"Arrest him, he's indecent, he's obscene what's more!" The Poems and Paintings of D H Lawrenceas part of Cultural History and Moral Outrage

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I

The line, taken from "Neptune's Little Affair With Freedom"[1] which forms the title of this paper, gives rise instantly to the issue of the relationship between the allied notions of *indecency* and *obscenity*. Implicit in the outburst is the notion that somehow, albeit uncertainly, there is a gradation between indecency and obscenity. Few people would disagree that such is, indeed, the case, but ascertaining how the distinction can, initially, be drawn and, thereafter, be accurately and appropriately maintained is another issue. Yet there have been attempts which might help to cast light both on the topic of the paper at large and on the specific contribution of the poems and paintings of D H Lawrence to cultural history and moral outrage. It is, though, immediately important to

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1 Taken, in turn, from "Songs I Learned at School" in *Nettles* by D H Lawrence (1930).

identify notions of indecency and obscenity as they generate moral outrage and to ask why they should or do.

A useful starting point is the decision of the Scottish High Court of Justiciary in *McGowan* v *Langmuir*,[2] a case decided, admittedly, after the incidents involving Lawrence's works occurred, although the judges involved could scarcely have failed to be aware of those incidents, and, even had it occurred before, it was a case which Lawrence would have, one suspects, either disparaged or ignored.[3] At the same time, its subject matter is quite apposite to the present discussion in that it involved the appellant's keeping for sale or gain certain indecent or obscene prints. By a majority, the High Court refused to disturb the conviction at first instance, although Lord Justice-General Clyde remained in doubt[4] as to whether the conviction was correct.

However, for the purposes of this discussion, the most important of the judgments was that of Lord Sands, who began[5] by saying that he did not believe the words "indecent" and "obscene" to be synonymous although the two expressions shaded into one another. There was a difference in meaning which he regarded as being easier to illustrate than define. "For a male bather", he said, "to enter into the water nude in the presence of ladies would be indecent, but it would not be obscene." Lord Sands went on to say that the matter might be expressed in an ascending scale: "Positive – Immodest; Comparative – Indecent; Superlative – Obscene." However, he continued, those were not rigid categories and the same conduct which, in certain circumstances, may merit only the milder description, may, in other circumstances, deserve a harder one. "Indecent," he said, was a milder term than "obscene," but it would satisfy the purposes of the instant case,

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2 1931 SLT 94.
3 See below n 84 *ff*.
4 1931 SLT 94, 99.
5 Ibid 96.

if the prints in question could be regarded as "indecent." That view, though expressed in rather more sophisticated terms, obviously mirrors the sentiment represented in the parody contained in this paper's title.

Lord Sands then emphasised that he was referring to decency and indecency in relation to sex, and to nudity and to physiological function.[6] He also necessarily pointed out that "indecency" meant contrary to decency in relation to "exposure, conduct or gesture" in accordance with the standards which prevail in the county at the time." He was also of the view that there was nothing indecent in the human frame as, "that would be a libel on nature." But that was subject to obvious exception.

By way of example the judge then had regard to conventions which attached to works of art, though, as he pointed out, there had been differences of opinion as to how far the convention ought to extend. "The concession," he stated, "if such it is to be regarded, is hedged in certain ways. The nude must be impersonal." Thus, Lord Sands went on, "[a] picture of the nude which a man might display in his drawing room as a work of art would, however perfect in that regard, be regarded as grossly indecent if the person depicted were his wife or daughter." That, in the judge's view, immediately illustrates the relativity of the notion of indecency and the difficulty of pronouncing upon it apart from surrounding circumstances.[7] Lord Sands then turned his attention[8] to the altogether, *prima facie* at least, clearer notion

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[6] The issue of "physiological function," as opposed to sex and D H Lawrence's work will be mentioned later in the paper. Below text at n 60*ff*. Lord Sands also noted that the words "decent" and "indecent" were frequently used in relation to matters other than those to which he had made specific allusion.

[7] In the judge's *ipsissima verba*, 1931 SLT 94 at 96, "[a] picture of Mrs Brown, to which only the very strait laced might take exception if displayed as a work of art in a remote city, might be grossly indecent if displayed in Brown's drawing room in Edinburgh."

[8] Ibid 97.

of "obscenity."[9] The other judges, Lord Justice-General Clyde and Lord Blackburn, were more concerned with the operation of the particular statutory provision.[10] Although the former was doubtful[11] of the relativity argument advanced by Lord Sands and considered that, where the indiscriminate exposure of pictures was calculated to prejudice good morals and to suggest impure thoughts to the beholder, he had difficulty "in seeing why it should not apply to the equally indiscriminate exhibition to the public view of representations of the human form in picture galleries, and indeed in many public places still more generally accessible."

It may be thought strange to begin with *McGowan* v *Langmuir*, but it is the only genuine attempt to distinguish the notions in an approximately relevant legal system; it has been anthologised[12] and noted in a later case of direct relevance to Lawrence's situation.[13]

In Scots Law, there is a wide *imprimatur* for the denunciation and punishment in Macdonald's statement[14] that "[a]ll shamelessly indecent conduct is criminal." Even though it may be open to serious question, it has been adopted by the High Court of Justiciary in another case.[15] More important, there is an analogue in English law which might have been, though in the event was not, used against Lawrence in respect of both his poems and paintings. In *R v Mayling*,[16] Ashworth J, in the English Court of Criminal Appeal stated that

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9 Below n 23.

10 *Glasgow Corporation Order Confirmation Act* 1914 s 21.

11 1931 SLT 94, 99.

12 See, for example, Louis Blom Cooper and Gavin Drewry (eds), *Law and Morality* (1976) 213 *ff*.

13 *R* v *Stanley* [1965] 2 QB 327, 333 (Lord Parker CJ). See below n 74.

14 JHA Macdonald, *Practical Treatise on the Criminal Law of Scotland* (1867) 206. It does not seem as though Macdonald could be accorded the status of an institutional writer. See David M Walker, *Oxford Companion to Law* (1980), 791.

15 *McLoughlan* v *Boyd* 1934 JC 19.

16 [1963] 2 QB 717, 724.

> [i]t is convenient first to consider the offence alleged to have been committed by the defendant. It is described in the indictment as 'committing an act outraging public decency' and it arises at common law and not out of any statute. In the judgment of this court, it is now well established that an offence so described is punishable at common law and, indeed, it was not contended on behalf of the defendant that no such offence existed.

Mayling, it is certainly true, had little factual connection with the subject matter of this paper itself,[17] but the more general tenor of the offence which appears to date back to the 17th Century[18] has, as will be later seen,[19] some analogue with Lord Sands's discussion as earlier noted.[20]

Having, thus, noted the law's uncertainty about what the lesser, as it seems broadly to have been accepted, allegation of indecency entails, it does seem as though the law has fared little better in its view of the greater, or so it might seem, allegation of obscenity. This paper is not seeking to provide a detailed disquisition on the notion of obscenity as such, as that has been attempted elsewhere,[21] but seeks to draw attention to the more than slightly confused entity to which the hypothetical rhetorician in *Nettles* refers.[22]

The test had been enunciated by Lord Cockburn CJ in *R v Hicklin*[23] where it had been said that, "I think the test of obscenity is this, whether the tendency of the matter charged

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17 Being concerned with observed indecent behaviour in a public lavatory.

18 See *R* v *Sidney* (1663) 1 Sid 168.

19 Below n 104.

20 Above n 2 *ff*.

21 See, for example, Norman St John Stevas, "Obscenity and the Law" [1954] *Criminal Law Review* 817, D G T Williams, "The Control of Obscenity" [1965] *Criminal Law Review* 471, 522; Graham Zellick, "Films and the Law of Obscenity" [1971] *Criminal Law Review* 126.

22 Above n 1.

23 (1868) LR 3 QB 360, 371.

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." Hicklin, as such, is important for the purposes of this paper, not because of its subject matter,[24] but for its procedural history. It involved an appeal from the decision of a recorder quashing the order of the justices for the destruction of particular pamphlets under legislation then applicable.[25] Justices were to figure prominently in one of the incidents involving the works of D H Lawrence.[26] In *Hicklin*, the order of the justices was ultimately upheld. Further, as is now well known, Lord Cockburn CJ's test has since been incorporated into statute, so that s 1(1) of the *Obscene Publications Act 1959* provided that,

> For the purposes of this Act an article shall be deemed to be obscene if its effect or (where the article comprises two or more distinct items) the effect of any one of its items is, if taken as a whole, such as to tend to deprave and corrupt persons who are likely, having regard to all relevant circumstances, to read, see or hear the matter contained in it.

But is that genuinely what Lawrence's speaker in *Nettles* had in mind? There is certainly evidence from the case law which suggests that, in all probability, it was not. In *DPP v Whyte*,[27] Lord Wilberforce suggested that it was not, when he said that, prior to that case, the words of Lord Cockburn CJ had largely been ignored – the courts simply considered whether

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[24] The case was concerned with copies of a certain pamphlet entitled, "The Confessional Unmasked; showing the depravity of the Romish priesthood, the iniquity of the confessional, and the questions put to females in the confession." It seemed that the appellant did not keep these works for gain or profit, but for the purpose of exposing what he considered to be the errors of the Catholic Church.

[25] *Obscene Publications Act 1857* (UK).

[26] Below n 102.

[27] [1972] 3 All ER 12, 18.

the relevant publication was obscene and any tendency to deprave or corrupt was presumed. That view had earlier been adopted by Windeyer J of the High Court of Australia in *Crowe* v *Graham*:[28]

> "Writings are obscene," he said, "by reason of what they describe, express or bring to mind, and the way and the words by which they do it. It is assumed incontrovertibly by the common law that obscene writings do deprave and corrupt morals, by causing dirty mindedness, by creating or pandering to a taste for the obscene."

In *Whyte*, Lord Wilberforce stated that the statutory provision does not deal with articles *which merely shock*,[29] however many people.

In *Crowe* v *Graham*, Windeyer J emphatically took the view[30] that, "whatever secondary or additional meanings have been laid upon the word obscene, it has not lost the meaning of filthy, bawdy, lewd and disgusting." In that context it is, perhaps, not altogether surprising that Windeyer J declined to discuss the meaning of "indecent" which also occurred in the applicable Australian legislation.[31]

Those are not the sole, nor most immediate authorities (Australian case law is, at best, peripheral to the main thrust of the argument). In *R v Anderson*,[32] the English Court of Criminal Appeal quashed a conviction where the trial judge had *inter alia* directed the jury that "obscene" meant "'repulsive', 'filthy', 'loathsome', or 'lewd'."[33] *Anderson* involved the, by now, notorious *Oz* "School Kids" issue and the views expressed by the trial judge would certainly have

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28 (1968) 41 ALJR 402, 409.

29 Author's emphasis.

30 (1968) 41 ALJR 402, 409.

31 *Obscene and Indecent Publications Act* 1901-1955 (NSW) s 16.

32 [1972] 1 QB 304.

33 Ibid 314 (Lord Widgery CJ).

been endorsed by one commentator in a legal journal[34] who described the defendants in *Anderson* as "revolting creatures" and "admittedly perverted and evil young editors." At the same time, those very predictable feelings of revulsion gave rise to another issue.

It was argued by distinguished counsel[35] that,[36]

> many of the illustrations in the magazine were so lewd and unpleasant that they would shock in the first instance and then tend to repel. In other words, it was said that they had an aversive effect and that far from tempting those who had not experienced the acts to take part in them, they would put off those who might be so tempted to conduct themselves.

Indeed, the same counsel had successfully argued that proposition in an earlier case.[37] This leads us to the rather strange conclusion that an article might be obviously obscene as judged by the standard of Lawrence's entitled and rhetorical critic, but not in its legal sense. Indeed, its very colloquial obscenity might actually preclude its legal obscenity!

The cases and issues which have been hitherto discussed have, in effect, entirely related to sexual conduct but, as will be later observed,[38] that is not the entirety of the subject matter of the paper by any means. Therein lies another problem: in one case,[39] it had been clearly held that a particular book could be considered obscene if it suggested that the effects of drug taking were such that the practice might be regarded as pleasant or favorable. One could substitute any practices which might be enjoyed by some individuals for the drug

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34 Theo Ruoff, "Links With London" (1971) 45 *Australian Law Journal* 640, 641, 642.

35 John Mortimer QC.

36 [1972] QB 304, 315 (Lord Widgery CJ).

37 *R* v *Calder & Boyars Ltd* [1969] 1 QB 151.

38 Below n 55.

39 *Calder (John) Publications Ltd v Powell* [1965] 1 QB 509.

abuse which gave rise to that prosecution. In turn, this gives rise to the position of the decision maker; it is quite clear, from some of the decisions of which mention has already been made,[40] that it is a matter for the trier of fact – that is, in a serious case for the jury, but in a less serious case, the judge or magistrate alone. In other words, there is no room for expert opinion (it must be remembered that it is the nature of the concept which presently concerns us, rather than any statutory defences, such as "public good"[41]). This is probably inevitable, as the decision of the House of Lords in *DPP v Jordan* held,[42] that expert evidence was inadmissible where, in effect, as Lord Kilbrandon put the matter,[43] the evidence was to be to the effect that it might be good for the public to be depraved and corrupted, quite regardless of any literary or artistic merit which the article in question may or not possess.

That case and its peculiar submissions notwithstanding, the situation of a trier of fact may not be in any way less problematical. This point was effectively raised by Stable J in *R* v *Martin Secker and Warburg*[44] who stated that, "[t]he charge is that the tendency of the book is to corrupt and deprave. Then you say: 'Well, corrupt and deprave whom?' to which the answer is: those whose minds are open to such immoral influences and into whose hands a publication of this kind may fall. What exactly does that mean"?

That means (if not a deal more) that questions for the trier of fact may be of an especially speculative character. It should be readily apparent that the same article may or not be obscene depending on the context of its publication. Thus, many publications may well tend to deprave or corrupt

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40 See *Calder & Boyars*, above n 37; *Anderson*, above n 32.

41 See, for example, *Obscene Publications Act 1959* s 4; *R* v *Penguin Books Ltd* [1961] *Criminal Law Review* 176.

42 [1976] 3 All ER 775. For comment, see Frank Bates, "Pornography and the Expert Witness" (1978) 20 *Criminal Law Quarterly* 250.

43 Ibid 785.

44 [1954] 2 All ER 683, 686.

fourteen years old schoolgirls from a relatively sheltered environment. Hence, a distributor who sells such an article to girls at, for instance, Ascham School in Sydney may very well be obviously guilty of an offence. However, were he to sell the same article at, for instance, the Newcastle Club (of which he might be a member) or Western Suburbs Leagues Club, that might not be so. The market may also be relevant to the seller's intent, howsoever relevant that itself may be.[45]

II

Even assuming some awareness of the legal background, the author, artist or distributor is not going to find decision making, in the same way as the trier of fact,[46] very easy whatsoever he might seek to do, and this is exactly what happened to D H Lawrence. In late 1928 and early 1929, the writer's lot, as described by Worthen,[47] was not unhappy – in his own words about his environ: "it's sunny here all the time, and quiet and very pleasant: the people are all very nice: why should one hurry away to something worse!"[48]

Yet, though things were seemingly almost idyllic in French Bandol, the effects of England were not long to be awaited. In early January 1929, a registered envelope which contained his two typed copies of the almost completed collection of poems to be known as *Pansies* was opened by the English postal authorities. The official reason, as described by Worthen,[49] was a random search of the mail for the purpose of checking,

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[45] Ibid 688. There, Stable J told the jury that, "[y]ou will have to consider whether the author was pursuing an honest purpose and an honest thread of thought or whether that was all just a bit of camouflage ...". That was regarded as being too favorable to the defence.

[46] Above n 40.

[47] J Worthen, *D H Lawrence: The Life of an Outsider* (2005) at 388 *ff*.

[48] The only real problem, in Worthen's view, was that Frieda, his wife, wished for a place of her own: ibid 388.

[49] Ibid 388.

"whether letters or other matter not conveyed at that rate" were in the package. The reality, his biographer notes, was rather different: ever since most of the copies of *Lady Chatterley's Lover*, which had entered England before the authorities were alerted, any package from Lawrence was suspect.

There was to be an immediate reward for the authorities in Lawrence's introduction, which is worth more than a passing comment, given the earlier discussion. On a general note, in the foreword to Pansies, Lawrence wrote that

> [t]hese poems are called *Pansies* because they are rather *Pensées* than anything else. Pascal and Le Bruyére wrote their *Pensées* in prose, but it has always seemed to me that a real thought, a single thought, not an argument can only exist easily in verse, or in some poetic form.

Yet the initial interest was almost certainly generated by a passage in "Introduction to Pansies," where Lawrence discusses the, "poor simple scapegoat words representing parts of man himself; words that the cowardly and unclean mind has driven out into the limbo of the unconsciousness, whence they return upon us looming and magnified out of all proportion, frightening us beyond all reason."

To illustrate a proposition which many of us, today, might regard as self-evident, Lawrence refers to the well-known poem of Dean Swift's, "Celia", in which every stanza ends with, in Lawrence's own words, the "mad, maddened refrain": "But – Celia, Celia, Celia shits!" Swift's coprophobia is, again, by now too well known to need documentation. Nevertheless, the typescripts were seized and sent to the Home Office and the Home Secretary, Sir William Joynson-Hicks had been advised that, "there is no possible doubt that these [packages] contain indecent matter and, as such, are liable to seizure."[50]

Yet on the strength of the Swift quotation, is it possible in law, with the benefit of hindsight (howsoever dubious that

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[50] Ibid 389.

might be) to justify the Home Office's comment to its Minister? In *McGowan* v *Langmuir*, earlier discussed,[51] Lord Sands seemed to see indecency and obscenity as part of a continuum, though he did make an obiter reference to physiological function.[52] It ought to be quite clear from Stable J's comment in *Secker and Warburg*[53] that the book involved did,

> deal with candour or, if you prefer it, crudity with the realities of human love and of human intercourse. There is no getting away from that, and the Crown say: 'Well, that is sheer filth' is it? Is the act of sexual passion sheer filth? It may be an error of taste to write about it. It may be a matter in which, perhaps, old-fashioned people would mown the reticence that was observed in these matters yesterday, but is it sheer filth?

There is surely a conceptual difference between the activity discussed by Stable J and that which aroused the interest of the Home Office. Lawrence's comments in his "Introduction to Pansies" are surely quite apposite. As regards Swift, Lawrence wrote that,

> [h]is arrogant mind could not see how ridiculous his revulsions were. He couldn't even see how much worse it would be if Celia didn't shit. His physical sympathies were too weak, his guts were too cold to sympathise with poor Celia in her natural functions. His insolent and sickly squeamish mind just turned her into a thing of horror, because she was merely natural and went to the W.C.

Put another way, is transference of revulsion, at whatever level, from one bodily function to another in any wise to be justified? Has the law seen anything similar? Of course, contextually and regrettably, it has. It may be thought that the following discussion represents one author, at any rate,

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[51] Above n 2 *ff*.
[52] Above n 6.
[53] Above n 44, 687.

going, as it were on a "frolic of his own".[54] But, though it arises in a very different context, it may be, albeit rather nastily, illustrative. The issue before the Full Court of the Family Court of Australia in *Re P and P*[55] was the vexed matter of the sterilisation of a young woman with a substantial intellectual disability. In that context, the issue arose of sterilisation as a means of menstrual management. The Court[56] did not disagree[57] with the view which had been expressed at first instance that, were that the only factor favoring sterilisation in the instant case, then the operation could not be justified on that ground alone.

The Court then went on to note a comment made in a report by the Family Law Council[58] regarding an apparent inconsistency of approach to menstruation with other physiological functions, such as urinary and faecal control. The Court was of the view that that was, "an invalid comparison since the latter are necessary to maintain life and it could not be seriously suggested that colostomies are an appropriate alternative. Menstruation on the other hand has particular relevance to reproductive functions, but not to the maintenance of life." Unfortunately, the Court was seriously mistaken in its medical history.[59]

In Alex Comfort's remarkable book, *The Anxiety Makers: Some Curious Sexual Preoccupations of the Medical Profession*, he

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54 *Joel* v *Morison* (1834) 6 C & P 501, 503 (Parke B).

55 (1995) FLC 92-615.

56 Nicholson CJ, Fogarty and Finn JJ.

57 (1995) FLC 92-615 at 82, 149.

58 Family Law Council, *Sterilisation and Other Medical Procedures On Children* (1994) 48. For comment on the menstruation taboo, see Peter Fryer, *Mrs. Grundy: Studies in English Prudery* (1963), 71*ff*.

59 *Re P and P* marked a serious disagreement, not merely over that rather peripheral matter, between the Court and the Family Law Council. Such disagreements are rare; for comment on the Council s achievements, see Bill Hughes, *The Family Law Council 1976-1996: A Record of Achievement* (1996).

describes the[60] remarkable career of Sir William Arbuthnot Lane. In cases of chronic intestinal status, generally better known to us as constipation, Lane not merely urged colostomy, but carried it out. In Comfort's *ipsissima verba*:[61]

> To treat the disorder he resorted with typical boldness to excision of the colon – a heroic measure which he carried out with superb skill. Cases of all kinds where the cause of the disease was obscure, from rheumatic fever in children to thyroid disease in adults, trusted Lane to remove their colons. Most of them survived the operation; some found their health improved by the ordeal.

From the point of view of this paper, the content of the poems in *Pansies* themselves, as opposed to the introduction,[62] it is clear that the indecent/obscene content is limited. Worthen, relying on Pollnitz, notes[63] that the words indicative of "indecent material"[64] as the advice to the Home Secretary noted were scant enough. These were: "turds" and "turd" in "The Jeune Fille" and in "Be a Demon," and "arse" and "membe" in "Demon Justice." There were, of course, some rather more obliquely sexual references in other poems – such as allusions to "Lady Jane," the significance of which will not have been lost on commentators on Lawrence[65] – though, given the apparent need for the instantly obvious they are, and would be, less, at least, likely to attract the attention of scrutineers of the kind who reported to Joynson-Hicks.

Yet that was, inevitably, not the end of the story. On 28 February 1929, there was a Parliamentary Debate on the

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60 (1967) 134 *ff.*

61 Ibid 135.

62 Above n 50.

63 Above n 47, 489.

64 Above n 50.

65 See references to "John Thomas" in *The Little Wowser, To Clarinda.* It will be remembered that *John Thomas and Lady Jane* was one of the early working titles of *Lady Chatterley s Lover.*

Seizure of *Pansies*,[66] most of the relevant questions on the order paper standing in the politically sensitive name of Miss Ellen Wilkinson.[67] The recipient was the Home Secretary, Sir William Joynson-Hicks, later Viscount Brentford, who has already received mention,[68] a person whom Lawrence, in a contemporaneous letter,[69] described as an "imbecile."

In that context, in response to a question from Mr. Frederick Pethick-Lawrence, later Baron Peaslake,[70] the Home-Secretary had stated that, "[a]t present, there is no censorship. It is not until a book or any other obscene document is brought to my notice that I exercise my position. A censorship would imply that every book should be read by the body of censors, which would be an impossible position." He was to reiterate that in answer to a later question. As regards *Pansies*, he stated that he had been advised that there was no doubt that the relevant typescripts contained indecent matter and as such, "are liable to seizure. I have, however, given instructions that they shall be detained for two months to enable the author to establish the contrary if he desires to do so." That response should be taken together with an evasive and negative response to the question as to whether, before books were seized, officials had any literary advice as to their nature.

The same questioner then inquired whether, from Sir William's answers to those questions and others, some person or persons came to a preliminary decision that the book was of an indecent character. Pethick-Lawrence then went on to inquire on behalf of Miss Wilkinson: "Who are these persons who are entitled to give this provisional opinion and what qualifications have they to make a literary discrimination of this kind?" The Home Secretary's response was again less

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66 Quoted in Edward Nehls (ed), *D H Lawrence: A Composite Biography:* Volume 3, 1925-1930 (1959), 308 *ff.*

67 (1891-1947). Labour MP for Middlesbrough East (1924 1931).

68 Above n 50.

69 2 March 1929 to Mabel Dodge Luhan.

70 Labour member for Leicester West. Miss Wilkinson was unable to attend the House owing to a family bereavement.

than congenial:

> In the first place, in this case the Postmaster-General makes the first determination that this is prima facie and a case of indecency. He then sends it to me, and, if I agree, I send it on to the Director of Public Prosecutions. It is not a question of literary merit at all, and, if the hon. Member has any doubt, I will show him this book in question. It contains grossly indecent matter.

If the then Home-Secretary is to be regarded as correct, community standards have changed more radically than might usually be accepted. The previous discussion seems to suggest a pre-adolescent scatological prurience coupled with an obliquity which was unlikely to be instantly recognisable.[71]

The questioning's emphasis then changed to the possible violation of sealed postal packets.[72] The issue of the use of the mails tends to show, it is submitted, that legislature and judiciary have learnt little from these strange exchanges. If one seeks to be charitable, one can only say that the Home Secretary had found himself in a situation where he was defending indefensible practice in a scarcely defensible socio-legal historical context. Not, perhaps, altogether surprisingly, this strange continuum did not end with the questions asked in Parliament.

The effectively circular nature of the debate surrounding *Pansies*[73] is well illustrated by the decision of the English Court of Criminal Appeal in *R v Stanley*,[74] which dealt with the transmission of articles through the post, a major issue in the

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[71] See above n 55 *ff*.

[72] Under the directed questioning of Mr Charles Ammon, later Baron Camberwell, Labour member for Camberwell North.

[73] The authors have drawn on the privately printed "definitive edition" 1929, which contains some fourteen poems which do not appear in the "trade edition", published by Martin Secker in the same year; see F W Roberts "A Note on the Text" in *D.H. Lawrence: Complete Poems* (1964).

[74] [1965] 2 QB 327.

Parliamentary questions.[75] *Stanley* dealt with the operation of s 11 of the *Post Office Act 1953* (UK) which made it an offence to, "send or attempt to send or procure to be sent a postal packet which ... encloses any indecent or obscene print, painting, photograph, lithograph, cinematograph film, book, card or written communication, or any indecent or obscene article whether similar to the above or not." The way in which that legislation was drafted suggests that its framers had taken the conceptual issues raised by the *Pansies* controversy into scant, if any, account. This is the more so when the judgment of Lord Parker CJ is further taken into consideration.

In *Stanley*, the jury had reached the conclusion that the articles in question were not obscene, but that they were indecent. It was, hence, argued before the appellate court that the words meant exactly the same and that an alternative verdict was not possible. The basis of that argument was the judgment of Lord Cooper in another Scots case, *Galletly v Laird*.[76] There, Lord Cooper, the pre-eminent Scots judge of his generation,[77] had said[78] that he was willing to accept that, in common parlance, "obscene" was a stronger epithet than "indecent" and, even, to accept the analysis of Lord Sands in *McGowan v Langmuir*,[79] but, at the same time, he did not consider that those considerations played any part in the drafting of the legislation. In Lord Cooper's opinion, the words had been employed tautologically, "to convey a single idea and a perfectly clear idea at that, and it would be palpably absurd to ask courts to wade through such a collection as has been produced in these cases for the purpose of uselessly classifying the condemned material into different grades of indecency."

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[75] Above n 72.

[76] 1953 S.C. (J) 16.

[77] See T B Smith, "The Contribution of Lord Cooper of Culross to the Law of Scotland" (1955) 67 *Judicial Review* 249.

[78] 1953 S.C. (J) 16, 29.

[79] Above n 2.

Lord Parker CJ did not regard[80] Lord Cooper as saying anything which could not be gleaned from his *ipsissima verba* – that is, that the two words were expressing the same idea but in varying degrees. Further,[81] the Lord Chief Justice then expressed entire agreement with the view of Lord Sands in *McGowan* v *Langmuir*[82] and did not imagine that Lord Cooper was saying anything other than that, as the words conveyed the single idea, it was permissible for the charge to be made in the alternative. He went on to say[83] that, "an indecent article is not necessarily obscene, whereas an obscene article almost certainly must be indecent." However, that statement has clearly failed, despite the Lord Chief Justice's words, to take into account conceptual distinctions which, though they might have escaped the attention of the colloquial rhetorician whose views encapsulate the title of this paper, ought not to have been treated so evasively by lawyers or those responsible for the law's administration.

III

Again, as the title of this paper suggests, the unhappy tale is continued, albeit in a different medium. As Worthen describes[84] the initial situation, "the main excitement of life in the summer of 1929 was over his paintings; the book of reproductions to be published around the time of an exhibition being staged in London." Lawrence had been painting in earnest for the previous three years; whatever might have been the deficiencies in his painting,[85] Dorothy Warren, the owner of a London gallery was prepared, at least, to exhibit

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80 [1965] 2 QB 327, 332.
81 Ibid 333.
82 Above n 5.
83 Ibid 334.
84 Above n 47, 398.
85 Below n 96 *ff*

them. At this point it is necessary to introduce a new, and rather extraordinary, character into this intriguing (if scarcely edifying) story – he is Sir John Squire. Squire has been appropriately epitomised by Frank Muir in the *Oxford Book of Humorous Prose* (1992) in which Squire prominently figures – though not as a contributor.[86] Muir describes Squire in these terms:[87]

> a literary journalist, Georgian poet and critic ... [who founded] a magazine called the London Mercury to nurture Georgian poetry and new authors, which he managed to do quite well in every respect except financially. He was no businessman but he was a tremendous enthusiast, not only for poetry of the hearty, 'foaming tankard' school, but also for architecture and cricket.

Assuming Muir's epitome to be accurate, and there is no reason to suppose that it is not, one could not confidently predict a harmonious literary relationship between Squire and Lawrence.

So, unsurprisingly, it proved. Although Squire might, today, be regarded as a figure of ridicule as indeed, he was by some contemporaries,[88] there can, equally, be no doubt that, by others, he was regarded as personifying a particular variety of desirable middle-class values. As such, he was to feel the wrath of Lawrence himself. McGinty has discussed[89] the nature of the relationship between Squire and Lawrence. "Lawrence's attitude to Squire," he writes, "developed over time into a real and complex hatred. Squire became elevated

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[86] Squire is parodied as Mr Hodge in the extract from E A MacDonell s novel *England, Their England* (1933) which contains the memorable and well known depiction of the village cricket match, involving Squire and friends.

[87] F Muir (Ed), *The Oxford Book of Humorous Prose* (1992), 721.

[88] Above n 86

[89] Ronan G McGinty, *D H Lawrence's Poems: The Contemporary Reception* (Unpublished PhD thesis, University of Newcastle (NSW), 2005) 226.

in [Lawrence's] mind as the symbol of censorship and class constraint, as the living face of bourgeois criticism. On the other hand, Squire's reviewing of Lawrence's work ... evidenced a scarce–withheld venom". All that, although, on the surface at least, the relationship had begun cordially enough in 1914. By 1924 however, Lawrence had told Martin Secker[90] that, "Jack Squire is a suburban rat, but then, so are they all." Indeed, both in *Nettles*[91] and *More Pansies*,[92] Lawrence responded with especial vitriol against both Squire and the *London Mercury*.

Although most of Lawrence's ire was directed at Squire's critical comment on his poems, these last comments were prompted by the reception of his pictures. In Lawrence's *ipsissima verba*:[93] "I hear that dirty dog J C Squire gave the final blow to my pictures in his dish-rag *Mercury*. I must find a way of knifing him – tell me if you ever see a chance."

Yet, as regards the pictures, Squire had a reputable-sounding ally: Thomas Wade Earp (1892-1958) was an art critic who was the author of several books on contemporary painting[94] as well as being a translator of the French writer Stendhal. He was as far from sympathetic to the focus and the nature of Lawrence's painting as Squire had been to Lawrence's later[95] poems. Earp was especially and noisomely critical[96] of Lawrence's own "Introduction to These Paintings", the thesis of which he encapsulates in the following scabrous terms:

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90 Ibid 227.

91 "London Mercury".

92 ["Mr Squire"].

93 Quoted in McGinty, above n 89, 228. Letter to Laurence E Pollinger.

94 *The Gate of Bronze* (1918); *Still Life and Flower Painting* (1930); *Augustus John* (1934); *Van Gogh* (1934); *The Modern Movement in Painting* (1935); *French Painting* (1945).

95 Squire was less aggressively hostile towards, for instance, *Birds, Beasts and Flowers* (1922). See McGinty, above n 89, 118.

96 T W Earp, "Mr. Lawrence on Painting" *The New Statesman* 33, August 17th 1929, 578.

> Sex-repression, caused by the fear of disease has robbed us of the power both of artistic creation and appreciation. 'We, dear reader, you and I, we were born corpses and we are corpses.' Such is Mr. Lawrence's general thesis and such his general nonsense. In order to make our poor dead flesh creep, he turns history into a dirt track and rides round it on a hobby horse.

Earp was likewise critical of Lawrence's technical abilities when, after conceding[97] evidence of "imagination and ... passable draughtsmanship," in the paintings, he put forward the opinion that the "alternate muddiness and garishness of colour, and the clumsiness with which the pigment was laid upon the canvas, revealed a basic inability in mere picture making."

Just as he had done with Squire, Lawrence levelled his contempt, in *More Pansies*[98] on Earp:

> I heard a little chicken chirp:
> My name is Thomas, Thomas Earp!
> And I can neither paint nor write,
> I only can set other people right.

In turn Lawrence was taken to task by Philip Trotter for questioning Earp's seriousness of purpose.[99]

However, the rest is history, and well-known history at that: the exhibition itself was described, in terms redolent of those discussed earlier in the paper by the same Philip Trotter:[100]

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[97] Ibid.

[98] ["Thomas Earp"].

[99] Letter to the Editor of *The New Statesman*, 8 August 1957. See Nehls, above n 66, 715. Trotter was Dorothy Warren's husband, above n 85.

[100] Quoted in Nehls, above n 66, 340.

> Throughout the ... congestion three schools were clearly distinguishable: those who condemned the pictures as obscene, but split wide on the question of repressive action; those who defended the pictures as not obscene, and/or asked what, in any case, was meant by obscene and what is its legal definition. The third group, welcome only for its non-use of the hideous word obscene, had come in search of dirty pictures and, in varying degrees of forcefulness, expressed disgust at finding none ... The daily litter of cast-away catalogues on the stairs and landings was interpreted as a manifestation of outraged modesty; but disappointed prurience was at least an equal contributor.

As Trotter's account suggests, the exhibition attracted considerable attendances. In *Nettles*[101] Lawrence described the public curiosity: "Thirteen thousand people came to see / my pictures, eager as the honey bee." Ultimately the exhibition was interrupted by police on 5 July 1929.[102] Thirteen paintings were seized and impounded until a hearing the following month. As well as the paintings, four copies of the Mandrake Press book of reproductions of Lawrence's paintings were also seized.[103]

The hearing took place on 8 August 1929 before Mr Frederick Mead at Marlborough Street Police Court. Trotter was concerned by the possible nexus between Mead and Herbert G Muskett, the head of Worther and Sons, solicitors for the police. In 1915, Muskett had appeared for the police in the suppression of D H Lawrence's novel, *The Rainbow*.[104] Mead, described by Lawrence in *Nettles* as, "Mr Mead that old, old lily,"[105] was eighty-two and whose, in Trotter's words, "preferred victims," were the elderly and often distinguished

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[101] "13, 000 People."

[102] Philip Trotter likewise described the police intervention. See Nehls, above n 66, 342 ff.

[103] As was a book of William Blake's Pencil Drawings. See Nehls, above n 66, 345.

[104] Ibid 354.

[105] "Innocent England."

perpetrators of nocturnal park incidents.[106] The Gallery was represented by St John Hutchinson KC, an early civil libertarian. Yet, as Trotter says, the whole matter was – unlike the questioning of Joynson-Hicks in Parliament[107] – something of an anticlimax.[108]

In the end, Muskett drafted an undertaking with which Mr Mead and Mr Hutchinson agreed. The case was to be adjourned *sine die*, the pictures were to be restored to their owners and the books of reproductions destroyed. As was clear from Lawrence's tongue-in cheek suggestion in "Innocent England" in *Nettles*, he recognised the major affront to the public as his inclusion of pubic hair on the human object of his work. All could have been righted, he claimed, by the addition of

> A fig leaf; or, if you cannot find it,
> a wreath of mist with nothing behind it.
>
> A wreath of mist is the usual thing
> In the north, to hide where the turtles sing.

Indeed, as Worthen has stated,[109] Mr Mead's only real contribution was his view that the paintings' obscenity and their value as works of art were quite independent of one another. This despite the fact that St John Hutchinson had proposed, with the aim of showing that the paintings were serious works of art, Sir William Orpen, Mr Glyn Philpot, Mr Augustus John and a number of art professors.[110] Perhaps one should give Lawrence the last word from *Nettles*:

> Ah the clean waters of the sky, ah! can you wash
> away the evil starings and the breath

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[106] For an instance, see Nehls, above n 66, 719.
[107] Above, n 66 ff.
[108] Quoted in Nehls, above n 66, 386.
[109] Above n 47, 400.
[110] See Nehls, above n 66, 386.

of the foul ones from my pictures? Oh purify
them now from all this touch of tainted death! [111]

Nettles, was Lawrence's response to the Warren Gallery events, though he inevitably extrapolates from them. As fate would have it, he was denied the opportunity to gauge the effect of his vitriol; the poems were not published (by Faber & Faber as a pamphlet) until 13 March 1930, eleven days after his death.

IV

Whether they have read the novel or not, most people have heard much about *Lady Chatterley's Lover* and rather less of *The Rainbow* and *Women in Love*, all of which, at various times were *causes célèbres*. Yet the events surrounding *Pansies* and the Warren Gallery's exhibition are of their own intrinsic interest. The first issue which arises from both incidents is the question of process, which bears instantly on the issue of moral panic.

It will have been quite apparent that the reaction to both the instances discussed in this paper were at once characterised by what might be immediately and legitimately described as acute over-reaction. It seems more than likely that the moral panic was precipitated simply by the fact that the central figure was the notorious D H Lawrence. As has already been observed,[112] the poems in *Pansies* are generally innocuous. As regards the paintings, Worthen has pointed out[113] that there is a particular focus on pubic hair in some of his work, but, once, again, the public effect seems wholly to have been disproportionate to the matter itself.

How far the panic is attributable directly to Lawrence's habitual violation of middle-class values might seem hard to

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[111] "Give me a Sponge."
[112] Above n 62 *ff*.
[113] Above n 47, 399-400.

tell insofar as it relates to the issues with which this paper has been concerned. A full reading of *Pansies* – unlikely to have been attempted by the post office officials involved in the initial seizure of the typescript[114] – underscores several items of speculative interest. One poem,[115] for instance, contains the following:

> Full of seething, wormy, hollow feelings
> rather nasty –
> How beastly the bourgeois is!

Another mocks[116] the "Oxford voice" or "worse still / the would-be-Oxford voice" and another[117] the self-consciously superior. Last, he writes:[118]

> The middle classes
> are sunless.
>
> They have only two measures:
> mankind and money,
> They have no reference to the sun.

Of money, a middle-class icon, he asserts:[119]

> Money is our madness, our vast collective madness.
>
> And of course, if the multitude is mad
> The individual carries his own grain of insanity around with him.

It would be easy to transfer the outrage generated by these attacks on treasured reference points or images to issues

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[114] Above n 49 *ff*.
[115] "How Beastly the Bourgeois is"
[116] "The Oxford Voice."
[117] "To be Superior."
[118] "The Middle Classes."
[119] "Money-Madness."

which would more generally be regarded as offensive in more universal and traditional form and substance. It is unclear as to whether that quantum leap was ever made but it is surely not too long a bow to draw, especially when one remembers that a source of the outrage generated by *Lady Chatterley's Lover* was likely to have been inflamed to a large extent by the difference in class of the main protagonists.

What is certainly true is that the agents of the outraged were those traditionally employed by the bourgeoisie. First, politicians with establishment attitudes and processes of judgment (Joynson-Hicks[120] is a graphic example). Second, the police forces whose general heavy footedness over the Warren Gallery matter has been described by Trotter[121] in some detail. Third, literary journals with less than liberal editorial policies. Comment has already been made regarding J C Squire,[122] and there can be little doubt that the values espoused by, and personified in him were those of the bourgeois *literati* who would find Lawrence outrageous, a pernicious upstart from the northern coalfields.

Given that general context, it is probably appropriate to conclude this paper – which is a rather unusual combination of legal commentary and socio-literary history - with Lawrence's comment on the emasculating power of the bourgeoisie, at least in regard to literary endeavour. In *Nettles*, he had this to say about Squire and the *London Mercury*[123]:

> Oh when Mercury came to London
> they 'had him fixed.'
> It saves him from so many undesirable associations.
>
> And now all the Aunties like him so much
> because, you, see, he is 'neither, my dear!'

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[120] Above n 68.

[121] Above n 101.

[122] Above n 86 *ff*.

[123] "London Mercury." "London Mercury" follows on from "Puss Puss!" which was neither a gentleman nor a lady, so as to "save him from so many undesirable associations." It precedes "My Little Critics", who have been likewise fixed with the same aim!