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**Unmasking The Confessional Unmasked:  
the 1868 Hicklin test and the toleration of obscenity.**

On 29 April 1868, Lord Chief Justice Alexander Cockburn formulated his famous refinement of the 1857 Obscene Publications Act:

I think the test of obscenity is this, whether the tendency of the matter charged as obscenity is to deprave or corrupt those whose minds are open to such immoral influences, and into whose hands a publication of this sort may fall.<sup>1</sup>

Regina v. Hicklin made legal and literary history, establishing a definition that remained in force in the United Kingdom until 1959.<sup>2</sup> Its influence, moreover, was international. In 1892, the so-called Hicklin test was taken up in Canada, where it remained on the Criminal Code until 1959.<sup>3</sup> In 1896 the United States Supreme Court adopted it as the standard definition until 1957.<sup>4</sup> The judgement remained in the Indian Penal Code until it was overturned in 2014.<sup>5</sup> Lord Cockburn's words had such impact because they brought much-needed specificity to a question that the 1857 Act had conspicuously evaded. What was an obscene publication?

The Act's architect, the previous Lord Chief Justice John Campbell, knew one when he saw one. Addressing the House of Lords during the bill's second reading, he insisted that the proposed law should 'apply exclusively to works written for the single purpose of corrupting the morals of youth'.<sup>6</sup> In other words, it was directed squarely at the flourishing pornography trade, centred on a few streets in central London, and dominated by the so-called 'ogre of Holywell Street', William Dugdale. Typical Dugdale publications included The Lustful Turk, or Lascivious Scenes from a Harem (1828) and The Amorous Quaker

(1848), and his catalogues promised to cater to ‘every stretch of voluptuous imagination’ through scenes of ‘rogering, ramming, lust, lechery and licentiousness’.<sup>7</sup> Incurable, Dugdale had been repeatedly before the courts, and a recent legal skirmish had directly inspired Lord Campbell to action.<sup>8</sup> In December 1857, Lord Campbell updated the Lords about the Obscene Publication Act’s immediate consequences—a ‘siege of Holywell street’ in which ‘the shops where these abominations were found had been shut up’.<sup>9</sup> Yet his confidence that prosecutions should be limited to Holywell Street ‘abominations’ alone was not underwritten by clarity about how obscenity could be defined.

As Lord Campbell reassured his colleagues at the end of 1857, ‘apprehensions’ about his Act’s ‘probable effect’ had not been realised, ‘for as yet no repertory of the fine arts had been disturbed’.<sup>10</sup> The Lords’ unease was ironically prescient, since the Obscene Publications Act would eventually be used against D H Lawrence, Radclyffe Hall and James Joyce, in a series of spectacular trials which pitted art against sexual morality, and censorship against free speech. These famous early twentieth-century prosecutions, as Adam Parkes, Celia Marshik and Lisa Sigel have established, were theatrical events, allowing writers to present themselves as innovative, outspoken martyrs for art and sexual freedom, in principled opposition to a belatedly prudish state.<sup>11</sup> State censorship was coded as Victorian, since it was enacted through a mid-Victorian statute, but, as this article will demonstrate, the implications of the Obscene Publications Act for writing which claimed other purposes than the pornographic were surprisingly slow to emerge. The Hicklin test’s formulation—material tending ‘to deprave or corrupt those whose minds are open to such immoral influences, and into whose hands a publication of this sort may fall’—suggested that obscenity was a quality inherent in the text’s reception, irrespective of the intentions, noble or otherwise, of author, publisher, or distributor. Lord Cockburn’s judgement, to alter the literary landscape for the

century to follow, was, I shall suggest, scarcely a considered ideological statement about morality or aesthetics. Instead, it appears to have been a convenient, pragmatic solution to an immediate, local and very pressing difficulty.

The text before Lord Cockburn and his fellow justices at the Court of Queen's Bench was The Confessional Unmasked, a tract denouncing the Roman Catholic Church and sold in great numbers by the Protestant Electoral Union since early 1865. It had caused three years of sectarian, political and regional uproar, creating crises of public order across the United Kingdom—and a persistent headache for local and national government. Although startlingly sexually explicit, The Confessional Unmasked did not conform to Lord Campbell's original conception of a publication 'written for the single purpose of corrupting the morals of youth'. Instead, its 'purpose' was avowedly and self-evidently one of religious controversy—and, by implication, religious freedom. The case of The Confessional Unmasked is significant for the history of censorship for two reasons. Firstly, its indiscriminate and wholesale circulation for three years during the 1860s indicates a legal and cultural climate of surprising forbearance. The state seemed strikingly reluctant to deploy the Obscene Publications Act against material other than unambiguous 'Holywell Street abominations', even when that material was flagrantly sexually explicit, politically troublesome, and widely disseminated. Secondly, the conviction of The Confessional Unmasked appears to have been a last resort, only achieved after two previous legal cases, and after other attempts to circumscribe the dangers that it presented had failed. The Hicklin test, so significant to later show-trials between art and the censors, was, essentially, contingent in its design, and accidental in its implications.

Despite its significance to the legal history of censorship, The Confessional Unmasked has yet to be subject to extensive scrutiny; nor have its contentious modes of

publication and distribution been examined. Walter Kendrick takes its status as a work of high-minded doctrinal dispute at face value, finding Cockburn 'willing (at the cost of some consistency on his own part)' to deduce 'an intention that the Protestant Electoral Union might not have been remotely conscious of' from its publication.<sup>12</sup> Investigating the case more closely, Dominic Janes similarly finds prosecution 'on the face of it, bizarre', arguing that it reveals how 'the danger that the [Obscene Publications] act was defined to prevent had much more to do with the publication of religious tracts than might appear to have been the case'.<sup>13</sup> For Janes, the Protestant Electoral Union's energetic distribution of the pamphlet was 'simply an accepted means by which to effect legislative change', pursued by a body of principled evangelicals.<sup>14</sup> Celia Marshik acknowledges the tract's obscenity, but also takes the Protestant Electoral Union in good faith, arguing that the case 'raised the question of whether one could publish and sell "obscene" works to achieve a social goal, in this case discrediting the Catholic Church'.<sup>15</sup> This article will propose that no such noble motives informed the zeal to market a sensational and salacious shilling shocker to tens of thousands of readers. The Confessional Unmasked was a volatile, tricky hybrid—unstable, poised between religious controversy and inflammatory pornography—and its sale provided an obscure organisation of cranks and charlatans with a steady and substantial revenue stream. Its content, marketing and reception between 1865 and 1868 imply that Lord Cockburn was far from innovative, but was instead reinforcing the 1857 Act's established parameters. A fuller investigation of The Confessional Unmasked itself, alongside the eccentric and disingenuous character of the Protestant Electoral Union, reveals the ambiguities, instabilities, and pragmatic fudges at the heart of evolving obscenity law—and implies a far greater mid-Victorian tolerance of sexually explicit publications than has previously been acknowledged.

The Confessional Unmasked, showing the Depravity of the Romish Priesthood, the Iniquity of the Confessional, and the Questions put to Females in Confession consisted of 76 pages of excerpts from Roman Catholic manuals of theology. It began sedately by establishing Saint Alfonso Maria de Liguori's Theologica Moralis (1748) and Dr Peter Dens' Moral and Dogmatic Theology as the authorised texts of priestly instruction. Liguori, it observed, had been canonised at Rome in 1839, and an 1832 edition of Dens' work had been issued with the special approval of Daniel Murray, then Archbishop of Dublin.<sup>16</sup> Having explained its key sources, the pamphlet continued a scholarly note. Parallel translations of extracts from Liguori and Dens—the original Latin on the left, a lively demotic English on the right—were punctuated by often-outraged editorial interpolations and footnotes. The first half surveyed the ethics of confession and the duty of confidentiality, attempting to establish Catholic doctrine and practice as particularly disposed towards evasion. The secrecy of the confessional, the pamphlet argued, overruled secular promises, oaths and jurisdictions: priests were supported in committing perjury and withholding evidence in courts of law. Moreover, penitents absolved in confession from crimes ranging from theft to adultery were not obliged to confess them to other authorities, whether judicial or domestic. So far, The Confessional Unmasked pursued a longstanding mode of attack by presenting the Roman Catholic Church as disingenuous in protecting its spiritual authority, often in outright opposition to temporal laws. In its very form, it sought to expose matters 'written in Latin' and therefore 'beyond the reach' of an 'ignorant...class of persons' (CU iv)—a practice recalling the Reformation drive to translate sacred texts into the vernacular. The Confessional Unmasked proposed to shine light in dark places 'for the information of general readers, who are either not able, or have not time, to consult the original works for themselves' (CU iv).

'General readers' with a keen interest in doctrinal dispute could, however, hardly have been prepared for what was to come. The Confessional Unmasked's dry beginnings belied its tendency to introduce indecency by increments. The second half probed deeper into theological discussions of sexual transgressions, initially coding confession as seduction, but building towards representing it as perversion. Two lines of argument were particularly productive: the suggestion that priests pressed women to disclose intimate details of their sexual lives, and the anxiety that priests, in compelling such disclosures, intervened between husband and wife, becoming voyeurs or even interlopers in the marriage bed. They began with relatively tame explorations of questions routinely put to the young. When interrogating 'young men of about twenty' or 'a young girl or woman vainly decked', advice was 'to move from less shameful to more shameful things' (CU 39)—a strategy, ironically, pursued by The Confessional Unmasked itself. Matters of flirtation and courtship—whether a girl has 'ornamented herself in dress so as to please the male sex', or whether 'a betrothed young woman' has 'permitted kisses and other greater liberties'—gave way to interrogations about 'the most secret acts of the married' (CU 42). The theology of the 'marriage debt'—the mutual obligation for husband and wife to engage in potentially conceptive sexual intercourse with one another—offered rich opportunity.

The Confessional Unmasked began with preliminaries: what if a woman, 'through ignorance or modesty', refused her husband—and what if he 'insisted on his right... whether in anger and with threats, or with entreaties and coaxing endearments' (CU 43)? Swiftly, it moved to particulars. Do 'married persons sin mortally if, after having commenced, they refrain from spending?' (CU 50). 'If the husband withdraws after spending, but before the wife has spent, can she immediately, by touches, excite herself to spend?' (CU 52). Might wives 'by touches excite themselves before copulation, in order that they may spend

immediately on the marital encounter taking place' (CU 53)? And what kinds of 'touches' were allowed, what forbidden? Attempts to prevent conception with 'potions' or strategies to 'eject the seed' (CU 49) were proscribed, but so too were certain acts and caresses that might incidentally hinder it. 'Connection in the hinder vessel' was a mortal sin, but positions where 'Manner or posture is inverted... for instance, when done from behind or when the parties are on their sides, or, standing, or sitting, or when the husband lies underneath' were only among 'the weightier sort of venial sins' (CU 55). Stronger stuff was yet to come. Might a husband 'rub his \_\_\_ against the hinder vessel of his wife', if he then went on to complete the act 'in the vessel ordained by nature' (CU 58)? Might he 'move the finger morosely within the female vessel' (CU 61), or 'introduce his \_\_\_ into the mouth of his wife' (CU 63), or 'introduce his finger into the hinder vessel of his wife'? (CU 63). What were the limits—and what the possibilities?

Ostensibly, The Confessional Unmasked contributed to longstanding protest about the extent of state tolerance of Roman Catholicism. Anonymously authored by a 'C.B.', thought to be publisher David Bryce, the pamphlet had first appeared in 1836, riding a wave of 'no popery' agitation following Catholic emancipation in 1829.<sup>17</sup> Second and third editions in 1851 and 1852 followed the so-called Papal Aggression of 1850, when Pius IX established a hierarchy of dioceses in England and Wales.<sup>18</sup> The Protestant Electoral Union issued its mass edition of 25,000 copies in early 1865 as part of a longstanding and affiliated protest against government funding of St Patrick's Seminary College at Maynooth.<sup>19</sup> The Maynooth Grant had proved bitterly contentious since 1845, when Sir Robert Peel's Conservative administration had raised the annual endowment for the education of Irish Catholic priests from £8,000 to £26,000. Proposals to abolish the endowment were unsuccessfully introduced into every session of the House of Commons between 1851 and 1863, supported by public



petitions and agitations.<sup>20</sup> By 1865, disquiet over Maynooth had become elided with resistance to the disestablishment of the Irish Church, finally achieved by Gladstone's new Liberal government in 1869.<sup>21</sup> The Protestant Electoral Union's case was that its two main sources—Dens and Liguori—were the standard works of instruction at St Patrick's College. It prefaced David Bryce's original 1836 text by explaining that its motives were to expose 'the ATROCITY and ABOMINATION of THE TEACHING OF THE GOVERNMENT COLLEGE OF MAYNOOTH' (CU, front cover), and energetically circulated it throughout the country, issuing between 1865 and 1867 28,000th, 34,000th, 50,000th and 61,000th editions.<sup>22</sup> The Confessional Unmasked was thus vigorously marketed as a crucial intervention in an ongoing politico-religious dispute. Yet its brand of inflammatory sexual paranoia suggests that not all of its many thousands of readers were necessarily ardent theologians.

The Confessional Unmasked was a wolf in sheep's clothing, the assumed pelt of religious controversy slipping away to reveal perils beneath. It is easy to see how graphic and detailed accounts of forbidden practices might have encouraged readers to consult it as a sex manual. Strictures against postures and acts enhancing pleasure while evading conception could offer covert birth control advice, or simply suggest modes of variety. Moreover, the tract's rhythms of revelation borrowed pornography's cumulative structure of incremental exposure. By selecting extracts from theological manuals and rearranging them in a form of escalating explicitness, The Confessional Unmasked edited theology into erotica. In a stroke of brilliance, the strategy constituted its defence, as it resisted the charge of prurience by making an attack on prurience its supposed justification. Its 'object' was

not to fix the details of monkish obscenity in the memory, but to secure grave and comprehensive reflection on the system of Confessional as a

whole, of which obscenity, utterly needless and dreadful, appears to constitute an essential part (CU54).

The Confessional Unmasked was ostensibly about the corrosive power of language, since it argued that words were the means by which priests obtained sexual access to their women penitents—whether in imagination or in fact. But, by transforming doctrine into titillation, it allowed 'obscenity' to become a mobile, self-reflexive quality, simultaneously invited and repulsed. It was a teasing paradox: if it were obscene, then surely so were the dry Latin manuals of Catholic theology from which it drew? The riddle helped The Confessional Unmasked evade prosecution for three decades. Bryce's original 1836 edition seems to have been published with neither fanfare nor hindrance. The 1851 edition was advertised in The Times and courteously noticed in The Athenaeum.<sup>23</sup> Yet only the Protestant Electoral Union's edition, hawked in its thousands, attracted legal attention—and then only after over three years of vigorous promotion. 'Let anyone walk up the Strand from Charing Cross and the probabilities are that before he reaches Coutts Bank he will be offered a copy of The Confessional Unmasked', protested the Catholic periodical The Weekly Register in July 1867.<sup>24</sup> If obscurity mitigated obscenity, did this flaunting presence on the streets of the nation's cities and towns finally provoke an otherwise laissez-faire judiciary into action? And to what extent was legal intervention necessitated by the organisation responsible—Walter Kendrick's traduced naïfs, the Protestant Electoral Union?

### III

The Protestant Electoral Union was a tiny association, founded in early 1865 by Lieutenant-Colonel Henry John Brockman, solicitor Charles Hastings Collette, and Robert Steele, chairman of the Protestant Evangelical Mission.<sup>25</sup> The new organisation—initially

known as the Protestant Evangelical Mission and Electoral Union but afterwards usually abbreviated to the Protestant Electoral Union [PEU]—appointed Brockman as its chairman and Steele as its secretary. It attracted a handful of Church of England clergy, including the Rev William Burton Crickmer, Perpetual Curate of Beverley Minster, Rev Dr John Armstrong, Rector of Burslem, and the Rev R J McGhee, Rector of Holywell. The PEU's first action was to publish a new edition of The Confessional Unmasked, and to send a copy to every member of both Houses of Parliament.

On 3 March 1865, George Hammond Whalley, the vehemently anti-Catholic Liberal MP for Peterborough, brandished his copy as he addressed the Commons:

Now, he held in his hand the translation of a book paid for by the country to the extent of some thousands a year, and which formed the basis of the education at Maynooth and the convent schools. ["Read, read!"] The time might come when it might be necessary to comply with the suggestion of hon. Members, and read the contents.<sup>26</sup>

Whalley was supposedly attempting to purify the nation by threatening to read aloud from a publication of startling explicitness, and the cry of "Read, read!" may have been either an ally's encouragement or a satirical dare. The PEU's awareness of the paradox was evident in a preface, expressing anxious care lest 'some may misunderstand the motives of the Protestant Electoral Union in promoting the circulation of this pamphlet' (CU, ii). Boasting of Whalley's endorsement in subsequent editions, it presented widespread circulation as vital to a democratic political campaign, underscoring 'the necessity of giving to the PEOPLE the means of learning the perilous condition in which the policy of the Government has placed them' (CU, ii). But the furthering of a noble purpose by the widespread promotion of a text of notorious indecency was, simultaneously, a sound commercial strategy. The PEU's motives

must remain, to a degree, obscure, but that does not mean that their preliminaries to The Confessional Unmasked should be taken at face value. To many, they appeared to be no mere collection of earnest zealots, honestly devoted to the Protestant cause and sincerely hostile to the Scarlet Woman of Rome. Instead, the manner and size of their campaign invited conjecture about The Confessional Unmasked as the centre of a lucrative and disingenuous enterprise.

Suspicious were invited by the PEU's employment of itinerant lecturer William Murphy, who joined the fledgling organisation as its chief publicist and self-described 'paid agent'.<sup>27</sup> Murphy was born in Limerick in 1834 into a working-class Roman Catholic family, before converting to evangelical Protestantism in his teens. A boot-and-shoe maker by trade, he worked for the Dublin-based Irish Church Missions, before migrating to England with his wife in the early 1860s and travelling from Liverpool to London as an evangelist.<sup>28</sup> Murphy first came to notice in late-January 1865, when he delivered five evening lectures at the Gloucester Corn Exchange, attacking the veneration of the Virgin Mary, papal indulgences, the concept of purgatory, and devotion to the scapular, before the Friday night finale, an advance-ticketed event for adult men only, entitled 'The Confessional Unmasked'.<sup>29</sup> His week in Gloucester set the pattern for future events—a sequence of five nightly lectures over the course of a week, building up to the pamphlet's sensational revelations.

The term 'lecture' was misleading. These were no sedate addresses on doctrinal differences to respectfully attentive audiences, but raucous, confrontational events, 'remarkable for expressions of vituperation and controversial rancour', as The Cheltenham Chronicle reported.<sup>30</sup> By Friday night, tensions had escalated to a point requiring a heavy police presence. The sale of tickets at a shilling a head had failed to adjust demand to

capacity. 'The audience swarmed even over the platform, and the crowd at the doors extended into the street'; 'laughter and uproar were too great for anyone to hear'; questions from the floor 'could not be heard above the confusion of sounds'; and 'every minute threatened a tough faction fight'.<sup>31</sup> Such a 'scene of confusion had never been witnessed in the Corn Exchange', and it quickly became a brawl: 'Another interruption arose, but the lecturer told his audience he should have to pay for all the chairs they broke'.<sup>32</sup> What Murphy said to occasion such uproar became clearer when he next came to attention in June 1865, speaking at St James's Hall in central London:

Before two minutes were over, Mr Murphy had screamed himself hoarse in a fine Irish brogue. He danced, gesticulated, roared and perspired visibly. His fists shot out in rapid succession as if he had been propelled by machinery. His eloquence consisted of small extracts from a book called The Confessional Unmasked, and read with tremendous vehemence. The result was a series of dislocated rhetorical bursts, coming out in small spurts and jets, like a geyser run mad.<sup>33</sup>

The urbane reporter for The Pall Mall Gazette found 'the frantic ebullitions of a half-educated Irishman, dancing about a platform like a fowl on a hot gridiron [...] not bad fun for once'.<sup>34</sup> Under other circumstances, however, Murphy's strident vernacular could not be so easily dismissed.

In February 1867, the PEU arrived in Wolverhampton—where around 12,000 Irish Catholics made up one sixth of the population.<sup>35</sup> Placards (**figure 1**) of 'an offensive character' were posted, and the opening night saw a clamorous assembly of around a thousand in the Agricultural Hall, 'two thirds of the number being Irish, and more than half of these being youths and girls, bonnetless'.<sup>36</sup> Murphy and Brockman mounted the platform at

8pm, but could not make themselves heard. 'Fighting hand to hand' broke out, 'walking sticks were brought into play', and 'the lecturer, having been struck on the head with the top rail of a chair, got hold of it, and was about to aim it as a missile in return, when he was held back by Mrs Murphy'.<sup>37</sup> The following evening, reinforcements from Coventry and Birmingham struggled to police a throng of 'chiefly Irish men and youths, with a few bareheaded women and girls', who threw stones before making 'a rush to enter without paying'.<sup>38</sup> 'Foul language was volubly used, chiefly by the women', and the crowd swelled to six thousand until it was divided into quarters by an arriving troupe of the 10th Hussars.<sup>39</sup> By Friday's 'Confessional Unmasked' finale, attended by a capacity audience of 3,000, the town's magistrates felt obliged to deploy '70 regular troops, 40 yeomanry, 140 police and 250 special constables'.<sup>40</sup> The crisis escalated when the PEU moved on to Birmingham in June. Since the Mayor refused the use of the Town Hall, the PEU built a wooden 'Tabernacle' on a piece of waste land adjacent to the Irish district of the city, with capacity to hold 3,000—and rebuilt it after 'stout-looking labourers' tore it down.<sup>41</sup> As Brockman and Murphy spoke on the first night, 'a tumultuous body of men and women surrounded the building, hooting, pushing, and throwing stones', the Mayor read the Riot Act in three locations, police attacked the crowds with cutlasses, the 8th Hussars were on standby, and 'Protestant reprisals commenced with the sacking of two streets and a Roman Catholic chapel' (**figure 2**).<sup>42</sup>

What Murphy actually said was usually omitted from newspaper reports. 'Hoarse from incessant shouting', he was often inaudible over his clamorous audience—and much may have been too incendiary to print. However, one eyewitness account gives a flavour. After a lecture in Stalybridge in May 1868 had cumulated in a mob attack on the town's only Roman Catholic chapel, Unitarian minister John Page Hopps wrote to The Times giving what

he claimed were direct quotations from Murphy's lecture on 'The Confessional Unmasked'.

Supported by 'half a dozen ruffians who also lecture', Murphy began by brandishing

a ten chambered revolver, amid the wildest enthusiasm of the audience, this being without provocation and in a meeting of friends. His opening sentence was 'I'm a queer lad, as you'll find out yet'. His next sentence was a threat to smash something or somebody. Then he 'offered up prayer' and proceeded to make the following statements: 'The way to get rid of Fenianism is to hang the priests', 'It will not take us long to drive the Popish lambs to Paddy's land', 'You may depend upon it I'm a rough chap'. 'According to the History of the Council of Trent, every priest is bound to have his own concubine', 'A Roman Catholic could murder his baby or his wife by paying the priest 26l 2s 9d and confessing his crime to him', 'Your wives and daughters are exposed to debauchery in the confessional, are betrayed and kidnapped into convent prisons, and there kept the dupes or slaves of priestly lust'. All this, with much displaying of his bright ten-chambered revolver, which he called his bulldog, and which on one occasion he fired out of the lecture-hall into the streets.

His catchphrase appeared to be 'My name is Murphy, and a red hot one it is'.<sup>43</sup> This account was immediately challenged by MP George Whalley, who contributed a testimonial to Murphy's piety and good conduct, and by PEU stalwart Rev John Armstrong, who protested that Hopps was biased since he was 'not a member of the Established Church'.<sup>44</sup> But the fundamental accuracy of Hopps' narrative is supported by similar accounts. In Cheltenham, Murphy had disparaged 'Paddy's land' as 'degraded and demoralised because of the craft of the priests'.<sup>45</sup> In Birmingham, 'the harmony of the proceedings was interrupted by a discharge

of rotten eggs at the chairman'—Brockman—who promptly 'drew a revolver'.<sup>46</sup> Murphy's belligerence transformed religious difference into thrilling provocation.

As Walter Arnstein has observed, these 'Murphy riots', and those that were to follow in Ashton-under-Lyme, Rochdale, Bacup, Bolton, Manchester and Tynemouth, created a 'Victorian dilemma'. Successive Conservative and Liberal administrations were caught between conflicting ideological commitments to freedom of speech and religious tolerance.<sup>47</sup> The problem was sharpened by surges of Fenian militancy in Ireland and England throughout 1867. In February and March, the Irish Republican Brotherhood orchestrated unsuccessful rebellions in Kerry, Cork, Limerick and Dublin. Meanwhile, Fenians in England conducted an abortive raid on an ammunitions store at Chester Castle in February; ambushed a police van in Manchester, killing a guard, in September; and set a bomb in the wall of Clerkenwell prison in December, killing 12 bystanders.<sup>48</sup> Murphy was ready to exploit escalating backlash and panic about these 'Fenian outrages', particularly evident in the Northern manufacturing towns of recent Irish settlement. 'The way to get rid of Fenianism is to hang the priests', he apparently declared in Stalybridge—and John Page Hopps' account is substantiated by the title of a PEU tract, Fenianism—the Priest the Real Fenian (1868).<sup>49</sup> The spectacle of angry crowds of incensed Irish, provoked into combat by a Protestant demagogue who fired up his followers to desecrate Catholic places of worship, posed a serious threat to regional and national stability. Accordingly, in February 1867, the Home Office opened what would become a 329-page file on 'Various Disturbances on Occasion of Anti-Popery Lectures by Mr Murphy'. The month saw the first Fenian uprising in Kerry, the raid on Chester Castle—and Murphy's arrival in Wolverhampton. Until February 1867, Murphy and the PEU could be largely ignored by the state and mocked by the press as canting extremists. After February 1867, all stakes were raised.



## IV

From the first paper in the Home Office file—a notice of fears of a breach of the peace in Wolverhampton, dated 22 February 1867—the intractable difficulty posed by Murphy and the PEU is clear. Conservative Home Secretary Gathorne Hardy was regularly petitioned by mayors, magistrates and police chiefs asking for assistance in defraying expenses that would otherwise fall upon local ratepayers. Hundreds of Special Constables were sworn in, and infantry and cavalry troops transported around the country at the eleventh hour. Should 'the expense of their conveyance by railway be borne by the local authorities or by the Government', typically inquired the Mayor of Wolverhampton in April 1867.<sup>50</sup> Within a year, Murphy himself was telegraphing demands for police protection 'in my Capacity as Protestant Lecturer for the Evangelical Mission of London', insisting on his legal right to freedom of speech.<sup>51</sup> Prominent Roman Catholics were also lobbying the Home Secretary. After the Stalybridge riots in April 1868, Rudolph Feilding, Earl of Denbigh urged the Government to 'vindicate its own character for vigour and energy', since it was acquiring the reputation of being 'not capable of acting vigorously against riot, except where Fenians are concerned'. Driving the point home, he added:

It is useless to talk of putting down Fenianism, while the Irishmen in this country are expected to receive outrage on them in regard to their religion, which they value more than their lives.<sup>52</sup>

Hardy shared Denbigh's view that 'that rascally firebrand Murphy ought to be stopped somehow'.<sup>53</sup> He relieved his feelings in marginal annotations: 'Mr Murphy is a perfect nuisance', 'Mr Murphy is a positive nuisance and I think ought if possible to be stopped'.<sup>54</sup> However, Murphy and the PEU were well aware of the limits of the law. The question was, under what statute might their activities be successfully hindered?

The 1857 Obscene Publications Act offered a solution. It might be deployed against the tract forming both the grand finale of Murphy's lecture series, and its key souvenir.

'Admission to The Confessional sixpence', boasted the placards plastered across the Midlands: 'The Confession Unmasked will be sold after the meeting, price one shilling' (**see figure 1**). Certainly, the Mayor and magistrates of Birmingham seemed to think so when, on 9 July 1867, they petitioned the Home Secretary about a 'work of the most unspeakably filthy character', of which 'it is said that upwards of 30,000 copies have been sold during the last week'. Although 'not indeed professedly sold to Females or Youths', The Confessional Unmasked 'finds its way with the greatest facility into the hands of old and young of both sexes, not excepting the pupils of the Grammar Schools'. Was publication, they asked, 'an Offence at Common Law?'<sup>55</sup> The magistrates of Wolverhampton had, however, anticipated them. On 19 March 1867, metalbroker Henry Scott came before Benjamin Hicklin JP, charged with selling 'an obscene book within the meaning of the Act, calculated to contaminate the public morals'. The police had confiscated 253 Confessional Unmaskeds from Scott, who had no previous experience as a bookseller. He had been selling copies for a shilling throughout Wolverhampton, motivated solely, he claimed, by religious conviction.<sup>56</sup> The results of this prosecution were inconclusive. Hicklin found The Confessional Unmasked obscene, and ordered the destruction of the volumes seized.<sup>57</sup> But, backed by the PEU, Scott promptly appealed to the Quarter Sessions, and on 13 July Wolverhampton's Recorder, John Powell, overturned Hicklin's verdict 'with regret'. Finding no 'malicious and mischievous intention' behind Scott's actions, he observed that 'to publish an obscene book is not a misdemeanour at common law, unless the publication is prompted by a corrupt motive'.<sup>58</sup> His judgement, however, was unsure. Condemning 'zealous sectarians', Powell declined to release the confiscated tracts to Scott immediately, instead referring the case upwards to the Queen's Bench.<sup>59</sup> Legal attempts to restrain the PEU were at stalemate.

Scott's Wolverhampton prosecution, the Birmingham petition, and the appeal to Wolverhampton's Recorder together shone a spotlight on a question that had dogged the PEU since its inception. Was the publication of The Confessional Unmasked a matter of conviction or profit? In March, Benjamin Hicklin probed the nature of the defendant's investment, requiring Henry Scott to prove his claim that he had purchased his stock of 500 copies at the shilling price he sold them for, rather than the 9d discounted rate the PEU advertised to 'subscribers to the Union'.<sup>60</sup> His eldest son, Ernest Melancthon Scott, was cross-examined:

His father remitted the money after selling the books. If there were any loss his father would bear it. (The witness produced a receipt from the Secretary of the Union for 300 copies, £15). He added that his father had also sent money to Mr Murphy. His father had also had books, addressed to the women of England (price 1d. each), 250 of which might have been sold. There were also some leaflets, which were given away. Witness could not say how much money his father had in hand belonging to the Electoral Union.<sup>61</sup>

This testimony was not enough to dissuade Hicklin from convicting Scott. But it seemed to demonstrate that Scott was not himself a beneficiary. It cast sufficient doubt over 'the question of his intent and motive', as Scott's counsel put it on appeal, that Powell overturned Hicklin's verdict four months later. But, in exonerating Scott of personally profiting from The Confessional Unmasked, the two trials exposed him as the PEU's stooge, a source of revenue both as a volunteer salesman of its publications, and as a donor to its campaigns.

More was at stake here than Scott's culpability. Behind Scott stood the PEU, on trial for concealing a pornography racket behind an ersatz religious crusade. The charge had hovered over the PEU's activities from Murphy's Gloucester debut in January 1865, when he claimed to have 'sacrificed his own and his wife's fortune to proclaim the truth of the gospel', while directing the 'rushing audience' towards collection boxes placed at the exit for the benefit of 'the Protestants'.<sup>62</sup> In June, The Daily Telegraph attacked the PEU for advertising Murphy's 'Confessional Unmasked' lecture at St James's Hall in a manner calculated to attract 'young men about town' through the promise of 'indecent revelations', accusing them of 'retailing spiced indecencies'.<sup>63</sup> By September, The Pall Mall Gazette ironically noted that publications 'emanating from No. 3 Craven Street, Strand' invariably concluded with

a rattle of the begging box. The public are told Lieutenant-Colonel Brockman and his friends cannot possibly carry out their 'important operations' without immediate and liberal subscriptions.<sup>64</sup>

Murphy's lectures were good business. Fired-up, disorderly, even drunk audiences, amassing in their hundreds and thousands, were charged for admittance and solicited for donations, before a final shake-down when they were peddled scurrilous publications. The London Journal recognised an evangelical fairground barker, the notorious Tabernacle being 'a sort of wooden circus which Mr Murphy carries around with him, and pitches for his summer tour as other showmen do their boxes'.<sup>65</sup> Moreover, the promotion and organisation of the lectures invited suspicions of sharp practice. Placards posted throughout Wolverhampton in March 1867 revealed a differential pricing structure, where the first four in the series were ticketed at 2d or 1d 'to defray expenses', but 'The Confessional Unmasked' finale was priced at sixpence. The Tabernacle could hold around 3,000—but 'it was rumoured that nearly 6,000 tickets had been sold' for Murphy's final lecture in Birmingham, causing the authorities considerable anxiety 'lest some disturbance would take place from so large a crowd being

collected outside'—many presumably balked of the sixpenny tickets they had purchased.<sup>66</sup> 6,000 sixpenny tickets generated £150 during a period when a qualified engineer could expect an annual salary of £110.<sup>67</sup> Yet ticket sales were small beer, compared to the revenues achieved from the sale of The Confessional Unmasked itself. In December 1867, the PEU released a '61,000th edition': 61,000 copies at a shilling apiece grossed £3,050—an astonishing sum achieved within three years, before ticket sales, subscriptions, donations, or revenue from the PEU's long back catalogue could be taken into account.<sup>68</sup>

The inconclusive legal skirmishes over the hapless Scott in March and July 1867 brought these matters to prominence. The months leading up to the April 1868 Queen's Bench judgement saw the periodical press mount a concerted attack on the PEU as covert pornographers, associating their Craven Street headquarters with Holywell Street—the original target of the 1857 Obscene Publications Act, and barely a quarter of a mile away. In 1865, The Daily Telegraph had accused the 'little knot of sectaries congregated in Craven-Street, Strand' of seeking 'to turn that locality into a kind of pious Holywell Street' by issuing 'a supplementary Gospel in prurient penny tracts—a reduction made if a quantity be taken'.<sup>69</sup> In August 1867, The Saturday Review revived the charge. The Confessional Unmasked was 'as unspeakably filthy as the choicest productions of the genius of Holywell Street', 'hawked about the street for the delectation of every maidservant or potboy who can be induced to buy it': it asked 'Why have not the premises at 3, Craven Street, Strand, been long ago searched with a police warrant?'<sup>70</sup> 'Trafalgar Square has at this moment, as it has for the last month, been made hideous by the placards of The Confessional Unmasked', it repeated that November, wondering whether 'the police are directed to wink at these abominations'.<sup>71</sup> In December, The London Journal joined in, attacking 'zealous missionaries whose tracts are prized in Holywell Street', who only 'escape Lord Campbell's Act against obscene

publications by the difficulty of proving intent'.<sup>72</sup> In early March, The London Review alleged that Holywell Street 'publication-stews' were pirating the tract 'edited under the auspices of a pious association'.<sup>73</sup> Later that month, it condemned 'a society for the propagation of filthy pamphlets, which escapes the law by assuming to work as missionaries under the questionable guise of indecency'.<sup>74</sup> Together, these commentaries amounted to a campaign to present the PEU as hypocritical charlatans, exploiting a legal loophole. The 'difficulty of proving intent' was presented as the fig-leaf behind which they sheltered—and Lord Chief Justice Cockburn was implored to whisk it away.

## V

By the time the Queen's Bench met to consider The Confessional Unmasked on 29 April 1868, pressure had mounted from several directions. Rochdale and Stalybridge had been in uproar since mid-March, where 'very large printed placards' had created 'Tumult and Riot'. Captioned 'Protestants to the Rescue! No Surrender', advertisements for Murphy's lectures had urged 'the Protestants of Rochdale' to 'Come in your Thousands and assert your rights to Freedom of Speech'.<sup>75</sup> Behind the scenes, Murphy himself was writing to the Home Office demanding protection from a 'Popish mob', telegraphing on St Patrick's Day to complain that the Rochdale magistrate 'would rather imprison me than protect me'.<sup>76</sup> Home Secretary Gathorne Hardy was busy approving requests for Special Constables and military troops, while defending his failure to put a stop to the PEU's activities to prominent Catholic lobbyist Lord Denbigh:

'The Confessional Unmasked' is as I understand before the Queen's Bench for a decision as to whether its dissemination can be properly indicted or banished. Legal opinion has been hitherto against its prosecution but should the Courts hold otherwise then it would be the

duty of the Government to put down the publication. I am not surprised at your indignation but I have to look to legal measures and consequences.<sup>77</sup>

Should the Home Secretary have had opportunity to have a quiet word with Lord Cockburn, then his private view that 'Murphy is a positive nuisance' may have been communicated. Indeed, Lord Cockburn was primed to appreciate the wider political context, since he had spent the previous week presiding over the trial of the six Fenians charged with the Clerkenwell prison bombing.<sup>78</sup> Meanwhile, periodicals had for months been showing the Queen's Bench the way by pointing up Craven Street's proximity to Holywell Street. Finding The Confessional Unmasked indictable as an obscene publication could formally discredit the PEU, and potentially prohibit a major source of its revenue stream.

The Queen's Bench's task was made the easier because recent events, and press reaction to them, had framed The Confessional Unmasked as precisely the cheap, mass-produced smut that the 1857 Act was intended to outlaw. Lord Campbell and his colleagues were clear that no 'repertory of the fine arts' was to be 'disturbed'.<sup>79</sup> Instead, the statute was to

apply exclusively to works written for the single purpose of corrupting the morals of youth and of a nature calculated to shock the common feelings of decency in any well-regulated mind

—works summarised by a named location, Holywell Street.<sup>80</sup> Lord Campbell's Act set out to preserve a particular readership from 'demoralisation': poor, urban, working-class, without formal education. This was the very audience assiduously courted by the PEU—and, significantly, it included women. Commentators noted, time and again, gendered instances of demoralisation. At Wolverhampton, 'girls, bonnetless' filled the Agricultural Hall, Mrs Murphy 'held back' her husband on the platform, and 'bareheaded women and girls' flung

stones and 'Foul language' in the streets outside. To The Saturday Review, the PEU clearly targeted the 'maidservant and potboy' who represented 'those classes of the community most likely to be contaminated'.<sup>81</sup> Moreover, Murphy's riotous reception dramatised the capacities and capabilities of an aroused and impulsive audience. The collective brawling breaking out in and around packed halls, where chairs were broken, stones thrown, and revolvers fired into the air, offered painful illustrations of the power of language to inflame—particularly during lectures on 'The Confessional Unmasked', in which the spoken and the written word were conspicuously blended.

Accordingly, although Scott's counsel did his best to emphasise the noble principles of a distributor who 'did not keep or sell the pamphlets for purposes of gain', Regina v. Hicklin brusquely set aside the question of intention.<sup>82</sup> During a discussion of case law, Cockburn added topical nuance by considering the relationship between criminal intention and effect:

But, if intention is necessary, it must be inferred that the appellant intended the natural consequences of his act, which the recorder finds are to prejudice good morals (368).

The 'natural consequences' of mass distribution of The Confessional Unmasked across the country were, by April 1868, notorious. What Cockburn could hardly have failed to have in view was a very visceral instance of a text's incendiary effects. The Confessional Unmasked's status over the previous three years as the paradigmatic and extreme illustration of the impact of 'obscenity' upon a mass readership underwrote his famous judgement. For his 'test of obscenity'—whether the 'tendency of the matter charged' was 'to deprave or corrupt those whose minds are open to such immoral influences, and into whose hands a publication of this sort may fall'—privileged the reading experience of the susceptible above all else. As his judgement went on, Cockburn demolished the PEU's defence that they were merely exposing



the prurience of the Roman Catholic church, observing that if questions 'between the priest and the person confessing' be 'libidinous', then the injury is magnified 'when the whole is put into a series of paragraphs' describing 'some impure practices, some of them of the most filthy and disgusting and unnatural description is it possible to imagine' (371). He came close to an accusation of bad faith, in a dry indictment which implied that the PEU were sheltering behind a fundamental implausibility. The Confessional Unmasked was

a work the obscenity of which is so clear and decided, that it is impossible to suppose that the man who published it must not have known and seen that the effect upon the minds of many of those into whose hands it would come would be of a mischievous and demoralizing character (372).

Cockburn's glissade from one of the tract's many distributors to 'the man who published it'—from Scott to Brockman or Steele—was telling. 'I hold', he concluded 'that, where a man publishes a work manifestly obscene, he must be taken to have had the intention which is implied from that act' (373). Thus The Confessional Unmasked's conviction was restored. The PEU were legally confirmed as pornographers, Henry Scott merely their pawn.

## VI

The short term effects of Cockburn's ruling were surprisingly inconclusive. Scott's stock of 253 copies was destroyed, and 3,800 more were confiscated in Rochdale in May 1868.<sup>83</sup> Yet Murphy continued to lecture in his customary vein, as John Page Hopps reported from Stalybridge later that month. Moreover, the PEU responded to the Rochdale confiscations by issuing an alternative to The Confessional Unmasked, in the form of a transcript of a debate in Rochdale between Murphy and a Catholic opponent. The Depravity of the Priests and the Immorality of the Confessional extensively quoted Murphy's distinctive

oratory: 'Listen again! "But it is always a mortal sin if the husband introduces his — into the mouth of his wife" (Sensation)'.<sup>84</sup> These highlights were even sold at twopence—a sixth of the price of the original. Meanwhile, The Confessional Unmasked itself continued to be circulated. In October 1870, PEU lecturer George Mackay was convicted of selling a slightly expurgated version, raising protests in the House of Commons.<sup>85</sup> In February 1871, the PEU premises were raided and chairman Robert Steele prosecuted for issuing a new edition, prefaced by an account of Mackay's trial.<sup>86</sup> In 1872, Reynold's Newspaper reported that the unexpurgated tract was sold for a shilling in many London bookshops: indeed, its own advertising columns regularly carried booksellers' notices promoting it.<sup>87</sup> By February 1873, The Era protested that 'a certain wicked old foxy-faced man' was still a fixture in Trafalgar Square, employed by 'a religious society' to sell The Confessional Unmasked outside the National Gallery using 'an old and obsolete hawkers' licence'.<sup>88</sup> These instances of the tract's continued availability over the five years following Regina v. Hicklin underscored the judgement's lack of immediate impact. Murphy's lectures continued to cause serious disturbances, especially in Manchester where he 'offered himself as a candidate on Protestant principles' in the November 1868 General Election.<sup>89</sup> The city's Head Constable ominously reported 'some Fenians here' hoped he would 'raise the passions' of 'men who have kept back before', and Judy magazine summarised the sensation he caused in a cartoon showing Murphy as a political 'hot potato' (**figure 4**).<sup>90</sup> During disturbances in Whitehaven in early 1871, Murphy was badly beaten and thrown down a flight of stairs by six Irish labourers: broken in health, he died in Birmingham the following year at the age of 38.<sup>91</sup> His assailants achieved a silencing never accomplished through legal means.

Lord Cockburn's landmark judgement thus had surprisingly little impact on the immediate matter it set out to regulate. It had the ideological effect of formally discrediting a

disreputable organisation, but, otherwise, it did not seriously curtail the PEU's activities, hinder Murphy, or even prevent the dissemination of The Confessional Unmasked. The PEU's scurrilous publications were hydra-headed, and its most notorious pamphlet, once banned, resurfaced clandestinely and in other forms. Murphy continued unabashed, until the labourers of Whitehaven intervened. The ruling merely confirmed the PEU as charlatan pornographers, paradigmatic examples of what The Saturday Review had already termed 'Prurient Prudery'. Indeed, it is a rich irony that later interpretations of Regina v. Hicklin's place in the history of censorship had the effect of restoring the PEU's tattered reputation. To Walter Kendrick, Lord Cockburn's judgement seemed to attribute an intention that 'the Protestant Electoral Union might not have been remotely conscious of'—but he surmises an unworldly good faith which contemporaries in 1868 would scarcely have recognised. Yet, if the short-term effect of Regina v. Hicklin was minimal, its long-term consequences reverberated down the next century. The Confessional Unmasked exposed a problem at the heart of attempts to regulate sexually explicit publications: where did obscenity reside? Was it a quality immanent in the text itself, irrespective of the nature of its consumption? Or did obscenity inhabit the manner of the text's reception, to be established through the nature and responses of its readership?

Cockburn's judgement responded to the evidence of least contention. Murphy's lectures dramatized reader response as rioters became inflamed by a text removed from its intended clerical audience and reassembled into a sensational guide-book to sexual variety. The arousal that The Confessional Unmasked provoked was two-fold—erotic and sectarian, affecting the individual body and the body politic. It crossed a line from the privacy of the bedroom or gentleman's library, to the publicity of the street or municipal hall. Those rioting were extreme and conspicuous examples of imperilled readers, particularly when they were

working-class, young or female. Indeed, dismay over The Confessional Unmasked's impact upon femininity spilled over into Henry Scott's first trial, as his nineteen year old son Ernest was cross-examined on the practicalities of storage and sale:

Are they openly kept in your house, so that all the females have access to them? Have your mother and servant access to them? Are they kept in a room unlocked? Are they kept in a room in which your mother sits? He should think their servant was thirty years old.—Had she access to these books, if she thought proper. She cannot read.<sup>92</sup>

Henry Scott's wife and—illiterate—servant stood proxy for other readers filling Wolverhampton that month. Revealingly, the prosecution's argument anticipated the notorious words of barrister Mervyn Griffiths-Jones in the 1960 trial of Lady Chatterley's Lover: 'Is it a book you would have lying around your own house? Is it a book that you would even wish your wife or your servants to read?'<sup>93</sup>

A century earlier, Henry Scott's supervision of his own wife's and servant's potential reading was similarly in dispute. The coincidence underlines how the impact of The Confessional Unmasked's eventual, if ineffective, prohibition resonated down the decades. The statute that Regina v. Hicklin modified was only replaced in 1959, a year before the Chatterley trial. The passage of ninety years elided from legal memory the extraordinary circumstances prompting an extraordinary judgement. Cockburn's decision to set aside authorial intention and define obscenity as material tending 'to deprave or corrupt those whose minds are open to such immoral influences, and into whose hands a publication of this sort may fall' was a pragmatic response to a uniquely troublesome and troubling instance. The Queen's Bench was informed by the national infamy of a tiny group of meretricious mountebanks, charged with corrupting a dangerously susceptible readership. Behind Regina

v. Hicklin stood the reckless profiteering of an organisation whose skill in monetising civil unrest could no longer be overlooked. The Protestant Electoral Union were provocateurs, The Confessional Unmasked their most successful provocation—and Cockburn's judgement stands as confirmation of the old adage that hard cases make bad law.

## VII

The full story of The Confessional Unmasked and its delayed, ineffectual suppression significantly shifts our understanding of the impact and legacy of the 1857 Obscene Publications Act. It reveals surprising state tolerance, a decade after the statute passed into law, of a cheap pornographic pamphlet in widespread circulation throughout the United Kingdom for three long and turbulent years. That tolerance was wholly in accordance with the intentions underwriting the original legislation. As Lord Campbell explained, his law was to apply ‘exclusively to works written with the single purpose’ of sexual arousal. He meant, and was understood to mean, unambiguous Holywell street erotica, such as The Lustful Turk. The Confessional Unmasked packaged sexual titillation as religious controversy, and the masquerade, unconvincing as it was, was enough to evade justice until Regina v. Hicklin. Three successive trials were needed to establish whether it was indictable, and the pamphlet was only brought to court after it had reduced large swathes of the country to dangerous disorder. The Hicklin test defined obscenity as an effect produced on readers, setting aside authorial intention. Ironically, the question of intention appears to have been, in another sense, at stake. Lord Cockburn and his colleagues, under pressure from the press and the Home Office, probably intended to use obscenity legislation as a convenient tool to manage an acute and extraordinary instance of the effects of unregulated reading. The long-term consequences of their ruling seem not to have been immediately apparent. Certainly, the

continued distribution of The Confessional Unmasked well into the 1870s indicated it had little effect on the matter it set out to regulate.

Nonetheless, the cultural implications of Regina v. Hicklin echoed into the next century, where the judgement and the Act it moderated came to stand, at home and abroad, for the tyranny of outdated Victorian values over sexual and artistic freedom. The conceptualisation of that tyranny was a crucial element of the modernist mission to fight censorship, allowing Lawrence, Joyce and Hall to become cause célèbres in a boldly-defined culture war. Some critics continue to follow Kendrick in interpreting that conflict as a struggle between modernist revolution and conservative prudery. For Christopher Pollnitz, ‘the anachronistic 1857 Act’ was the weapon seized between 1924 and 1929 by Conservative Home Secretary Sir William Joynson-Hix and his Director of Public Prosecutions, Sir Archibald Bodkin, in order ‘to reverse the modernist challenge to Victorian morality’.<sup>94</sup> Others have established how modernists made productive use of a censorship dialectic predicated on self-conscious conflict between innovators and reactionaries.<sup>95</sup> But the case of The Confessional Unmasked indicates that the ‘Victorian morality’ supposedly encapsulated in the 1857 Act and underscored in its 1868 refinement was something of a fantasy, taken up by modernists and their supporters as part of their claim to make it new. The suppression of The Confessional Unmasked was, after all, belated, reluctant, and, ultimately, ineffectual. Instead, its story is one of remarkable legal forbearance, even while an inflamed mass readership was rioting in the streets.

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<sup>1</sup> 'Regina v. Hicklin' (1868), Law Reports 3: Queen's Bench Division 1867-68, 371.

<sup>2</sup> The 1959 Obscene Publications Act repealed the 1857 Obscene Publications Act and replaced the Hicklin test with a definition of obscenity which required the article charged to be ‘taken as a whole’, before judging whether it might ‘deprave and corrupt persons who are likely, having regard to all relevant circumstances, to read, see or hear the matter contained or embodied in it’ (7&8 Eliz 2 Ch 66, Section 1).

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<sup>3</sup> The Canadian Department of Justice, Communication and Public Affairs, Pornography and Prostitution in Canada: Report of the Special Committee on Pornography and Prostitution (Ottawa: Minister of Supply and Services, 1985), 111-2.

<sup>4</sup> 'Rosen v. United States', 161 U.S. 29 (1896), 43. The 'Hicklin test' remained the legal test for obscenity until 'Roth v. United States', 354 U.S. 476 (1957).

<sup>5</sup> The Indian Penal Code, 'Sale, etc, of obscene books, etc', Section 292:1. The Hicklin test was displaced in *Aveek Sarkar v. State of West Bengal* by the Indian Supreme Court in February 2014. The judgement found that 'the obscenity has to be judged from the point of view of an average person, by applying contemporary community standards' (paragraph 24).

<sup>6</sup> Hansard HL vol 146 col 329 (25 June 1857).

<sup>7</sup> 'The Holywell Street Seizures', Lloyd's Weekly Newspaper 22 November 1857, 12; 'Extraordinary Case—Dugdale v Stanton', Reynold's Newspaper 13 July 1856, 16; Ronald Pearsall, The Worm in the Bud: The World of Victorian Sexuality (Stroud: Sutton Publishing, 2003), 364. For further details of the network of pornographers setting up businesses on Holywell Street and its environs, see Iain McCalman, Radical Underworld: Prophets, Revolutionaries and pornographers in London, 1795-1840 (Cambridge: Cambridge University Press, 1988), 235.

<sup>8</sup> See Katherine Mullin, 'Poison More Deadly than Prussic Acid: Defining Obscenity after the 1857 Obscene Publications Act', Prudes on the Prowl: Fiction and Obscenity in England, 1850 to the Present Day, ed. David Bradshaw and Rachel Potter (Oxford: Oxford University Press, 2013), 11-29.

<sup>9</sup> Hansard HL vol 148 col 227 (7 December 1857).

<sup>10</sup> Ibid.

<sup>11</sup> Adam Parkes, Modernism and the Theatre of Censorship (New York: Oxford University Press, 1996); Celia Marshik, British Modernism and Censorship (Cambridge: Cambridge University Press, 2006); Lisa Sigel, 'Censorship in Inter-War Britain: Obscenity, Spectacle, and the Workings of the Liberal State', Journal of Social History 45 (2011), 61-83.

<sup>12</sup> Walter Kendrick, The Secret Museum: Pornography in Modern Culture (London: University of California Press, 1996), 121.

<sup>13</sup> Dominic Janes, 'The Confessional Unmasked: Religious Merchandise and Obscenity in Victorian England', Victorian Literature and Culture 41 (2013), 677-8.

<sup>14</sup> Ibid, 682.

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<sup>15</sup> Marshik, 22.

<sup>16</sup> [Anon], The Confessional Unmasked, showing the Depravity of the Romish Priesthood, the Iniquity of the Confessional and the Questions put to Females in Confession. 28,000th Edition (London: Protestant Electoral Union, 1865), iii, hereafter cited parenthetically in the text as CU.

<sup>17</sup> 'Obituary Notices', The Bookseller 3 June 1875, 2.

<sup>18</sup> The Confessional Unmasked (London: Thomas Johnston, 1851); The Confessional Unmasked (London: William Strange, 1852). For an account of the backlash against the Papal Aggression, including the 1851 Ecclesiastical Titles Act, see Jonathan Bush, "Papists" and Prejudice: Popular Anti-Catholicism and Anglo-Irish Conflict in the North East of England, 1845-70 (Newcastle: Cambridge Scholars Publishing, 2013), 66-70.

<sup>19</sup> G. I. T. Machin, 'The Maynooth Grant, the Dissenters and Disestablishment, 1845-1847', The English Historical Review 82 (1967), 61-85.

<sup>20</sup> Frank Wallis, 'The Revival of the Anti-Maynooth Campaign in Britain, 1850-52', Albion: A Quarterly Journal Concerned with British Studies 19 (1987), 527-47.

<sup>21</sup> Denis G Paz, Popular Anti-Catholicism in Mid-Victorian England (Stanford: Stanford University Press, 1992), 16-7.

<sup>22</sup> Many PEU editions proclaimed circulation figures on frontispieces. The British Library holds a 28,000th edition stamped 1865; a 34,000th with an estimated date of 1865, and a 50,000th edition dated 1867. A 61,000th edition dated by hand 'December 1867' is held in 'Mr. Murphy. February 1867 - May 1870. Various Disturbances on Occasion of Anti-Popery Lectures', Home Office 45 / 7991, The National Archives, Kew, United Kingdom, 210. Further references cited as HO45 / 7991. All these editions were reprints of the Bryce original, and thus retain identical pagination through the body of the text. Some carry additional frontispiece and prefatory material by the PEU.

<sup>23</sup> 'Supplement to The Times', The Times 9 June 1851, 11; 'List of New Books', The Athenaeum 15 March 1851, 295.

<sup>24</sup> 'The Confessional Unmasked', The Weekly Register 20 July 1867, 5.

<sup>25</sup> Denis G Paz, Popular Anti-Catholicism in Mid-Victorian England (Stanford: Stanford University Press, 1992), 38.

<sup>26</sup> 'Motion for a Select Committee', HC Deb 3 March 1865 vol 177, c. 1045, 1075-6.

<sup>27</sup> HO45 / 7991, 31.



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- <sup>28</sup> John Wolffe, 'Murphy, William (1834–1872)', Oxford Dictionary of National Biography, Oxford University Press, 2004; online edn, Jan 2008.
- <sup>29</sup> 'A Convert's Views on Popery', The Cheltenham Chronicle 24 January 1865, 2.
- <sup>30</sup> 'Anti-Papal Movement', The Cheltenham Chronicle 14 February 1865, 5.
- <sup>31</sup> 'A Convert's Views on Popery', The Cheltenham Chronicle 24 January 1865, 2.
- <sup>32</sup> *Ibid.*
- <sup>33</sup> 'The Confessional Unmasked', The Pall Mall Gazette 27 June 1865, 5.
- <sup>34</sup> *Ibid.*, 5.
- <sup>35</sup> Roger Swift, 'Another Stafford Street Row: Law, Order and the Irish presence in mid-Victorian Wolverhampton', Immigrants and Minorities 3 (March 1984), 5-29.
- <sup>36</sup> 'Disturbance at Wolverhampton', Daily Post 20 Feb 1867, 7.
- <sup>37</sup> *Ibid.*
- <sup>38</sup> 'Another Disturbance in Wolverhampton', Daily Post 21 Feb 1867, 8.
- <sup>39</sup> *Ibid.*
- <sup>40</sup> 'The Wolverhampton Riots', The Times 25 February 1867, 12.
- <sup>41</sup> 'Mr William Murphy's Visit to Birmingham: Attempt to Destroy the Building in Carr Lane', Aris's Birmingham Gazette 1 June 1867, 7.
- <sup>42</sup> 'Apprehended Riot In Birmingham', The Times 17 Jun 1867, 6; 'Leader', The Times 20 June 1867, 10.
- <sup>43</sup> 'The Murphy Riots', The Times 26 May 1868, 11.
- <sup>44</sup> 'The Murphy Riots', The Times 28 May 1868, 5.
- <sup>45</sup> 'A Convert's Views on Popery', The Cheltenham Chronicle 24 January 1865, 2.
- <sup>46</sup> 'Notes of the Week', The London Journal, 31 August 1867, 242.
- <sup>47</sup> Walter L. Arnstein, 'The Murphy Riots: A Victorian Dilemma', Victorian Studies 19 (1975), 51-71.
- <sup>48</sup> Donald R. MacRaild, The Irish Diaspora in Britain, 1750-1939 (Basingstoke: Palgrave, 2011), 124-129.
- <sup>49</sup> I have been unable to locate a copy of this publication, advertised on the rear flyleaf of Two Methods to Stop Popery and Preserve the Chastity of English Wives, Daughters and Servants (London: Protestant Electoral Union, 1869).
- <sup>50</sup> Memorandum dated 6 April 1867, HO45/ 7661, 17.
- <sup>51</sup> Letter dated 14 March 1868, HO45/ 7661, 58.
- <sup>52</sup> Letter dated 10 April 1868, , HO45/ 7661, 75.

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- <sup>53</sup> Ibid.
- <sup>54</sup> Annotations to material dated 6 April 1867 and 24 April 1868, HO45/7661, 17, 86.
- <sup>55</sup> Petition dated 9 July 1867, HO 45 7991, 31-4.
- <sup>56</sup> 'A Barrister', The case of "The Confessional Unmasked": being a report of the proceedings at Wolverhampton, and in the Court of Queen's Bench, in the matter of the appeal "Scott v. Justices of Wolverhampton" ; with some prefatory remarks (London: A Gadsby, 1868), 15.
- <sup>57</sup> Ibid, 20; 'The Confessional Unmasked' The Times 20 March 1867, 12.
- <sup>58</sup> The Legality of 'The Confessional Unmasked', The Pall Mall Gazette 13 July 1867, 5.
- <sup>59</sup> Ibid, 34-5.
- <sup>60</sup> 'A Barrister', The Case of "The Confessional Unmasked", 18.
- <sup>61</sup> Ibid. There were 20 shillings in the pound, so 300 copies would indeed cost £15. Scott also appears to have sold Henry Brockman's Letter to the Women of England on the Confessional (London: Protestant Electoral Union, 1867).
- <sup>62</sup> 'A Convert's Views on Popery', The Cheltenham Chronicle 24 January 1865, 2.
- <sup>63</sup> 'Prurient Patriots', The Daily Telegraph 24 June 1865, 3.
- <sup>64</sup> 'A Protestant Triumph', The Pall Mall Gazette 14 Sept 1865, 10-11.
- <sup>65</sup> 'Notes of the Week', The London Journal, 31 August 1867, 242.
- <sup>66</sup> 'The Riots of Birmingham, Friday Evening', The Times 22 Jun 1867, 12.
- <sup>67</sup> For representative wages during the mid-1860s, see Dale S Porter, The Thames Embankment: Environment, Technology, and Society in Victorian London, (Akron, Ohio: University of Akron Press, 1998), 176.
- <sup>68</sup> The '61,000th edition' dated December 1867 is held in the Home Office files, HO 45 / 7661, 210.
- <sup>69</sup> 'Prurient Patriots' [from the Daily Telegraph], The Cork Examiner 26 June, 1865, 3.
- <sup>70</sup> 'The Protestant Electoral Union', The Saturday Review 10 August 1867, 178-80.
- <sup>71</sup> 'London Streets', The Saturday Review 16 November 1867, 630.
- <sup>72</sup> 'Notes of the Week', The London Journal 14 December 1867, 640.
- <sup>73</sup> 'Pestilent Publications', The London Review 7 March 1868, 220.
- <sup>74</sup> 'Our Bigots', The London Review 28 March 1868, 298.
- <sup>75</sup> HO 45 / 7991, 53.
- <sup>76</sup> Letter dated 14 March 1868; telegram dated 17 March 1868, HO 45 / 7991, 61.
- <sup>77</sup> HO 45/ 7991, 84.

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- <sup>78</sup> Brian Jenkins, Fenian Problem: Insurgency and Terrorism in a Liberal State, 1858-1874 (Montreal: McGill-Queen's University Press, 2008), 198.
- <sup>79</sup> Hansard HL vol 148 col 227 (7 December 1857).
- <sup>80</sup> Hansard HL vol 146 col 329 (25 June 1857).
- <sup>81</sup> 'The Protestant Electoral Union', The Saturday Review 10 August 1867, 178.
- <sup>82</sup> 'Regina v. Hicklin' (1868), Law Reports 3: Queen's Bench Division 1867-68, 363.
- <sup>83</sup> 'Murphy's Obscene Books Ordered to be Destroyed', Glasgow Herald 15 May 1868, 12.
- <sup>84</sup> The Depravity of the Priesthood and the Immorality of the Confessional (London: Protestant Electoral Union, 1868), 8.
- <sup>85</sup> 'A Summary of this Morning's News', The Pall Mall Gazette 20 October 1870, 6; 'A Summary of this Morning's News', The Pall Mall Gazette 5 January 1871, 6; HC Deb 18 May 1871 vol 206 cc 960-1.
- <sup>86</sup> 'The Confessional Unmasked Again', The Standard 3 February 1871, 6.
- <sup>87</sup> 'The Confessional Unmasked', Reynold's Newspaper 5 May 1872, 6. See, for example, 'Advertisements and Notices', Reynold's Newspaper 17 July 1870, 7, where The Confessional Unmasked was offered for sale for 2s 6d by H Herbert of Wych Street—adjacent to Holywell Street—alongside illustrated editions of Fanny Hill and Aristotle's Masterpiece.
- <sup>88</sup> 'Our Omnibus', The Era 16 February 1873, 4.
- <sup>89</sup> 'Northern Circuit', The Times 21 July 1871, 11; 'Murphy riots at Manchester', The Tablet 12 September 1868, 13.
- <sup>90</sup> Thomas Welby to Gathorne Hardy, memo dated 30 August 1868, HO 45/ 7991, 196.
- <sup>91</sup> Wolffe, 'Murphy, William (1834–1872)'.
- <sup>92</sup> 'A Barrister', The case of "The Confessional Unmasked", 18.
- <sup>93</sup> C H Rolph, The Trial of Lady Chatterley (London: Penguin Books, 1961), 17.
- <sup>94</sup> Christopher Pollnitz, 'The Censorship and Transmission of D H Lawrence's Pansies: The Home Office and the "Foul-Mouthed Fellow"', Journal of Modern Literature 28:3 (2005), 56.
- <sup>95</sup> Celia Marshik. Adam Parkes and Hannah Roche agree in finding censorship an ultimately productive and enabling force in the shaping of modernist writing. See Marshik, British Modernism and Censorship; Parkes, Modernism and the Theatre of Censorship; Roche, 'An 'ordinary novel': genre trouble in Radclyffe Hall's The Well of Loneliness', Textual Practice 31:3 (2017), 1-17.