conceptualizations of obscenity. This transformation occurred as a result of the success of competing knowledges of the aesthetic, emerging from the commercial market and the university.

Chapter 6 described how knowledges of the aesthetic reconceptualized legally obscene objects as having redeeming value or merit that negated the potential for (moral) harm. Scholarly knowledges constituted *Fanny Hill* in aesthetic terms and as a valuable or valid object of study. These knowledges, which I associated with the art for art's sake movement, point to a continuity from the commercial discursive formation; "good" or "valuable" knowledges could be derived from literature, as long as such knowledges were guided by experts. Prefaces and postscripts once again abounded, as critics and scholars like Peter Quennell, Peter Sabor, and Peter Wagner produced introductions to guide "proper" reading.[1259] Academics were as engaged in producing knowledges about *Fanny Hill* (what it is) and its effects (what it does) as previous agents, including judges or bishops. Like agents from the commercial discursive formation, academics taught students, an incarnation of the simple or vulnerable subject, how to properly read and respond to the obscene. Thus, there was continuity as academics produced knowledges pertaining to *Fanny Hill* and its effects in order to guide student subjects. There was also transformation, however, as these knowledges were not produced to govern problematic sexual behaviours or to prevent vice, for example; instead, academics as agents produced knowledges to ameliorate the aesthetic appreciation of subjects. The aestheticization of *Fanny Hill* involved the production of knowledge that excluded discussions of (sexual) morality and that imbued the

[1259] Quennell, introduction to *Memoirs*, 5-17; Sabor, introduction to *Memoirs*, vii-xxvi; Wagner, introduction to *Fanny Hill*, 7-30.

novel with value as a result of its literary and socio-historical qualities. In the absence of clear – or dominant – legal standards or norms or truths, scholarly discourse pertaining to *Fanny Hill* became the means by which knowledge of the obscene was produced within the scholastic discursive formation. However, re-inscriptions of the harm argument also re-emerged.

By the 1990s, *Fanny Hill* was no longer constituted as a touchstone of literary or sexual freedom or a significant historic event; instead, *Fanny Hill* was increasingly constituted by feminist and queer scholars as problematic due to its sexual (mis)representation. Where once criminal law constituted *Fanny Hill* as harmful because it was immoral, academics reconceptualized it as harmful because it was gendered or heteronormative. Rather than turning to morality, religion or law, academia became the surface of emergence in which the obscene could be sought and found. Processes of exclusion were once again mobilized as emergent authorities of delimitation, including feminists and queer scholars, produced knowledges that prohibited an aesthetic rather than a political reading of *Fanny Hill*. Academic knowledges produced the truth of *Fanny Hill* and the obscene and their harmful effects, and excluded or rejected those knowledges that did not similarly problematize the obscene and its effects on moralized subjects and problematic social orders.

This was a significant transformation from what preceded it, given the scholastic discursive formation's emphasis on problematizing gender and sexual norms rather than producing such norms. Yet this problematization functioned to produce norms of its own, whereby subjects were ostensibly enabled or empowered to produce their own subjectivities. Similarly, this production of knowledges encouraged student subjects to properly read and respond to books, as well as the political relations in which they were implicated. In other words, students were moralized to reject or resist gendered or heteronormative arrangements.

This points to the production of knowledges and truths, as well as to their fracturing, as a multiplicity of interpretations and readings of *Fanny Hill* and the obscene were produced by and within the university. Rather than preserving or producing a (moral) social order, a significant concern of previous discursive formations, the scholastic discursive formation sought to produce a social order distinct from religious standards of morality and instead based on political equality (or that did not support distinctions along the lines of gender or sexuality).

The knowledges produced by academics within the university and the scholastic discursive formation had effects, much like the knowledges produced by bishops and judges, for example. Student subjects were encouraged to better or more properly read and respond to obscene literature – and the proper response was to appreciate the obscene aesthetically or problematize it politically (rather than morally or legally). Students were encouraged to respond to the obscene intellectually, rather than with reference to religious or legal standards or grids of specification, for example. Thus, the knowledges and techniques of the scholastic discursive formation not only encouraged the recognition of the aesthetic merits of obscene literature, but also encouraged students to recognize and problematize differences and distinctions, or the normalization of hierarchicalization of gender relations and sexualities.

In conclusion, the main element of continuity throughout these discursive formations is the re-inscription of sexual representation in literature as harmful. While previously harm was imagined to affect the governability of simple subjects, or to cause moral harm or corruption to vulnerable or moral citizen subjects, this newly constituted harm was that which stemmed from a gendered, patriarchal and/or heteronormative social order. Thus, rather than disrupting a peaceable or moral social order, *Fanny Hill* was problematized for contributing to the continuation of a problematic social order. Still, this project of moral regulation, like those

before it, contributed to nation-building. Rather than a morally pure and strong civic nation, however, a new morality based on conceptualizations of equality was produced.

Conclusion

In this project, I described numerous competing discursive formations that regulated *Fanny Hill* and the obscene. Following Foucault, I cannot derive definitive truth claims or make normative judgments because truths and knowledges are produced within a discursive formation, including the one in which I exist. Rather than positing truth, questioning self-evidences or common sense understandings about the obscene fulfilled the purpose of a genealogy, which was to make sense of the emergence, existence, and effects of the obscene and its associated moral regulation projects. Having said that, there are a few "take aways" that I can give the reader.

First, there is something strange about *Fanny Hill*; it is intimately associated with the concept of the obscene, such that neither can be conceptualized without the other. Second, the multiplicity of the scholastic discursive formation, or the ways in which it enables the production of a variety of statements, is, I suggest, possibly undermining its dominance. In a discursive formation that enables the existence of multiple knowledges and truths, it is increasingly difficult to distinguish between what might be called common sense and academic knowledges; popular knowledges are increasingly able to circulate in a variety of media forms, while academic knowledge is often limited in audience. The effect of this multiplication of truths, knowledges and readings of *Fanny Hill* is a phenomenon to continue to watch, as a new (perhaps cultural) discursive formation emerges. Third, this project was *my* history of sexuality, in which history was conducted through the lens of obscenity. Rather than a history of repression, I pointed to the production of subjects and social orders, constituted through particular systems of knowledge

and institutional techniques, as well as the incitement to discourse. Rather than trying to determine what obscenity really is, instead I formulated "the matter in the most explicit terms, by trying to reveal it in its most naked reality, by affirming it in the positivity of its power and its effects".[1260] In other words, I reproduced the emergence and existence of iterations of the obscene, and conceptualized it as a phenomenon that could be understood as disciplining bodies and regulating populations. In doing so, I revealed how and why concepts like obscenity came to be and continue to be, and with what effects, and made space for (without insisting on or proposing) transformation. To put it differently, I both traced and contested relations of power-knowledge that constitute(d) social orders and subjects, and I pointed to the will to knowledge that enabled sex in literature to be tied to sexual behaviour in ways that made it a problematic object and a target of intervention (or regulation). Finally, I critically considered the phenomena of the speaker's benefit, including my own participation in the intellectualization of sexuality. *Fanny Hill* continues to be significant in academic scholarship in a way that needs to be problematized in order to provide insights into the scholarly participation in relations of power-knowledge pertaining to the obscene and its regulation.

I emphasize the importance of recognizing that academics do not "simply" analyse or critique discourse objects, but are implicated in the constitution and regulation of the obscene, and thus in relations of power-knowledge. I am part of the scholastic discursive formation, or am an agent within the university institution, which "radiated discourses aimed at sex, intensifying people's awareness of it as a constant danger".[1261] This incitement to discourse – in which this project is enmeshed – prompted me to critically reconsider what Foucault refers to as

[1260] Foucault, *The History of Sexuality*, 9.

[1261] Foucault, 31.

the speaker's benefit, whereby deliberate transgression of sexual prohibition, repression, or taboo and the belief in or constitution of a better, freer, or more egalitarian tomorrow implicates academics within the politics of truth regimes.[1262] For this reason, I cannot say that any discursive formation is better than another, but this genealogy has problematized relations of power-knowledge in such a way that the reader may reconsider his or her own relations to power-knowledge.

I began this project many pages ago by referring to Luka Magnotta and the *Fifty Shades* (2011-2012) trilogy, noting that these events proved the timeliness of this project. I return again to these events because they also point to the ongoing regulation of the obscene. Specifically, events involving Magnotta demonstrate that the "truly" risky or dangerous examples of the obscene remain criminalized by law, while literary examples of the obscene, such as *Fifty Shades*, are regulated by more or less organized popular and academic techniques. The reading of such literature, characterized by popular media as "mommy porn", continues to be implicated in the constitution and regulation of gendered behaviour; apparently, only suburban moms are the ones who read – and are shamed for reading – such "bad" literature. Yet this regulation is, I suggest, beginning to be contested.

Martin Latham suggested that the reading of books like *Fifty Shades* and *Fanny Hill* are potentially acts of resistance that counter the "hauteur" of academics and literary or cultural critics.[1263] Responding to the academic criticism of the *Fifty Shades* trilogy (i.e. as being poorly written), Latham commented that "for some reason, poorly written porn is more unforgiveable

[1262] Foucault, 6-7.

[1263] Martin Latham, "Lie Back and Think of James," *Bookseller*, August 10, 2012, 13.

than poorly written fiction, or impenetrable academic gobbledegook".[1264] He drew attention to the dominant discursive practices that restrict the possibility of where "good" erotica can come from; "porn" continues to be distinct from obscene "literature" or "erotica" and is unauthorized (i.e. by academic experts). To put it differently, in the case of *Fifty Shades*, academic experts (were perceived to have) critiqued and excluded the book as not having (redeeming) value or literary merit; it did not meet academic standards to qualify as "good" or aesthetic literature, and potentially harmed or misrepresented vulnerable populations (e.g. the BDSM community). This popular problematization perhaps signals the emergence of popular discursive practices that contest scholarly discursive practices, and is something to watch.

Throughout this project, I considered moral, commercial, religious, legal and scholarly conceptualizations of obscenity and *Fanny Hill* that were evident in discursive practices and moral regulation projects. This project considered why *Fanny Hill*, over and in time, as a cultural object was vilified, commercialized, prohibited, criminalized, and studied in order to understand the sequences of multiple *Fanny Hill*s as obscene, and their implications in various relations of power-knowledge. I am very much aware that this project contributes to the production of social science or criminological knowledge about the obscene and about *Fanny Hill*, and is thus implicated in and influenced by historical conditions that made such a project possible. Thus, while this project comes to its conclusion, it is not really the end. Instead, there is every likelihood that another discursive formation, possibly a cultural one, will eventually produce dominant knowledges and practices pertaining to the obscene.

THE END...

[1264] Latham, "Lie Back," 13.

APPENDIX A

Glossary of Analytic Terms

**Terms from Chapters 2 and 3 are arranged in the order of discussion*

Archaeology: Describes the discursive rules that constitute bodies of knowledge, and considers the archive which contains and constrains discourse. Concerned with the existence of discourse in a particular historical moment.

Genealogy: Describes the emergence and transformation of discursive practice. Genealogy *is* a form of history (i.e. a history of the present) and it *does* an insurrectionary form of history that challenges traditional histories as well as the historical implications of the present.

Discourse: Groupings of statements that exist within and are determined by a discursive formation and which contribute to the maintenance of socio-historical conditions.

Statements: The units of discourse, which refer to objects or states of affairs.

Rules of formation: Socio-historical conditions and rules that allow some statements to be made.

Discursive formation: Identified by a regularity or correlation between statements, objects or concepts; a discursive formation is unified by the rules that govern the formation of statements rather than by its content (i.e. its constituent statements). Discursive formations are constituted by four interrelated elements – *objects*, *enunciative modalities*, *concepts*, and *themes* – which form according to certain rules.

Rules for the formation of objects: Rules that govern the emergence and identification of a problematic object like obscenity. A discourse object is formed through the interactions of *surfaces of emergence* (those social and cultural spaces such as the family from which a discourse object emerges), *authorities of delimitation* (those who have authority derived from particular institutions to constitute the discourse object and to problematize it), and *grids of specification* (the process of classifying objects according to symptoms or properties so that it is obvious that it is problematic).

Rules for the formation of enunciative modalities: Statements are expressed by those who have the right/privilege/ability to use a given mode of speech (e.g. priests can make religious sermons and judges can make verdicts). These speakers are able to make statements because of the institutional site that they occupy (e.g. a person becomes a priest through his relationship with the institution of the Church). The relative position of the speaking-subject is also considered (e.g. is a judge pronouncing a sentence-statement or is a journalist reporting on the judge's sentence statement?) in order to determine the force of the statements.

Rules for the formation of concepts: Points to the degree of consensus regarding statements that pertain to a discourse object, as well as the range and transformation of statements pertaining

to a problematic discourse object. Constrains, for example, the procedures by which obscene literature could be considered sinful *or* illegal, and the range of acceptance or competition among such conceptualizations.

Rules for the formation of themes: Refers to the theories or themes that develop within a discursive formation, such as the idea that individual moral purity (e.g. through the abstention of obscene reading) leads to collective social purity. These collective beliefs may be supplanted or subjugated; where a discursive formation enables competing theories, these are points of diffraction that must be limited by authorities and practices (i.e. the limitation of statements that do not support or sustain them).

Rules of exclusion: Ensure the appearance of uniformity, truth and consensus in discursive formations.

External rules of exclusion: Exclude, prohibit or delegitimize certain expressions contrary to dominant discourses. These external rules of exclusion include (1) *prohibition*, where expression (for example about sexuality) is taboo, except in cases of the privileged right of the speaking subject, or those who under certain circumstances can speak of such things; (2) *division and rejection*, or the creation of oppositions, such as obscenity and purity, that lead to the acceptance of one and the rejection of the other; (3) *opposition between true and false*, which pertains to the will to truth, in which certain types of knowledge are recognized as being authoritative and truthful (such as science or law) while others are disregarded.

Internal rules of exclusion: Contribute to the apparent unification and sufficiency of extant dominant discourses in order to delegitimize certain contrary expressions. These internal rules of exclusion include (1) *commentary*, or the process of relating discourse back to an original and authoritative "true" text that authorizes some discourses and limits alternatives; (2) *position of the author*, or the idea that an individual necessarily authored a unified discourse; (3) *distinctions between disciplines*, or the classification of discourse according to disciplinary boundaries that limits the possibility for critiquing a discourse based on disciplinary systems of truth, propositions, rules, definitions, techniques, and instruments.

Practices: Constitute and respond to problematic discourse objects in conjunction with systems of knowledge.

Problematize: To critically seek contradictions, dissensions and evidence of struggles in discursive formations in order to establish the complexity and contingency of the past and its effects in the present.

Struggle: Moments in history where the relations and implications of power and resistance, dominant and subjugated knowledges become evident, particularly in association with events. The goal of considering struggle is to uncover historical content that is overlooked because it does not fit into ordered, unified and progressive historical narratives, as well as popular knowledge that is not recognized as being as credible or authoritative as the scientific knowledge of dominant discourse. In so doing, the present, with its historical ways of thinking and behaving, becomes open to transformation.

Events: Not simply the answer to "what happened?", but specific, complex and contingent moments of struggle, characterized by change, in which dominant ways of thinking and behaving are marked by the extension, intensification, introduction or transformation of discursive practices.

Moral regulation: A project aimed at a problematic or socially harmful object identified by informal or expert knowledges that requires regulation (through techniques) by institutional agents and which moralizes targets.

Objects of regulation: Discourse objects that are frequently created as a result of the "discovery" of a social problem. They are frequently considered to be harmful.

Regulatory agents: Those who regulate the problematic object of regulation; they have certain responsibilities that ensure the (continued) regulation of the object according to institutional standards and mechanisms.

Regulatory knowledge: Authoritative knowledge is integral to the creation of an object of regulation, as well as its regulation.

Techniques of regulation: Techniques or practices act on the normative content of regulatory knowledge in order to produce moralized targets.

Targets of regulation: Subjects at whom regulatory knowledges and techniques are directed in order to constitute subjectivities and to reproduce or reinforce the dominant social order.

APPENDIX B

Chronological List of Scholarly Books, Chapters and Articles on *Fanny Hill*

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Epstein, William H. *John Cleland: Images of a Life*. New York: Columbia University Press, 1974.

Ivker, Barry. "John Cleland and the Marquis d'Argens: Eroticism and Natural Morality in Mid-Eighteenth Century English and French Fiction." *Mosaic* 8, no. 2 (1975): 141-148. https://www.jstor.org/stable/24776982.

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APPENDIX C

Questions to Guide Genealogical Reading

A. Rules of Formation

Recall that rules of formation act as the conditions of existence that function to permit or make possible the production of discourse.

#1. Formation of Objects:

- What is the problematic discourse object?
- What is its surface of emergence, or in what space is the discourse object sought and found?
- Who are the authorities of delimitation, and what institutional site (and attendant institutional knowledge) authorizes the constitution of the discourse object?
- What are the grids of specification (or those interlinked concepts through which something is viewed), or by what symptoms or properties is the object classified and made problematic?

#2. Formation of Enunciative Modalities:

- In what ways are statements expressed? How are they formulated (e.g. as an authoritative, expert, scientific, etc. discourse)?
- Who (or what category of person) has the right, privilege or ability to use a given mode of speech?
- What is the institutional site or source of statements?
- What is the relative position of the subject making the statement about the discourse object?

#3. Formation of Concepts:

- What is the general level of consensus among statements pertaining to the discourse object?
- What are the rules, logics or methods that are followed in order to make definitive statements about a discourse object's essential properties or characteristics? What are the procedures by which "truthful" knowledge and understanding are produced, and other forms of knowledge and understanding excluded?
- What is the range of statements within a discursive formation that are accepted, rejected, or contested? What statements from other discursive formations are active? What statements are no longer accepted but have historical connections to current statements?
- What procedures allow for statements to be rewritten, transcribed or translated?

#4. Formation of Themes:

- What specific themes develop within a discursive formation?
- What are the points of diffraction, or those points when otherwise equivalent statements are incompatible?

- How are these points of diffraction limited by authorities and practices?

B. Rules of Exclusion

Recall that certain discourses are excluded in order to ensure the appearance of uniformity, truth and consensus in discursive formations.

External Rules of Exclusion

#1. Prohibition:

- What is prohibited? What cannot or should not be spoken of (or read)?
- What circumstances prohibit speech about such discourse objects?
- Who is the privileged speaking subject, or who may under certain circumstances speak about the prohibited discourse object?

#2. Division and Rejection:

- What oppositions pertaining to the discourse object exist?
- How is the discourse object divided into oppositions in such a way that one is accepted and one rejected?
- Are there specialized spaces in which rejected statements can be heard?

#3. Opposition Between True and False:

- What knowledge is recognized as authoritative and true, and what knowledge is recognized as false or is disregarded?

Internal Rules of Exclusion

#1. Commentary:

- What original, authoritative, and/or "true" text authorizes discourse?
- Is the original text brought up-to-date or reread to redefine discourse?

#2. Position of the Author:

- Who is identified as the author?
- How does the idea of an author suggest the discourse is unified rather than fragmented?

#3. Distinctions Between Disciplines:

- What evidence is there of disciplinary boundaries influencing the possibility for thinking about or critiquing a discourse?
- Do certain disciplines lay claim to certain discourses?
- How do these disciplines influence the questions that can be asked and answered about the discourse object?

C. Subjugated Knowledges and Struggle

Recall that discursive formations contain multiple dissensions.

- What gaps, differences, substitutions or transformations exist within a discursive formation?
- What competing or contradictory statements exist within a discursive formation?
- To what extent do these statements suggest gradual substitution or abrupt change?
- What evidence is there of subjugated knowledges? What historical knowledge is overlooked, disguised, or considered anomalous? What popular knowledge is disqualified because it is not recognized as credible or as authoritative as scientific knowledge?
- How are these subjugated knowledges linked to (or evidence of) specific struggles? How are these struggles framed?
- How do subjugated knowledges problematize the discourse object?
- How do subjugated knowledges problematize ways of thinking and behaving, or dominant discourse and practice?

D. Discursive Practice

Recall that discursive formations do not just produce ideas, knowledge, opinions, etc., but also material practices.

- How do practices constitute and maintain a discourse object?
- How do practices respond to the problematic discourse object?
- How are practices institutionalized?
- What evidence is there that dominant ways of thinking and behaving are challenged? Is there an extension and intensification, introduction or transformation of practices?

NOTE: These questions are intended as a *guide*, focusing attention on dominant and subjugated knowledges in order to identify struggles.

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Royal Proclamations, Decrees and Statutes

**Arranged by country and date*

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United States

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An Act for the Suppression of Trade in, and Circulation of, Obscene Literature and Articles of Immoral Use, 1873, ch. 258

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Britain

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