



Who or what was on trial in *The Trial of Lady Chatterley*?

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One of the things *The Trial of Lady Chatterley* highlights is the amazing flexibility of the English language. Words are manipulated by the judge, the prosecution, the defence and many of the expert witnesses, not to mention D. H. Lawrence's own efforts to change the meanings and associations of certain words and acts. The meaning of words is always important in law as their interpretation is a strong tool for both defence and prosecution. Additionally as the meaning and merit of the words and content of *Lady Chatterley's Lover* are on trial the ability to fix and share meanings becomes of even greater importance than in, say, the trial of a driving offence.¹ Consequently, this essay shall show that what is on trial in *The Trial* is whether the ambiguities and fluidity of meaning in the Obscene Publications Act, in *LCL* and in literary criticism undermine the Act's role: the ability to differentiate between texts for the public good and texts which are not for the public good due both to their level of obscenity and the extent of their literary merit.² To do this I will explore three kinds of meaning and their usefulness to, and effect on, the Act. Lawrence conceives of two kinds of meaning in his essay 'Pornography and Obscenity', mob-meaning and individual-meaning, and I suggest a third: official meaning.³ I will also look at the relationship between mob and individual meaning and how it can be both problematic and helpful for the Act. Ultimately I shall find that the Act's dependence on words whose official-meaning is so problematic as to be almost non-existent gives the jury a lot, perhaps too much, responsibility. Accordingly the role of experts as advocates and interpreters of individual-meaning for a jury who are encouraged the judge and prosecution to assign words their mob-meanings is enormously important for the Act, and functions in such a way as to redeem it to an extent.

Before exploring the relationship between mob-meaning and individual-meaning, and its impact on the Act, I shall outline the three kinds of meaning. What I intend by 'official' meaning words are simply words the meaning of which are as fixed as is humanly possible, for example the meaning of the word 'plank' is very stable and someone who used it in the way we normally use 'bottle' would be fixed with a quizzical stare, not asked 'what do you mean by that use?'. Lawrence argues there are 'two great categories of meaning', the first of which - mob-meaning - is a derogative term for the meaning given to a word by the majority.⁴ Conversely, Lawrence credits individual-meaning with dynamism, originality and sincerity.⁵ It can be seen that each 'word-meaning' has a different level of fluidity, Ludwig Wittgenstein's theory of meaning helps explain how this may have come about. He argues that meaning is fixed by use, and so 'new types of language...come into existence, and others

¹ The Trial of Lady Chatterley shall henceforth be referred to as 'The Trial', and Lady Chatterley's Lover as 'LCL'.

² The Obscene Publications Act, 1959 shall henceforth be referred to as the 'Act'.

³ In *Law and Morality*, ed. by Louis Blom-Cooper QC and Gavin Drewry (London: Duckworth, 1976), pp. 222-5 (p. 222).

⁴ 'Pornography and Obscenity', p. 222.

⁵ *Ibid*, p. 222-3.

become obsolete'.⁶ This idea is recognised within *The Trial* in several places. For example Graham Hough explains that Lawrence attempts to redeem four-letter words by trying 'to use them in contexts that are entirely serious... to make use seriously of [them]'.⁷ If meaning is fixed by use this explains why there are different levels of stability. Words gain official meaning when used in the same set of ways for lengthy periods of time by speakers of a shared language. Mob-meaning is established through majority use and is therefore relatively stable due to being used in the same way a lot. Equally individual-meaning is especially fluid; in extreme cases a word may be used in a particular way by only one person who is able to change his/her mind, at which point that meaning of the word disappears if it is not used by someone else. It should already be beginning to become clear that extreme fluidity of meaning could be problematic if found within a legal act or field of expertise.

Ideally the Act would be based on words with established official meanings, it would make it much simpler to decide whether a publication was obscene or not if 'obscene' had a fixed meaning like 'plank'. However, this is not the case as is evident by the Act's use of a definition that includes the words 'tend to deprave and corrupt persons who are likely...to read...it'.⁸ This definition raises many questions. The prosecution initially tries to define deprave and corrupt as likely to suggest impure thoughts but, 'this proved to be a highly controversial suggestion'.⁹ The reference to likely readers in the Act implies that some people are more open to corruption than others, as there is no other reason to mention the readership. Who this might be and how it can be so is left entirely open, indeed, the prosecution quotes Mr Justice Stable as asking 'what, exactly, does that mean?'.¹⁰ The Act is couched in terms the meaning of which is ambiguous at best and, as John Montgomerie suggests, 'a wholly subjective adjective is no very promising foundation for a law'.¹¹ Frederick Schauer recognises that calling on the average person as is constantly done throughout the trial is 'designed to provide some sort of measuring rod, in the hope that, by referring to such an external standard, determination of obscenity may be marked by some degree of consistency', yet asserts that 'this objective has not been achieved'.¹² The Act is thus based on words which have no official-meaning so it is left to the mob and the individual to attempt to create some foundation of meaning for the Act before it, and its ability to help differentiate between texts, sinks.

Mob-meaning is explicit in the attitude of the prosecution and judge, and is also assumed to be predominant in the jury, as Montgomerie says, 'inevitably juries decide the issue not on an assessment of evil consequences which they have no means of judging but by the criterion of current *mores*'.¹³ They have no official-meaning to go by and, perhaps particularly when the safety of the public is in their hands and all eyes are on them, they are likely to be heavily influenced by mob-meaning. This pressure is evident in the judge's summing up when he says, 'it is an equally important case from the point of view of the public which you represent. Because is it right or is it wrong to say that in these days our moral standards have reached a low ebb?'.¹⁴ The jury is thus given the ridiculously huge responsibility of reflecting and representing the contemporary moral state of society. They must do this working within conflicting interpretations of what 'deprave and corrupt' mean, it

⁶ Marie McGinn, Wittgenstein and the Philosophical Investigations (London: Routledge, 1997), p. 55; Ludwig Wittgenstein, Philosophical Investigations (London: Blackwell, 2001), p.10.

⁷ *The Trial of Lady Chatterley's Lover*, ed. by C. H. Rolph (Reading: Cox and Wyman, 1961), p. 44.

⁸ Obscene Publications Act, 1959 in UK Statute Law Database
<http://www.statutelaw.gov.uk/content.aspx?activeTextDocId=1128038> [accessed 8 May 2009]

⁹ Trial, p. 13.

¹⁰ Ibid, p. 14.

¹¹ John Montgomerie, *The Obscenity Laws: A Report by the Working Party set up by a Conference convened by the Chairman of the Arts Council of Great Britain* (London: Andre Deutsch, 1969), p. 14.

¹² *The Law of Obscenity* (Washington: Bureau of National Affairs, 1976), p. 69; Trial, p. 225.

¹³ *Obscenity Laws*, p.29.

¹⁴ Trial, p. 227.

would therefore be unsurprising if they fell back on the safety of mob-meaning, even if they were inclined to be open to other interpretations of the Act and *LCL* prior to the trial.

Though mob-meaning is implicit in the jury it is explicit in the prosecution. For example, when Richard Hoggart characterises *LCL* as ‘puritanical’ the prosecution replies ‘I thought I had lived my life under a misapprehension as to the meaning of the word “puritanical”’.¹⁵ Hoggart then explains what it means, what it officially or individually means, but the prosecution continues to appeal to and encourage its mob-meaning by reading passages and asking ‘incredulously’ whether they are puritanical.¹⁶ The meaning that Hoggart assigns to ‘puritanical’ is not in common use and the prosecution plays on this, implying that the official meaning Hoggart gives it is either incorrect, or meaningless because it is not the mob-meaning. The judge similarly backs mob-meaning, when summing up he refers to Hoggart’s use of puritanical and says ‘well, it is for *you* to say what weight you attach to *that* opinion’ which similarly implies that Hoggart’s use is wrong.¹⁷ Mob-meaning is relatively stable and can therefore be relied upon by the Prosecution, Jury and Judge which is important in order for the Act to have a consistent ability to differentiate between texts. However, it is also very problematic. Over-reliance on mob-meaning stifles not only accuracy, as has been seen, but also social progress. If words must always be confined to their mob-meaning it will make the expression of new ideas extremely difficult, and thus the promotion of new ideas even more difficult. Additionally, there is a dangerous tendency to equate mob-meaning with the public as a mass’ use of words which denies the multiplicity of individual opinion within that public.

It is primarily the experts, in particular the literary experts, who introduce individual-meaning to the Act and *The Trial*. They do this partially through their own methods and discourse and partially through their interpretations of *LCL* which Lawrence wrote with the intention of imbuing it with individual-meaning, and therefore which, if interpreted only through mob-meaning, suffers. This is not to say that only experts are capable of understanding its individual-meaning. Many of the experts in the trial attempt to redefine words through use, with mixed success. Joan Bennett tries to widen the meaning of marriage to include ‘any union between two persons who love one another’; this is not a very successful redefinition – possibly because it does have a fixed official meaning.¹⁸ Richard Hoggart uses ‘moral’ to describe *LCL*, which is reasonably unsurprising as a description now but at the time would have seemed perverse as much of the book not only advocated behaviour that was strictly against the contemporary English social mores (the mob-meaning of morality), but described it too, as evidenced by its 30 year ban. Hoggart says that by ‘moral book’ he means it advocates ‘enormous reverence’ for each other between lovers.¹⁹ This definition of ‘moral’ provides the jury with an alternative way of thinking about morality. Similarly Bennett’s definition of marriage suggests a new respect for loving relationships outside of marriage which we can see is now common in society today, it is thus a progressive definition. This fluidity of meaning introduced by the experts could either help or hinder the Jury’s decision-making process.

Above I demonstrated that within *The Trial* the literary experts demonstrate their adeptness at manipulation of meaning, at the creation of individual meaning. It might be argued that the presence of this skill was due to *what* was on trial, not because it is intrinsic to their field of study. That *LCL* is a novel in which individual-meaning is paramount is evident, particularly in Lawrence’s use of the four-letter words. As many experts argued, including Helen Gardner, ‘by the very fact this word [fuck] is used so frequently in the

¹⁵ Ibid, p. 92, 99.

¹⁶ Ibid, p.102.

¹⁷ Ibid, p. 245.

¹⁸ Trial, p. 63.

¹⁹ Ibid, p. 92.

book...Lawrence has gone very far...to redeem this word [and it] has taken on great depth of meaning'.²⁰ He is trying to create a way for people to fully express themselves about sex. However, the manipulation of meaning the experts demonstrate is not simply because of *LCL*, the phenomenon of creating individual-meaning is central to literary criticism. This habit can be seen in Raymond Williams' title *Keywords*, which clearly indicates his objective – to elaborate and create the meanings of key words. It is also evident in the way F. R. Leavis challenges T.S. Eliot's negative view of Lawrence by adopting Eliot's terms but bestowing them with new positive meanings. For example, Eliot uses 'genius' with the implication that it is separate from thought which Lawrence lacks, Leavis replies that 'genius in Lawrence was, among other things, supreme intelligence'.²¹ The role of literary critics within the Act thus entails the inclusion of fluid individual-meaning, and this fluidity may either help or hinder the jury's decision-making process and it is these possibilities which I shall now explore.

The fluidity and multiplicity of meaning found in literary criticism is potentially problematic, particularly when it holds a position of such importance within the Act. As Montgomerie comments, 'bad though it is for us to expect juries to give their opinions on opinions, it is still worse when the opinions of the presumed experts are known to be divided'.²² The witnesses are there to give evidence which implies some sort of objectivity, but objectivity is not literary criticism's primary concern. Indeed, part of its appeal is its openness to diverse views. However, this makes its presence as a source of evidence on which the jury can base its verdict very awkward. In fact, this multiplicity of views and meanings is why literary experts are crucial to the Act in trials of literature. Mob-meaning will, generally, be utilised by the prosecution, the task of experts is to provide alternative meanings. Though some of the jury may well have understood what individual-meanings Lawrence intended, for some the presence of mob-meaning may otherwise have been overwhelming. Due to the weight of mob-meaning the Act requires individual-meaning to act as a counterbalance, to provide the second thought, as Lawrence puts it.²³

A bigger challenge for the Act is the fact that the jury are supposed to be deciding whether *LCL* is for the *public* good, but to help them make this decision the Act grants them experts who have interpreted it primarily using individual-meaning rather than the more widely used mob-meaning. As Lawrence himself said 'if you're talking to the mob, the meaning of your words is the mob-meaning, decided by majority'.²⁴ If *LCL* will be interpreted by the public using the mob-meaning then it is potentially not for the public good, despite alternative readings in which it *would* be for the public good. The introduction of literary experts would then hinder the Jury making a decision for the public good. But this is to take a very negative view of the public. Even if the majority of people would not manage to glean the individual-meaning from *LCL*, as Lawrence also says, if *LCL* manages to startle a few people 'into an individual state' that must be a good thing.²⁵

In conclusion, the fact that the Act is based on words which have no official meaning is extremely problematic. In addition the inclusion of literary experts seemed to have the ability to exacerbate the problem due to the field's fundamental fluidity of meaning and the ensuing lack of foundation for the Jury's decision-making process. However, I have argued that in reality the presence of literary experts functioned as a counterweight to the pressures and habit of mob-meaning that the jury were experiencing. The Jury have to make a decision

²⁰ Trial, p. 60.

²¹ *After Strange Gods* (London: Faber and Faber, 1934), p. 63; D.H. Lawrence, *novelist* (London: Chatto and Windus, 1955), p. 323.

²² *Obscenity Laws*, p. 23.

²³ *Obscenity Laws*, p. 224.

²⁴ 'Pornography and Obscenity', p. 222.

²⁵ 'Pornography and Obscenity', p. 224.

which ‘anybody with even a single O-level would [not] solemnly...attempt’ due to the extreme ambiguity of the most crucial terms and aspects of the Act: obscenity, the average person and artistic merit.²⁶ It is therefore crucial that that ambiguity is not foreclosed by mob-meaning when there are other possibilities crucial to the development of society. This is particularly the case for a publication like *LCL* which was written as a positive challenge to mob-meaning. The Act thus finds itself utterly incapable of fixing meanings, but in reparation it increases the possibility of sharing different meanings. It thus retains a slim possibility of differentiating between publications which are for the public good and publications which are not for the public good.

²⁶ Obscenity Laws, p. 23

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